Wednesday round-up

Posted By Adam Chandler On January 12, 2011 @ 9:19 am In Round-up | Comments Disabled

Yesterday the Court issued two decisions, including Justice Kagan's first decision as a Justice, and heard oral argument in two cases. The former attracted much more attention than the latter.

In a tax case decided yesterday, *Mayo Foundation v. United States* [1], the Court (in an opinion by the Chief Justice, with Justice Kagan recused) unanimously upheld a Treasury Department rule that treats medical residents as full-time employees rather than students, thereby subjecting them to payroll taxes. Coverage of the decision is available from SCOTUSblog [2], the Chronicle of Higher Education [3], the Wall Street Journal [4] (and the WSJ Health Blog [5]), the New York Times [6], the Associated Press (via the Washington Post [7]), Accounting Today [8], JURIST [9], and Courthouse News Service [10].

Justice Kagan issued her first opinion yesterday, in *Ransom v. FIA Card Services* [11], a bankruptcy dispute. At the Volokh Conspiracy [12], Orin Kerr praised the decision as "well-written and clear for an opinion on such a complicated topic." Justice Scalia was the lone dissenter. News reports linked the occasion to purported "traditions" surrounding a Justice's first pronouncement from the Court. In the Washington Post [13], Bob Barnes observed that "[l]ike other rookie justices before her, Kagan drew a relatively noncontroversial decision for her maiden effort"; similarly, Jess Bravin of the WSJ Law Blog [14] explained that "[n]ew justices customarily receive a noncontroversial case for their maiden opinion." (Put somewhat more indelicately by Mike Sacks at First One @ One First [15], "True to tradition, it's a dog of a case.") Also, Justice Kagan's opinion fell short of unanimity, which some writers (like Tony Mauro at the Blog of LegalTimes [16] and David Savage of the Los Angeles Times [17]) described as a departure from tradition. But John Elwood at the Volokh Conspiracy [18] observes that only "[f]ive of the current members of the Court had unanimous debut opinions." NPR [19], SCOTUSblog [2], the New York Times [6], the Christian Science Monitor [20], Fox News [21], the Associated Press (via NPR [22]), the ABA Journal [23], USA Today [24]'s On Deadline blog, Bloomberg [25] (also here [26]), and JURIST [27] provide more detail on the case. And John Carney has a critical take on the decision at CNBC.com [28].

The Court issued one additional order late yesterday, staying the execution of Texas death row inmate Cleve Foster. Justices Scalia and Alito indicated that they would have allowed Foster's lethal injection to proceed as planned last night. The Associated Press (via the Fort Worth Star-Telegram [29]) has the full story, and the stay was noted by Doug Berman at Sentencing Law and Policy [30] and by Kent Scheidegger at Crime & Consequences [31].

Yesterday's oral arguments in *Goodyear Lux Tires v. Brown* [32] and *J. McIntyre Machinery v. Nicastro* [33] drew the attention of at least one commentator, Howard Wasserman at PrawfsBlawg [34]. Wasserman writes that the cases are, "potentially, the first major personal jurisdiction cases to come to SCOTUS since 1990—during Justice Brennan's final term on the Court." In addition, the WSJ Law Blog [35] has a recap of Monday's argument in the securities case *Matrixx Initiatives v. Siracusano* [36].

Bloggers continue to write about the Court's refusal to hear *Alderman v. United States* [37], a Commerce Clause challenge to a federal law that prohibits convicted felons from owning body armor, over the dissent of Justices Scalia and Thomas. (Nabiha collected the early commentary in her round-up [38] yesterday.) Steven Schwinn of Constitutional Law Prof Blog [39] and Ilya Somin of the Volokh Conspiracy [40] analyze the dissent's Commerce Clause implications, and the Atlantic Wire [41] summarizes some of the commentary on the case and what it portends for the challenges to President Obama's health care reform law. On his Washington Post [42] blog, Ezra Klein opines that "it's hard to argue that regulating a national health-care system is a less appropriate use of federal power than deciding what people can wear when they walk to the grocery." And at Cato @ Liberty [43], Ilya Shapiro describes *Alderman* as one example of how the Supreme Court's "non-rulings" can be "more important that the cases it actually hears."

This morning at 10 a.m., the Court will hear argument in *Sykes v. United States* [44], an Armed Career Criminal Act case. SCOTUSblog [45] has Doug Berman's preview of *Sykes*, a case that he is "struggling to get psyched for," according to his blog Sentencing Law and Policy [46]. After the *Sykes* argument, the Court will hear *Kentucky v. King* [47], a Fourth Amendment case that Holly Ragan previewed for SCOTUSblog [48] and Martin Magnusson previewed for ACSblog [49].

Briefly:

- The San Francisco Business Times [50] and Berkeleyside [51] report that Justice Sotomayor will judge the final round of the moot court tournament at U.C. Berkeley's law school next month.
- At the First Amendment Center [52], Tony Mauro reflects on two recently granted cases—*Commission on Ethics of the State of Nevada v. Carrigan* [53] and *Sorrell v. IMS Health* [54]—"that pose that basic question of whether the First Amendment is even involved."
- And finally, the San Francisco Chronicle [55] reports on the recent cert. denial in *Atlantic Richfield vs. Santa Clara County*, which clears the way for "cities and counties to hire private lawyers, and offer them a share of the proceeds, when suing companies for the huge costs of cleaning up lead paint."

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