US Supreme Court term opens with the stench of a democracy in shambles

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13 October 2024

The US Supreme Court opened its current term, as customary, on the first Monday of October, with a docket consisting of cases accumulated over the summer recess, followed by oral arguments in pending cases. The pretense of normalcy could not conceal the reality of a high court facing corruption scandals, particularly involving its most senior justice, Clarence Thomas, and a loss of public confidence not seen since the notorious *Dred Scott v. Sanford* decision of 1857 that helped trigger the Civil War.

Two weeks earlier, the Court refused to stop Missouri from executing Marcellus Williams, despite DNA evidence that established his innocence. Two weeks before that the Court sanctioned Nevada's barring of Green Party presidential candidate Jill Stein from the ballot despite her having submitted over double the required number of petition signatures.

Those recess orders followed last year's right-wing rampage, in which the Supreme Court criminalized homelessness and sanctioned the arbitrary separation of families of mixed nationalities by the State Department, while deciding a series of cases that effectively stripped federal agencies of the authority to regulate businesses.

The Court's assault on democratic rights culminated in its July 1 ruling granting US presidents, including Donald Trump, presumptive immunity from prosecution for crimes committed while in office. The ruling, placing the president above the law, overturned an appeals court ruling denying Trump's bid for immunity in relation to his attempted overthrow of the 2020 election.

Last month *The New York Times* reported, based on discussions and memoranda usually kept confidential, how Chief Justice John Roberts personally guided each of three blockbuster cases arising from Donald Trump's rejection of the 2020 election and attempted coup d'etat, to conclusions that protected Trump and his fascist cohorts at the expense of American democracy.

First, Roberts drafted the unsigned "per curiam" ruling that states cannot bar Trump from the ballot despite the Fourteenth Amendment's disqualification of insurrectionists. Although nominally unanimous, the decision was 5-4 on the important question of whether an act of Congress is required to give the clause legal effect, an absurd negation of the constitutional text.

Second, Roberts suddenly took over from Justice Samuel Alito the decision whether January 6 insurrectionists generally could be charged with the federal crime of "obstructing" a proceeding four days after news reports emerged that an upside-down American flag was flown outside the Alito home in sympathy with the attempt to disrupt the electoral vote count and transfer of power.

Roberts' unprecedented reassignment of the opinion to himself underscores that Alito had no business sitting in judgment on any of the Trump election cases in the first place and should have been recused altogether. The same goes for Thomas, whose right-wing activist spouse Virginia Thomas participated in plots with Trump lawyers, including Sidney Powell, to concoct phony electors.

Third, the *Times* reported that the justices discussed among themselves how the timing of their ruling on Trump's appeal from the Court of Appeals' denial of his immunity claim would affect the upcoming criminal trial for his role in the January 6 insurrection and the November 2024 election itself. Roberts personally insured, over the objection of Thomas, who wanted it delayed more, that the decision granting Trump broad presidential immunity from prosecution for crimes while in office would be published before the July 4

recess—but still too late for the case to go to trial before the election.

While Roberts' majority decision was widely, and correctly, denounced as a shabbily drafted assault on the fundamental democratic principle that no one is above the law, internally, Trump-nominated justices Brett Kavanaugh and Neil Gorsuch praised Roberts for an "extraordinary opinion" and "remarkable work."

So far, the Supreme Court has about 40 cases on its docket for the new term, many raising significant questions regarding immigrants, prisoners, environmental protection and other issues, but few "hot button" issues, aside from a case that challenges Tennessee's law banning "gender-affirming" medical care for patients under eighteen.

The first week included an argument related to gun control. In what would have seemed obvious during earlier historic periods, a majority of justices seemed inclined to uphold a US Bureau of Alcohol and Firearms (ATF) regulation that treats "ghost guns"—kits that can be assembled into functioning weapons without serial numbers—as "firearms" subject to the Gun Control Act of 1968. The regulation had been blocked nationally, however, by a fascistic federal judge in Texas before the Supreme Court ruled 5-4 earlier this year that the regulation could remain in effect until the case is decided.

The justices also heard arguments on whether plaintiffs suing under public-interest laws are entitled to awards of statutory attorneys' fees as prevailing parties when the defendants modify their challenged conduct after a case is filed, but before final judgment. While normally the six-vote right-wing majority would reflexively line up against civil-rights lawyers, recently many such cases have been brought by reactionary legal foundations, which are not infrequently the beneficiaries of substantial fee awards.

In a rare instance of a capital case being argued, on Wednesday October 9, eight justices—Neil Gorsuch recused himself—considered whether Richard Glossip will be put to death for the 1997 Oklahoma City murder of Barry Van Treese. No one questions that another man, Justin Sneed, beat Van Treese to death with a baseball bat, but Sneed parlayed his uncorroborated testimony that Glossip paid him for the killing in exchange for a life sentence.

Glossip, now 61, has maintained his innocence throughout 25 years on death row, and has been involved in multiple legal proceedings, including challenges to the injection of toxins as a mode of execution. A state legislative report found "grave doubt as to the integrity of Glossip's murder conviction and death sentence," as did a separate investigation commissioned by Oklahoma's Republican attorney general.

Glossip appealed for a new trial on the basis that the prosecutor failed to turn over notes referring to evidence that Sneed was bipolar and under psychiatric care, and then lied about it on the stand. The attorney general agreed that Glossip was denied due process and has refused to defend the conviction and death sentence, which were nevertheless upheld by the Oklahoma appellate court.

When Glossip petitioned the Supreme Court for certiorari to review Oklahoma's denial of a new trial despite the due-process violation, Christopher Michel, a former Roberts law clerk, was appointed to represent Oklahoma in lieu of the attorney general. While the other seven justices nitpicked for almost two hours over whether they had jurisdiction to review the decision of a state court, the usually quiet Thomas repeatedly interrupted with complaints that the prosecutors' "reputations are being impugned" without being "given an opportunity to give detailed accounts of what those notes meant."

Thomas' sudden concern for due process is odd. It is Glossip's head in the noose, not those of the prosecutors.

There are no election cases under review at the moment, but there can be little doubt that the ultra-right Supreme Court majority is poised to intervene on behalf of the increasingly fascistic Republican Party if the need arises over the next several weeks or months to help overturn a possible Democratic victory in the presidential race.