

Presidential immunity, charges vs. Jan. 6 insurrectionists, emergency abortions among remaining cases

US Supreme Court dismisses challenge to mifepristone abortion pill, strikes down ban on assault rifle bump stocks

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The United States Supreme Court issued six decisions over the last two days as the current term advanced toward its traditional conclusion before the July 4 holiday.?

One ruling dismissed an injunction against the approval by the US Food and Drug Administration (FDA) of mifepristone, a medication used to induce abortion during the first 10 weeks of pregnancy but without affirming any future right to access. Another decision struck down a regulation of the Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF) that barred the use of “bump stocks” on semi-automatic assault rifles.

The high court still has 23 cases to decide, virtually all of which could have profound political and social impacts. These include:

- Donald Trump’s claim that he cannot be prosecuted for crimes committed while carrying out his official duties as president
- Whether January 6 insurrectionists can be charged with obstruction
- Whether persons subject to domestic violence restraining orders have a Second Amendment right to possess firearms
- Whether a municipality can jail the unhoused for sleeping in public
- Whether a state can limit abortions during medical emergencies
- Whether federal immigration authorities can separate a US citizen from her spouse without any procedure
- Three cases involving federal regulatory agencies and three cases involving internet speech.

Thursday’s holding dismissing the injunction against mifepristone was based solely on the plaintiffs’ lack of “standing” to bring a lawsuit, a fundamental principle arising from the separation of powers. The requirement that

plaintiffs have standing forces the federal judiciary to stay in its lane by deciding only actual cases and controversies involving claims of actual injury, thus prohibiting advisory opinions.

Following the Supreme Court’s obliteration of the constitutional right to abortion access two years ago in *Dobbs v. Jackson Women’s Health Organization*, a small group of anti-abortion doctors sought a nationwide injunction against mifepristone, access to which was no longer constitutionally protected. The group deliberately filed in the Amarillo Division of the Northern District of Texas, where the only federal judge is Matthew Kacsmaryk, a religious fanatic appointed by Donald Trump, whose result-oriented decision making is well documented and favored by extreme right-wing litigants.

Despite the obvious fact that the plaintiffs had no personal stake in whether other doctors prescribed mifepristone to their own patients, i.e., alleged actual injuries as required by the constitutional requirement of standing, Kacsmaryk enjoined the distribution of mifepristone nationally, supposedly because the US Food and Drug Administration (FDA) had not conducted adequate testing before approving it in the year 2000, or expanding access in 2016, although decades of studies had established its medical safety.

The reactionary Fifth Circuit Court of Appeals, headquartered in New Orleans, upheld Kacsmaryk on the issue of standing but ruled that the FDA’s initial approval was outside the statute of limitations and could not be enjoined. The Fifth Circuit affirmed the rest of Kacsmaryk’s order, thus restricting mifepristone to the first seven weeks of pregnancy and requiring multiple in-person visits with a physician.

The lack of standing is obvious, and the US Supreme

Court stayed the Fifth Circuit ruling pending its own review. Thursday's unanimous decision by Justice Brett Kavanaugh rejected the plaintiffs' claims that they suffered injury because their own medical practices might somehow be affected by other medical practitioners prescribing mifepristone to their own patients. Kavanaugh called this an "unprecedented and limitless approach" that would "seemingly not end until virtually every citizen had standing to challenge virtually every government action that they do not like."

While legally correct, the decision does not protect access to mifepristone from reactionary state laws or future FDA actions. It has no effect on the Supreme Court's earlier elimination of the constitutional right to abortion access. The fact that the Supreme Court had to step in and vacate such outrageous lower court rulings, however, is itself revealing in regard to the growing disregard for basic legal norms among neo-fascist judges.

In another notable ruling, on Friday the Supreme Court invalidated by a vote of 6-3 the 2018 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulation banning "bump stocks," which are sold to replace the fixed stocks on commercially available semi-automatic assault rifles, such as the AR-15, to make them capable of continuous fire with a single trigger pull.

The National Firearms Act of 1934 outlawed private possession of fully automatic firearms—labeled "machineguns" in the statute—which are defined as weapons capable of continuous fire by holding the trigger down. The bump stock emulates a classic machine gun by harnessing a legal semi-automatic's recoil energy to repeatedly "bump" the shooter's stationary trigger finger, creating continuous fire.

The ATF enacted the ban after the horrific October 1, 2017 mass shooting in Las Vegas, Nevada, that resulted in 58 deaths and more than 500 wounded, the most deadly mass shooting in US history. Investigation revealed that the shooter used bump stocks attached to legally purchased semi-automatic assault rifles to inflict the carnage.

Justice Clarence Thomas wrote on behalf of the six right-wing justices that a "semiautomatic rifle equipped with a bump stock is not a 'machinegun' because it cannot fire more than one shot 'by a single function of the trigger.' And even if it could, it would not do so 'automatically.' ATF therefore exceeded its statutory authority by issuing a Rule that classifies bump stocks as machineguns."

On behalf of the three moderates, Justice Sonia Sotomayor wrote that this was an "easy case" because an assault rifle with a bump stock automatically shoots more than one shot with a single trigger pull. "Today's decision to reject that ordinary understanding will have deadly consequences,"

Sotomayor wrote. "The majority's artificially narrow definition hamstring the Government's efforts to keep machineguns from gunmen like the Las Vegas shooter."

While the opinions of Thomas and Sotomayor go into detail about the mechanics of weapons, neither addresses the expertise of federal regulatory agencies such as the ATF to construe relevant congressional enactments on such technical issues. The justices' disregard for the ATF is part of the broader attack on regulatory agencies favored by business interests seeking relief from all restrictions on their ability to generate profits. The Supreme Court will have more to say on those issues shortly.

In another case decided Thursday, the Supreme Court unanimously reversed an injunction obtained by the National Labor Relations Board (NLRB) and affirmed by the Sixth Circuit Court of Appeals, based in Cincinnati, Ohio. The injunction compelled Starbucks, the gargantuan coffee shop chain, to continue to employ baristas who alleged they were terminated for trying to unionize, while their claims of unfair labor practices were under administrative review by the NLRB.

The case was sent back to the lower courts with instructions to reconsider the injunction under a stricter standard more favorable to employers.

The alignment of the Supreme Court's so-called liberal wing, all women nominated by Democrats, with the six right-wing justices, all nominated by Republicans, against the Starbucks workers demonstrates the dominance of capitalist class interests across the high court's narrow political spectrum.

Finally, in a 5-4 decision authored by Justice Samuel Alito, the Supreme Court on Friday reversed two lower court rulings that allowed foreign nationals living in the United States to challenge "removal orders" issued in their absence on the basis that they did not receive the statutorily required notice of the removal hearings. Justice Ketanji Jackson wrote the dissent, which Neal Gorsuch joined along with Sotomayor and Elena Kagan.



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