

US Supreme Court opens 2010 term with pro-corporate agenda

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Yesterday—the first Monday in October—the Supreme Court opened its 2010 term with a docket of 51 cases, 23 of which raise issues primarily of concern to major corporations. While there are some civil rights and criminal law issues on the docket, notably absent at present is any case challenging the assault on democratic rights initiated by the Bush administration and continued under Obama's, including summary imprisonment, rendition, torture and murder.

Thousands of petitions for certiorari, the technical name for review requests in the Supreme Court, are filed every year. The selection of cases is as revealing as the decisions themselves. Most likely 30 to 40 more cases will be added by the time the term ends in late June.

Newly confirmed Associate Justice Elena Kagan is sitting in the seat filled since 1975 by moderate John Paul Stevens, and asked her first question 20 minutes into the first oral argument, whether a bankruptcy debtor can shield the expense of maintaining a vehicle after the finance company has been paid back. Because of her role as Obama's Solicitor General, the lawyer who represents the administration in Supreme Court matters, she is expected to disqualify herself in about half of the term's cases.

Regardless, Kagan's presence is expected not to affect the court's ideological balance, which will remain dominated by the extreme four-vote right-wing bloc plus the very conservative Associate Justice Anthony Kennedy.

For the fifth term under Chief Justice John G. Roberts, Jr., it can truly be said that the business of the high court is business. Following up on last term's decision in *Citizens United*, which overturned a century of precedent by invalidating all restrictions on using corporate cash to influence election campaigns under the guise of protecting free speech (See: "The Supreme Court ruling on corporate political spending"), the high court is poised to lift a

variety of restrictions on the pursuit of profits and eliminate the power of individuals to fight back.

The cases with the most immediate potential impact on corporate earnings and consumer safety are two product-liability suits for personal injuries. Wyeth Laboratories, a major drug manufacturer now owned by Pfizer, is claiming immunity under a federal regulatory law from a lawsuit by the parents of a child who, at the age of six months, became severely developmentally impaired after being injected by an archaic vaccine. In the other, Mazda Motor contends that because federal regulations required only a lap belt it cannot be sued for failure to install a much safer shoulder harness. Traditionally both claims would be controlled by state tort law, but the Supreme Court may intervene to protect the companies.

The Supreme Court will also be reviewing a cell phone service provider's contention that the Federal Arbitration Act bars states from authorizing class-wide arbitrations. Adoption of such a rule nationally would effectively eliminate class actions in broad categories of cases where the individual losses are small, but they aggregate into tens of millions of dollars misappropriated from customers.

There are also two cases which seek to enlarge jurisdictional limitations for suing foreign companies in the United States, and another which turns on whether a drug company violates federal securities law when it fails to disclose unfavorable evidence of a product's side effect.

A particularly remarkable feature of the current Supreme Court is its willingness to review claims asserted by corporations based on what have traditionally been viewed as fundamental rights belonging to individuals.

For example, in the only "right to privacy" case on this term's docket the Supreme Court will decide whether communications behemoth AT&T can assert that release of data from the government about its overcharging

customers pursuant to the Freedom of Information Act could “constitute an unwarranted invasion of personal privacy.” Previously such claims have only been honored for human beings, not transnational corporations.

Similarly, one of the two free-speech cases now on the docket turns on whether a California law banning the sale of violent video games to minors violates the First Amendment rights of corporations marketing them. The most prominent immigration case on this year’s docket was brought by the United States Chamber of Commerce to invalidate an Arizona law punishing employers who hire undocumented workers, claiming that federal immigration statutes preempt state measures.

The high court is taking up the 'states secret' privilege, but not in the context of whether the Obama administration can invoke it to bar lawsuits for money damages based on illegal renditions and torture (See: “Federal appeals court adopts Obama 'state secrets' doctrine to block torture case”) or for injunctions against extra-judicial murders (See: “Obama administration invokes 'state secrets' doctrine to defend the assassination of US citizens”).

Instead, the high court will decide whether to dismiss two cases brought by the Department of Defense against Boeing Company and General Dynamics Corporation for the return of \$3 billion in payments and interest relating to the terminated A-12 Avenger stealth fighter aircraft program. The giant defense contractors are arguing that the government’s invocation of the state secrets privilege deprived them of their defense to the charges of overpayment in violation of their Fifth-Amendment right to due process of law, and that therefore they are entitled to keep all the money paid under the canceled contracts.

By contrast, on Monday the Supreme Court denied certiorari to an appeal by 23 private lawyers representing Guantánamo Bay prisoners who are seeking records of Bush administration eavesdropping on their attorney-client conferences. The Second Circuit Court of Appeals, which covers New York City, had denied the request on the basis of the “state secrets” privilege.

Among the non-business cases scheduled for hearing this week, today civil rights lawyer Dan Stormer will argue in support of 28 scientists employed at NASA’s Jet Propulsion Laboratory who claim that the government violated their rights with overly intrusive background checks.

Wednesday the Supreme Court will hear arguments in two interesting cases. In *Connick v. Thompson* the Orleans Parish District Attorney’s Office is challenging a

jury award of \$14 million in favor of John Thompson, who was framed for murder and came within weeks of his scheduled execution date. All tolled, Thompson spent more than 18 years in Louisiana’s notorious Angola Penitentiary, mostly in solitary confinement on death row.

The second matter, *Snyder v. Phelps*, turns on whether the First Amendment prevents the father of a United States Marine killed in Iraq from suing anti-homosexual demonstrators who appeared at his son’s funeral with signs such as “God Hates Fags,” and “Thank God For Dead Soldiers.” Many observers have voiced concern that the Supreme Court might use the outrageous facts of the case to establish broad limitations on freedom of speech.

Next week the Supreme Court will hear arguments in *Skinner v. Switzer* on whether convicted prisoners have a right to sue for access to biological evidence for DNA testing that might exonerate them. Late last term, Chief Justice Roberts wrote a particularly brutal opinion denying such access, suggesting that so long as a convicted prisoner had “a fair trial,” he can be kept in prison even after demonstrating “actual innocence” (See: “US Supreme Court promotes wrongful imprisonment and age discrimination”).

Coming up for hearing in November is an important establishment clause case, whether Arizona’s provision of tax credits to parents who pay for religious schooling violates the separation of church and state.

Later in the month, the Supreme Court will review a lower court order requiring California to reduce its prison population in *Schwarzenegger v. Plata* to remedy statewide failures to provide medical care and constitutionally habitable living conditions. The case has far reaching implications for the 1.4 million inmates in the various state penitentiaries, most of whom are confined under conditions of unspeakable brutality.

The actual working out of Supreme Court decisions is a complex process, and no one can predict decisions accurately. But the court’s increasingly right-wing and pro-business character under Chief Justice Roberts is clear, and the next nine months will undoubtedly be characterized by more protections for big business and more attacks on the democratic rights of individuals.



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