Defining the Roberts Court's Legacy:

The 2014-2015 Supreme Court Docket

As Chief Justice John Roberts's Supreme Court approaches its tenth anniversary, it has begun to define the legacy it will leave on our country. Americans have watched this Court upend decades-old precedent on voting rights, abortion access, workplace discrimination, religious liberties, and forced arbitration. It has blocked access to the courthouse doors and stacked the deck against everyday Americans. Still, there have been exceptions. The Court upheld major provisions of the Affordable Care Act, struck down the Defense of Marriage Act, and expanded privacy rights for Americans with cell phones.

This year will be a test for the Court. Will it help everyday Americans or continue on its path of judicial overreach that has undermined the civil rights of consumers, racial minorities, and women?

This term, the Court will decide whether to:

- Approve the use of redistricting plans designed to dilute the power of minority voters (***Alabama Legislative Black Caucus***).
- Undermine the Pregnancy Discrimination Act by allowing employers to fire pregnant women (***Young***).
- Remove protections for whisteblowers seeking to safeguard the public (***MacLean***).
- Require workers to take unpaid time while going through airport-style corporate security (***Busk***).
- End religious liberty in prisons (***Holt***).
- Limit the EEOC's ability to bring suit to protect employees (***Mach Mining***).

The Court may also hear cases that could:

- Legalize same-sex marriages across the country (***Herbert v. Kitchen, et al.***).
- End subsidies for low-income Americans under the Affordable Care Act (***King v. Burwell***).
- Expand *Hobby Lobby* to deny even more women access to contraception (***Michigan Catholic Conference v. Burwell***).
- Restrict access to medication abortions (***Humble v. Planned Parenthood Arizona***).

I. Workers' Rights

1. ***Young v. United Parcel Service***
   - **Issue:** Remedying pregnancy discrimination in the workplace
   - **Argument Date:** December 3, 2014

   Peggy Young was a driver for United Parcel Service (UPS) who asked UPS for a "light duty" assignment after her doctor recommended that she not lift more than 20 pounds during her pregnancy. UPS, which had a practice of giving light duty assignments to other employees who were temporarily disabled, rejected Young's request. Young was therefore forced to take unpaid leave for the rest of her pregnancy. As Young's brief to the Supreme Court explained, "If Peggy Young's lifting restriction had resulted from an on-the-job injury, an [Americans with Disabilities Act] disability, or a condition that rendered her ineligible for [Department of Transportation] certification, [. . .] UPS would have accommodated it. But because her restriction resulted from pregnancy, UPS refused to do so."

   Young brought a lawsuit against UPS under the Pregnancy Discrimination Act as codified in Title VII. The district court dismissed Young's case, finding that UPS did not discriminate against her because the company's light duty policy—which UPS argued was based on whether an employee was injured on or off the job—was gender-neutral and "pregnancy-blind." The Fourth Circuit affirmed the district court's decision.

   In July 2014, the EEOC updated its rules against pregnancy discrimination for the first time in 30 years to include a clarification as to when employers must provide "light duty" assignments to pregnant workers. Under the new rules, an employer is required to provide light duty assignments for pregnant workers if it provides light duty to workers who are not pregnant, but who are similarly unable to complete heavier tasks. According to the guidance, "Thus, for example, an employer must provide light duty for pregnant workers on the same terms that light duty is offered to employees injured on the job who are similar to the pregnant worker in their ability or inability to work."

   If the Supreme Court were to affirm the Fourth Circuit, it would be ignoring congressional intent and the EEOC's regulatory authority in order to side with employers' interests at the expense of women workers.

2. ***Department of Homeland Security v. MacLean***
   - **Issue:** Whistleblower protection
   - **Argument Date:** November 4, 2014

   Robert MacLean, a U.S. air marshal, disclosed sensitive information to MSNBC in 2003, revealing that the TSA had decided not to assign air marshals on particular long-distance flights. The government fired MacLean for violating a TSA regulation barring public disclosure of details regarding how the agency deploys security staff, including air marshals. MacLean sued the government in federal court, arguing that his actions were protected under the federal Whistleblower Protection Act. The Act protects employees whose disclosures reveal unlawful conduct, gross mismanagement, or threats to public safety. The Act does not

apply where a government employee breaks existing law at the time they reveal information. The government argued that MacLean broke the law by revealing sensitive information, and, therefore, that he should not be protected as a whistleblower.

The U.S. Court of Appeals for the Federal Circuit ruled in MacLean's favor, finding that he did not break a federal law because the information he leaked was designated as "sensitive" by the Department of Homeland Security, but was not specifically defined as such in any statute. Therefore, the Whistleblower Protection Act's exception for government employees who break existing laws at the time they reveal information did not apply in this case. As a result, the court found that the Whistleblower Protection Act covered MacLean's actions. The federal government is appealing that decision. If the Supreme Court reverses the Federal Circuit, government employees will be prohibited from disclosing information regarding public safety, even when the disclosure does not violate an existing law.

3. ***M&G Polymers USA, LLC v. Tackett***
   - **Issue:** Interpreting collective bargaining agreements that provide for health insurance benefits for retired employees
   - **Argument Date:** November 10, 2014

   Circuit courts have split on how to interpret collective bargaining agreements to determine whether retiree health insurance benefits are vested, or guaranteed for life. If retiree health benefits are vested, they cannot be altered or rescinded after the termination of the collective bargaining agreement.

   The Sixth Circuit—which is the lower court involved in this case—has held since 1983 that, when there is no specific language on duration written into a collective bargaining agreement, there is an assumption that retiree health insurance benefits are vested. The Third Circuit, in stark contrast, has held that a clear statement that the health insurance benefits are intended to survive the termination of a collective bargaining agreement is necessary for the benefits to be vested. The Second and Seventh Circuits have fallen in the middle, holding that there must at least be some durational language in the agreement that can reasonably support an interpretation that the health insurance benefits should be guaranteed for life.

   In this case, M&G Polymers USA, LLC essentially eliminated health benefits for hundreds of retirees, which a bench-trial found to be a violation of the collective bargaining agreement after finding the health benefits were vested for life. The Sixth Circuit affirmed the lower court's decision in favor of the retirees.

   The Supreme Court's decision in this case will affect tens of thousands of retirees. If the Court were to reverse the Sixth Circuit and resolve the circuit split in favor of employers, retirees across the country who understood their benefits to be vested could see their benefits terminated.

4. ***Integrity Staffing Solutions Inc. v. Busk***
   - **Issue:** Compensation under Fair Labor Standards Act
   - **Argument Date:** October 8, 2014

When employees spend time going from Point A to Point B for their work, they are typically compensated for that time under the Fair Labor Standards Act (FLSA). In this case, former temporary employees of Amazon.com's contractor Integrity Staffing Solutions are suing the contractor under the FLSA for lack of compensation at the end of their shifts. The workers claim that they should be compensated for the time they spend waiting to clear security checks at the end of their work shifts, which amounts to about 30 minutes a day. Integrity argues that it should not have to compensate its employees for work unrelated to fulfilling orders for Amazon.com, but as the employees point out in their brief, that would mean they could be required to "make coffee without pay" or "wash the windows without compensation."

The Ninth Circuit held that the security screenings at the end of the workers' shifts were "integral and indispensable to their principal activities," therefore meeting the standard for compensation under the FLSA. If the Supreme Court were to reverse the Ninth Circuit and decide against the workers, it would open the door for corporations to take advantage of their employees by requiring non-compensable tasks before or after a workday.

II. Civil Rights and Liberties

1. ***Alabama Legislative Black Caucus v. Alabama* & *Alabama Democratic Conference v. Alabama***
   - **Issue:** Constitutionality of packing supermajority districts and the dilution of voting rights
   - **Argument Date:** November 12, 2014

In 2000, following the census, the Alabama legislature passed new districting maps maintaining the previously-created plans that included 27 house districts and eight senate districts with African American majorities. In 2012, following the 2010 census, the Alabama legislature maintained those 27 house and eight senate districts with African American majorities, but added to the African American majorities in almost every district, creating "supermajority" districts. The minority population of house districts reached as high as 76.8 percent and the minority population of senate districts reached as high as 75.22 percent. The Alabama Legislative Black Caucus and the Alabama Democratic Conference argue that the new map "necessarily increases the political segregation of African Americans and reduces their ability to influence the outcome of legislative elections in the rest of the state." By packing minority voters into a handful of districts, Alabama is able to limit the number of districts in which those voters can have an impact.

A three-judge panel of the District Court for the Middle District of Alabama held, in a split 2-1 vote, that the redistricting plan was neither unconstitutional nor a violation of Section 5 of the Voting Rights Act. Judge William Pryor, Jr., who authored the majority opinion, wrote that the plan did not deny African American voters the right to participate in the political process. Judge Myron Thompson, in dissent, wrote that there "is a cruel irony to these cases. . . . Even as [Alabama] was asking the Supreme Court to strike down [Section 5] for failure to speak to current conditions," referring to the Court's 2012 decision in *Shelby County v.*

Holder, "the State of Alabama was relying on racial quotas with absolutely no evidence that they had anything to do with current conditions, and seeking to justify those quotas with the very provision it was helping to render inert." This case is a direct appeal to the Supreme Court from the district court.

If the Supreme Court were to affirm the Alabama district court's decision, it would serve as a continuation of *Shelby County*'s assault on minorities' voting rights.

2. ***Holt v. Hobbs***
   - **Issue:** Religious liberty challenge to prison grooming restrictions
   - **Argument date:** October 7, 2014

   Arkansas' Department of Corrections enforces a policy that bans inmates from growing beards, with limited exceptions in instances of dermatologic problems. The policy—which the state defends as necessary for safety and security, namely to promote health and hygiene, prevent hiding contraband, and minimize "opportunities for disguise"—does not make an exception for religious inmates whose faith requires them to grow facial hair.

   Gregory Holt is a Muslim man serving a life sentence in an Arkansas prison who, under the Arkansas policy, has been prohibited from growing a beard in accordance with his religious beliefs. He is suing the state under the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law requiring that prison officials demonstrate a compelling interest for a policy that burdens an individual's religious practices.

   In Holt's brief, he lays out the state's argument: "Respondents say they can allow no exceptions to the no-beard rule because of security concerns. But that defense is not tenable when forty-four other state and federal prison systems with the same security interests allow the beards that Arkansas forbids. [. . .] [T]hese are post-hoc rationalizations for bureaucratic stubbornness, or worse."

   The Eight Circuit Court of Appeals ruled in favor of the state. Holt filed a handwritten appeal to the Supreme Court, and, in addition to granting his case, the Court issued an interim order that he be allowed to grow a half-inch beard until the resolution of his case. If the Supreme Court were to affirm the Eighth Circuit and find that prison officials may limit the religious freedoms of the already powerless, it would render the religious liberty guarantees of RLUIPA a "dead letter."[1]

3. ***Heien v. North Carolina***
   - **Issue:** Fourth Amendment Search & Seizure
   - **Argument date:** October 6, 2014

   Nicholas Heien was pulled over by the North Carolina police for having a burned-out brake light. After police stopped Heien's vehicle, they discovered cocaine in the car and both Heien and his passenger were arrested and convicted of drug trafficking. Heien appealed his

[1] *See* Bob Allen, *Prison Beard Case is Supreme Court's Next Church-State Decision*, ABP NEWS (Aug. 5, 2014), http://abpnews.com/culture/social-issues/item/29038-prison-beard-case-supreme-court-s-next-church-state-decision.

case, arguing that because North Carolina law required a car to have only one functioning brake light, the police made a mistake of law in pulling him over and therefore the traffic stop and all subsequent action—the search and seizure of the cocaine in the car and the subsequent arrest—were illegal.

Typically, to make a traffic stop, a police officer must have reasonable suspicion that a traffic law has been violated. After the state appeals court ruled the stop unconstitutional, the North Carolina Supreme Court reversed and upheld Heien's conviction, finding that the stop was permissible despite the officer's mistake of law because he had a "reasonable, articulable suspicion to conduct the traffic stop." In other words, if police reasonably believe that a driver is breaking the law—even if it later turns out that the officer was mistaken—the stop and subsequent search may still be constitutional.

If the Supreme Court were to affirm the North Carolina Supreme Court's decision, it would essentially allow police officers to use "ignorance of the law" as a justification for stopping and searching defendants. As Heien's brief argues, there is a "fundamental unfairness" in requiring everyday people to know the law "while allowing those entrusted to enforce the law to be ignorant of it."

4. ***Mellouli v. Holder***
   - **Issue:** Deportability based on drug paraphernalia conviction
   - **Argument Date:** TBD

Under federal law, the government may deport noncitizens who have been convicted of violating any law that relates to a controlled substance listed in the Controlled Substances Act. In this case, Moones Mellouli is a citizen of Tunisia who has been living in the United States as a lawful permanent resident. In 2010, Mellouli was convicted of violating a Kansas drug paraphernalia law that prohibited possession of drug paraphernalia. Mellouli was convicted under the statute for being in possession of a sock that had stored some illegal drugs, but the charge did not reference any particular substance. In early 2011, the government arrested Mellouli and charged him with removability under federal law because of his drug paraphernalia conviction. Mellouli argued to the Immigration Judge that he was not deportable under the federal statute because the government had not shown that his conviction involved a controlled substance. The Immigration Judge and the Board of Immigration Appeals, however, found that a "conviction for possession of drug paraphernalia involves drug trade in general," therefore triggering the federal removability law. Mellouli appealed to the Eighth Circuit, which denied the petition because it found it reasonable that the BIA would conclude that the conviction under Kansas law for possessing drug paraphernalia was a violation of law "relating to" a controlled substance.

The Supreme Court granted certiorari to decide whether, to trigger deportability of a noncitizen under federal law, the government has to show a connection between a drug paraphernalia conviction and an actual prohibited substance. If the Court decides that the government does not have to show that connection, it will make it much easier for the government to deport noncitizens—those living lawfully in the United States—even when they have not violated a controlled substance law.

III. Access to Justice

1. ***Jesinoski v. Countrywide Home Loans, Inc.***
   - **Issue:** Limiting borrowers' rights to rescind a home loan under the Truth in Lending Act
   - **Argument Date:** November 4, 2014

   Under the Truth in Lending Act, a borrower has the right to rescind a home loan by midnight on the third business day following the closing of the loan, or until the lender has provided all the legally required loan documents to the borrower. The Truth in Lending Act also sets a three-year statute of limitations to exercise the right to rescind the loan, even if the required disclosures have not been delivered to the borrower.

   Larry and Cheryle Jesinoski sued Countrywide Home Loans, a subsidiary of Bank of America, after they attempted to rescind their home loan in 2007. The Jesinoskis sent a letter to Bank of America expressing their desire to rescind the loan, but the bank refused to acknowledge the rescission, claiming that the Jesinoskis would need to file a lawsuit to ensure the rescission of their loan, and that a letter stating the desire was insufficient. The Jesinoskis then sued in federal district court and argued that the letter, which was sent within the three-year timeframe established by the Truth in Lending Act, should have sufficed. However, the court—later affirmed by the Eighth Circuit—found that the Jesinoskis' failure to file a lawsuit within the three years doomed their rescission attempt.

   The issue the Supreme Court will decide is whether a written letter to a creditor is sufficient notice of rescission within the three-year window set out by the Truth in Lending Act (as found by the Third, Fourth, and Eleventh Circuits), or whether a borrower must file a lawsuit within three years to rescind the loan (as found by the First, Sixth, Ninth, and Tenth Circuits).

   The Jesinoskis have a right to rescind their home loan within a three-day timeframe, but Bank of America is attempting to rewrite the Truth in Lending Act in order to limit individuals' access to that right. If the Supreme Court were to find in favor of Bank of America, it would place a limitation—never imagined by Congress—on individuals' ability to access their rights under the Truth in Lending Act. Such a decision would be another example of the Court's placing procedural hurdles in the path of everyday Americans seeking to assert their rights.

2. ***Mach Mining, LLC v. Equal Employment Opportunity Commission***
   - **Issue:** Whether—and to what extent—the EEOC's settlement efforts may be analyzed by a federal court in a defendant's attempt to dismiss a Title VII discrimination suit
   - **Argument Date:** TBD

   Mach Mining is an Illinois-based company with 130 mining employees. It has never hired a woman in a mining position, despite having scores of applicants. The company recently built a new facility, yet it provides no female restrooms or changing facilities.[2] After receiving

[2] *Mach Mining Sued By EEOC For Sex Discrimination*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Sept. 27, 2011), http://www.eeoc.gov/eeoc/newsroom/release/9-27-11d.cfm.

complaints, the Equal Employment Opportunity Commission (EEOC) sued Mach Mining under Title VII for employment discrimination.

Under Title VII, the EEOC has a "conciliate" duty to try to resolve and settle charges of job discrimination before filing lawsuits against employers in federal court. Federal courts are split on how deeply they may probe the EEOC's conciliation efforts when the efforts are challenged by employers: some courts have used a generous "good faith" measure for the EEOC, while others have held the EEOC to a more stringent standard. Mach Mining alleges that the EEOC failed to adequately conciliate before bringing its claim.

A ruling in favor of Mach Mining would undermine the EEOC's ability to sue companies that illegally discriminate, particularly for the worst offenders. A high standard for reconciliation would give employers "every incentive to thwart the settlements process and to stockpile exhibits for the coming court battle rather than to negotiate in good faith with the Commission," especially when the company has no other defense, the EEOC explained in a brief to the Court.

The Seventh Circuit ruled in favor of the EEOC. The Supreme Court granted certiorari to resolve the circuit split on the extent to which a court may analyze the EEOC's conciliation process. If the Supreme Court rules in Mach Mining's favor, it could affect dramatically the number of discrimination lawsuits that wronged employees are able to bring against employers.