

16-961 DALMAZZI V. UNITED STATES

DECISION BELOW: 76 M.J. 1

LOWER COURT CASE NUMBER: 16-0651

QUESTION PRESENTED:

Since shortly after the Civil War, federal law has required express 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 a judge of the Article I U.S. Court of Military Commission Review (CMCR), Judge Mitchell continued to serve on the U.S. Air Force Court of Criminal Appeals (AFCCA). The U.S. Court of Appeals for the Armed Forces (CAAF) rejected as moot Petitioner's challenge to Judge Mitchell's continued service on the AFCCA, because his CMCR commission had not been signed until after the AFCCA decided her case on the merits—even though she moved for reconsideration after the commission was signed.

The Questions Presented are:

1. Whether the Court of Appeals erred in holding that Petitioner's claims were moot.
2. 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).
3. Whether Judge Mitchell's simultaneous service on both the CMCR and the AFCCA violated the Appointments Clause.

CONSOLIDATED WITH 16-1017 AND 16-1423 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).

DALMAZZI v. UNITED STATES, 16-961 AND COX v. UNITED STATES, 16-1017 DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 9/28/2017