

US Supreme court issues more anti-democratic rulings

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On June 26, the US Supreme Court issued two further decisions of an anti-democratic character. Earlier this month it handed down one ruling giving police greater license to enter homes without knocking, and another sanctioning the retroactive application of an anti-immigrant law.

The first of Monday's rulings reversed a decision of the Kansas Supreme Court requiring juries to find that aggravating factors outweighed mitigating ones before imposing the death penalty. The second struck down a Vermont campaign finance reform law that limited contributions to, and expenditures by, political parties and campaigns.

In both cases, the high court's extreme right-wing justices ignored contrary state decisions, giving the lie to the claims that they exercise "judicial restraint" and respect "states' rights."

The Kansas death penalty law, which had been thrown out by the state's high court, allowed an accused to be executed if the jury found that aggravating circumstances were not outweighed by mitigating circumstances, thus shifting the legal burden of proof on the defendant to show that he should not be executed. Saying this law meant that "in doubtful cases the jury must return sentence of death," the Kansas Supreme Court in 2004 reversed the 1996 death sentence given Michael Lee Marsh. The US Supreme Court's June 26 ruling returns him to death row.

The case was argued twice before the US Supreme Court, first while Sandra Day O'Connor was still on the court, and again after Samuel A. Alito, Jr. replaced her as an associate justice. Alito provided the fifth vote for the majority, joining the new chief justice, John G. Roberts, Jr., and justices Clarence Thomas, Antonin Scalia and Anthony M. Kennedy.

Justice David H. Souter dissented in an opinion

joined by the other three liberals on the court, justices John Paul Stevens, Ruth Bader Ginsburg and Stephen Breyer. Identifying dozens of cases where convicted capital defendants were exonerated, Souter called the Kansas law "obtuse by any moral or social measure." He elicited a rabid response from Scalia, who filed a separate opinion concurring with the majority.

"There exists in some parts of the world sanctimonious criticism of America's death penalty," Scalia wrote, "as somehow unworthy of a civilized society. (I say sanctimonious, because most of the countries to which these finger-waggers belong had the death penalty themselves until recently—and indeed, many of them would still have it if the democratic will prevailed.) It is a certainty that the opinion of a near-majority of the United States Supreme Court to the effect that our system condemns many innocent defendants to death will be trumpeted abroad as vindication of these criticisms. For that reason, I take the trouble to point out that the dissenting opinion has nothing substantial to support it."

In fact, since 1973 at least 123 people in 25 states have been released from death row with evidence of their innocence, the most recent being John Ballard in Florida on February 23, 2006. What has "nothing substantial to support it" is Scalia's assertion that the 111 nations no longer conducting executions are defying "the democratic will."

In the campaign finance case, *Sorrell v. Randall*, the Supreme Court issued six different opinions, none supported by a five-justice majority. Breyer—the "liberal" most known for seeking common ground with the right-wingers—issued the principal opinion, joined by Roberts and Alito, striking down for the first time a limitation on contributions as "too low." The opinion went on to hold any spending limits unconstitutional,

giving tremendous advantages to office-seekers with private fortunes, such as billionaire New York Mayor Michael Bloomberg.

More generally, the decision was a victory for the big money interests that dominate and pervert the election process and all but openly bribe political office-holders to carry out their corporate agenda.

In a separate concurrence, Thomas, joined by Scalia, called for prohibiting all contribution limits, which would require the high court to overrule the 1976 precedent *Buckley v. Valeo*.

The three remaining liberals—Souter, Ginsburg and Stevens—dissented, saying Vermont could justify its law by demonstrating “the impact of the money chase on the democratic process.”



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