US Supreme Court term begins with more threats to democratic rights

John Andrews
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With the traditional opening of the new term on the first Monday of October, the United States Supreme Court, now firmly under the control of right-wing Chief Justice John G. Roberts, Jr., is poised to overrule decades of established precedent. The court appears ready to dismantle many of the remaining protections for democratic rights established during the middle of the twentieth century, one of the few periods when the high court did not function openly as an instrument of political and social reaction.

Ignoring tradition, on September 9 the court heard re-arguments in *Citizens United v. Federal Election Commission*, a case remaining from last term. As noted by the *World Socialist Web Site* and other publications, several justices seem ready to declare unconstitutional any attempt by Congress to limit political contributions by corporations, although such laws have been upheld since they were first enacted in 1947. (See: "US Supreme Court set to ease rules on corporate campaign cash".)

With newly confirmed Associate Justice Sonia Sotomayor holding the seat vacated by David Souter, the Supreme Court began with oral arguments on October 5 in *Maryland v. Shatzer*, yet another vehicle for the high court to cut back on the landmark *Miranda v. Arizona* ruling of 1966 by allowing police to return and question criminal suspects who previously invoked their constitutional right to remain silent. The case follows on last term's *Montejo v. Louisiana*, which overruled precedent that prohibited police investigators from interviewing a criminal suspect who already had legal representation.

The conventional wisdom is that Sotomayor will not affect the court's ideological balance because, like Souter, she is considered a judicial "moderate" by contemporary standards. There is some reason to believe, however, based on her background as a prosecutor and her decisions when a judge on the federal Court of Appeals, that she will vote more favorably than Souter for police powers and against the rights of those accused of crimes.

The most significant case for democratic rights argued last week is *Salazar v. Buono*. The plaintiff sued for the removal of an eight-foot-high cross erected years ago as a memorial to US war dead on a remote desert outcropping in the massive Mojave National Preserve—federal land located in Southern California. A United States district judge issued an injunction to remove the cross. To avoid the ruling, in 2004 Congress passed a law conveying the land directly under the cross to the Veterans of Foreign Wars (VFW), with a provision that the land will revert to the United States if no longer maintained as a war memorial.

Elena Kagan, the Obama administration's new solicitor general, argued in favor of maintaining the blatantly sectarian religious symbol on what remains, effectively, federal land. The purpose of the 2004 enactment is obviously to skirt the First Amendment, which opens the US Constitution's Bill of Rights with the statement, "Congress shall make no law respecting an establishment of religion."

Salazar is the first "Establishment Clause" dispute to be heard by the Roberts court. Joined by the other George W. Bush appointee confirmed by the Democratic-controlled Senate, Associate Justice Samuel Alito, as well as Associate Justices Antonin Scalia, Clarence Thomas and Anthony Kennedy, Roberts seems to have a clear five-vote majority in favor of scuttling decades of precedent enforcing the "wall of separation between church and state," as Thomas Jefferson described the Establishment Clause in a famous 1802 letter.

While most of the justices at the October 7 oral argument seemed to be groping for a narrow, technical ground on which to base a decision, Scalia bullied his way forward in the typical result-oriented, intellectually dishonest and highly offensive manner one expects from this so-called intellectual leader of the Supreme Court's right-wing bloc. This included the following remarkable exchange with the plaintiff's lawyer, Peter Eliasberg, of the Southern California American Civil Liberties Union (ACLU).

Eliasberg: I think it would be very odd indeed for the VFW to feel that it was free to take down the cross and put up, for example, a statue of a soldier which would honor all

of the people who fought for America in World War I, not just Christians, and say: “Well, we were free to do that because even though there’s the sign that says this cross is designated to honor all the—”

Scalia: The cross doesn’t honor non?Christians who fought in the war? Is that—is that—

Eliasberg: I believe that’s actually correct.

Scalia: Where does it say that?

Eliasberg: It doesn’t say that, but a cross is the predominant symbol of Christianity and it signifies that Jesus is the son of God and died to redeem mankind for our sins, and I believe that’s why the Jewish war veterans—

Scalia: It’s erected as a war memorial. I assume it is erected in honor of all of the war dead. It’s the—the cross is the—is the most common symbol of the resting place of the dead, and it doesn’t seem to me—what would you have them erect? A cross—some conglomerate of a cross, a Star of David, and, you know, a Moslem half moon and star?

Eliasberg: Well, Justice Scalia, if I may go to your first point. The cross is the most common symbol of the resting place of Christians. I have been in Jewish cemeteries. There is never a cross on a tombstone of a Jew. (Laughter.) So it is the most common symbol to honor Christians.

Scalia: I don’t think you can leap from that to the conclusion that the only war dead that that cross honors are the Christian war dead. I think that’s an outrageous conclusion.

Eliasberg: Well, my—the point of my—point here is to say that there is a reason the Jewish war veterans came in and said we don’t feel honored by this cross. This cross can’t honor us because it is a religious symbol of another religion.

Scalia, who claims to be guided exclusively by the original intent of the framers and a “strict construction” of the Constitution, has no problem with congressional approval of a Christian symbol on federal land.

Rulings in *Salazar* and the other cases argued so far are expected early next year.

There are about 50 more pending matters on the Supreme Court docket, which is less than usual at the outset of a term. The number of high court cases has been declining for years.

Attracting the most media interest so far is *McDonald v. City of Chicago*, in which the Supreme Court will decide whether its recent decision that the Second Amendment “right to bear arms” prohibits the District of Columbia from banning handgun ownership applies to state and local governments as well. (See “The reactionary politics of the Supreme Court’s ‘gun rights’ decision”.) It seems unlikely that the Supreme Court majority will pass up this new opportunity to give a political boost to the reactionaries who comprise the Republican Party “base.”

There is only one national security case thus far, *Holder v. Humanitarian Law Project*, which turns on the constitutionality of laws criminalizing “material support” to foreign groups labeled terrorist organizations by the US government. Such statutes have been used repeatedly in political prosecutions over the last decade, particularly to victimize Muslim charities, which provide relief to Palestinians and others oppressed by imperialism and Zionism.

Migliaccio v. Castaneda is a particularly horrific case. A man detained on immigration charges died due to the deliberate failure of federal prison authorities to treat a cancerous lesion on his penis for eleven months. The Obama administration is arguing that the responsible federal officials cannot be sued individually even if the denial of medical care violated the Constitution.

There are two cases, *Graham v. Florida* and *Sullivan v. Florida*, in which juveniles were sentenced to life in prison without possibility of parole, one for a crime committed at 16 and the other at age 13. Neither offense was murder. The punishment is being challenged as violating the “cruel and unusual” provision of the Eighth Amendment.

That such a question can even be debated among high court judges demonstrates the erosion of democratic rights in the US. The outcome is unclear. Four years ago the Supreme Court held by a narrow 5-4 vote that the death penalty cannot be applied to juvenile offenders.

One notable feature of this term’s docket is the high number of cases—almost half—involving seemingly esoteric business issues, such as whether hedge fund strategies can be patented and whether court rulings denying corporate claims of attorney-client privilege are immediately appealable. Many of these cases are of immense importance to corporate interests, which see in the new court an opportunity to further weaken legal restraints on their profit-making activities.