



Supreme Court begins another closely watched term

By **DOUG SHERWIN**, The Daily Transcript
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The U.S. Supreme Court may not settle the same-sex marriage question this term, but the justices will give legal pundits plenty to talk about with a wide-ranging docket.

The high court has already scheduled 49 cases for the 2014-15 term, with more likely to be added, and will tackle issues on freedom of speech, illegal search and seizure, paid time at work and whether or not the United States is at war.

"The cases on the docket right now are really just the tip of the iceberg," said California Western School of Law professor Laurence Benner, speaking at the school's semi-annual preview of the upcoming Supreme Court term.

"The court has about 2,000 cases that have accumulated over the summer, so they have this backlog they have to go through. We're probably going to see a lot more cases coming down the pipeline."

One of the more interesting cases is *Elonis v. U.S.*, which involves the criminal conviction of a man who posted threatening messages on social media, indirectly targeting his ex-wife and others.

The man appealed, claiming he didn't make any specific threat and his posts are protected by the First Amendment's freedom of speech provision. The question the court will try to answer is whether a conviction requires proof of a subjective intent to threaten or whether it's enough to show that a "reasonable person" would regard the statement as threatening.

"One of the functions of the free speech laws is to allow people to vent their feelings," Benner said. "Even if the speech alarms or disgusts people, it's still protected speech. You don't, however, have the right to make a specific threat that puts people in imminent fear of great bodily harm."

Since the man convicted in this case made no specific threat, Benner said the case falls more in the gray area.

"The question the court really is presented with is should society, in this age of anxiety, be able to intervene, through criminal law, when the rantings of a possibly unstable individual come to light."

A closely watched Fourth Amendment case will be *Heien v. North Carolina*, which involves an unusual traffic stop that led to the discovery of cocaine. Police officers in North Carolina mistakenly pulled over a man for having one broken taillight when state law allows a person to drive with at least one working taillight.

The man claims the cocaine should be suppressed as evidence under the Fourth Amendment's exclusionary rule. The state of North Carolina, meanwhile, is asking the court to hold that a police officer who misinterprets state criminal law does not violate the Fourth Amendment when he stops and detains a citizen based on conduct that does not violate the law.

"It could further erode Fourth Amendment protections against unjustified seizures by creating what you might call the Barney Fife exception to the Fourth Amendment," Benner said. "There is a common law rule that ignorance of the law is no excuse. Heien argues that the same rule should apply to the government."

The high court also will be looking at a wage-and-hour claim this term in the case, *Integrity Staffing Solutions v. Busk*. The court will decide whether workers have to be paid for time spent going through anti-theft security screenings at the end of their shift. Employees who handle jewelry and other expensive items were being required to go through a screening after work, but not getting paid for the time.

"These types of wage-and-hour, 'what time is compensable' cases are really, really hot here in California," said California Western professor Jessica Fink. "It's part of a larger trend and certainly one to watch."

In another labor and employment case, *Young v. United Parcel Service* centers on the Pregnancy Discrimination Act. A woman, who had restrictions on how much she could lift during her pregnancy, claims **United Parcel Service** (NYSE: UPS) violated federal law by not giving her appropriate accommodations, even though they did for non-pregnant workers who had work limitations.

"It's always important to take the court's temperature with respect to pregnancy discrimination, Title 7 and federal discrimination cases," Fink said.

A case not yet set for argument, but expected to be heard this term, involves a whistle-blower who acted on behalf of the federal government with claims against his private contractor employer.

In *Kellogg Brown & Root Services v. Carter*, a man claimed his employer, which provided medical services for the U.S. military, was engaging in a pattern of fraudulent billing practices.

The company said his case should be dismissed because, among other things, the statute of limitations under the Federal False Claims Act had expired.

The Fourth Circuit Court of Appeals ruled, however, that under the Wartimes Enforcement of Fraud Act, the clock is stopped for any offense involving fraud against the government when the United States is at war.

"The [Supreme] Court has to decide should this provision within the Wartimes Enforcement of Fraud Act apply to civil claims, where we have a fraud allegation by a private citizen, even when there's been no formal proclamation of war," Fink said.

There also will be more mundane cases. California Western's Glenn Smith said only 14 of the cases docketed so far raise constitutional issues.

"This term is looking fairly typical," Smith said. "The court is primarily a court that deals with federal appeals, and a court that deals with non-constitutional issues, many with statutory construction and regulatory and rules cases."