POSC 386 Video message, Thursday, April 16, 2020

Hello everybody! Good to see a bunch of you yesterday at our joint meeting with Professor Pete Giesen’s class. I particularly appreciated the display of pets towards the end. That’s definitely an advantage of online class meetings!

In today’s message I wanted to say a few words about our online debate on the writ of certiorari. I see that people are still posting, and that’s great. Please continue the conversation, since I don’t think all have argued the issues out. Excellent back-and-forth arguments, I really enjoyed them.

Some of the arguments were already focused on what is called the decision on the merits: If the Court grants cert, should Pawlowski win and be released to house arrest? Some of you who thought so used this point to argue for cert, and some who thought he should not get released argued against cert. I believe that these considerations play into whether justices vote for cert (remember the defensive denial: why grant cert if you agree with the lower court?), but those are not necessarily the legal arguments that lawyers will make. Instead, they will make arguments that are more “neutral” in a sense: They may raise the question of whether important legal questions are involved (for example, does a prison environment that poses health risk constitute cruel and unusual punishment?); or they may argue that the case is important in a variety of ways.

For example, while the case itself is about Pawlowski’s situation, it would constitute a precedent for other prisoners who may ask to be released into house arrest or other alternative punishments. This means that this individual case could serve as a means for the Supreme Court to make broader policy decisions.

A side note here: This case is a federal case because Pawlowski was convicted in federal court, under federal law. The state of Pennsylvania has no role to play in this case, as a result, except maybe with an amicus curiae brief or the like. The governor of Pennsylvania could not pardon Pawlowski either, only the President.

We will continue our discussion of explaining Supreme Court decisions next week and then we’ll move to a look into judicial appointments. Please do read the texts that I posted on Canvas in preparation of yesterday’s class. They’re short and really interesting, explaining how different states select their judges.

Stay well! And stay tuned!