# Fresh attacks on individual rights loom as US Supreme Court begins new term

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The US Supreme Court's 2000-2001 term began October 2 as new terms usually do—with a flurry of orders denying petitions for review. Only a small percentage of cases are accepted for argument and decision.

Most commentators characterize the court's caseload as less dramatic than last year's, but still raising many important issues, particularly in two cases addressing the power of Congress to regulate business. If the trends of the last few decades continue, the court's legal assault on individual rights will proceed, in part through an expansion of the power of the police to trespass on individual privacy.

The most significant development over the past two terms has been the Supreme Court's resurrection and expansion of the "states' rights" doctrine, on the basis of which the court has struck down federal legislation, especially laws protecting workers from discrimination and other unfair employment practices. This term, the court may move to exempt state governments and institutions from the Americans with Disabilities Act in *University of Alabama at Birmingham Board of Trustees v. Garrett*.

Potentially more far-reaching, in *Solid Waste Agency v. U.S. Army Corps of Engineers*, the court will consider whether the Constitution grants Congress power under the Commerce Clause to protect migratory birds on wetlands within a single state. A decision against Congressional power could threaten federal environmental protection legislation such as the Endangered Species Act.

Perhaps the most significant case on this year's docket, however, is *American Trucking Association, Inc. v. Environmental Protection Agency*. At issue is the power of Congress to delegate its authority over regulating interstate commerce to agencies such as the Environmental Protection Agency. If the challenge is upheld, virtually the entire regulatory apparatus of the federal government aimed at shielding people and the environment from the excesses of big business could shatter.

Last term ended with a series of decisions curtailing individual rights. Although the Court upheld the *Miranda* decision—which requires that police tell people prior to interrogating them of their right to silence and to legal counsel—it struck down a so-called "partial birth" abortion law in a way that left openings for future legislation restricting the legal right to abortion.

A particularly outrageous decision authored by Chief Justice William Rehnquist, *Boy Scouts of America v. Dale*, ruled that a state anti-discrimination law cannot protect a gay scoutmaster from discrimination because his "presence in the Boy Scouts would, at the very least, force the organization to send a message, both to youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."

Also, late last term the court decided *Mitchell v. Helms*, voting 6-3 to uphold the constitutionality of a state program to furnish computers and other equipment to schools, even if they are affiliated with a church. The six-justice majority itself split 4-2 on the reasons for upholding the law. The plurality opinion, penned by ultra-right-wing Justice Clarence Thomas, sets forth the most expansive rules for government aid to religious schools of any Supreme Court opinion to date, specifically approving "diversion" of secular materials provided by the government to religious teaching. Many commentators have noted that Thomas's opinion undermines the First Amendment's Establishment Clause prohibition against government sponsorship of religion and opens the door to vouchers

and other attacks on public education.

Oral arguments have already been held on some cases this term, including one, *Ferguson v. City of Charleston*, which challenges a South Carolina state hospital's policy of testing pregnant women for cocaine use and then turning over positive results to the police to use for child abuse prosecutions. This barbaric practice, which clearly violates basic notions of privacy, was denounced by the American Medical Association in an *amicus curiae* (friend-of-the-court) brief because it discourages women from seeking medical care or disclosing drug use to their doctors.

Nevertheless, the policy was upheld by the reactionary Fourth Circuit Court of Appeals, and at oral argument on October 4, Justice Antonin Scalia, one of the court's most right-wing justices, predictably indicated his support for it. Some of the other justices seemed uneasy, however, so the outcome of this case remains in doubt.

Another privacy case already argued this term is *Indianapolis v. Edmund*, which challenges the use of police roadblocks to stop people randomly, examine them for so-called signs of drug use, and expose them and their cars to drug-sniffing dogs. The practice was invalidated by the Seventh Circuit Court of Appeals in a decision by Richard A. Posner, one of the most well-known conservative appeals court justices in the county, who declared such police methods to be “associated with totalitarian nations.” Nevertheless, at the October 3 oral argument, some of the justices, including Rehnquist, seemed sympathetic to the roadblocks and dismissive of their implications for individual rights.

Still to come are arguments and decisions in *Illinois v. McArthur*, which prevents the police from keeping people out of their own homes while they are obtaining a search warrant, and *Atwater v. City of Lago Vista*, which challenges the right of police to arrest people for minor traffic infractions. Rulings upholding either of these police practices would significantly curtail the Fourth Amendment guarantee against unreasonable searches and seizures.