New US Supreme Court term opens

Threats to slash consumers' rights, expand police powers

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The 2008 term of the United States Supreme Court opened, according to tradition, on the first Monday of October. It began with oral arguments in *Altria Group v. Good*, a case that threatens to derail lawsuits against the tobacco industry by consumers who are alleging false advertising about the relative safety of "light" cigarettes.

Representing Philip Morris, Theodore Olson--the lawyer who represented George W. Bush when the Supreme Court intervened to steal the 2000 presidential election--claimed that federal regulations requiring the publication of tar and nicotine levels on cigarette packaging immunize the manufacturers from liability, despite the claim that the tobacco companies knew that consumers were compensating by smoking more cigarettes and by inhaling deeper and longer. Olson brushed aside the traditional role states play in protecting the health and safety of their citizens through a long history of allowing lawsuits for false advertising.

As soon as David Frederick, the attorney for the smokers, began his response, Chief Justice John Roberts jumped down his throat, stating that the case was controlled by a precedent set last term. He referred to *Riegel v. Medtronic*, in which the justices went out of their way to construe a 1976 federal law regulating medical devices to preclude states from authorizing personal-injury lawsuits based on product defects. Roberts said that allowing smokers' claims in state court would interfere with federal control of "the relationship between smoking and health," despite the fact that states have traditionally been heavily involved in the health of their citizens.

Riegel has been widely denounced by consumer organizations for its unprecedented attack on the traditional power of individual states to regulate civil liability for injuries caused within their borders. The opinion, written by Associate Justice Antonin Scalia--the senior member of the Supreme Court's four-vote extreme right-wing block--was joined by "swing" Justice Anthony Kennedy and all of the so-called "liberals" except Ruth Bader Ginsburg. Olson argued on behalf of the corporation in that case as well.

So much for states' rights, not to mention strict construction and judicial restraint, the supposed pillars of "conservative" judicial philosophy. In reality, Scalia always approaches his decisions by working backward from the results dictated by his extreme right-wing, pro-business political views.

Most commentators expect the Supreme Court to throw out the smokers' claims, further underscoring the high court's increasingly overt bias in favor of big business. Besides the *Riegel* decision last term, the court enraged consumer advocates by slashing the punitive damages awarded against Exxon Mobil arising from the catastrophic 1989 Exxon-Valdez Alaskan oil spill, and by shielding accountants, lawyers and other professionals from liability for their roles in stock manipulation schemes.

Besides saving the tobacco industry billions of dollars in damage payouts to families decimated by its products, the Supreme Court is posed to expand even further this new "preemption" doctrine. Next month, the court will hear arguments in a case filed by a woman whose arm was amputated because a drug was wrongly administered. The pharmaceutical industry is claiming that federal approval of drug warning labels "preempts" the state-law tort claim that better warnings would have prevented her injuries.

On the second day of the term, October 7, the Supreme Court heard oral arguments in two cases threatening the further expansion of police powers at the expense of democratic rights.

In *Arizona v. Gant*, the defendant, who had a warrant for driving on a suspended license, was arrested after he pulled into his driveway, parked and exited his car. While handcuffed and confined in the back of a police car, officers searched his vehicle, claiming the need to look for weapons to protect their safety. The Arizona Supreme Court suppressed evidence uncovered during the search because the officers had no probable cause.

During the argument, Scalia expressed utter contempt for precedents over the last several decades, which define when evidence should be excluded because of violations of the Fourth Amendment's search-and-seizure clause. Instead, he suggested that the case, and all those like it, should be decided as if it were still 1791, the year of the Constitution's ratification.

"What was the situation when the Fourth Amendment was adopted?" Scalia asked one of the attorneys. "Do you know? If you stopped Thomas Jefferson's carriage to arrest Thomas Jefferson and you pulled him off to the side of the road, could you--could you then go and search his carriage?"

In the second case, sheriff's employees failed to record in a database that a warrant had been recalled, and the defendant was arrested. The Supreme Court will decide whether evidence found as a result is admissible despite the fact that there was neither a valid warrant nor probable cause for the arrest. The Fourth Amendment requires one or the other.

Pro-police decisions in either case will serve to further erode democratic rights established during earlier periods, particularly the post-war years when Earl Warren was chief justice (1953-1969).

Among other cases to be decided before the 2008 term ends next June is *Ashcroft v. Iqbal*, which will determine whether Muslims rounded up and abused after the September 11 terrorist attacks can sue the US government for money damages. That is the only decision relating to the "war on terrorism" presently on the high court docket, but the petition for review of Ali Saleh Kahlah al-Marri, the only person known to be held by the US government as an enemy combatant outside of Guantánamo Bay, is likely to be accepted for review.

A citizen of Qatar studying at Bradley University in Illinois, al-Marri--married and the father of five--has been imprisoned for seven years without ever having a court hearing on his guilt or innocence. He claims to have been tortured, interrogated for more than a year, and housed in solitary confinement. The reactionary Fourth Circuit Court of Appeals ruled last July that al-Marri could continue to be imprisoned in the Naval Brig at Charleston, South Carolina, without criminal charges being filed.

Other cases posing serious threats to democratic rights include *Pearson v. Callahan*, which turns on the extent to which police officers who violate constitutional rights can avoid liability by claiming that the applicable legal standards are unclear. This so-called "qualified immunity" defense is used to throw thousands of civil rights cases out of court every year. In *Van de Kamp v. Goldstein*, the court will determine whether a man who spent 24 years in prison for a murder he did not commit can sue the Los Angeles district attorney for using jailhouse informants to fabricate the evidence used to convict him.

The Supreme Court will also be deciding whether performers can use profanity during television broadcasts, whether public areas that already have Judeo-Christian monuments must accept symbols of other faiths, and whether the US military can conduct activities that violate federal environmental laws.

The 2008 term is unfolding against the background of a rapidly deepening economic crisis and an emerging social catastrophe for millions of Americans. Already, the ruling elite has abandoned constitutional principles by dumping trillions of dollars into banks and other financial institutions to protect the fortunes of the financial oligarchs without any meaningful political process.

In addressing the myriad legal issues that no doubt will arise in the coming months, the Supreme Court will be guided not by its historical precedent and legal tradition, but by the most fundamental interests of the ruling class it represents.