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Fairness dictates a chance to appeal after plea

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Class v. U.S.
Oral Argument: Oct. 4

Class v. United States, one of two criminal cases set to be argued in the first week of the U.S. Supreme Court's new term beginning in October, raises important questions about when and how defendants can challenge the constitutionality of a criminal law that they have admitted to have violated. Petitioner Rodney Class should be allowed to challenge on appeal the constitutionality of his statute of conviction even though he entered an unconditional guilty plea.

While on a trip to Washington, D.C., Class parked his Jeep in a lot near the U.S. Capitol building. He left several guns — for which he had valid permits — inside a container in his Jeep while he visited the Capitol. The parking lot was clearly signed as being restricted to congressional employees, but there was no express notice that firearms are prohibited. When Class returned to his Jeep, he was arrested and charged with violating a federal law that prohibits possession of firearms on Capitol grounds.

Class pled guilty. His plea agreement contained a general waiver of appellate rights, which he affirmed during his plea colloquy. He did not specifically waive his right to appeal the constitutionality of his statute of conviction, but he failed to expressly preserve that right by entering into a conditional plea.

Class then appealed to the U.S. Court of Appeals for the D.C. Circuit, challenging the firearm statute on due process and Second Amendment grounds. The D.C. Circuit declined to reach the merits of Class' constitutional claims and affirmed his conviction based on waiver of his right to appeal.

Class' case is now before the Supreme Court, where it will be argued on Oct. 4. As Class frames it, the question presented is whether his guilty plea inherently waived his right to challenge the constitutionality of his statute of conviction.

In essence, this question turns on the scope of an exception to a general rule. Typically, a defendant's unconditional guilty plea extinguishes his right to appeal his conviction, but the Supreme Court has recognized an exception when the defendant's claims on appeal go to "the very power of the State to bring the defendant into court to answer the charge brought against him." *Blackledge v. Perry*, 417 U.S. 21, 30 (1974); see also *Menna v. New York*, 423 U.S. 61 (1975). Class argues that these cases create a broad presumption against

waiver of constitutional challenges. By contrast, the government would limit the *Blackledge/Menna* exception to situations where double jeopardy or lack of subject matter jurisdiction bars initiation of prosecution in the first place.

The Supreme Court's precedent provides no clear answer to the question presented. That being so, the court can and should look to the real-world implications of the parties' competing approaches.

Everyone probably agrees that criminal defendants should not languish in prison if they are convicted under statutes that are unconstitutional. As such, there has to be some practical mechanism by which a defendant in Rodney Class' position can challenge his statute of conviction. At the same time, every defendant who pleads guilty waives constitutional rights, and prosecutors have an interest in finality that might be undermined if defendants could file appeals after entering unconditional pleas. How, then, do we reconcile these competing interests?

The government's proposed approach in *Class* is very narrow: Unless a federal defendant enters a conditional plea under Federal Rule of Criminal Procedure 11(a)(2), he cannot appeal regardless of whether he claims a statute is unconstitutional. If he enters an unconditional guilty plea, his only recourse is to seek review by filing a habeas petition.

This narrow approach would deprive too many defendants of an opportunity to raise constitutional challenges. Conditional pleas under Rule 11(a)(2) are extremely rare, in part because they require the consent of both the court and the government. Conditional pleas are especially unlikely to be feasible when the parties sharply disagree about the merits of the defendant's constitutional claims. In this case, for example, the government characterized Class' Second Amendment claims as "insubstantial," so it is doubtful that prosecutors would have agreed to a conditional plea.

Without a conditional plea, a defendant would have to seek relief by filing a habeas corpus petition. But even if the defendant's constitutional claim is meritorious, there is no guarantee that he will be able to obtain habeas relief. In many federal districts, defendants who plead guilty are required to waive all collateral attacks except for those based on ineffectiveness of counsel. For instance, in the Northern District of California, the U.S. attorney's office uses a standard plea agreement template that requires a pleading defendant to agree "not to file any collateral attack on my conviction or sentence," including a habeas corpus petition, "except that I reserve my right to claim that my

counsel was ineffective." There is no exception for situations where the defendant claims that the statute of conviction is itself unconstitutional. Complex habeas procedures create further barriers to relief.

By contrast, a version of Class' approach is already working in practice. Since the 1970s, the 9th U.S. Circuit Court of Appeals has allowed defendants to raise several types of constitutional challenges even after entering an unconditional guilty plea. Under this approach, Class might still be able to raise a facial or as-applied constitutional challenge to his statute of conviction.

The 9th Circuit's cases are based on the notion that certain types of constitutional challenges implicate the government's power to prosecute a defendant in the first instance — and thus that defendants in Class' position should still have an opportunity to appeal. The Supreme Court could adopt that reasoning in this case, but if it prefers a narrower approach, there are other ways to rule in Class' favor. The court could hold as a matter of statutory interpretation that Rule 11 does not require federal defendants to enter into conditional pleas in order to preserve their right to appeal the constitutionality of their statute of conviction, and then remand for further determination of whether Class knowingly, voluntarily and intelligently waived his appellate rights. Alternatively, the court could hold as a matter of contract interpretation that when plea agreements for federal defendants fail to specifically address this issue, any ambiguity should be construed against the government.

No matter how the Supreme Court gets there, fairness dictates that defendants in Class' position should get a real opportunity to challenge on direct appeal the constitutionality of their statute of conviction.

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