Written by **Joe Wolverton, II, J.D.** on June 2, 2014

First and Fourth Amendments Face Supreme Court Rulings

As *The New American* reported Saturday, the Supreme Court has announced plans to publish rulings in several key constitutional cases. Every Monday in June, the schedule reports, will see the release of one or more decisions.

One of the cases of concern to civil libertarians and constitutionalists involves the Obama administration claiming the authority to search and seize cellphone records without a warrant, despite the protections against such government intrusion provided by the Fourth Amendment.

The *Washington Post* published the following summary of the case of *U.S. v. Wurie*:

> In 2007, the police arrested a Massachusetts man who appeared to be selling crack cocaine from his car. The cops seized his cellphone and noticed that it was receiving calls from "My House." They opened the phone to determine the number for "My House." That led them to the man's home, where the police found drugs, cash and guns.
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> The defendant was convicted, but on appeal he argued that accessing the information on his cellphone without a warrant violated his Fourth Amendment rights. Earlier this year, the First Circuit Court of Appeals accepted the man's argument, ruling that the police should have gotten a warrant before accessing any information on the man's phone.

The Appeals Court ruling doesn't sit well with a president who considers the Constitution irrelevant and who is accustomed to the court's collusion in the federal government's continuing effort to revoke all civil liberties.

Of specific interest in the *Wurie* case is the government's claim that a cellphone is no different from any other items a suspect might be carrying that are subject to search by law enforcement, "including notebooks, calendars, and pagers," the *Post* points out.

One of these things is not like the others, however. Today, a cellphone is as much a personal computer as a telephone and most people carry things inside their smartphones that have not been placed within the scope of acceptable searches: "our e-mails, text messages, photographs, browser histories and more," the *Post* explains.

Should the Obama administration receive a favorable ruling from the Supreme Court, one that holds that police do not need a specific — constitutionally qualifying — warrant to search a suspect's cellphone, the threat to the Fourth Amendment and individual liberty is incalculable.

For example, a person arrested on a bench warrant for failing to appear for a hearing would have his entire life subject to search and seizure if he was carrying his smartphone at the time he was taken into

police custody. Then, the photos, texts, social media posts, and photos stored on that phone would come under the scrutiny of government and the data could be collected and saved in order to blackmail the citizen turned suspect.

In light of the broad discretion granted to government and law enforcement by the Supreme Court in the 1979 case of *Smith v. Maryland*, police (and those to whom the information gleaned from the cellphone was shared) could do whatever they deem "reasonable" with regard to the information obtained from the warrantless search of the cellphone.

In the case of *Smith v. Maryland*, the court held that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties."

The court in that case ruled that if someone is talking to another person by way of a medium provided by a third-party (in the *Smith* case it was a telephone company), both parties must expect that the "intermediary" will have access to the content of the communication.

Regarding the telephone company, the court explained that when a person uses a telephone, he "voluntarily convey[s] numerical information to the telephone company and 'expose[s]' that information to its equipment in the ordinary course of business."

Not surprisingly, the Obama administration in its brief filed in the *Wurie* case references the *Smith* case. The government says *Smith* supports its position that there is a reduced expectation of privacy regarding the contents of a cellphone.

The upshot of *Wurie* is that it is just another piece of evidence of the president's pursuit of a country where citizens are nothing but future suspects and where privacy and civil liberties are defined not by the Constitution, but by the federal government.

From the NSA and Homeland Security, to the U.S. Postal Service and the IRS, the wall of protection provided by the Fourth Amendment is being demolished and the government given life by the Constitution is now on the verge of patricide.

Notably, the Cato Institute predicts that the Supreme Court will find in favor of the federal government, although insisting "the justices are extremely wary of pronouncing legal rules that could be rendered obsolete or unworkable as newer technology develops."

The last of the cases we will outline concerns one the most fundamental rights protected by the First Amendment — the right to the free exercise of religion.

Two cases challenging the contraception mandate of the Department of Health and Human Services (HHS) avers that the plaintiffs' religious freedoms are being violated by forcing them to offer free (or heavily subsidized) access to contraceptives, including those that induce abortion.

One of the individual plaintiffs challenging the Obama administration's coercive contraceptive statute reveals the real danger to liberty posed by the provision.

"With this mandate contained in the Affordable Care Act, the government is not only violating our religious beliefs; they are also taking it upon themselves to tell us what the boundaries of those religious beliefs are," states Father Pavone, national director of Priests for Life. "It is not up to the government to tell us when our conscience hurts; on the contrary, it's up to us as believers to tell the government."

The two cases whose decisions will be handed down are *Conestoga Wood Specialties Corp. v. Sebelius*

and *Sebelius v. Hobby Lobby Stores*. The legal history of those two cases was provided by *The New American* late last year:

> The United States Court of Appeals for the Third Circuit has ruled that the Conestoga Wood Specialties Corporation, a Mennonite-owned company, must comply with the Health and Human Services mandate that compels companies to pay for drugs that may cause abortions. The ruling was handed down in a 2-1 decision asserting that the Mennonite faith of the company's owners may not prohibit the company from complying with the mandate.

And:

> In [September 2012], Hobby Lobby Stores, Inc., a privately held retail chain, filed a lawsuit in the U.S. District Court for the Western District of Oklahoma, opposing the HHS "preventive services" mandate, which forces the Christian-owned-and-operated business to provide, without co-pay, the "morning after pill" and "week after pill" in their health insurance plan.

People of faith now wait to see which side the Supreme Court will support: the side that believes the federal government can impose immoral mandates on the mass of citizens regardless of their religious principles, or the side that believes that the government has no authority to encroach upon one of society's most sacrosanct rights — the right to exercise one's religious faith free from federal dictates.

Strangely, some still argue that when the Supreme Court rules on the constitutionality of a federal act, there remains no recourse and the issue is settled once and for all.

In light of recent decisions by "conservatives" on the Supreme Court in the ObamaCare case, it is no wonder that many Americans doubt that states have a right to nullify a congressional act in the wake of a Supreme Court decision.

Thomas Jefferson had something to say in the matter. In 1804, he wrote that giving the Supreme Court power to declare unconstitutional acts of the legislature or executive "would make the judiciary a despotic branch." He noted that "nothing in the Constitution" gives the Supreme Court that right.

In this Mexican standoff of fundamental liberty, Supreme Court, and federal government, the last man standing is the people acting in their collective political capacity as states.

Even Abraham Lincoln recognized the lack of constitutional authority for the Supreme Court's assumption of the role of ultimate arbiter of an act's conformity with the Constitution.

Lincoln said that if the Supreme Court were afforded the power to declare whether an act of the federal government was constitutional, "the people will have ceased to be their own masters, having to that extent resigned their government into the hands of that eminent tribunal."

Renowned constitutional scholar Von Holtz explained the error in accepting the Supreme Court as the ultimate arbiter of constitutional fidelity. "Moreover, violations of the Constitution may happen and the injured cannot, whether states or individuals, obtain justice through the court. Where the wrongs suffered are political in origin the remedies must be sought in a political way," he wrote.

He continued, regarding this "aristocracy of the robe," "That our national government, in any branch of it, is beyond the reach of the people; or has any sort of 'supremacy' except a limited measure of power granted by the supreme people is an error."

How can anyone read these statements and honestly conclude that any branch of the federal government is intended to be the surveyor of the boundaries of its own power?

Every department of the federal government was created by the Constitution — therefore, by the states — and has no natural sovereignty. No branch can define its own authority. Such a thought is ridiculous and contrary to any theory of popular sovereignty ever proposed. If courts, Congress, or presidents had such power, it would make them judge, jury, and executioner in every case in which their own act exceeding constitutional authority is at bar.

Monday, June 2, constitutionalists will witness how far the Supreme Court is willing to go in joining the unholy alliance formed to obliterate constitutional protections of fundamental liberty.

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