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Tuesday round-up

Posted By [Nabiha Syed](#) On April 26, 2011 @ 8:05 am In [Round-up](#) | [Comments Disabled](#)

Coverage of the Court's last week of oral argument continues to focus on today's argument in [Sorrell v. IMS Health](#) ^[1], as James mentioned [yesterday](#) ^[2] (and in which Goldstein, Howe and Russell represents one set of respondents). In *Sorrell*, the Justices will consider whether the First Amendment allows a state to bar the sale or marketing of information derived from nonpublic prescription records. Frank Pasquale of [Balkinization](#) ^[3] explains that "while *IMS v. Sorrell* is often characterized as a direct clash between privacy and the First Amendment, it is better characterized as a more complex struggle over the ethical conduct of commerce, medicine, and marketing"; he argues that the "secrecy of the data mining business itself should weigh heavily in the minds of the justices as they consider *Sorrell*." At [Forbes](#) ^[4], Cory L. Andrews opines that because "Vermont's academic detailers are free to use such data, while drug companies cannot," the law should be struck down as unconstitutional. Nina Totenberg of [NPR](#) ^[5] summarizes the competing arguments in the case, as well as possible implications, while at [BBCNews](#) ^[6], Andrew Cohen provides background on the issue of data mining.

Other coverage of the Court centered upon the Court's denial of cert. before judgment in [Virginia v. Sebelius](#) ^[7], Virginia's challenge to the Patient Protection and Affordable Care Act. As [JURIST](#) ^[8], [AP](#) ^[9], [USAToday](#) ^[10], [Los Angeles Times](#) ^[11], [Washington Post](#) ^[12], and [Politico](#) ^[13] all note, the denial was expected; the Court rarely intervenes before an issue has been addressed by the lower courts. Adam Liptak of the [New York Times](#) ^[14] notes that it "appears almost certain that all nine justices will hear cases challenging the law when they reach the court in ordinary course, probably in the term that starts in October"; on that note, Ilya Shapiro at [Cato@Liberty](#) ^[15] observes that "there does not as yet seem to be a 'smoking gun'" that would require Justice Kagan to recuse herself. The [Christian Science Monitor](#) ^[16] and [CNN](#) ^[17] also discuss the denial, as does Lyle Denniston of [this blog](#) ^[18].

As Lyle also reports, yesterday the Court did not act on the petition in *Khadr v. Obama*, the one remaining Guantanamo detainee case on its docket. And the Court heard oral argument yesterday in two cases, *Erica P. John Fund v. Halliburton* ^[19] and *McNeill v. United States*; [JURIST](#) ^[20] has coverage of both cases, while the [Conglomerate](#) ^[21] offers a round-table on questions raised by *Erica P. John Fund*.

Briefly:

- In an opinion piece at [USAToday](#) ^[22], Richard W. Garnett explains why [Hosanna-Tabor Church v. FEOC](#) ^[23] "could prove to be among the court's most important religious-liberty cases in many years."
- David Hudson of the [First Amendment Center](#) ^[24] argues that Chief Justice Roberts "has proven to be more of a First Amendment defender — at least in certain contexts — than many imagined."
- The editorial board of the [Wall Street Journal](#) ^[25] observes that the theory of climate tort in last week's [American Electric Power Co. v. Connecticut](#) ^[26] was so "unconvincing... that not a single Justice seemed persuaded when the Supreme Court heard oral arguments last Tuesday—even some of the liberals questioned the theory with Scalia-like vigor."
- And finally, Steven Schwinn of [this blog](#) ^[27] analyzes last week's decision in [Virginia Office of Protection and Advocacy v. Stewart](#) ^[28].

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- [1] *Sorrell v. IMS Health*: <http://www.scotusblog.com./case-files/cases/sorrell-v-ims-health-inc>
- [2] yesterday: <http://www.scotusblog.com./2011/04/monday-round-up-75/>
- [3] Balkinization: <http://balkin.blogspot.com/2011/04/rethinking-ims-health-v-sorrell-privacy.html>
- [4] Forbes: <http://blogs.forbes.com/docket/2011/04/25/the-rise-of-the-pharmaceutical-un-sales-force/>
- [5] NPR: <http://www.npr.org/2011/04/26/135703500/supreme-court-weighs-whether-to-limit-data-mining>
- [6] BBCNews: <http://www.bbc.co.uk/news/world-us-canada-13190004>
- [7] *Virginia v. Sebelius*: <http://www.scotusblog.com./case-files/cases/virginia-v-sebelius/>
- [8] JURIST: <http://jurist.org/paperchase/2011/04/supreme-court-rejects-virginias-petition-for-expedited-review-of-health-care-law.php>
- [9] AP: http://hosted.ap.org/dynamic/stories/U/US_SUPREME_COURT_HEALTH_CARE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT
- [10] USA Today: <http://content.usatoday.com/communities/ondeadline/post/2011/04/supreme-court-rejects-bid-to-hear-health-care-challenge-this-term/1>
- [11] Los Angeles Times: <http://www.latimes.com/news/nationworld/nation/sc-dc-court-healthcare-20110425,0,7998978.story>
- [12] Washington Post: http://www.washingtonpost.com/politics/supreme-court-turn-down-virginias-request-to-expedite-review-of-health-care-law/2011/04/15/AFr7U5hE_story.html?wprss=rss_homepage
- [13] Politico: <http://www.politico.com/news/stories/0411/53655.html>
- [14] New York Times: <http://www.nytimes.com/2011/04/26/us/politics/26scotus.html>
- [15] Cato@Liberty: <http://www.cato-at-liberty.org/supreme-court-denies-expedited-obamacare-review/>
- [16] Christian Science Monitor: <http://www.csmonitor.com/USA/Justice/2011/0425/Supreme-Court-says-no-to-expedited-hearing-on-health-care-reform-law>
- [17] CNN: <http://edition.cnn.com/2011/CRIME/04/25/scotus.healthcare.reform/>
- [18] this blog: <http://www.scotusblog.com./2011/04/court-passes-on-health-care/>
- [19] *Erica P. John Fund v. Halliburton*: <http://www.scotusblog.com./case-files/cases/erica-p-john-fund-inc-v-halliburton-co>
- [20] JURIST: <http://jurist.org/paperchase/2011/04/supreme-court-hears-arguments-on-class-certification-sentencing-laws.php>
- [21] Conglomerate: <http://www.theconglomerate.org/2011/04/halliburton-roundtable-the-arguments-i-wish-i-heard.html#trackback>
- [22] USA Today: <http://www.usatoday.com/news/opinion/forum/2011-04-24-Hosanna-Tabor-and-Supreme-Court.htm>
- [23] *Hosanna-Tabor Church v. EEOC*: <http://www.scotusblog.com./case-files/cases/hosanna-tabor-evangelical-lutheran-church-and-school-v-eeoc/>
- [24] First Amendment Center: <http://www.firstamendmentcenter.org/chief-justice-roberts-and-the-first-amendment>
- [25] Wall Street Journal: http://online.wsj.com/article/SB10001424052748704658704576274930992503832.html?mod=googlenews_wsj
- [26] *American Electric Power Co. v. Connecticut*: <http://www.scotusblog.com./case-files/cases/american-electric-power-co-inc-v-connecticut-2/>
- [27] this blog: <http://www.scotusblog.com./2011/04/opinion-analysis-court-allows-suits-by-state-agencies-against-state-officials/>
- [28] *Virginia Office of Protection and Advocacy v. Stewart*: <http://www.scotusblog.com./case-files/cases/virginia-office-for-protection-and-advocacy-v-reinhard/>

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