OPINION

REVIEW & OUTLOOK

The 'King' and the Supreme Court

The Supreme Court is keeping Americans in suspense as it saves its most highly-awaited decisions for the final days of the term. But the mixed opinions in *U.S. v. Texas* on Friday deserve more attention because of their implications for executive power.

The Justices lack consistent principles on 'standing' to sue.

Texas and Louisiana challenged the Biden Department of Homeland Security's guidelines that prioritized the arrest and removal of noncitizens in certain categories like suspected terrorists. One question before the Court was whether the states had standing to challenge the Administration's discretionary enforcement of immigration law.

Under the Court's standing principles, plaintiffs must show a concrete injury caused by the defendant that can be redressed by a court. Texas says it is harmed by the Biden policy because it must spend more money on law enforcement and social services. But a 8-1 majority ruled that the states lacked standing, with the Justices splitting in their rationale.

The controlling opinion by Justice Brett Kavanaugh, joined by Chief Justice John Roberts and Justices Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson, held that as a general principle plaintiffs can't challenge an executive branch's decision not to enforce the law when they aren't being prosecuted or threatened with prosecution.

Such challenges raise "the distinct question of whether the Federal Judiciary may in effect order the Executive Branch to take enforcement actions," Justice Kavanaugh writes. "Courts generally lack meaningful standards for assessing the propriety of enforcement choices in this area" and "the Executive Branch must prioritize its enforcement efforts."

That's true as far as it goes, but the Solicitor General during oral arguments claimed a much more expansive power to suspend laws it doesn't like. Asked at oral argument whether the Constitution bars an injured party from bringing suit if a President chose not to enforce environmental or labor laws, the Solicitor General replied: "That's correct."

Imagine the howls if the Trump Administration had claimed it couldn't be sued if it decided not to enforce, say, the Clean Air Act. Justice Neil Gorsuch in a concurrence joined by Justice Clarence Thomas and Amy Coney Barrett hoists the majority on its disparate application of standing standards.

"This Court has allowed other States to challenge other Executive Branch policies that indirectly caused them monetary harms," Justice Gorsuch writes. He cites *Massachusetts v. EPA* (2007), which let Democratic states challenge the federal government's failure to regulate CO2 emissions even though they weren't directly harmed.

Justice Gorsuch also points to other challenges brought by Democratic states in which the Court has applied its standing principles liberally, such as *Department of Commerce v. New York*, which challenged the Trump Commerce Department's Census citizenship question. "So why are these States now forbidden from doing the same?"

The Court undermines its authority when it applies inconsistent standing logic to justify hearing cases, especially those with major political implications. Under Justice Kavanaugh's logic, Massachusetts would not have had standing to sue the EPA, and the Chief noted as much in his dissent at the time.

"Has this monumental decision been quietly interred?" Justice Samuel Alito muses in his separate dissent. "The Court should not use a practice of selective silence to accept or reject prominently presented standing arguments on inconsistent grounds."

Justice Alito also makes the salient point that the Administration's expansive view of executive power is inconsistent with the Constitution's command that the laws be faithfully executed. He recalls the powers claimed by English kings prior to the Glorious Revolution of 1688 "to suspend the operation of existing statutes, and to grant dispensations from compliance with statutes."

Justice Kavanaugh responds that the ruling says no such thing, but we doubt that's how the White House will read it. An early clarification from the Court, and more consistency on standing, would be helpful.

A Wealth-Tax Watershed

The Supreme Court is set to finish another consequential term this week, and on Monday the Justices teed up for next term what could be a landmark tax case. In agreeing to hear *Moore v. U.S.*, the Court will consider the legality of a form of wealth tax that is the long-time dream of the political left.

The Supreme Court will decide if 'income' can be an unrealized gain.

We recently urged the Justices to take this appeal from a bad ruling by the Ninth Circuit Court of Appeals. The case concerns a provision in the 2017 tax reform that levied a one-time mandatory repatriation tax on foreign companies, as Congress scrambled to find revenue to pay for tax-rate cuts.

But the tax applied to American shareholders, even passive investors like Charles and Kathleen Moore of Washington state. They were hit by a surprise $14,729 tax bill, though they had never seen a dime of income from their investment in a friend's company in rural India. They were taxed instead on the unrealized income of the foreign company.

And there's the rub. The Moores sued for a refund, but a three-judge panel of the Ninth Circuit ruled that "realization of income is not a constitutional requirement." This defies the traditional understanding in U.S. tax law, and in Supreme Court doctrine, that income must be realized before it can be taxed. That is, the income must be real income, not merely an increase in the value of an asset in market value or on some company's books.

The Moores were denied an en banc hearing by the full Ninth Circuit, but four judges dissented from that denial. Judge Patrick Bumatay's powerful dissent for the four judges will be a constitutional guide for the Supreme Court when it hears the case.

A 1920 case, *Eisner v. Macomber*, held that a gain in asset value qualifies as income only if it is "received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal." The fight will be whether that precedent still holds under the Constitution's Sixteenth Amendment that allowed the income tax.

The legal and economic stakes are high. A ruling that upholds the Ninth Circuit would open the door for Congress to tax wealth and property of all kinds, including art and collectibles. Sens. Bernie Sanders and Elizabeth Warren are wealth-tax evangelists, and Senate Finance Chairman Ron Wyden has floated a proposal. The press is already pitching the case in class-warfare terms as an opening for corporate refunds. The horror.

If the courts give a green light, prepare for a raid on much of the private wealth and savings of Americans. The Supreme Court can forestall this outcome by reinforcing its tax precedents and foreclosing the kind of levy that sideswiped the Moores. If progressives want a wealth tax, they should be obliged to amend the Sixteenth Amendment redefine income.

Richard Ravitch, 1933-2023

One of any journalist's carbonated experiences was getting a phone call from Richard Ravitch. The consummate New Yorker would invariably describe a looming fiscal problem, followed quickly by his preferred solution—oh, and perhaps a request to run an op-ed piece with his ideas.

The old-school liberal helped New York City dodge fiscal disaster.

Dick Ravitch, who died Sunday at age 89, never won an election. He was instead the kind of backstage wise man whom office-holders called on for advice over several decades, and especially when they were in fiscal trouble. He was the financial fireman who rescued government and politicians from their profligacy.

In 1975, as New York City struggled to pay its bills, Ravitch convinced Albany to create a Project Finance Agency that became a model for the Municipal Assistance Corp. that saved the city from bankruptcy. In 1979 he was handed the job of rescuing the city's subways as chairman of the Metropolitan Transportation Authority, serving until 1983.

Through various political and financial machinations, he raised enough money to keep the trains running. Far from being a green-eyeshade accountant, Ravitch understood the need to cajole and make deals in a democracy. He could work with old-time union chiefs like Al Shanker. But even he couldn't tame the modern public unions that continue to block reforms that would prevent future fiscal fiascoes.

We got to know Dick Ravitch in his later years as he joined with former Federal Reserve Chairman Paul Volcker to warn about the fiscal and pension problems building in American states and cities. By then his solutions were mostly ignored by Democrats, who have defaulted to bailouts from Washington.

But in 2014 he advised the GOP Governor of Michigan and a federal judge on Detroit's bankruptcy. The Obama Administration and Republicans also took his advice to help Puerto Rico find a way out of its debt debacle in 2016. The legislation created an oversight board that brokered fiscal compromises while bond holders took a haircut.

Ravitch was part of a Democratic Party tradition in New York City and state that is fast fading from view. Though liberal, he believed in making government work and staying fiscally responsible. Too many of the Democrats who run New York today think the Ravitches of the world are a needless impediment to their progressive designs.

Ravitch was an occasional contributor to these pages, most recently with co-author William Glasgall in January. They announced the Richard Ravitch Public Initiative at the Volcker Alliance to alert the public about unfunded liabilities that would lead to new crises. The headline: "Cities Are Headed for Fiscal Trouble Again." It's the country's loss that Richard Ravitch won't be around to save the day again.

LETTERS TO THE EDITOR

What Happened to 'Paying Their Fair Share'?

While Kimberley Strassel's "The Hunter Biden Whistle Blows" (Potomac Watch, June 23) is devastating, don't count on the Biden-family-business story having any influence on the 2024 election. Just as the laptop story was buried by the mainstream media last time, the whistleblower's evidence will appear virtually nowhere as well. Count on Democrats to deny the story; Rep. Adam Schiff may even claim it's Russian disinformation.

The Biden administration will find other people in high places to assert unequivocally that the information is false. Remember the 50 former intelligence officials? They have now been discredited, but does it really matter?

Robert M. Sussman
Paradise Valley, Ariz.

The press has played down the Hunter Biden story for years, but it can't anymore. That does not, however, mean that it is the least bit inquisitive about the details of his tax indictment. Helping to play down the extent of the crimes is none other than U.S. Attorney David Weiss. He is always referenced in the press as appointed by former President Donald Trump; never is it mentioned that his appointment was proposed by the two Democratic senators from Delaware, and that presidents typically nominate those proposed by the local politicians. Without that context, one is led to believe that Mr. Weiss is a party-line Republican and that Hunter Biden must have received a fair deal.

George Brady
Lower Gwynedd, Pa.

Assuming a $12,700 standard deduction, a married couple filing jointly would have paid $534,201 in federal taxes on an income of $1.5 million in 2017. Hunter Biden paid no taxes that year, despite having that level of income.

Last week President Biden repeated his familiar canard about rich people's supposed tax avoidance, stating, "It's about time the superwealthy start paying their fair share." Unless, I suppose, it's your son who is earning seven figures.

Scott Kaufmann
Kansas City, Kan.

Now that the Biden Justice Department has established the kid-gloves standard for sensitive political cases, I guess this means Mr. Trump will be sent to a diversion program to learn how to handle classified documents.

William David Stone
Beverly Hills, Calif.

Justice Alito, Paul Singer and Sore Losers

ProPublica's big story ("ProPublica's Fishing Expedition," Review & Outlook, June 22) is that Justice Samuel Alito went on the fishing trip and then agreed with six other justices who didn't go on the fishing trip, forming a 7–1 majority? That isn't exactly man-bites-dog news. Besides, the Supreme Court explains its decisions in written opinions. If the legal reasoning is in any way unsound, criticize that. But if the legal reasoning is sound, there's no story.

Kevin Clark
Franklin, Tenn.

I am sure that Justice Alito is sincere in his belief that the gifts he accepted didn't compromise his ability to be impartial, but I keep returning in my mind to the sage advice given to public servants: Never let anyone buy you lunch.

Derek van Bever
Cambridge, Mass.

I found Justice Alito's claim of ignorance about Paul Singer's involvement in the Argentina case not credible ("ProPublica Misleads Its Readers," op-ed, June 21). This case, on which the justices ruled for Mr. Singer's fund, had been major international news, with Mr. Singer mentioned prominently. The hedge-fund billionaire appears frequently in the press, and he and Justice Alito had several interactions, including flying on Mr. Singer's plane and staying together at the fishing lodge. Could the justice really not have known?

Michael Ryan
New York

Your editorial argues that the left's entangling of the Supreme Court in politics is the result of its "fury at having lost control of the Court." Since leftists "can't accept that loss," you conclude, "they will destroy the Court if they must to get that control back."

I am struck by the parallel picture of a losing Republican presidential candidate willing to destroy a branch of our government he couldn't control beside a militant leftish movement willing to destroy another branch of which it lost control. How ironic.

Bob Carpenter
Dimondale, Mich.

How Our Political Duopoly Blocks Competition

Benjamin Chavis Jr.'s op-ed "Democrats Fail to Live Up to Their Label" (June 20) identifies a significant issue in our electoral system: the difficulties that small political parties have in gaining access to the ballot. For decades, the two major parties that control all the state legislatures have worked vigorously and creatively to erect barriers. They pass self-serving laws that make signature requirements tough to meet and charge exorbitant fees for access to voter-registration lists. Small parties often can't afford to pay and therefore are limited in reaching the audience of voters who might be engaged by their message.

With the help of Richard Winger, a ballot-access expert, I have brought lawsuits around the country fighting for the rights of minor parties and independent candidates to get on the ballot and provide an alternative for voters who would like to support them. Justice Sandra Day O'Connor long ago identified the vested interest the major parties have in limiting ballot access to the detriment of those who would like a broader choice.

Mr. Chavis rightly argues that it is antithetical to the notion of democracy for political leaders to limit ballot access for others simply to serve their own party's interests. All Americans should favor full and equal opportunities for ballot access, in support of the right of candidates to put forward their political positions and the right of voters to vote for someone who truly represents their views.

David I. Schoen
Montgomery, Ala.

My Theory of Why Biden Said 'God Save the Queen'

Regarding the Notable & Quotable on President Biden's "God save the queen" remark (June 21): Mr. Biden may be channeling "The Devil's Brigade," a 1968 film with Cliff Robertson. It is based on a true story of a combined American-Canadian commando unit that captured a seemingly invincible German fortress in 1943.

In the scene "The Canadians Arrive," a group of American misfit soldiers are brawling on a parade ground. They hear the skirl of bagpipes and stop fighting as a column of Canadians in impeccable kilts march into camp, wheel smartly and snap to attention. Viewing the contrast between the disheveled Americans and his troop, Robertson, as the major leading the group, turns to his second in command and says, now doubly ironic, "God save the king!"

Geoff Godard
Oakville, Ontario

What Do Real Golfers Know?

"Real golfers know that the game is all about ethics and honesty," a letter writer explains (June 16). I'll take a mulligan on that statement.

Mel R. Harper
Atlanta

Falling in Love With Latin?

At Loyola High School in the 1950s, I didn't find studying Latin as exhilarating as Gerard Gayou found it years later ("The Guiding Light of Latin Grammar," Houses of Worship, June 23). I came away, however, with this ditty: "Latin's a dead language, as dead as it can be. First it killed the Romans, and now it's killing me."

Jerry Sennes
Las Vegas

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Pepper ... And Salt

THE WALL STREET JOURNAL

"Raincheck on the gym? My life coach says a nap after work is good for the soul."