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Marissa Miller Round-up

Posted Mon, June 24th, 2013 8:27 am

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Monday round-up

The weekend's coverage looked ahead to the high-profile cases that the Court is likely to issue this week and back at the decisions that the Court issued within the last few days.

Among the eleven cases that still remain are four of the Term's most anticipated cases: *Shelby County v. Holder* (voting rights), *Fisher v. University of Texas at Austin* (affirmative action), *United States v. Windsor* (Defense of Marriage Act), and *Hollingsworth v. Perry* (California's Proposition 8). At the Los Angeles Times, David Savage examines these cases in the context of assertions by the Chief Justice that he would like to avoid deeply fractured decisions, noting that "this week will test whether he can do it again." Chris Geidner of BuzzFeed discusses the standing issues presented by each of these cases and suggests that, in all of them, the Court ultimately could decide not to decide the case at all. Both Andrew Cohen of The Atlantic and Richard Hasen, writing for the Daily Beast, address the wait for these decisions; Cohen is critical, arguing that the Justices "owe us all the opportunity to reasonably absorb the decisions they do hand down in a fashion that increases the chances those decisions will be accurately and adequately evaluated as quickly as possible," but Hasen takes the opposite view, contending that "[i]f we want our justices to be deliberative, comprehensive, careful, and transparent, we should celebrate, not bemoan, the fact that the hardest opinions come at the end." As to the same-sex marriage cases specifically, Joseph Ura discusses recent political science research suggesting that "practical political concerns about the prospects of a backlash in support of gay rights following Supreme Court decisions advancing marriage equality are misplaced" at the Pacific Standard. At PrawfsBlawg, Will Baude considers and ultimately rejects the possibility that the Court will dismiss *Windsor* for lack of standing.

The weekend's coverage also emphasized last week's opinion in *American Express v. Italian Colors*, in which the Court held that the Federal Arbitration Act does not permit courts to invalidate a contractual waiver of class arbitration on the ground that the plaintiff's cost of individually arbitrating a federal statutory claim exceeds the potential recovery. Writing for the Huffington Post, Nan Aron argues that the decision establishes a Catch-22 for litigants, as it allows them to challenge corporations on an individual basis through arbitration, even though those individual challenges will never succeed because "the cost of making the case is so high no one can afford to undertake it on their own." Additional coverage of, and commentary on, this case comes from Michael Bobelian of Forbes, Archis Parasharami and Andy Pincus at Mayer Brown's Class Defense blog, Ed Mannino, Kenneth Jost of Jost on Justice, and Carolyn Shapiro at the ITT Chicago-Kent Law faculty blog.

The weekend's clippings also included additional coverage of last week's decisions in *Arizona v. Intertribal Council of Arizona*, *Agency for International Development v. Alliance for Open Society International*, and *Maracich v. Spear*. At the National Law Journal, Alan Morrison discusses possible legislative responses by Arizona to the decision in *Intertribal Council*, in which the Court held that Arizona's proof-of-citizenship requirement for would-be voters is preempted by federal law; at JURIST, Jessica Levinson contends that Justice Antonin Scalia's opinion was not "a clear statement

in favor of easing voter registration requirements," but instead provides states with "a clear roadmap for establishing more stringent voter registration requirements." UPI's Michael Kirkland also has coverage of this case. Nicole Huberfeld of HealthLawProfBlog has a different take on *Alliance for Open Society*, in which the Court held that the federal government's requirement that aid organizations wishing to receive federal funding for HIV and AIDS programs overseas must have an explicit policy opposing prostitution violates the First Amendment. She argues that the case reiterates this Court's willingness to rein in congressional exercises of the spending power. Finally, at Mayer Brown's Class Defense blog, Archis Parasharami urges attorneys to read *Maracich* as "extending an invitation to challenge class actions for statutory damages . . . when businesses face class actions for massive damages under federal or state statutes," as those class actions are arguably "not a superior method for adjudicating the statutory claims because the potential for extraordinarily massive liability imposes excruciating (and improper) pressure on defendants to settle," and thus "raise serious due process concerns."

Briefly:

- The blog of the Federal Evidence Review reports on last Monday's decision in *Salinas v. Texas*, in which the Court held that that a defendant's silence during police questioning in a precustodial setting could be used at trial without violating the Fifth Amendment privilege against self-incrimination.
- Luke Rioux of Harmless Error summarizes the Court's opinion in *Alleyne v. United States*, in which the Justices ruled that, because mandatory minimum sentences increase the penalty for a crime, any fact that increases the mandatory minimum is an "element" of the crime that must be submitted to the jury.

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Recommended Citation: Marissa Miller, *Monday round-up*, SCOTUSblog (Jun. 24, 2013, 8:27 AM), http://www.scotusblog.com/2013/06/monday-round-up-176/

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