

BN U.S. Supreme Court to Decide Terrorism, HMO Cases as Term Ends
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By Laurie Asseo

June 14 (Bloomberg) -- The U.S. Supreme Court will decide almost two dozen cases by the end of its term this month, including whether the Bush administration is violating the rights of ``enemy combatants'' in the war on terrorism.

The case will be the court's first ruling related to the administration's policies on terrorism. The decision on whether the U.S. can hold ``enemy combatants'' seized after the Sept. 11 attacks, including two U.S. citizens held in this country and about 650 foreign citizens at Guantanamo Bay Naval Base in Cuba may play a role in this year's presidential election.

``It could be a very strong endorsement for the Bush administration and give them unprecedented powers,'' said Erwin Chemerinsky, a law professor at the University of Southern California in Los Angeles. ``It could be a very sharp rebuke.''

The court in Washington also will decide whether public schools can ask students to recite the Pledge of Allegiance with the phrase ``under God'' and whether patients can sue health-maintenance organizations including Aetna Inc. and Cigna Corp. over treatment decisions. The justices also will say if Vice President Dick Cheney's energy task force must reveal who attended its meetings in 2001.

The justices have 22 cases awaiting decision. They have handed down rulings in 50 other cases in the current term that began in October.

``Every term the bulk of the opinions get done in the last three weeks,'' said Ronald Rotunda, a law professor at George Mason University. ``If we chopped off the last three weeks, we'd never have anything controversial.''

Commander in Chief

In the terrorism cases, the government argues that the U.S. Constitution allows George W. Bush, as commander in chief, to control captured enemies such as the foreign detainees in Guantanamo and U.S. citizens Yaser Esam Hamdi and Jose Padilla, who are being held in a military prison in South Carolina.

The government said it is holding them to gather intelligence and prevent new acts of terrorism. The detainees said their rights are being violated and they are entitled to some type of hearing.

``It's hard to consider these cases without thinking of all that's come out in the last several weeks'' about the abuse of Iraqi prisoners by U.S. soldiers in that country, Rotunda said. The abuse was publicly reported after the justices heard

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arguments in the terrorism cases in April.

Outside events aren't supposed to affect Supreme Court cases, though ``judges read the newspapers,'' Rotunda said.

HMO Cases

The court's decisions in the appeals by Aetna and Cigna will affect the rights of 72 million Americans covered by HMOs. Aetna and Cigna, the third and fourth-largest U.S. health insurers, want to bar patients from suing for damages in state courts when an HMO's refusal to pay for a particular treatment leads to injury or death.

``It is a big deal,'' said Michael Obuchowski, who helps manage about \$35 million for Altanes Investments LLC in New York. Allowing such suits ``would increase the cost of coverage and probably eliminate coverage for some people,'' he said.

Still, he said, ``The general feeling is that if there is a decision against the HMOs, Congress would intervene'' and change federal law to bar such suits. Legislation to give patients a broad right to sue has previously stalled in Congress, and Obuchowski said the trend now is toward controlling costs.

Obuchowski manages shares of UnitedHealth Group Inc. and WellPoint Health Networks Inc., the two largest U.S. health insurers, and Anthem Inc., which is buying WellPoint to become the largest U.S. health insurer. He doesn't own shares of Aetna or Cigna.

Pledge of Allegiance

The Pledge of Allegiance case is an ``extraordinarily emotional'' one, said Pepperdine University law professor Douglas Kmiec. Interviewed days after the death of former President Ronald Reagan, Kmiec said, ``Reagan throughout his career saw very little objection to public recognition of a creator.''

A San Francisco-based federal appeals court ruled that asking public school students to say the pledge with the ``under God'' phrase violates the constitutionally mandated separation of church and state. Atheist Michael Newdow said that the daily recitations of the pledge at his daughter's school in California interfere with his right to teach her his beliefs.

``The Pledge of Allegiance case reminds us how much the modern court has had to say about social issues,'' said University of Virginia law professor A.E. Dick Howard. People have strong feelings about symbolism, particularly while the U.S. is at war in Iraq, he said.

Energy Task Force

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Congress added ``under God'' to the pledge 50 years ago. During arguments in the case March 24, the justices signaled they had few concerns about asking public school children to recite the pledge with the reference to God. In 1943, the court ruled that public school students can't be forced to recite the pledge.

Cheney's energy task force seeks to avoid disclosing its records to two advocacy groups, the Sierra Club and Judicial Watch, that said the panel was influenced by business executives such as former Enron Corp. Chairman Kenneth Lay.

The Bush administration said requiring it to disclose who was involved in task force meetings would violate the Constitution's separation of powers between the executive and judicial branches of government.

The Sierra Club and Judicial Watch are trying to prove the panel in effect included non-government members, which would bolster their argument that its deliberations must be made public.

Vitamin Price-Fixing

Justice Antonin Scalia refused to remove himself from the case after the disclosure that he went duck hunting with Cheney in January, three weeks after the court agreed to hear the vice president's appeal.

Also awaiting decision is a dispute over whether Roche Holding AG, BASF AG and other members of a vitamin price-fixing cartel should have to face potentially billions of dollars in claims in U.S. courts for overcharging foreign customers.

The justices will rule on appeals involving the right of suspects in custody to be warned of their Miranda right to remain silent, and a federal law that seeks to shield children from pornography on the Internet.

--With reporting by Greg Stohr in Washington. Editors: Rubin, Liedtka, Kraus.

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To contact the reporter on this story:
 Laurie Asseo in Washington at (1) (202) 624-1953 or
 lasseo1@bloomberg.net.

To contact the editor responsible for this story:

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Glenn Hall at (1) (202) 624-1966 or ghall@bloomberg.net.

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