Opinion
Guest Voices



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Last Sunday, Chief Justice of the United States John Roberts was the only member of the Supreme Court to attend the annual Red Mass at St. Matthew's Cathedral in downtown Washington, D.C., invoking the protection and inspiration of the Holy Spirit upon all those engaged in the administration of justice. Pity the rest were not there: They are going to need all the inspiration and protection they can get this term.

This will be the first full term since Associate Justice Amy Coney Barrett joined the bench. And the court is meeting in person now: When they heard oral arguments in the courtroom Oct. 4, it was the first time since COVID-19 turned their sessions to virtual ones 19 months ago. Anyone who has done a Zoom panel knows there is a world of difference between meeting in person and meeting virtually. Only Justice Brett Kavanaugh attended virtually, due to a COVID diagnosis. Justice Sonia Sotomayor gets a thumbs up for wearing a mask.

One of the first items of business represented a small victory for organized labor. In *Baisley v. International Association of Machinists and Aerospace Workers*, the court declined to review a 5th Circuit Court of Appeals decision that upheld a private sector union's right to collect a fee from a non-union member who benefited from the union's representation in contract negotiations and enforcement. The employee tried to invoke the same kinds of First Amendment arguments in *Janus v. AFSCME* that did result in the court granting workers in the public sector the right to freeload by not paying fees to a union that nonetheless represents them in collective bargaining.

There are two big hot-button cases the court will hear this term, the first involving gun rights. Oral arguments are scheduled for Nov. 3 in the case *New York State Rifle and Pistol Association, Inc. v. Bruen*. In 2008, the court held in *District of Columbia et al. v. Heller* that the Second Amendment guaranteed the right to keep a firearm for protection in one's home. Now the court is being asked to extend that right, as plaintiffs challenge a New York law that requires someone seeking a permit to carry

a concealed weapon outside the home demonstrate "proper cause."

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It is always hard to read the tea leaves but when the court refused to review in a different case involving the same gun rights group as plaintiff, Justice Samuel Alito issued a dissent, joined by Justice Neil Gorsuch in full, and Justice Clarence Thomas in part. In a separate concurring opinion, Kavanaugh acknowledged there might be merit in Alito's concern that the lower courts were not properly applying Supreme Court decisions in gun cases, although he sided with the majority in refusing to review on other grounds. That is four justices with at least some reservations, and it is unclear where Barrett and Roberts will come down on the current case.

The biggest fireworks are expected in the case *Dobbs v. Jackson Women's Health Organization* in which an abortion clinic is challenging a Mississippi law that would bar most abortions after 15 weeks of pregnancy. Oral arguments in that case are scheduled for Dec. 1.

"It does seem very likely that the court will blow a big hole in abortion rights, if not overturn Roe V. Wade altogether," NBC's justice reporter Pete Williams said on MSNBC. "This is the case from Mississippi. The Supreme Court has held through the last several decades that states can restrict abortion in the period before viability, which is thought to be about 23 or 24 weeks, but cannot ban it during that period."

Washington Cardinal Wilton D. Gregory elevates the Eucharist during the 69th annual Red Ma

Washington Cardinal Wilton D. Gregory elevates the Eucharist during the 69th annual Red Mass at the Cathedral of St. Matthew the Apostle in Washington Oct. 3, 2021. The Mass seeks God's blessings and guidance on those involved in the administration of justice. It is traditionally celebrated the Sunday before the first Monday in October, the day that the U.S. Supreme Court begins its new term. (CNS/Catholic Standard/Andrew Biraj)

Current law, with some minor tweaks, is rooted in Justice Sandra Day O'Connor's ruling in *Planned Parenthood v. Casey*, a 1992 decision that tossed out the trimester approach of *Roe* and instead said states could not "unduly burden" a woman's right to an abortion before viability, and could restrict it after 23 or 24 weeks, except in

cases where the mother's life or health was endangered. The Mississippi law lowers that threshold to 15 weeks.

Pro-choice groups worry not only that the court will uphold the Mississippi law, thus lowering the threshold for when the state can restrict access to an abortion, but that it could decide to use this case to overturn the foundational claim in *Roe*, that there is a constitutional right to an abortion. I shall have more to say on the issues at stake before the oral arguments are made.

Carson v. Makin is set for oral arguments on Dec. 8, and it involves a challenge to a Maine law that bars students from using publicly funded scholarship money from applying that money to attend a religious school. The line between permitting and prohibiting state aid to religious schools has shifted constantly since the late 19th century and it is likely to shift again as the current court seems more attached to the free exercise clause of the First Amendment than to the disestablishment clause.

One case the court has still not decided to hear is *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, in which plaintiffs argue that race should not be a factor in admission decisions because it unfairly penalizes Asian American students. The court barred quota systems in the 1970s but has permitted race to be considered among other issues as colleges and universities seek a student population that is diverse across racial, ethnic and socio-economic lines.

As the court releases its decisions in these and other cases, we will all know just how far the conservative majority on the court is willing to go in overturning the decisions of previous courts. Will Kavanaugh or Barrett side with the chief justice in trying to moderate the more extreme stances of Alito and Thomas? When will Gorsuch's more libertarian views lead him to side with the court's liberals? Or will the conservative majority, five of whom are Catholic, steamroll the judicial legacy of the Warren and Burger courts? Next June we will better know the answers to these questions.