US Supreme Court refuses to hear appeal in political rights case

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14 October 2010

The US Supreme Court on Tuesday decided not to review the dismissal of a case brought by two people who were thrown out of a speech given by President George W. Bush in 2005 because they arrived in a car with a bumper sticker that read, “No More Blood For Oil.”

On March 21, 2005, President Bush delivered a speech on Social Security at the Wings Over the Rockies Air and Space Museum in Denver, Colorado. Leslie Weise and Alex Young secured tickets to attend the “town hall” event, which was open to the public and publicly funded.

Weise and Young arrived at the event in a car with a bumper sticker that read, “No More Blood For Oil.” The phrase signals opposition to the so-called “war on terror” and to the US military occupations of Iraq and Afghanistan.

Weise and Young were stopped by security forces before they could enter. A man in a dark blue suit with an earpiece and a lapel pin, later identified as Michael Casper, was summoned. Casper told Weise that she had been “ID’d” and that if she “tried any funny stuff” she would be arrested. Weise and Young took their seats.

After consulting other government officials, Casper returned. He told Weise and Young that the White House had a “policy” of excluding anyone who held a “viewpoint contrary to that held by the president.” Weise and Young were then escorted out of the event. There was no suggestion that the two had any plans to disrupt the event; they were excluded entirely on the basis of the bumper sticker.

The ACLU filed a lawsuit on behalf of Weise and Young against Casper and the other security personnel involved in ejecting them from the event on the basis of the First Amendment right to free speech. The First Amendment, ratified in 1791 in the aftermath of the American Revolution, separates church and state and secures the rights to free speech, press, assembly, free exercise of religion, and to petition the government for redress.

The federal district court dismissed the case, *Weise v. Casper*, finding that Weise and Young’s rights were not violated, and that in any event Casper and others were entitled to “qualified immunity” because the Weise and Young’s right to free speech was not “clearly established.” The Tenth Circuit Court of Appeals affirmed the dismissal on “qualified immunity” grounds.

The legal doctrine of “qualified immunity” is one component of the new canon of dubious and anti-democratic legal doctrines that are presently being expanded by US courts, along with the “state secrets” doctrine and expansive doctrines of presidential wartime powers. The “qualified immunity” doctrine renders government officials immune from lawsuits brought by those whose rights they violate where the rights are not “clearly established” rights “of which a reasonable person would have known.”

The “qualified immunity” doctrine has no basis in the US Constitution or federal law. It was invented out of whole cloth by the Supreme Court to protect government officials who are caught violating the constitution. Since it was created, the doctrine has been significantly expanded. Judges expand the doctrine by finding that more and more rights are not “clearly established.”

In dismissing the case of *Weise v. Casper*, both the federal district court and the Tenth Circuit Court of Appeals found that no “clearly established” First Amendment law prohibits government officials who are speaking at events that are open to the public and paid for by taxpayers from excluding people from the

audience on the basis of viewpoint.

"It is simply astounding that any member of the executive branch could have believed that our Constitution justified this egregious violation of [Weise and Young's] rights," wrote Tenth Circuit Court of Appeals Judge William Holloway, dissenting.

Also raised by the *Weise v. Casper* case is the so-called "government speech" doctrine. The ACLU's petition to the Supreme Court summarized this doctrine succinctly: "the President always has the right to pick and choose his audience to make it appear that everyone agrees with him." In the bizarre and upside-down world of modern constitutional law, the government and the corporations have ever-expanding "rights" that they can invoke against the population, instead of the other way around.

The US Supreme Court is not required to hear every case. Instead, litigants make formal requests to have their cases heard, called petitions for writ of certiorari, which are granted or denied by the court. The votes of a minimum of four of the nine justices are required to grant a writ of certiorari ("the rule of four"). If the petition is denied, then the decision of the lower court is for all practical purposes affirmed.

The Supreme Court grants approximately 1 percent of certiorari petitions. The decision about which cases to hear is often just as significant, if not more significant, than the decisions in the cases that are heard. By means of the denial of a cert petition, reactionary rulings in lower courts can be given a stamp of approval with little public awareness or discussion. The case of *Weise v. Casper* is an example of this phenomenon.

With regard to the selection of cases for the Supreme Court's present term, the WSWS wrote, "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." Instead, the docket primarily reflects issues of concern to major corporations. (See "US Supreme Court opens 2010 term with pro-corporate agenda ")

Justice Ruth Bader Ginsburg, joined by Justice Sonia Sotomayor, dissented from the decision not to grant the petition: "I cannot see how reasonable public officials, or any staff or volunteers under their direction, could have viewed the bumper sticker as a permissible reason for depriving Weise and Young of access to the event."

The remaining seven justices voted to deny the petition, including recent Obama nominee Elena Kagan. They gave no reasons for their decision.