White House urges Supreme Court to approve health care “reform” and deepen attacks on democratic rights

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The United States Supreme Court opened its 2011 term yesterday, the first Monday of October, giving every indication that it will work with the administration of President Barack Obama to cut corporate and government health care costs and roll back constitutional standards which limit police powers and protect the rights of people accused of crimes.

There have been 48 cases accepted for review this term, which ends next June. The Supreme Court will probably accept about 20 or 30 more, most likely including one to decide the constitutionality of Obama’s 2010 health care law mandating that individuals either purchase health insurance or pay a tax penalty.

Last week, Donald B. Verrilli, Jr., who has replaced Neal Katyal as the solicitor general--the lawyer responsible for representing the president in cases before the Supreme Court--petitioned for review of a lower court ruling that the “individual mandate” in Obama’s health care overhaul exceeds congressional authority under the Commerce Clause of the US Constitution.

The administration’s petition is clearly aimed at influencing the high court’s right-wing bloc, as it repeatedly cites a lower court opinion by Judge Jeffrey Sutton upholding the Obama health care law. Sutton, a former law clerk for Antonin Scalia and leading member of the right-wing Federalist Society, was appointed by George W. Bush to the Sixth Circuit Court of Appeals and is known for his extreme views on “states’ rights.” The administration’s petition also relies heavily on Scalia’s 2005 concurring opinion in *Gonzalez v. Raich*, which upheld congressional authority to criminalize the personal cultivation and use of marijuana for medical purposes under an expansive construction of the Commerce Clause.

The high court docket so far contains significantly fewer business cases than in other years since John Roberts became chief justice. What stands out, however, is the number of cases in which Solicitor General Verrilli has intervened on behalf of police agencies by filing *amicus curiae* “friend of the court” briefs urging the Supreme Court to curtail constitutional protections.

Examination of the cases set for oral arguments this week reveals much about the current alignment of forces. First up is *Reynolds v. Independent Living Center of Southern California*, in which a number of health care providers obtained an injunction, upheld in the Ninth Circuit Court of Appeals, against a California law which allowed the state to reimburse them at rates lower than those mandated by the Medicaid Act for services rendered to Medicaid beneficiaries--people otherwise unable to pay their health care bills.

Low Medicaid rates already discourage doctors from treating low-income patients, inhibiting access to essential health services. Allowing individual states to make further cuts in reimbursement rates threatens to deprive millions more people of access to health care. Nevertheless, the Obama administration has intervened against the plaintiffs, arguing in support of state power to cut Medicaid reimbursement rates.

Supporting the health care providers and opposing the Obama administration is an unusual coalition. It includes congressional Democrats such as Senator Majority Leader Harry Reid and House Minority Leader Nancy Pelosi, the American Medical Association, the Chamber of Commerce, AARP (the American Association of Retired Persons), and the American Civil Liberties Union (ACLU).

Next up, the Supreme Court will have yet another opportunity to gut the *Miranda* rule, which requires police to advise suspects in custody of their constitutional rights before interrogating them about crimes.

In *Howes v. Fields*, a man jailed in Michigan for disorderly conduct was taken from his cell to a locked room with four deputy sheriffs, where he was questioned for seven hours about an unrelated crime without first being told he had a right to remain silent and consult a lawyer. During the interrogation session, the jail withheld medications the prisoner needed to prevent rejection of a transplanted kidney.

The district court granted habeas corpus on the grounds that statements obtained during the interrogation should not have been used as evidence, and the Sixth Circuit Court of Appeals affirmed.

The Obama administration intervened in support of reinstating the conviction, arguing that the prisoner was not "in custody" for *Miranda* purposes because he was free to ask his jailors that he be returned to his cell.

Next, the court will hear the case of Alabama prisoner Cory Maples, whose federal habeas corpus appeal of his death sentence was never considered because the lower court ruled it was filed too late. He had no right to an appointed attorney, and the lawyers who agreed to handle his case pro bono (without payment) had left their law firm without giving the court their new address. The notice triggering the time to appeal was returned to the clerk as undeliverable. Mr. Maples and his family had no way of knowing that the time for his appeal was expiring without the necessary action being taken.

That such a dispute could even reach the highest court of the United States--with a man's life literally hanging in the balance—says much about the brutality and disregard for democratic rights that pervade the American "justice" system.

The Obama administration has taken no position on Mr. Maples' execution, but it has intervened in the high court's next case, *Martinez v. Ryan*, to oppose the right of a convicted Arizona prisoner to representation by a court-appointed lawyer on a habeas corpus petition claiming that his lawyer did not represent him properly in earlier proceedings. Opposing the Obama administration as friends of the court are the American Bar Association, the Innocence Network, and six former state Supreme Court justices.

Among cases set for argument later in the term are several threatening to roll back protections derived from the Bill of Rights.

In *Florence v. Board of Freeholders*, the Supreme Court will decide whether people arrested for minor offenses--in that case, a supposed non-payment of a traffic fine--can be stripped and searched during booking into jail. The Obama administration has intervened to support allowing such humiliating "visual body cavity" searches for all prisoners regardless of the criminal charge or whether there is any reason to believe the person might be smuggling something.

The Obama administration is siding with the Los Angeles County Sheriff's Department in *Messerschmidt v. Millender*. The lawsuit arises from an abusive 5:00 a.m. SWAT raid on a family home carried out because an adult foster-child who no longer lived there and was not present during the raid had been involved in a violent crime. When granting review, the Supreme Court suggested that it might overrule two high court precedents which allow civil suits against police based on illegal search warrants.

In yet another attack on the Bill of Rights, Obama administration lawyers in *Minneci v. Pollard* are asking the Supreme Court to reverse a Ninth Circuit Court of Appeals decision protecting the right of more than 25,000 federal prisoners incarcerated in "privately run secure facilities" under contract with the United States Bureau of Prisons to sue prison employees who violate their constitutional rights.

United States v. Jones has the Obama administration defending the FBI's use of tracking devices on cars without first obtaining a warrant. The decision in this case could open the doors to gross invasions of privacy by means of high-tech surveillance.

In other cases, the Obama administration is siding with prosecutors who want to expand the use of suggestive eyewitness identifications at criminal trials, immunize police witnesses who cause false arrests and malicious prosecutions by lying in court, and relax the rules on turning exculpatory evidence over to criminal defendants.