

- SCOTUSblog - <http://www.scotusblog.com> -

Tuesday round-up

Posted By [Nabiha Syed](#) On December 7, 2010 @ 9:53 am In [Round-up](#) | [Comments Disabled](#)

Yesterday the Court granted certiorari in two cases – [Wal-Mart v. Dukes](#)^[1] and [American Electric Power v. Connecticut](#)^[2] – that involve corporate interests, capturing headlines and significant coverage. Robert Barnes of the [Washington Post](#)^[3] notes that the cases “come before a court that traditionally has been sympathetic to business interests, but is sensitive about recent criticism from the left” regarding perceived corporate favoritism. David Savage of the [Los Angeles Times](#)^[4] and Daniel Fisher at [Forbes](#)^[5], Full Disclosure blog also compare the two petitions, offering brief overviews; details and documents for each case are available on [this blog](#)^[6].

In [Wal-Mart v. Dukes](#)^[1], the largest employment discrimination case in U.S. history, the Court has agreed to review whether claims by individual employees may be combined as a class action. The [Atlantic Wire](#)^[7] breaks down what’s at stake in the case, while the [New York Times](#)^[8], [CNN](#)^[9], [ABC News](#)^[10], [Associated Press](#)^[11], [Wall Street Journal](#)^[12], and Bloomberg (via [Boston Globe](#)^[13]) provide detailed coverage. Writing for [Slate](#)^[14], Dahlia Lithwick describes the case as a “high-stakes appeal” that may “prove an early litmus test for whether the presence of three women at the high court will in any way shape the debate about gender discrimination.”

In [American Electric Power v. Connecticut](#)^[2], the Court will consider whether states can use the tort theory of public nuisance to regulate carbon dioxide emissions. [Bloomberg](#)^[15], the [Wall Street Journal](#)^[16], [Reuters](#)^[17], and [Legal Newsline](#)^[18] offer more coverage. Warren Richey of the [Christian Science Monitor](#)^[19] characterizes the lawsuit as “unusual” because it is “an attempt to fill a vacuum in U.S. environmental policy.” Lawrence Hurley of Greenwire (via the [New York Times](#)^[20]) notes that the Court’s decision will affect two cases pending in the Ninth and Fifth Circuits on the same issue; in [Wired](#)^[21], Brandon Keim reports on how the case has inspired other climate-change litigation in New Orleans and Alaska. At [Cato@Liberty](#)^[22], Ilya Shapiro argues that “it is unconstitutional for courts to make complex policy decisions”; meanwhile, Douglas Kysar explains why the threat of tort liability should remain part of the balance of powers at [ACSblog](#)^[23]. [Legal Planet](#)^[24] and the [Volokh Conspiracy](#)^[25] join the debate on the issue as well, while Alice Kaswan discusses some of the key legal issues in the case at the [Center for Progressive Reform](#)^[26].

Yesterday’s oral argument in [Henderson v. Shinseki](#)^[27], in which the Court considered whether leniency should be afforded to veterans who miss their deadlines for benefits claims due to mental or physical illness resulting from their service, also garnered headlines. Joan Biskupic of [USA Today](#)^[28] reports that “no obvious consensus” emerged during oral arguments: the Justices “expressed skepticism for granting an exception yet voiced concerns about veterans shut out of the system, arguably through no fault of their own.” Whether exceptions may be permitted turns in part how the Court interprets its recent decision in another case, *Bowles v. Russell*, as Adam Liptak explains in the [New York Times](#)^[29]. The [Washington Post](#)^[30] and [Courthouse News Service](#)^[31] recap the oral arguments in more depth. [JURIST](#)^[32] and [Courthouse News Service](#)^[33] also briefly cover [Pepper v. United States](#)^[34], in which the Court also heard oral argument yesterday. [Sentencing Law and Policy](#)^[35] explains that although the case has not received attention because of its procedural complexity, “even a narrow ruling in *Pepper* will not prevent it from becoming the most important modern Supreme Court decision on resentencing proceedings.” And [White Collar Crime Prof Blog](#)^[36] explains why *Pepper* will carry important implications for white-collar practitioners as well.

Finally, the Court will hear two more oral arguments today in [Janus Capital Group v. First Derivative Traders](#)^[37] and [Thompson v. North American Stainless](#)^[38]. Joanna Grossman and Deborah Brake, in a two-part column for [FindLaw](#)^[39], have an extensive discussion of the facts and preview the arguments in *Thompson* (part two available [here](#)^[40]). Erin Mohan also previewed *Thompson* for [this blog](#)^[41]. Tomorrow, the Court will consider whether Arizona law can sanction employers who hire

undocumented workers in [Chamber of Commerce v. Whiting](#) ^[42]. David Savage (via the [Columbus Republic](#) ^[43]) provides a history of the case, as does the Associated Press (via [Miami Herald](#) ^[44]). The editorial board of the [Los Angeles Times](#) ^[45] implores the Justices to “strike [the law] down” because it “encroaches on the authority of the federal government to regulate immigration.” The Court will also hear argument in [Chase Bank v. McCoy](#) ^[46], which considers whether advance notice to credit card holders is mandated when the terms of the account are changed after default.

Briefly:

- At [Appellate Daily](#) ^[47], Michelle Olsen recaps *Perry v. Schwarzenegger*, which considers California’s ban on gay marriage, and predicts that the argument is “just a step” on the way to the Supreme Court. Lyle Denniston of [this blog](#) ^[48] also contemplates the outcome of the case.
- John Elwood continues his coverage of relists to watch at the [Volokh Conspiracy](#) ^[49].

Article printed from SCOTUSblog: <http://www.scotusblog.com>

URL to article: <http://www.scotusblog.com/2010/12/tuesday-round-up-51/>

URLs in this post:

- [1] *Wal-Mart v. Dukes*: <http://www.scotusblog.com/case-files/cases/wal-mart-v-dukes/>
- [2] *American Electric Power v. Connecticut*: <http://www.scotusblog.com/case-files/cases/american-electric-power-co-inc-v-connecticut-2/>
- [3] Washington Post: <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/06/AR2010120607197.html>
- [4] Los Angeles Times: <http://www.latimes.com/news/nationworld/nation/wire/sc-dc-1207-supreme-court-print-20101206,0,5472531.story>
- [5] Forbes: <http://blogs.forbes.com/danielfisher/2010/12/06/big-day-for-big-cases-at-the-supreme-court/?boxes=businesschannelsections>
- [6] this blog: <http://www.scotusblog.com/2010/12/details-on-this-mornings-orders-2/>
- [7] Atlantic Wire: <http://www.theatlanticwire.com/opinions/view/opinion/Wal-Mart-Sex-Discrimination-Case-Heads-to-the-Supreme-Court-6061/>
- [8] New York Times: <http://www.nytimes.com/2010/12/07/business/07bizcourt.html?partner=rss&emc=rss>
- [9] CNN: <http://edition.cnn.com/2010/US/12/06/scotus.gender.pay/index.html>
- [10] ABC News: <http://abcnews.go.com/Politics/supreme-court-review-wal-mart-employee-sex-discrimination/story?id=12322746>
- [11] Associated Press: <http://www.google.com/hostednews/ap/article/ALeqM5jLn0TIqczOuyH1jSD3hERrIILciw?docId=7717af5888c143c3b42f50405b1c7e48>
- [12] Wall Street Journal: <http://online.wsj.com/article/SB10001424052748704156304576003313491986164.html>
- [13] Boston Globe: http://www.boston.com/business/articles/2010/12/07/sex_bias_suit_faces_crucial_test/
- [14] Slate: <http://www.doublex.com/blog/xxfactor/wal-mart-going-high-court>
- [15] Bloomberg: <http://www.bloomberg.com/news/2010-12-06/aep-utilities-get-u-s-supreme-court-review-on-warming-suit.html>
- [16] Wall Street Journal: <http://online.wsj.com/article/SB10001424052748704156304576003323338816658.html>
- [17] Reuters: <http://www.reuters.com/article/idUSTRE6B530P20101206>
- [18] Legal Newsline: <http://www.legalnewsline.com/news/230084-u.s.-sc-will-consider-states-global-warming-lawsuit>
- [19] Christian Science Monitor: <http://www.csmonitor.com/USA/Justice/2010/1206/Supreme-Court-takes-global-warming-case-that-targets-power-companies>
- [20] New York Times: <http://www.nytimes.com/gwire/2010/12/06/06greenwire-supreme-court-takes-up-climate-nuisance-case-71478.html>
- [21] Wired: <http://www.wired.com/wiredscience/2010/12/supreme-court-climate-case/>
- [22] Cato@Liberty: <http://www.cato-at-liberty.org/supreme-court-should-tell-courts-to-stay-out-of-global-warming-cases/>
- [23] ACSblog: <http://www.acslaw.org/acsblog/node/17837>