16-1423 ORTIZ V. UNITED STATES

DECISION BELOW: 76 M.J. 189

LOWER COURT CASE NUMBER: 16-0671

QUESTION PRESENTED:

Since shortly after the Civil War, federal law has required specific authorization from Congress before active-duty military officers may hold a "civil office," including positions that require "an appointment by the President by and with the advice and consent of the Senate." 10 U.S.C. § 973(b)(2)(A)(ii).

After President Obama nominated and the Senate confirmed Colonel Martin T. Mitchell as an "additional judge" of the Article I U.S. Court of Military Commission Review (CMCR), Judge Mitchell continued to serve as an appellate military judge on the U.S. Air Force Court of Criminal Appeals (AFCCA), including on the panel that heard (and rejected) Petitioner's appeal of his conviction by court-martial. The U.S. Court of Appeals for the Armed Forces (CAAF) rejected Petitioner's objections to such dual-officeholding, concluding that any statutory or constitutional infirmities with such dual service implicated Judge Mitchell's CMCR position, and not his eligibility to continue to serve on the AFCCA.

The Questions Presented are:

1. Whether Judge Mitchell's service on the CMCR disqualified him from continuing to serve on the AFCCA under 10 U.S.C. § 973(b)(2)(A)(ii).

2. Whether Judge Mitchell's simultaneous service on both the CMCR and the AFCCA violated the Appointments Clause.

CONSOLIDATED WITH 16-961 AND 16-1017 FOR ONE HOUR ORAL ARGUMENT. IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITIONS, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE CASES IN NOS. 16-961 AND 16-1017 UNDER 28 U. S. C. § 1259(3).

CERT. GRANTED 9/28/2017