Tuesday round-up

Opinions in *Arizona Christian School Tuition Organization v. Winn* and *Cullen v. Pinholster*; denials of certiorari in detainee cases; "verbal roller derby"

Yesterday the Court capped off its recent flurry of activity with two decisions, two grants of certiorari, and denials of certiorari in three separate detainee cases. No oral arguments are scheduled for this week, nor are the Justices scheduled to hold a Conference; the next Conference will take place on April 15.

Of the two decisions handed down yesterday, *Arizona Christian School Tuition Organization v. Winn* garnered considerable coverage. In the case, the Court ruled that taxpayers have no right to challenge an Arizona tax credit that permits contributions to private schools, including religious institutions. In an opinion by Justice Kennedy, the Court explained that the challengers lacked standing under Article III because they challenged the tax credit, rather than government spending. The decision drew the first dissent from Justice Kagan (joined by Justices Ginsburg, Breyer, and Sotomayor), who accused the majority of having "laid waste to the doctrine of taxpayer standing," which allows taxpayer suits where taxes are spent on religious matters. Adam Liptak of the New York Times has coverage of the decision; he notes that although the program at issue in the case "is novel and complicated," the decision could nonetheless "be quite consequential" because it has the effect of "closing the courthouse door to some kinds of suits that claim violations of the First Amendment's ban on government establishment of religion." Joan Biskupic echoes this sentiment in USA Today, explaining that the majority's distinction narrows the interpretation of the 1968 precedent, *Flast v. Cohen*; similarly, Lyle Denniston of this blog reports that after yesterday's opinion, *Flast* "appeared to stand alone, in stark and even threatened isolation." David Savage, writing for the Los Angeles Times, describes the decision as a "major win" for the school choice movement; at Cato@Liberty, Andrew Coulson opines that the decision "allows for universal access to the education marketplace without forcing any citizen to subsidize instruction that violates their convictions." *Winn* gives Orin Kerr "constitutional déjà vu" at the Volokh Conspiracy; he explains what he regards as parallels between yesterday's decision in *Winn* and last year's decision in *Berghuis v. Thompkins*. And in a guest post at ACSblog,Alex Luchenitser searches for a silver lining in the case (and finds two). And at NPR, Nina Totenberg details the array of reactions to the case, while CNN, JURIST, Christian Science Monitor, Constitutional Law Prof Blog, and Bloomberg all offer more coverage.

In *Cullen v. Pinholster*, the other case decided yesterday, the Court reinstated the death penalty for a California man convicted of murder, despite evidence that he suffered severe brain damage as child. Seven Justices joined parts of Justice Thomas' opinion for the Court. Kent Scheidegger pinpoints questions left unanswered by the opinion at Crime

and Consequences, while the Los Angeles Times, Sacramento Bee, JURIST, Courthouse News Service, and UPI all have coverage of the case.

Yesterday the Court also granted certiorari in two cases, *Florence v. Board of Chosen Freeholders* and *Greene v. Fisher*. Coverage of these grants focused on *Florence*, in which the Court will consider whether the Fourth Amendment permits a jail to conduct a suspicionless strip search even for minor offenses. New Jersey Star-Ledger and the Associated Press (via the Boston Globe) describe the traffic stop that led to the petition; CNN observes that the case gives the Court an opportunity to clarify disagreement over the issue in the lower courts.

Three denials of certiorari, made with little fanfare by the Court, grabbed almost as many headlines as the decisions handed down yesterday. These petitions – consisting of three separate appeals made by Guantanamo detainees – all asked for clarification on the standards of evidence needed to determine whether detainees must remain in custody while waiting to be tried, Politico reports. CNN, Associated Press, and the Christian Science Monitor offer background on the petitions. Lyle Denniston of this blog interprets this action as the Court's "clearest signal yet that it is at least strongly hesitant, if not entirely unwillingly, to second-guess how the D.C. Circuit Court fashions the law of detention of individuals by the U.S. military."