US Supreme Court opens new term

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11 October 2014

The US Supreme Court opened for business on the first Monday of October, as usual, by issuing a bevy of orders and entertaining the first of its oral arguments on pending cases. There are about 40 cases docketed so far, and four were argued this week.

On average about 75 cases are decided each term, while close to 10,000 petitions for review of particular cases appealed from lower federal courts, called petitions for writ of certiorari, are rejected outright. The Supreme Court concludes its annual term shortly before the July 4 holiday.

This Supreme Court term is the tenth under Chief Justice John G. Roberts, Jr., a stalwart right-wing ideologue who, with the dependable support of Associate Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy and Samuel Alito, has methodically expanded corporate power over employees and consumers, insulated the police from lawsuits following police killings and other civil-rights violations, and removed any remaining fetters over the ability of US imperialism to spy at home or abroad, and wage war anywhere it pleases.

Roberts keeps his fingers in the political wind, however, and maneuvers as necessary when the interests of the ruling elite so dictate.

A prime example occurred on Monday, when the Supreme Court denied review in seven petitions for certiorari seeking review of lower federal court rulings, each holding unconstitutional various state bans on same-sex marriages. The effect was to immediately legalize same-sex marriages in 15 states as well as the District of Columbia. With the Ninth Circuit striking down same-sex marriage bans in Nevada and Idaho on Tuesday, enforceable prohibitions against same-sex marriage remain in less than a dozen states.

People should have a democratic right to marry whomever they choose, and have access to whatever benefits that derive from marriage, a legal and civil institution. Nevertheless, the recent court rulings in favor of same-sex marriage do not represent any fundamental shift toward civil rights. Large sections of the ruling elite have embraced this issue for their own political reasons.

No doubt more petitions for review of the constitutionality of same-sex marriage bans will be filed in the future. There is nothing in this week's action that precludes the Supreme Court accepting one or more future cases and ruling whether the Constitution requires states to recognize same-sex marriages.

In addition to the same-sex marriage petitions, the Supreme Court declined several hundred other petitions for certiorari, adding little of note to the docket.

The term's first argued case, *Heien v. North Carolina*, threatens to roll back Fourth Amendment protection. A police officer pulled over a motorist because one of his two brake lights was not working. State law provides, however, that both brake lights had to be out of order for the law to be violated. A subsequent search of the car revealed cocaine. The dispute is over whether the evidence must be suppressed as the fruits of an unconstitutional traffic stop, a classic application of the "exclusionary rule," which is used to enforce the Constitutional prohibition against unreasonable searches and seizures.

The Supreme Court is debating whether the officer's supposedly "reasonable mistake of law" provided the "reasonable suspicion" necessary for a lawful traffic stop. The motorist's lawyer argued, logically, that if "errors of law" present "reasonable suspicion," police authority will be "vastly expanded."

That such a dispute could even work its way to the Supreme Court illustrates the sort of legal contortions the justices will go through to excuse police misconduct. Decades of case law interpreting the Fourth Amendment have established the elementary

principle that police officers must know the laws they are charged with enforcing, just as everyone else is charged with knowing the criminal laws they may be accused of violating. The hoary Latin maxim, *Ignorantia legis neminem excusat*, "ignorance of the law is no excuse," is among the first principles learned by law students.

Apparently the rule may not apply to the police. As it has in the past, the Obama administration once again sided openly with law enforcement and against the rights of individuals, Assistant Solicitor General Rachel Kovner arguing that the officer's ignorance of the law should be treated as an innocent mistake and not affect the legality of the traffic stop.

Turning to a case of great interest to corporations involved in various forms of wage theft, on Wednesday the Supreme Court heard arguments in *Integrity Staffing Solutions v. Busk*, to decide whether a temporary employment agency that supplies warehouse workers to Amazon and other major corporations must pay for the time—up to 25 minutes a day—those workers spend clearing security screening at the end of their shifts.

While the amounts lost by individual workers may not be great, the aggregate sums are astronomical. According to 13 class actions filed so far, by forcing workers to clock out before the security screening, rather than after, the employers have stolen hundreds of millions of dollars in wages from more than 400,000 temporary employees.

Scalia sided with the employers. "Getting yourself inspected as you leave the place of business is not part of the job," he said. So too did the Obama administration's lawyer, Assistant Solicitor General Curtis E. Gannon, a former law clerk of Scalia, who echoed his former boss's view that because the screening "happens as part of a process of getting out, it happens at the door, at the portal or near there," it is not part of the work day and should not be paid.

In future cases, the Supreme Court will continue to involve itself in political processes, as it did 14 years ago when it delivered the presidential election to George W. Bush, and as a result secured Roberts' appointment as chief justice.

There are two Alabama redistricting cases where local Democratic officials are contesting the latest iteration of the state's longstanding practice of cramming black voters into a few legislative districts to dilute their voting power. The case, scheduled for argument on November 12, is widely viewed as a test of whether anything remains of the 1965 Voting Rights Act after the Supreme Court invalidated the pre-clearance provision in June 2013. (See The US Supreme Court's dismantling of the Voting Rights Act)

The Supreme Court will also consider a challenge by Arizona Republicans to the state's use of a commission to draw up congressional districts, a process generally considered less partisan and therefore more fair.

One taxation case, *Comptroller v. Wynne*, will have a potentially massive impact on local government funding and the accumulation of wealth by the very rich. The Supreme Court will decide whether the United States Constitution mandates that a state must provide an income tax credit to residents for taxes paid in other states.

An unusual case poses the Supreme Court's willingness to interfere with activities of the other branches of government. For diplomatic reasons, the State Department declines to identify American citizens born in Jerusalem as born in "Israel" on passports. Congress passed a law mandating that it do so. *In Zivotofsky v. Kerry*, the Supreme Court will decide whether that statute "impermissibly infringes on the President's exercise of the recognition power reposing exclusively in him."

Missing from the Supreme Court docket, at least so far, are cases challenging executive authority to assassinate United States citizens and other people without due process, the use of torture, the mass collection of telephone and email communications, and the use of the "state secrets" doctrine to cover up official wrongdoing.