

TYPES NOT MAPPED YET June 24, 2024 | TTR not mapped yet | Joseph Orbach

SCOTUS Grants Cert to Resolve Split on Sovereign Immunity for Fraudulent Conveyance Claims

This morning, the United States Supreme Court granted the U.S. government's *certiorari* petition in *U.S. v. David L. Miller* [Order List \(06/24/2024\)](#) (supremecourt.gov). At issue in the case is whether the United States waived its sovereign immunity with respect to state law fraudulent conveyance claims that are asserted utilizing section 544 of the Bankruptcy Code.

The Supreme Court will resolve a circuit split between the Seventh Circuit, which 10 years ago ruled that the government had not waived sovereign immunity for such actions, and the Fourth, Ninth and Tenth Circuits, which all more recently had ruled that the government had expressly waived immunity with respect to such claims.

The outcome of this case will be important to bankruptcy trustees pursuing fraudulent conveyance claims against the U.S. government (such as claims the claims at issue in the underlying case against the IRS), as Section 548 of the Bankruptcy Code only has a two-year look-back period for fraudulent conveyances, while state statutes pursued under Section 544 of the Bankruptcy Code typically have a four-year look-back.

It is anticipated that this case will be argued during the 2024-25 SCOTUS term that commences in October, with a ruling expected before the end of June 2025.





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