Supreme Court Term Offers Hot Issues and Future Hints

By ADAM LIPTAK

WASHINGTON — The new Supreme Court term, which begins Monday, includes cases on some of the most contested issues of the day, including protests at military funerals, illegal immigration, support for religious schools, violent video games, DNA evidence and prosecutorial misconduct.

The term’s arguments and decisions will be scrutinized for insights into the thinking of the court’s newest member, Justice Elena Kagan, and for hints about how the court will rule when even more highly charged cases reach it, probably in a year or two, on federal health care legislation, same-sex marriage, the treatment of gay members of the armed services and the recent Arizona law giving the police there greater authority to check the immigration status of people they stop.

The marquee case on the docket so far is a suit brought by the father of a fallen Marine against a small Kansas church whose members protested at his son’s funeral. The case, to be argued Wednesday, is freighted with rage on both sides.

“Since when did any of our military die so that a group of people could target their families and harass them?” asked the Marine’s father, Albert Snyder, who won an $11 million jury verdict against the Westboro Baptist Church of Topeka, Kan., saying the church had caused him emotional distress.

An appeals court threw out the award on First Amendment grounds, saying the signs carried by the protesters — featuring messages like “God Hates Fags” — were not directed at the Marine, Lance Cpl. Matthew A. Snyder, or meant to convey factual assertions about him, but were instead protected commentary on matters of public concern.

Mr. Snyder said that ruling was perilous. “If the law can’t help us and the courts won’t do something,” he said, “someone is going to take this into his own hands.”
Margie J. Phelps, a daughter of the pastor of the church, will argue the case in the Supreme Court. She agrees that the case arrives at the Supreme Court at a volatile moment.

“We are a little church in the middle of the country that will not back down from the mob rule mentality that has taken over this country,” she said. “We are bringing the words of life and faith to a nation threatened with destruction.”

Rodney A. Smolla, the president of Furman University in Greenville, S.C., and an authority on the First Amendment, said the court’s decision to hear the case, Snyder v. Phelps, No. 09-751, indicates that “some number of justices would at least entertain the idea that special circumstances such as grief at funerals may warrant an exception to a robust conception of free speech in the general marketplace.”

Mr. Smolla added that aspects of the case were reminiscent of the controversy over the proposed Islamic center near ground zero in New York. While the law may treat the site of a terrorist attack and a military funeral differently, he said, “the cultural feeling is that each is close to a sacred space.”

The Reporters Committee for Freedom of the Press and 21 news organizations, including The New York Times Company, filed a brief supporting the Kansas church. “To silence a fringe messenger because of the distastefulness of the message,” the brief said, “is antithetical to the First Amendment’s most basic precepts.”

In a second major First Amendment case, Schwarzenegger v. Entertainment Merchants Association, No. 08-1448, the court will decide whether states may restrict the sale of violent video games to minors. The lower courts in the case and many courts considering similar questions have uniformly said no.

Indeed, the Supreme Court has never extended to violent materials the principles that allow the regulation of sexual materials. But the justices agreed to hear the video games case in April, just days after striking down a federal law making it a crime to sell dogfight videos and other depictions of animal cruelty.

The court’s business docket will be busy, too. After a one-year hiatus, the court will resume its scrutiny of an issue that often divides conservatives: who should prevail in tensions between federal and state efforts to regulate matters like vaccines, seat belts and arbitration?

“This is the issue that separates business conservatives and states’ rights conservatives,” said Catherine M. Sharkey, a law professor at New York University.
Business groups generally say there should be a national standard rather than a patchwork of state and local laws. But conservatives committed to federalism say that states have an independent role in regulating products and practices that could harm their residents.

The strange bedfellows quality of the issue, known as pre-emption, is illustrated by a brief filed in Bruesewitz v. Wyeth, No. 09-152, on behalf of Kenneth W. Starr and Erwin Chemerinsky. Mr. Starr, a former appeals court judge and independent counsel in the Whitewater investigation during the Clinton administration, is a leading conservative. Mr. Chemerinsky, the dean of the law school at the University of California, Irvine, is a prominent liberal.

But they agreed that the parents of a girl who say was injured by a vaccine should be able to sue its manufacturer under Pennsylvania law, notwithstanding a federal law that protects vaccine makers. The Obama administration, on the other hand, filed a brief supporting the manufacturer, saying a federal compensation system displaced state law.

In a second pre-emption case, involving seat belts, Williamson v. Mazda, No. 08-1314, the administration is on the other side of the question. In that case, the Justice Department has filed a brief supporting the estate of a woman killed in a car accident.

The car, which met federal safety standards, had shoulder and lap belts for some seats but only a lap belt in the seat occupied by the woman, Thanh Williamson. The federal government argued that Ms. Williamson’s family should be able to sue under state law because federal standards set a floor but not a ceiling on safety and that states are free to require more stringent standards.

Justice Kagan has disqualified herself from both pre-emption cases because she worked on them as United States solicitor general. She will not participate in about half of the 54 cases on the docket so far, raising the possibility of 4-to-4 deadlocks that automatically affirm the ruling below.

On Wednesday, Senator Patrick J. Leahy, a Vermont Democrat and chairman of the Senate Judiciary Committee, introduced legislation to allow the court to assign a retired justice to hear cases when an active justice is disqualified. But the three living retired justices — John Paul Stevens, David H. Souter and Sandra Day O’Connor — are generally considered moderate to liberal, complicating the bill’s chances of passing.

Among the cases in which the absence of Justice Kagan could make a difference is Chamber of Commerce v. Whiting, No. 09-115, another case that involves pre-emption and business
interests. But here the question is whether federal immigration law displaces an Arizona law that imposes harsh penalties on businesses that hire illegal immigrants.

The case was brought by an unusual coalition of business, civil liberties and immigrants' rights groups who are supported by a brief from the federal government, again demonstrating how pre-emption cases can cut across conventional ideological lines.

The court’s decision in the case, if there is one, may also provide guidance about the constitutionality of a more recent Arizona law giving the police there greater authority to check the immigration status of people they stop.

The court will consider yet another Arizona law in Arizona Christian School Tuition Organization v. Winn, No. 09-987, this one concerning tax credits to support religious and other schools.

In a pair of cases involving death row inmates, the justices will consider what an inmate may do to try to establish his innocence and what legal recourse is available to exonerated prisoners.

The first question is presented in Skinner v. Switzer, No. 09-9000, an appeal from Hank Skinner, an inmate in Texas who is seeking access to DNA evidence that he says could prove his innocence. In March, the court granted a stay of execution less than an hour before Mr. Skinner was to be put to death in the murder of his girlfriend and her two sons.

Mr. Skinner seeks to test blood, fingernail scrapings and hair found at the scene of the killings. He maintains that he was sleeping on a sofa in a stupor induced by vodka and codeine when the killings took place on Dec. 31, 1993.

Prosecutors say he is making his request too late. They add that testing would be pointless because “no item of evidence exists that would conclusively prove that Skinner did not commit the murder.”

The case concerning a prisoner’s exoneration is Connick v. Thompson, 09-571, which arose from a $14 million jury award in favor of a former inmate who was freed after prosecutorial misconduct came to light.

The former inmate, John Thompson, sued officials in the district attorney’s office in New Orleans, saying they had not trained prosecutors to turn over exculpatory evidence. A prosecutor there failed to give Mr. Thompson’s lawyers a report showing that blood at a crime scene was not his.
Mr. Thompson spent 18 years in prison, 14 in solitary confinement. He once came within weeks of being executed.