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By John Burton
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US Supreme Court upholds abortion access, eliminates executive watchdog and opens federal death chambers

Traditionally, the US Supreme Court issues significant rulings the week before the summer recess begins with the Fourth of July holiday. This week will be no exception.

On Monday, the court narrowly upheld the right to abortion access in a decision widely feared to be headed in the other direction. In other rulings, however, the court strengthened the unitary executive by curtailing congressional power to create a watchdog, and opened the death chamber door for dozens of federal executions, the first three scheduled for next month.

In Monday's most publicized ruling, *June Medical Services v. Russo*, the Supreme Court voted 5–4 to strike down a reactionary Louisiana law that would have regulated all of the state's abortion clinics out of existence by requiring their doctors to have admitting privileges at local hospitals.

Joined by the three other Supreme Court "liberals," Justice Stephen Breyer ruled that the Louisiana law was "almost word-for-word identical" to a Texas law the Supreme Court addressed in 2016. That majority decision was also written by Breyer.

Breyer demonstrated that the state's hospital privileges requirement was a transparent pretext to close clinics for ideological reasons. The evidence presented in the trial court established that "abortion in Louisiana has been extremely safe, with particularly low rates of serious complications."

Clinic staff and physicians testified that it proved "necessary to transfer patients to a hospital far less than once a year, or less than one per several thousand patients." Physicians on the hospital staff admit those rare patients that experience a complication. In sum, whether the clinic "physician has admitting privileges is not relevant to the patient's care."

The Louisiana law, like the Texas law struck down four years earlier, had "the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion." Breyer wrote. This "undue burden" violated the constitutional right to abortion access established in 1973's *Rowe v. Wade* ruling.

Despite Monday's victory, which apparently will allow Louisiana's three remaining clinics to remain open for the time being, efforts to choke off abortion access have succeeded in large areas of the South and the Midwest. The states of Mississippi, Missouri, North Dakota, South Dakota and West Virginia have only one clinic each. More challenges, including legislation to define a fetus with a viable heartbeat as a living human being, are currently working their way through the courts.

The 2016 decision was rendered after the death of Antonin Scalia left a vacancy. Trump replaced him with Neil Gorsuch, and then Anthony Kennedy, the justice who provided the decisive vote for striking down the Texas law in 2016, was replaced by Brett Kavanaugh. Both Trump judges were expected to vote against abortion access, and they did not disappoint.

The changes on the court were expected by many to create the five-vote bloc that could open the floodgates for state laws to deny access to abortion. However, this was, for the present, frustrated by Chief Justice John Roberts, who provided the deciding margin in Monday's ruling, not because he agreed with Breyer's reasoning, but out of an adherence to "stare decisis," the doctrine that precedents should be followed in all but the most exceptional cases.

Roberts' position suggests that the overruling of *Rowe v. Wade*, a passion of the Republican right, may require more changes of personnel on the high court. Some have hoped publicly for the death of Ruth Bader Ginsburg so that Trump can replace her with a third anti-abortion judge.

Regardless, the Supreme Court has become a focal point of the 2020 presidential campaign. Chief Justice Roberts, whose own ideological leanings are extremely conservative, is maneuvering between the two factions on the court with the goal of

protecting the institution's credibility, which has been in tatters since it stole the election for George W. Bush 20 years ago.

Chief Justice Robert's conduct is reminiscent of Justice Owen Roberts—no relation—an appointee of Herbert Hoover who regularly sided with the reactionary "four horsemen" to block New Deal legislation. In response, Franklin D. Roosevelt proposed legislation to expand the Supreme Court to 15 justices so as to create a new pro-New Deal majority. But Roberts unexpectedly voted in 1937 to uphold the constitutionality of a minimum wage law, which became known as "the switch in time that saved nine."

Today, however, US capitalism lacks the resilience it had in the 1930s, and petty maneuvers will not save it from its own internal contradictions.

In a second ruling, the Supreme Court, again by a 5–4 vote, invalidated congressional legislation aimed at protecting the director of the federal agency created in response to the 2008 financial crisis to regulate subprime mortgages and other forms of consumer debt that crashed the world economy. The legislation said the head of the Consumer Financial Protection Bureau could not be removed by the president absent good cause.

Chief Justice Roberts' opinion in *Seila Law v. Consumer Financial Protection Bureau*, joined by the four right-wing justices, found that the legislative effort to shield the director from political pressure violated the separation of powers. The decision provides a sweeping rationale to defang congressional watchdogs and represents a further slide toward the unconstrained "unitary executive" coveted by the extreme right.

Finally, the Supreme Court denied by a 7–2 vote a petition for certiorari by four condemned inmates to review a 2–1 lower court decision that rejected their challenge to the legality of federal execution protocols. Justices Ginsburg and Sonia Sotomayor voted in favor of the Supreme Court hearing the case, which requires four votes. All the others, including Breyer and Elena Kagan, voted against. There are no opinions explaining the reasoning.

"Even as people across the country are demanding that leaders rethink crime, punishment and justice, the government is barreling ahead with its plans to carry out the first federal executions in 17 years," Ruth Friedman, an attorney for Daniel Lee, the first inmate scheduled to be executed next month, said in a statement.

The whole affair is ghoulish and morbid from top to bottom. Life sentences without the possibility of parole insulate society from truly dangerous persons. Capital punishment

continues to exist to terrify workers, who are the exclusive victims of the barbaric, antiquated and arbitrary practice.

Carrying out a Trump agenda to reinstate and accelerate executions, dating back to the notorious frame-ups of the “Central Park Five,” Attorney General William P. Barr announced last summer that the United States Department of Justice will kill inmates by injecting a single drug, pentobarbital. After considering evidence, the lower court ruled that the new protocol violated the 1994 Federal Death Penalty Act, which requires that executions be carried out “in the manner prescribed by the law of the state in which the sentence is imposed.” State law requires a three-drug cocktail.

Two appellate judges newly appointed by Trump reversed, reinstating the executions. One ruled that the statute referred only to the general method of execution: in this case lethal injection as opposed to hanging or electrocution, for example. The other Trump justice ruled on a separate ground, asserting that the statute referred only to broad state laws and not to the specific execution protocols. Such is the small change of sophistry on which lives can turn!

The federal government has carried out three executions since restoring the death penalty in 1988, the last in 2003. There are now 62 prisoners on federal death row, and the door to the execution chamber is wide open for them.

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