

News Release



Immediate Release:
September 21, 1989

Contacts:
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C-SPAN FOCUSES ON 1989 SUPREME COURT Network Previews and Reviews Upcoming Court Action

C-SPAN will air three programs previewing the 1989-90 Supreme Court term, which begins October 2. In addition, the public affairs network will telecast programs reviewing important cases throughout the court's term.

On Saturday, September 30, at 7:00pm ET, C-SPAN will televise a conference sponsored by the Washington Legal Foundation focusing on cases before the court this term that could affect the business community. Immediately following this conference, C-SPAN will air a discussion sponsored by the American Civil Liberties Union on upcoming Supreme Court cases the ACLU is directly involved in.

On Monday, October 2, the day the Supreme Court hears its first oral argument of the session, C-SPAN will televise a special program about the high court, which will include a live Viewer Call-in program. Guests and topics for the special, to air at 6:30pm ET, will be announced.

Throughout the term, C-SPAN will provide viewers with an in-depth look at the key cases argued before the court. "America and the Courts," a weekly series devoted to the federal judiciary, will review the previous week's cases when the high court hears oral arguments. "America and the Courts" airs every Saturday night at 7:00pm ET.

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The American Civil Liberties Union

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"America and the Courts" Becomes Weekly Series
C-SPAN Previews '88-'89 Supreme Court Term

C-SPAN's "America and the Courts" program--focusing on the federal judiciary--expands to a weekly series as the 1988-89 Supreme Court term begins. ~~Beginning~~ *Starting* October 8th, "America and the Courts" will air each Saturday evening at 7:00 pm ET.

Weeks that the Supreme Court hears oral arguments, "America and the Courts" will offer a retrospective on key cases called "Supreme Court Review."

The first Monday in October marks the traditional start of the Supreme Court term. C-SPAN takes an in-depth look at the high court docket during "Supreme Court Preview" on Monday, October 3rd, from 3:30pm-8:00pm ET.

Monday, Oct. 3rd

3:30pm ET

Supreme Court Preview

Georgetown Law Center-Professors and members of the media discuss the upcoming Supreme Court term.

Supreme Court Advisory Group-Former clerks to each justice examine the process justices go through preparing for the term.

Viewer Call-In

6:30pm ET

LIVE
From Los Angeles

Alan Dershowitz, Harvard Law Professor and author of Taking Liberties

7:15pm ET

LIVE
From Chicago

Michael McConnell, University of Chicago Law Professor

Contacts: Nan Gibson/Rosemarie Colao
(202) 737-3220

"Supreme Court Review" on C-SPAN

Throughout the Supreme Court's 1988-89 term, C-SPAN will air **"Supreme Court Review"**—an interview program examining the previous week's events at the court. **"Supreme Court Review"** airs on the dates circled below.

October 1988							November 1988							December 1988						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
						1			1	2	3	4	⑤					1	2	③
2	3	4	5	6	7	⑧	6	7	8	9	10	11	⑫	4	5	6	7	8	9	⑩
9	10	11	12	13	14	⑮	13	14	15	16	17	18	19	11	12	13	14	15	16	17
16	17	18	19	20	21	22	20	21	22	23	24	25	26	18	19	20	21	22	23	24
23	24	25	26	27	28	29	27	28	29	30				25	26	27	28	29	30	31
30	31																			

January 1989							February 1989							March 1989							April 1989						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7					1	2	3	4													①
8	9	10	11	12	13	⑭	5	6	7	8	9	10	11	5	6	7	8	9	10	11	2	3	4	5	6	7	8
15	16	17	18	19	20	⑮	12	13	14	15	16	17	18	12	13	14	15	16	17	18	9	10	11	12	13	14	15
22	23	24	25	26	27	28	19	20	21	22	23	24	⑮	19	20	21	22	23	24	⑮	16	17	18	19	20	21	⑮
29	30	31					26	27	28					26	27	28	29	30	31		23	24	25	26	27	28	⑮
																					30						

"Supreme Court Review" Saturdays at 7:00 pm ET.

SUPREME COURT OF THE UNITED STATES

SCHEDULE FOR OCTOBER TERM 1989

<u>1989</u>	<u>M</u>	<u>T</u>	<u>W</u>		
October	2,	3,	4	(Argument)	7
	H,	10	11	(Argument)	14
	16			(No argument)	
<u>RECESS - October 17 through October 29</u>					(2 weeks)
October	30,	31,	Nov. 1	(Argument)	Nov 4
	6,	7		(Argument)	Nov 11
	13			(No argument)	
<u>RECESS - November 14 through November 26</u>					(2 weeks)
November	27,	28,	29	(Argument)	Dec 2
December	4,	5,	6	(Argument)	Dec 9
	11			(No argument)	
<u>RECESS - December 12 through January 7</u>					(4 weeks)
<u>1990</u>					
January	8,	9,	10	(Argument)	Jan 13
	H,	16,	17	(Argument)	Jan 20
	22			(No argument)	
<u>RECESS - January 23 through February 18</u>					(4 weeks)
February	H,	20,	21	(Argument)	Feb 24
	26,	27,	28	(Argument)	March 3
	Mar. 5			(No argument)	
<u>RECESS - March 6 through March 18</u>					(2 weeks)
March	19,	20,	21	(Argument)	March 24
	26,	27,	28	(Argument)	March 31
	Apr. 2			(No argument)	
<u>RECESS - April 3 through April 15</u>					(2 weeks)
April	16,	17,	18	(Argument)	April 21
	23,	24,	25	(Argument)	April 28
	30			(No argument)	
<u>RECESS - May 1 through May 13</u>					(2 weeks)
May	14			(No argument)	
	21			(No argument)	
	H,	29		(No argument)	
June	4			(No argument)	
	11			(No argument)	
	18			(No argument)	
	25			(No argument)	

both sides of the abortion issue. The Bush administration had asked the justices to use the case to overturn *Roe v. Wade*. (Weekly Report p. 1698)

In the end, the court lacked a majority to reverse its 1973 holding that a woman's decision whether to have an abortion is covered by a constitutional right to privacy. But it was close.

Four members appeared ready to overrule *Roe*: Chief Justice William H. Rehnquist and Justices Byron R. White, Antonin Scalia and Anthony M. Kennedy.

Justice Sandra Day O'Connor, who was the fifth vote in upholding the Missouri law, declined to go further. As in the past, O'Connor said she regarded the trimester analysis of *Roe* as "problematic." But she added, "When the constitutional validity of a state's abortion statute actually turns on the constitutional validity of *Roe v. Wade*, there will be time enough to re-examine *Roe*. And to do so carefully."

Many court observers surmise that O'Connor, the first woman justice, refuses to be the fifth and deciding vote in removing a constitutional protection for abortion. These observers believe that the majority is more likely to chip away at *Roe* than to level it.

Members of Congress on both sides of the issue plan to file friend-of-the-court briefs in the new abortion cases. So do the outside groups that pressed the court so hard in its last term.

It is a prospect that appalls most of the justices. Scalia, denouncing the court in general and O'Connor in particular for failing to decide cleanly whether to overturn *Roe*, said in his *Webster* concurring opinion:

"We can now look forward to at least another term with carts full of mail from the public and streets full of demonstrators urging us — their unelected and life-tenured judges who have been awarded those extraordinary, undemocratic characteristics precisely in order that we might follow the law despite the popular will — to follow the popular will."

Standards, Consent

In *Turnock v. Ragsdale*, the court will review an Illinois law requiring that abortion clinics meet licensing and regulatory standards similar to those set for hospital operating rooms.

A federal district court agreed with Dr. Richard Ragsdale that the state's standards for equipment and staffing have the effect of raising the cost of and limiting the availability of abortions. The 7th U.S. Circuit Court of

Major Cases, 1989-90 Term

Following are some of the major cases awaiting Supreme Court consideration in the term that begins Oct. 2:

Cruzan v. Director, Missouri Department of Health. Does the Constitution protect the right of an incompetent individual's family or guardian to order the removal of tubes for food and water? Or may state law prohibit the cessation of nutrition and hydration, regardless of the wishes of the patient and/or family? The case involves a young woman in a "persistent vegetative state."

Turnock v. Ragsdale. Can Illinois constitutionally require all first-trimester abortions to be performed in licensed clinics that meet physical standards comparable to those for other types of surgery, even if no medical reason requires such standards?

Ohio v. Akron Center for Reproductive Health. Can Ohio constitutionally require physicians to notify parents before performing an abortion on a minor, or in the alternative, require the minor to obtain judicial consent?

Hodgson v. Minnesota. Can Minnesota constitutionally require a minor to notify both biological parents, whether they are living together or not, before obtaining an abortion? The law provides a judicial-consent alternative.

Dole v. United Steelworkers of America. How extensive is the authority of the Office of Management and Budget, under the Paperwork Reduction Act, to disapprove the proposed regulations of other government agencies?

Board of Education of Westside Community Schools v. Mergens. Does the Equal Access Act of 1984 (PL 98-377) violate the First Amendment ban on establishment of religion by requiring public high schools to allow students who want to hold religious meetings to use empty classrooms on an equal basis with other student extracurricular groups?

Crandon v. United States, Boeing Co. v. United States. Does a federal conflict-of-interest law prohibit, and permit government recovery of, a private company's "severance" payment to an employee about to enter government service?

Spallone v. United States, Chema v. United States, Longo v. United States. May courts constitutionally compel city council members, through use of the contempt power, to vote to implement housing desegregation remedies contained in a consent judgment approved by the city council? The case involves Yonkers, N.Y.

Missouri v. Jenkins. Can a federal court order an increase in a school district's property tax to fund the district's share of the costs of a court-ordered desegregation plan? The case involves Kansas City.

Appeals affirmed that ruling. Referring to criteria from *Roe*, the appeals court said that even general regulations that burden a woman's right to end her pregnancy during the first trimester must be based on some compelling governmental interest.

Illinois officials contend the appellate court's ruling "emasculates the duty and authority of the state of Illinois to protect the health, safety and welfare of its citizens."

Illinois also is asking the court to apply a lower standard of constitutional review to the abortion question, one used when there is no fundamental right involved. The state says the court should uphold the requirements as long as they are "rational."

The other two abortion cases before the court involve Ohio and Minnesota laws dictating that minors who seek abortions have parental consent

before the procedure is performed.

In *Ohio v. Akron Center for Reproductive Health*, the state is appealing a 6th U.S. Circuit Court of Appeals decision striking down a statute requiring a physician who seeks to perform an abortion on a girl under 18 to notify at least one parent. As an alternative, the statute says a minor may go before a state judge to try to prove she is entitled to have an abortion without parental notification.

Ohio officials say federal court rulings on the parental-consent issue are inconsistent. Thirty-two states have enacted laws requiring some type of parental involvement in a minor's decision, the state says, but only five states have statutes that the federal courts have ruled constitutional.

About half the parental-involvement statutes have not been tested in court, according to the state's brief.

of distinguishing between equal treatment of student speech and state-mandated or state-endorsed religious speech," their brief said.

Revolving Door

The federal conflict-of-interest law (PL 87-849) at issue in *Boeing Co. v. United States* and *Crandon v. United States* prohibits payment or receipt of "supplementation of salary" as compensation for services as an officer or employee of the executive branch.

After Boeing paid five of its employees a total of \$485,000 when they left for jobs with the Pentagon, the government sued the huge defense contractor to recover the payments. But one of the questions before the court is whether a person who is not yet in federal service is within the reach of the law.

The government maintains that the payments made in 1981 and 1982 by Boeing were "classic violations" of the law because "they were made solely because the individual petitioners planned to assume positions with the Department of Defense . . . [and] they were calculated to supplement the recipients' federal salaries by making up the difference between their government pay and their higher pay with Boeing."

But Boeing says the money was for past performance and accumulated benefits, and that it was not contingent on the individuals entering government service. The firm also says that the government should not be entitled to damages, because none of the defendants gave Boeing preferential treatment while government employees.

A district court rejected the government's claim that the money constituted "unlawful supplementations of the recipients' federal salaries," ruling that the law does not prohibit money given before federal employment. The court also said that damages could not be recovered by the federal government "without a showing of actual corruption on the part of Boeing or the individual petitioners, which it had not shown in this case."

But the 4th U.S. Circuit Court of Appeals reversed and concluded that the "appearance of large payments by a defense contractor to key Defense Department employees is enough; there is no need to show an actual conflict, much less actual corruption."

Yonkers: Council Defiance

A tense, longstanding battle between Yonkers and the federal govern-

ment over segregation of the city's public housing comes to the Supreme Court on its first day of the new term.

In the related cases of *Spallone v. United States*, *Chema v. United States*, and *Longo v. United States*, the court will look at whether a federal district court properly imposed civil contempt sanctions against four members of the Yonkers City Council when they would not vote for a court-ordered plan for low-income housing.

At issue is whether legislative immunity deriving from the Constitution and courts extends to local legislators.

U.S. District Judge Leonard B. Sand found the city guilty in 1985 of intentional racial discrimination in where it located public and subsidized housing. One of the remedies ordered was construction of 1,000 units of housing in mostly white neighborhoods.



KEN HEINEN

The Yonkers City Council had approved a consent decree that included the subsidized housing, but the four councilmen refused to vote for implementing legislation, and it was defeated. (Later two members switched votes and the building plans reportedly are going forward.)

The Yonkers councilmen say they should be protected from contempt charges by constitutional legislative immunity. Article I, Section 6, provides that members of Congress "shall not be questioned in any other place" for their legislative activities.

The immunity shields congressmen from liability in civil suits for damages. The Supreme Court has extended the principle to state and regional legislatures, but never to city councils or town officials.

By holding them in contempt for not endorsing the housing plan, the councilmen added, the court also vio-

lated their First Amendment rights to vote as they wanted.

But the government says Judge Sand properly imposed civil contempt sanctions against the individual council members because they blocked the city's compliance with valid court orders. Its says neither the doctrine of legislative immunity nor the First Amendment shields city officials from such obstruction.

A brief by Solicitor General Kenneth W. Starr says, "Petitioners essentially advance one unsettling proposition: As members of a local legislative body, they are entitled deliberately to flout valid federal court orders, including the consent decree that the city council itself had approved."

"That proposition is unacceptable. It is wrong as a matter of federal law, this court's precedents, and principles of orderly government."

While the Supreme Court took the appeal from the four councilmen, it turned down an appeal from the city on almost \$1 million in contempt penalties that nearly bankrupted the city.

Kansas City: Taxing Power

The question in *Missouri v. Jenkins* is whether a federal judge has the power to order a municipality, in this case Kansas City, to raise property taxes to improve and desegregate local schools. U.S. District Judge Russell Clark said the increase was needed to pay the local share of the multimillion-dollar desegregation plan.

Missouri officials have appealed an 8th U.S. Circuit Court of Appeals decision approving a district court's near-doubling of property tax rates to pay for remedial measures in a school desegregation case that began in 1977.

Missouri Attorney General William Webster maintains that taxing power is reserved to the states under the 10th Amendment, and that it is a legislative responsibility not to be shared with other branches.

Among groups supporting Missouri's position are the National Governors' Association, the National League of Cities, National Conference of State Legislatures and U.S. Conference of Mayors.

The school district, however, says, "The [Supreme] court has repeatedly determined that where no other recourse is available to remedy a governmental entity's constitutional violation, the federal courts may require the entity to exercise its taxing power, and may further require that state-imposed limitations on that power give way." ■