Spate of antidemocratic rulings by US Supreme Court

Right-wing majority consolidated

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A number of recent decisions by the US Supreme Court further undermine long-upheld democratic protections and regulations.

There is no question that the Supreme Court has shifted to the right over the last couple of decades, a process that has accelerated sharply with the appointments—with the help of the Democratic Party—of Justices John Roberts and Samuel Alito. The addition of erstwhile " swing" Justice Anthony Kennedy to the conservative bloc of Chief Justice Roberts, Alito, Antonin Scalia and Clarence Thomas on several recent cases has effectively consolidated a majority on the nine-member Court hostile to historic US legal provisions on questions from capital punishment to abortion to fundamental democratic rights.

For the most part, the modus operandi of this right-wing bloc of justices has been to carve out exceptions to existing Supreme Court precedent, rather than to explicitly overturn previous decisions. The Court's recent opinions are characterized by a reckless approach toward judicial matters, simply ignoring or casting aside that which is inconvenient for present purposes while downplaying or ignoring the social consequences of these decisions.

This rightward movement of the Supreme Court, taken together with the increasing domination of the federal circuit courts of appeals by political forces more conservative than the Supreme Court itself, highlights a political establishment moving towards authoritarian methods of rule and the repudiation of fundamental democratic rights in the face of popular hostility to its policies.

The Supreme Court decided on Thursday, in a 5-4 decision, to deny a criminal defendant's habeas corpus appeal because he followed a federal district court judge's erroneous instructions, which resulted in his filing his petition two days past the deadline.

Keith Bowles was convicted of murder and sentenced to a prison term of 15 years to life. He was unsuccessful in challenging his conviction on direct appeal and filed a federal habeas corpus application that was denied by a district court. The final judgment of the district court was not served on Bowles or his attorney, causing them to miss the standard 30-day deadline to file a notice of appeal.

After he learned of the ruling, Bowles' attorney filed a motion to reopen the period to file an appeal, an action that is allowed under the Federal Rules of Appellate Procedure. The district court judge granted the motion but mistakenly wrote on his order a deadline of 17 days in advance, while the Federal Rules allow only a 14-day deadline after the period is reopened in which to file a notice of appeal. As a result, Bowles' attorney filed his notice of appeal on the 16th day after the order to reopen was granted.

The attorney for the government did not object to the reopening of the filing period or even to the 17-day deadline that the district court judge entered in his order. However, when the appeal reached the Sixth Circuit court, the court moved on its own to dismiss the case for a lack of jurisdiction, citing the fact that the district court judge had no authority to extend the filing period past 14 days.

The majority opinion, authored by Justice Thomas and joined by Justices Roberts, Scalia, Kennedy and Alito, is particularly callous and evidences a complete disregard for the rights of a person who is to be deprived of his liberty by the state. Even if one were to accept the legal justifications given by the majority opinion, it is traditionally customary for justices who reach a decision that may impose a harsh result on one of the parties to include something of a caveat in their opinion stating that they sympathize with the plight of the aggrieved party, while then explaining why they must nevertheless reach the conclusion they have. The majority opinion expresses no such concern and indeed seems oblivious to the draconian precedent set by the decision.

The ruling, rather than address the plight of an individual effectively deprived of his legal rights by means of misleading instructions from a judge, is instead highly technical, focusing on whether the 14-day filing period provided for in the Federal Rules was jurisdictional in nature—that is, whether in enacting the statute, Congress established the deadline in such a way that the courts could not modify it. Under Article III of the US Constitution, the power of federal courts to hear cases on appeal can be limited by restrictions or regulations imposed by Congress.

As is often the case with decisions from the present Court, the impression is given that a decision is arrived at first, while the legal justification is cobbled together later. The majority opinion cites a number of unlikely precedents, some dating back to the nineteenth century, where the Supreme Court found that statutory limits on the timing of appeals is a limitation on jurisdiction. However, in a number of older cases from previous decades, the Court was indiscriminate in its use of the term "jurisdictional" and would often use the term to label any time limits that the Court

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merely considered to be mandatory. In recent years, the Court made a distinction between a mandatory time limit, which can be waived in the interests of fairness, and a jurisdictional time limit, which the Court has no power to change.

The majority decision is all the more remarkable when one considers the fact that since 2003 there have been a string of cases that have held that time limits on the reach of federal statutes are only jurisdictional if Congress designates them as such. The dissent notes this fact rather pointedly by asking, " [W]hy does today's majority refuse to come to terms with the steady stream of unanimous statements from this Court in the past four years?... By its refusal to come to grips with our considered statements of law the majority leaves the Court incoherent."

The four dissenting justices, for their part, recognize the danger in simply casting aside previous precedent and are aware of the fact that the majority opinion could undermine the legitimacy of the justice system. The dissent notes, "It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch."

"If rigorous rules like the one applied today are thought to be inequitable," Thomas suggests cynically in the majority opinion, "Congress may authorize courts to promulgate rules that excuse compliance with the statutory time limits." As Thomas well knows, this is an unlikely course of action for a Congress that has recently passed the Patriot Act, the Anti-terrorism and Effective Death Penalty Act, and the Military Commissions Act, all of which serve to limit in one way or another an individual's available recourse in the court system.

The 5-4 decision in *Brown v Uttecht* earlier this month effectively chips further away at existing legal protections and restrictions on the use of the death penalty. According to the Bureau of Justice Statistics, there have been almost 5,000 state executions in the United States since 1930, averaging 70 a year since 1997.

Cal Coburn Brown pled guilty to robbery, rape, and murder in the state of California, where the state prosecutors sought the death penalty. During the jury selection phase, one potential juror—Richard Deal—was removed after he indicated that he believed that capital punishment should only be used in special circumstances. Brown's lawyers appealed Deal's removal.

Historically, US courts have consistently ruled that if a potential juror expresses moral opposition to a particular law, he cannot be dismissed on those grounds provided he understands and agrees to perform his legal duties as a juror.

The majority ruling, authored by Kennedy, acknowledges these precedents. However, the majority opinion finds, "the State has a strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes."

Also, Kennedy writes, "in determining whether a potential juror's removal would vindicate the state's interest without violating the defendant's right, the trial court bases its judgment in part on the juror's demeanor, a judgment owed deference by reviewing courts." This highly subjective principle will make it more difficult to appeal decisions involving jury selection, as reviewing courts will be obligated to show "deference" to the trial court.

While not explicitly overturning the long and consistent history of rulings on this question, this decision in *Brown v Uttecht* will certainly make it less difficult for prosecutors to disqualify potential jurors who express opposition to the death penalty. A common feature of rulings by the present Court is that precedents are often ignored even when the ruling in question contradicts them.

It is worthwhile to note that in the majority opinion Kennedy invokes the authority of the Antiterrorism and Effective Death Penalty Act, signed by Clinton in 1996, which was designed to hasten the process of capital punishment and eliminate opportunities for those on death row to appeal their cases.

Kennedy was joined in this decision by Roberts, Scalia, Thomas and Alito.

The majority of the Supreme Court, Stevens wrote in a dissenting opinion, "appears to be under the impression that trial courts should be encouraging the inclusion of jurors who will impose the death penalty rather than only ensuring the exclusion of those who say that, in all circumstances, they cannot." Justices Souter, Ginsburg and Breyer signed Stevens' dissent.

In April 2002, Evelyn Coke, a home healthcare worker for the elderly who had been paid less than the federal minimum wage for her work, sued her former employer Long Island Care at Home for unpaid wages and overtime under the Fair Labor Standards Act (FLSA), which includes minimum wage and maximum hours rules.

The Supreme Court earlier this month delivered a highly technical opinion, authored by Breyer, in which it upheld the Department of Labor's authority to "regulate" exemptions to the FLSA, denying Coke her wages and overtime. The decision of the Court was unanimous.

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