

15-338 SHERIFF V. GILLIE

DECISION BELOW: 785 F.3d 1091

LOWER COURT CASE NUMBER: 14-3836

QUESTION PRESENTED:

This case asks whether Congress, through the Fair Debt Collection Practices Act, meant to interfere with the way in which a State engages in a sovereign function-its debt collection. Ohio requires its Attorney General to collect debts owed to the State. It authorizes the Attorney General to "appoint special counsel," in addition to employees, "to represent the state in connection with" this debt collection. The law requires that the Attorney General give special counsel the office's letterhead for use in collecting tax debts, and the Attorney General has read the law as giving him discretion over whether those counsel use that letterhead for other debts owed to the State.

The Fair Debt Collection Practices Act bars "debt collectors" from "us[ing] any false, deceptive, or misleading representation or means," 15 U.S.C. § 1692e, but expressly does not apply to "any officer or employee" of a "State to the extent that collecting or attempting to collect any debt is in the performance of his official duties," *id.* § 1692a(6)(C). In this case, a divided Sixth Circuit held that special counsel do not qualify for this state exemption and that a jury could find their use of state letterhead "misleading."

The case presents two questions:

1. Are special counsel-lawyers appointed by the Attorney General to undertake his duty to collect debts owed to the State-state "officers" within the meaning of 15 U.S.C. § 1692a(6)(C)?
2. Is it materially misleading under 15 U.S.C. § 1692e for special counsel to use Attorney General letterhead to convey that they are collecting debts owed to the State on behalf of the Attorney General?

CERT. GRANTED 12/11/2015