The Supreme Court's Top Ten Cases

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With the Supreme Court on summer recess, it's time to review the biggest cases of the October 2013 docket. SCOTUSblog's **"Stat Pack"** notes that the Court this term had a high degree of unanimity and a relative lack of 5-4 decisions. But by margins both large and small, the court issued a number of important cases.

Reasonable people can, of course, disagree about the importance of any case. In compiling my own list, I generally ranked them with two criteria in mind. First, does the case affect constitutional doctrine, either by clarifying a murky area of law or by raising or lowering a legal bar? Second, will the case have practical consequences, either by shifting billions of dollars in legal rights, or by changing standard operating procedure for government agencies or law enforcement? If a case does either or both of these things, it appears higher on the list.

Here, in reverse order, are my top ten:

10. ***Utility Air Regulatory Group v. EPA***

This complicated set of cases dealt with the EPA's attempt to regulate greenhouse gases such as carbon dioxide as "air pollutants" under the Clean Air Act. In a 9-0 decision (at least with respect to the result), the Court held that part of what the EPA was trying to do was not permissible under the Clean Air Act, and part of it was. The Court ruled that the EPA went too far in terms of asserting statutory authority to regulate greenhouse gases and in attempting to "tailor" the statute to regulate only "major emitters" of greenhouse gases. However, the Court said that the EPA could impose carbon limits on facilities that already fall under permitting programs pursuant to other parts of the Clean Air Act. Even though the case didn't deal with any constitutional rights, it is hugely important, because it involves billions of dollars of regulated activity and the fight over global warming (or global climate change, as it is now called). The decision ensures that industry and the EPA will continue to fight in federal court for years to come. At least the lawyers will be happy.

9. ***Bond v. US***

When Carol Bond smeared dangerous chemicals on the mailbox of her former best friend (who, in the spirit of a *Maury* episode, was pregnant by Bond's husband), the feds got involved. Assault is a state-law crime, but a law enacted under the Treaty Power gave the federal government an opening. Many observers expected the Court would take the case as an opportunity to opine on the scope of the Treaty Power. Instead, the Court ducked the issue. Writing for a majority of six (although the judgment on the result was 9-0), Chief Justice Roberts held that the federal law, as a matter of statutory interpretation, simply didn't cover Bond's conduct. Still, it's an important case, because, in sussing out the meaning of the law's text, the Court made clear that it will interpret treaties -- and legislation implementing treaties -- with an eye toward preserving "traditional state authority."

8. ***Burwell v. Hobby Lobby***

In one of the most anticipated decisions of the term, the Court ruled that closely held corporations that have sincerely held religious objections cannot be required to provide contraception coverage. While the 5-4 opinion was littered with constitutional language, it's important to remember that this case involved the Religious Freedom Restoration Act (RFRA), a federal law that can be repealed or modified at any time (and which Congress can override in a subsequent statute)**.** Indeed, Senate Democrats immediately **proposed amending the law in various ways**. In other words, it's an open question whether this case will have big consequences going forward. There is no doubt, however, that it will change the public discourse about the proper role of religious freedom in our society and about the rights of corporations. Lower-court litigation over which corporations are covered under *Hobby Lobby* is quite likely. But the Court made two things clear. First, whether a corporation is "for-profit" or "non-profit" doesn't matter for RFRA purposes. Second, corporations are "persons" for RFRA purposes.

7. ***Susan B. Anthony List v. Driehaus***

Justice Thomas penned the unanimous decision in this First Amendment case coming out of Ohio. Ohio has a convoluted scheme that criminalizes "false" statements made during a political campaign. A pro-life organization, Susan B. Anthony List (SBA), put up billboards stating that a former congressman had voted for "taxpayer funded abortion" when he voted for Obamacare. He filed a complaint with the Ohio agency responsible for investigating "false" statements. The agency voted to move forward with the investigation, but put it on hold until after the election. Driehaus lost the election, and dropped the complaint, but not before SBA sued in federal court to have the law declared unconstitutional. The Supreme Court held that the SBA could maintain its suit, because even though the complaint had been dropped, it still faced a substantial threat of enforcement of a law that burdened electoral speech. This merely sent the case back to a lower court, but the holding could make it easier to stop the actions of administrative agencies, perhaps beyond simply those that threaten to sanction controversial speech. Particularly amusing was the **friend-of-the-court brief** by humorist P.J. O'Rourke and the Cato Institute, a libertarian think-tank, arguing that "truthiness" is "a key part of political discourse."

6. ***Town of Greece v. Galloway***

Like many towns across America, the Town of Greece, N.Y., opens its city meetings with a prayer given by local clergy. The prayer is open to all comers, but while Jewish and Baha'i invocations were given (and a Wiccan was invited to offer the prayer), most of the invocations were Christian in nature. When two citizens sued, claiming that this practice violated the Establishment Clause of the First Amendment, many thought it would be a slam dunk, because the Supreme Court had held in 1983 that "legislative prayer" did not violate the First Amendment. But some questioned the specific, sectarian nature of the prayers -- many of which invoked Jesus. In upholding the practice by a 5-4 margin, the Court limited the so-called "endorsement" test and held that prayers which endorse "values that count as universal and that are embodied not only in religious traditions, but in our founding documents and laws" cannot possibly be unconstitutional. In other words, rather than applying one legal test or another, the Court simply stated that the traditional practice of legislative prayer is beyond constitutional debate. This case will almost certainly be used in a wide variety of Establishment Clause cases going forward, to uphold traditional intersections of religion and government.

5. ***Daimler AG v. Bauman***

When Argentine residents sued a German car maker for allegedly collaborating with the Argentine government to kidnap, torture, and kill certain workers back in the 1970s, the question was this: Why was the suit filed in an American court? In a 9-0 decision written by Justice Ginsburg, the Court tossed out the case as violating the Due Process Clause of the Fourteenth Amendment. It looks like a technical case, but *Daimler AG* is another nail in the coffin for creative lawyers seeking to bring international human-rights claims (and other international tort claims) in U.S. courts.

4. ***McCullen v. Coakley***

The judges -- liberal and conservative alike -- all agreed that the Massachusetts law creating a 35-foot "no speech zone" around abortion clinics violated the First Amendment. The Court reiterated that state governments can pass laws to protect the health and safety of abortion-clinic staff and patrons, but ruled that there are many less restrictive ways to protect these people than placing a 35-foot no-go zone around a clinic. While four conservative justices on the Court would have gone further and held that the buffer zone was created to target pro-life speech and was therefore not "content neutral," the entire Court agreed that the law was an "extreme step" that was unnecessary to protect the safety of those entering and exiting clinics. While the narrow issue itself is of limited importance, the case represents broad agreement among the justices both that the First Amendment is alive and well and that the Court will take the purported policy justifications for such laws with a grain of salt absent a strong evidentiary showing to back them up.

3. ***Harris v. Quinn***

Many states provide reimbursements to Medicaid home-care providers. Often it is a family member who will take care of a sick relative and apply for money from the state. After the State of Illinois authorized unionization, a majority of home-care providers designated the Service Employees International Union to be the exclusive representative of these "employees." Illinois subsequently entered into a contract with the union that would require all home-care providers to pay the union a fee, even if they didn't want to join. In a ruling that could have sweeping implications for public-sector unions across the country, the Court held that this scheme violated the First Amendment rights of the home-care providers, because it required them to pay money out of their own pockets to fund speech, including political speech, that they might not support. Other "forced unionization" schemes are now suspect, including unionization of day care providers and full-fledged public employees.

2. ***McCutcheon v. FEC***

Campaign finance was an esoteric subject until the 2010 *Citizens United* case, which overturned certain statutory constraints on corporate campaign contributions. This term, some were touting *McCutcheon* as "the next *Citizens United*." In this case, the Court struck down aggregate contribution limits to campaigns. In a bizarre scheme, federal law limited not only how much someone could contribute to individual campaigns, but also how much someone could contribute overall. While the individual limits are still in place (for now anyway), the Court held that the government's justification for the law -- preventing corruption or the appearance of corruption -- wasn't served by the aggregate limits, and that the law affected a lot of innocent speech. Going forward, this case will be of significant practical impact: Wealthy donors will be able to contribute to more campaigns. But it also demonstrates that the Supreme Court is taking First Amendment concerns very seriously, and will continue to scrutinize sham justifications for laws.

1. ***Riley v. California***

This hugely important case establishes a blanket rule for cell-phone searches by police: Get a warrant. Previously, police had argued (and some courts had agreed) that the Fourth Amendment allowed cell-phone searches without a warrant when the cell phone was seized "incident to arrest." In other words, during a standard pat-down after arresting someone, if an officer came across a cell phone, he could search it then and there. No longer. In a 9-0 opinion by the chief justice, the Court held that, as a general matter, police need a warrant to search a cell phone seized during an arrest. This case should immediately have huge implications across the country as police are forced to change their standard procedures. Furthermore, the case indicates that the Supreme Court is capable of grappling with the legal implications of rapidly changing technology. As a practical matter, if an officer has evidence that a cell phone has been used as a part of a business selling illegal narcotics, it shouldn't be too difficult to quickly get a warrant .

Honorable Mentions:

Schuette v. BAMN: Activists sued the State of Michigan to invalidate a ban on affirmative action that had been enacted via a statewide referendum, arguing that banning racial preferences through this process violated the Equal Protection Clause of the Fourteenth Amendment. In a complicated ruling (3-2-1-2 or 6-2, depending on how you count the concurrences), the Court upheld the referendum and the citizens' right to enact statewide affirmative-action bans if they so choose.

NLRB v. Noel Canning: President Obama decided to "go it alone" in January 2012 and appoint various officials to positions without the advice and consent of the Senate, asserting his authority to do so under the Recess Appointments Clause in Article II of the Constitution. The problem was that the Senate had not declared itself to be in recess and was holding pro forma sessions every three days. The Supreme Court unanimously threw out the appointments, holding that if the Senate says it's in session, it's in session, even if the president doesn't get his way. The ruling assures that recess appointments will proceed more or less the way they did for all of the 20th century.

The Patent Docket: In a variety of cases, the Supreme Court continued to clarify patent law doctrine and litigation practices. Though Congress failed to pass "patent troll" legislation this summer, it might not need to if the Court continues to scrutinize this area of the law.