



October 8, 2013

Supreme Court Update

Today the Supreme Court begins a new term. With 53 cases currently on the docket, and many more expected to be heard this term, the Court will take up questions ranging from the First Amendment to the Senate's role in the appointment process.

Campaign Finance

- Today, in [McCutcheon v. FEC](#), the Court will consider the constitutionality of contribution limits that a person can make during a two-year political cycle. Under current law, the contribution limit is \$48,600 to all candidate committees over two years and \$74,600 to all other committees (\$123,200 total).

The Senate's Constitutional Authority

- In a case still awaiting scheduling, [NLRB v. Noel Canning](#), the Court will address whether the President exceeded his authority under the recess appointments clause when he unilaterally made appointments to the NLRB, bypassing the Senate. It will also hear whether the recess appointment power may be used during pro forma sessions of the Senate.
 - Two different [circuit courts](#) ruled that the President's authority to make recess appointments is limited to inter-session recesses of the Senate.
 - Senate Republicans filed a [brief](#) arguing that the President cannot unilaterally declare the Senate to be in "recess" against its will.
- [Bond v. United States](#) raises issues of federalism. The Court will look at whether Congress can use the Senate's treaty-making power to take over areas of the law traditionally reserved by the states. In this case, a woman accused of poisoning someone was charged under the Chemical Weapons Convention, rather than state law.

Freedom of Speech

- In [McCullen v. Coakley](#), the Court will take up the question of whether a Massachusetts state law restricting the speech of abortion opponents violates the First Amendment. Protesters cannot stand within 35 feet of the entrance of an abortion clinic.

Freedom of Religion

- Next month, in the case [*Town of Greece v. Galloway*](#), the Court will decide whether voluntary and non-discriminatory legislative prayers violate the Establishment Clause of the First Amendment. The Court has upheld legislative prayers several times before. The Obama Administration is not directly involved in the case, but filed a brief arguing that prayers should be allowed.

Abortion

- In [*Cline v. Oklahoma Coalition for Reproductive Justice*](#), the Court has asked the Supreme Court of Oklahoma to clarify a decision it made. The state court had struck down, without analysis or discussion, an Oklahoma law requiring abortion-inducing drugs to be administered under a specific, 13-year old, FDA protocol. Once it gets a response from the state Supreme Court, the U.S. Supreme Court will decide if further proceedings are necessary.

Affirmative Action

- In [*Schuette v. Coalition to Defend Affirmative Action*](#), the Court will examine a constitutional amendment in Michigan that prohibits preferential treatment for public university admissions on the basis of race and gender. The question is whether this part of the state's constitution violates the U.S. Constitution.

What the Court Might Hear

In addition to the cases already on the docket, throughout the next few months the Court will continue to choose other cases to take up this term. A few that would be notable are:

- In [*U.S. v. Wurie*](#), the Court would address whether police can review, without a warrant, cell phone call logs of a person who has been lawfully arrested.
- The Obama Administration and several companies have [asked](#) the Supreme Court to look at HHS guidelines mandating certain employers to provide contraceptives to employees. The question is whether non-religious employers can be exempted from the mandate in order to protect their free-exercise rights. The companies, including Hobby Lobby and Conestoga Wood Specialties, argue the mandate violates their religious beliefs.
- [Whether](#) the fundamental right to bear arms extends to people under the age of 21.
- Later this week, the Court will decide whether to take up cases reviewing the Environmental Protection Agency's greenhouse gas regulations.

Cases Denied Certiorari

- The Court denied several energy and environmental cases, including a challenge to the Department of Interior's listing of the polar bear as a "threatened species," and challenges to the department's withdrawal of drilling leases in Utah.