

Justices open big term with new human rights case

Contributed by MARK SHERMAN
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WASHINGTON (AP) _

The Supreme Court plunged into its new term Monday with a high-stakes dispute between businesses and human rights groups over accountability for foreign atrocities. The next nine months hold the prospect for major rulings on affirmative action, gay marriage and voting rights.

The term that concluded in June set a high bar for drama and significance, and the new one holds considerable potential as well. Cases involving some of the most emotional issues in American life are likely to be decided after voters choose a president and new Congress next month.

Meeting on the first Monday in October, as required by law, the justices entered the crowded marble courtroom for the first time since their momentous decision in late June that upheld President Barack Obama's health care overhaul.

The decisive vote in favor of Obamacare, Chief Justice John Roberts was smiling as he led the justices into the courtroom just after 10 a.m. The conservative chief justice will be watched closely in the coming months for any new indications of a willingness to side with the court's liberals, as he did in the health care case.

The lineup of justices was the same as in June, but the bench had a slightly different look nonetheless. Justice Antonin Scalia was without the glasses he no longer needs following cataract surgery over the summer.

The exterior of the building also looked different. The familiar columns are sheathed in scaffolding, which itself is covered in fabric made to look like the iconic front of the court.

Roberts formally opened the term, and the court turned quickly to its first argument, which could have far-reaching implications.

The dispute involves a lawsuit against Royal Dutch Petroleum, or Shell Oil, over claims that the company was complicit in murder and other abuses committed by the Nigerian government against its citizens in the oil-rich Niger Delta.

Human rights groups are warily watching the case because it would

be a major setback if the court were to rule that foreign victims could not use American courts, under a 1789 law, to seek accountability and money damages for what they have been through.

The justices appeared ready to impose some limits, but it was unclear how far the court would go to shield businesses and perhaps individuals as well, from human rights lawsuits under the 223-year-old Alien Tort Statute.

Justice Samuel Alito said the Nigerian case has no connection to this country because the businesses, the victims and the location of the abuse all are foreign. "Why does this case belong in the courts of the United States?" Alito asked.

Among other concerns raised by the justices was the prospect that U.S. firms could "be sued in any country in any court in the world," in Justice Anthony Kennedy's words.

The Obama administration is partly on the oil company's side in this case. "There just isn't any meaningful connection to the United States," Solicitor General Donald Verrilli Jr. said.

But Verrilli also said the court should not issue a broad ruling that would foreclose all similar lawsuits even when the corporation being sued is American. The administration is not endorsing such lawsuits, but argues that the broader question should wait for an appropriate case. U.S. allies also oppose a broad interpretation of the law.

The Alien Tort Statute went unused for most of American history until rights lawyers dusted it off beginning in the late 1970s. Lawsuits have been brought against individuals who allegedly took part in abuses and, more recently, against companies that do business in places where abuses occur as well as in the United States.

Paul Hoffman, a Venice, Calif.-based lawyer who represents the Nigerian victim, drew a parallel to Nazi Germany and the role played by chemical giant I.G. Farben in supplying Nazi death camps with poison gas.

"Is it the case that a modern-day I.G. Farben would be exempt from the Alien Tort Statute?" Hoffman said.

Business interests argue they are being subjected to claims over the bad behavior of foreign regimes, which are shielded from lawsuits here under U.S. law.

The court first heard the case in February to consider whether businesses could be sued under the law. But the justices asked for additional arguments about whether the law could be applied to any conduct that takes place abroad.

A decision is expected by spring.

The first blockbuster case on the court's calendar is Oct. 10, when the justices will hear arguments in a fight over the University of Texas' affirmative action program. Texas uses multiple factors, including community service, work experience, extracurricular activities, awards and race, to help fill 20 to 25 percent of the spots in its freshman classes. The outcome could further limit or even end the use of racial preferences in college admissions.

The court also is expected to confront gay marriage in some form. Several cases seek to guarantee federal benefits for legally married same-sex couples. A provision of the 1996 Defense of Marriage Act deprives same-sex couples of a range of federal benefits available to heterosexual couples.

Several federal courts have agreed that the provision of the law is unconstitutional, a situation that practically ensures the high court will step in.

A separate appeal asks the justices to sustain California's Proposition 8, the amendment to the state Constitution that outlawed gay marriage in the nation's largest state. Federal courts in California have struck down the amendment.

The justices may not consider whether to hear the gay marriage issue until November.

Another hot topic with appeals pending before the high court, and more soon to follow, is the future of a cornerstone law of the civil rights movement.

In 2006, Congress overwhelmingly approved, and President George W. Bush signed, legislation extending for 25 more years a critical piece of the Voting Rights Act. It requires states and local governments with a history of racial and ethnic discrimination, mainly in the South, to get advance approval either from the Justice Department or the federal court in Washington before making any changes that affect elections.

The court spoke skeptically about the provision in a 2009 decision, but left it mostly unchanged. Now, however, cases from Alabama, North Carolina, South Carolina and Texas could prompt the court to deal head-on with the issue of advance approval. The South Carolina

and Texas cases involve voter identification laws; a similar Indiana law was previously upheld by the court.

It is unclear when the justices will decide whether to hear arguments in those cases. Arguments themselves would not take place until next year.

The court itself has largely been absent as an issue on the presidential campaign trail. But the justices could become enmeshed in election disputes, even before the ballots are counted. Lawsuits in Ohio over early voting and provisional ballots appear the most likely to find their way to the justices before the Nov. 6 election, said Richard Hasen, an election law expert at the University of California at Irvine law school.