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Tuesday Round-up

Jay Willis | Tuesday, December 8th, 2009 9:36 am

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Adam Liptak at [The New York Times](#) recaps Monday's oral arguments in *Free Enterprise Fund vs. Public Company Accounting Oversight Board*, noting in particular the Chief Justice's concern about the insulation of PCAOB members from presidential control. Liptak also broaches the possibility that the Court may use the case to rule more broadly on the extent to which the executive branch must exercise oversight over independent regulatory agencies. The [Wall Street Journal](#) and Robert Barnes at the [Washington Post](#) also highlight the justices' different lines of questioning during oral argument.

As oral arguments concluded, the blogosphere began to speculate on how the Court might rule. Orin Kerr at the [Volokh Conspiracy](#) concludes that the Court regarded the PCAOB as tightly controlled by the SEC and will thus rule that the Board is unconstitutional. The [Conglomerate](#) notes that based on his questions, Justice Scalia may view the PCAOB as a (constitutional) division of the SEC; in the [WSJ](#)'s view, the Court's conservative justices seemed to regard the PCAOB as more independent from executive control than the Constitution permits. In this op-ed from the [American Enterprise Institute](#), Ilya Shapiro argues for a decision in favor of Free Enterprise Fund; he asserts that a lack of checks and balances on the PCAOB inappropriately shields its members from oversight.

In her coverage of *Free Enterprise Fund*, Nina Totenberg at [NPR](#) profiles in more detail the relationships between the executive branch, the SEC, and PCAOB. She notes that those that deride independent oversight agencies as an unconstitutional "fourth branch" of government are hoping for a Supreme Court ruling in favor of the petitioners in this case.

Also in [The New York Times](#), Liptak covers the Court's grant of certiorari in *Christian Legal Society v. Martinez*. Liptak analyzes similar decisions from the Ninth and Seventh Circuits to determine how the Supreme Court might eventually rule in the case; Lyle Denniston covered this story yesterday in [this SCOTUSblog post](#). The San Francisco Chronicle has [this article](#) on the case, which involves a student religious group at San Francisco's UC Hastings College of Law. The [BLT](#) and [ACS Blog](#) also have coverage, as does The Volokh Conspiracy, where Eugene Volokh [argues](#) that a rule which limits funding to student groups that organize themselves in a certain way does not violate a right to free association, as such a rule is "based on conduct, not on the viewpoint of the groups' speech."

The [Detroit News](#) (via [How Appealing](#)) reports on the trial that will result from the Court's summary reversal in *Michigan v. Fisher* on Monday. Eugene Volokh also [covers](#) the Court's decision in *Michigan v. Fisher*, noting Justice Stevens's ambiguous dissent and speculating on his possible motivations for doing so.

Looking ahead to today's arguments in *Black v. United States* and *Weyhrauch v. United States*, Tony Mauro at the [National Law Journal](#) posits that Justice Scalia's blistering dissent last Term from the denial of certiorari in *Sorich v. U.S.* may have prompted the Court to take up challenges to the "honest services" statute in a trio of cases this term. In his dissent, Justice Scalia characterized the statute as an overly broad doctrine that could potentially extend to "a salaried employee's phoning in sick to go to a ball game." The [WSJ Law Blog](#) also previews *Black* and *Weyhrauch*.

The [LA Times](#) has this AP piece recapping oral arguments in *Florida v. Powell*. The justices expressed doubt that the state's *Miranda*-inspired warning at issue was sufficient to inform the respondent of his rights, and the article speculates that the Court will rule that police must be explicit in advising suspects that they can have a lawyer present during interrogation.

Finally, in other court-related news, Orin Kerr at the [Volokh Conspiracy](#) has a humorous piece in which he speculates on how the Internet, and the blogosphere in particular, might make future Supreme Court proceedings more accessible to the general public. Jess Bravin at the [WSJ](#) speculates on how a decision in *Citizens United v. FEC* will affect state-level campaign-finance laws.

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