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Supreme Court Preview

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9-11-2020

### 2020-2021 Supreme Court Preview: Schedule of Events

Institute of Bill of Rights Law, William & Mary Law School

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# Schedule of Events

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[law.wm.edu/academics/intellecualife/researchcenters/ibr/scp/2020/notebook/scheduleofevents1/index.php](http://law.wm.edu/academics/intellecualife/researchcenters/ibr/scp/2020/notebook/scheduleofevents1/index.php)



## WILLIAM & MARY LAW SCHOOL

### Friday, September 11, 2020

Welcome 4:00pm

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Moot Court 4:05pm

California v. Texas (ACA Case)

- Advocates: Erin Murphy & Pratik Shah
- Justices: Allison Orr Larsen (Chief), Amy Barrett, Kevin Newsom, Stephanos Bibas, Adam Unikowsky, Neal Devins, Katherine Crocker, & Joan Biskupic

*Brief Description:* This case presents another constitutional challenge to the individual mandate in the Affordable Care Act (the mandate was upheld in 2012 as a permissible use of Congressional taxing power). In 2017 Congress amended the ACA to set the penalty for not buying health insurance at zero. That change led Texas (along with several other states and individuals) to file a lawsuit arguing that because the penalty for not buying health insurance is zero, it is no longer a tax and the mandate is therefore unconstitutional. The Fifth Circuit Court of Appeals struck down the mandate. California (and several other states) joined the lawsuit to defend the law.

The Supreme Court and the 2020 Election: 5:30pm

What Challenges are likely and what will be the Supreme Court's Role in Deciding them?

- Moderators: Adam Liptak & Rebecca Green
- Panelists: Pamela Karlan, Paul Smith, Kannon Shanmugam, Franita Tolson, & Benjamin Ginsberg

*Brief Description:* As we approach an historic election in November 2020, many anticipate that election challenges will wind up in federal court. This panel will discuss trends in COVID-related election cases at the Court so far, anticipate which challenges are likely going forward, and will speculate what the Supreme Court's role will be in deciding them. What has changed at the Court (and otherwise) since Bush v. Gore? How is the Chief Justice likely to navigate election cases before the Court? What role does (and should) the Court play in post-election litigation?

Transparency and the Shadow Docket

2:00pm

- Moderators: Jess Bravin & Aaron Bruhl
- Panelists: Jeffrey Wall, Stephen Vladeck, Beth Brinkmann, Adam Liptak, Paul Clement, & Donald Verrilli

*Brief Description:* “The shadow docket” is a phrase used to describe the significant volume of orders and summary decisions that the Supreme Court issues without full briefing and oral argument. This panel will discuss what is new and what is not about the shadow docket. The panelists will speculate on the ways in which the Court will use these orders going forward, and will discuss the upsides and downsides of doing so.

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Who is the Real John Roberts?

3:00pm

Predicting the Surprises of the Fall Term

- Moderators: Joan Biskupic & Timothy Zick
- Panelists: David Cole, Linda Greenhouse, Greg Garre, Kannon Shanmugam, & Jeffrey Fisher

*Brief Description:* Chief Justice Roberts cast several votes in high-profile cases last Term that many found to be surprising, and it led to a debate over whether the Chief Justice should be described as a moderate or not. This panel will anticipate which cases in the 2020-2021 Term will provide an opportunity for the Chief Justice to cast the deciding vote, and will address whether the Chief Justice’s voting pattern in 2020 was indicative of a shift or should be otherwise explained.

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Break

4:00pm

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What is the Future of the Supreme Court?

4:15pm

Potential Reforms, Their Implications, & Their Likelihood

- Moderators: Bob Barnes & Laura Heymann
- Panelists: Beth Brinkmann, Andrew Pincus, Paul Clement, Pamela Karlan, Erwin Chemerinsky, & Walter Dellinger

*Brief Description:* Democrats recently unveiled “structural court reforms” as part of their platform. These potential reforms include, among others, adding seats to the Supreme Court, making changes to the confirmation process, and shortening the Justices’ terms of office. This panel will discuss which reforms seem most likely to be adopted and what concerns are motivating them. Twenty-five W&M students will also bring their questions to the panel about the future of the Supreme Court.

