Wednesday round-up
The Court and the White House Reengage on *Citizens United* and the State of the Union

Adam Chandler | Wednesday, March 10th, 2010 9:38 am | Tags: round-up

Speaking at the University of Alabama yesterday, Chief Justice Roberts revisited the "exchange" between President Obama and Justice Alito during the State of the Union address in January. In response to a law student's question, Roberts described the scene at the State of the Union as "very troubling" and, to some extent, "a political pep rally." The Chief Justice's comments drew a quick response from White House press secretary Robert Gibbs ("What is troubling is that [*Citizens United*] opened the floodgates for corporations and special interests to pour money into elections—drowning out the voices of average Americans.") and were declared the "Quote of the Day" by Above the Law. According to Sam Stein of the Huffington Post, "[t]he push back … from the White House seems almost unprecedented in its directness … Undoubtedly, it's bound to spur another round of debates over what constitutes proper decorum between the two branches." Joan Biskupic at USA Today, David Savage at the L.A. Times, and Jake Tapper at ABC News have the story in full, and Eugene Volokh examines whether the Constitution's State of the Union Clause might offer the Justices an "adequate excuse" for not attending future addresses.

Newspapers and blogs remain interested in Monday's trio of cert. grants: *NASA v. Nelson*, a case about information privacy and government background checks; *Snyder v. Phelps*, a case about anti-gay funeral protesting; and *Bruesewitz v. Wyeth*, a case about federal preemption and vaccines. At Concurring Opinions, Daniel Solove has a detailed two-part analysis of the issues at stake in *NASA*. He raises the possibility that the Court will eliminate a right to information privacy that is "recognized by the vast majority of federal circuit courts" and argues that it should not do so. Wired and the Pasadena Star-News also take note of *NASA*.

The Kansas City Star and the Wichita Eagle offer local background on the protesters whose demonstrations are at issue in *Snyder*. At the WSJ Law Blog, Ashby Jones labels the case as "a contender as one of the more interesting cases of the Supreme Court's 2010-11 term." For *Bruesewitz*, the Pittsburgh Post-Gazette and the Pittsburgh Tribune-Review each offer a local account of the fifteen-year legal battle over a children's vaccine that may have given the petitioners' daughter a chronic seizure disorder. Meanwhile, TV Week's TVBizwire blog notes that on Monday the Court denied a challenge by a federal death row inmate to a federal prison policy—adopted after Timothy McVeigh appeared on "60 Minutes" in 2000—that bars death row inmates from being interviewed in person. The petition had been supported by many news organizations.

There are two new articles about Justice Scalia's comments during last week's argument in the Second Amendment case *McDonald v. City of Chicago*. Saul Cornell, Justin Florence, and Matthew Shors have a piece in Slate explaining that localities have exercised a long-standing authority to regulate guns. They argue that such history should give originalists pause before incorporating the Second Amendment against the states: "there is ample historical evidence showing that at the time the 14th Amendment was ratified, states had broad authority to enact nondiscriminatory gun-safety regulations." In the Washington Examiner, Josh Blackman and Ilya Shapiro have an op-ed questioning whether Justice Scalia is "abandoning originalism" by appearing to ignore the Privileges or Immunities argument in favor of incorporation through substantive due process. They observe that "when the justice was faced with a golden opportunity to advance originalism, he blinked."

The L.A. Times reports that the Court's campaign finance rulings have contributed to the ever-expanding fundraising success of the U.S. Chamber of Commerce. In an opinion piece in U.S. News & World Report, the Brennan Center's Ciara Torres-Spelliscy urges the U.S. to adopt a law like one the U.K. "passed in 2000 that requires British companies to seek authorization from their shareholders for corporate political spending." Elsewhere, ACSblog has an interview with Joseph Sandler, an election law expert, in which he discusses the impact of *Citizens United*.

On her blog, Joan Biskupic reflects on lessons we can draw from past administrations' Supreme Court nominations processes. She observes that, especially in Republican administrations, the president's nominations team starts in-depth research, vetting, and even interviews well before a vacancy presents itself. Biskupic also notices a pattern: finalists who were passed over for a nomination to the Court often snag the next vacancy during that president's term.

Briefly:

- The L.A. Times profiles Goodwin Liu, President Obama's recent nominee to the Ninth Circuit. Liu is a Berkeley professor and former clerk to Justice Ginsburg who testified against Justice Alito at his confirmation hearings.
- At Concurring Opinions, Tuan Samahon discusses "a whopper of an assumption" in *Free Enterprise Fund v. PCAOB*, a separation-of-powers case argued in December.

- Retired Justice Sandra Day O'Connor carried her campaign to end judicial elections to Elon University School of Law in Greensboro, North Carolina, reports the Burlington Times-News.

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