SPRING 2014 NEWSLETTER

CIVIL RIGHTS LAW UPDATE

By Josh Skinner

United States Supreme Court

***Schuette v. Coalition to Defend Affirmative Action*, No. 12-682 (April 22, 2014)**

State governments do not violate the Equal Protection Clause by prohibiting state and other governmental entities from granting race-based preferences in the admissions process for state universities.

In 2006, Michigan adopted an amendment to the State Constitution prohibiting state and other governmental entities in Michigan from granting certain preferences, including race-based preferences, in a wide range of actions and decisions. Various groups, students, faculty and prospective students to Michigan public universities challenged the constitutional amendment in federal court. The district court granted summary judgment to Michigan, upholding the amendment. A panel of the Sixth Circuit reversed the grant of summary judgment and the Sixth Circuit, sitting en banc, agreed with the panel decision. The Supreme Court granted review and reversed the decision of the Sixth Circuit.

When voters enact policies as an exercise of democratic self-government that prohibit racial-preferences in public university admissions, such policies do not violate the Equal Protection Clause and should not be struck down by courts. The Court explained that the case is not about how the debate about racial preferences should be resolved, but about who may resolve it. Finding no authority in the Constitution of the United States or prior Supreme Court precedent for setting aside Michigan's law, the Court reversed the decision of the Sixth Circuit.

***Navarette v. California*, No. 12-9490 (April 22, 2014)**

Police officer complied with the Fourth Amendment when he executed a traffic stop of a vehicle based on a 9-1-1 caller reporting that the vehicle had run her off the road.

Someone called into 9-1-1 to report that a specific pickup (the model and license plate were provided by the caller) ran the reporting party off the roadway. A police officer received the message from the dispatcher, intercepted the truck and initiated a traffic stop. As the officer, and another officer who arrived shortly thereafter, approached the truck, they smelled marijuana. A search of the truck bed revealed 30 pounds of marijuana. The driver and passenger were arrested. The driver and passenger moved to suppress the evidence arguing that the traffic stop violated the Fourth Amendment. The state courts denied the motion to suppress and the driver and passenger sought review from the United States Supreme Court. The Court affirmed.

The Fourth Amendment permits brief investigative stops (e.g., traffic stops) when a law enforcement officer has a particularized and objective basis for suspecting the particular person

stopped of criminal activity. The "reasonable suspicion" is based on both the content of the information possessed and its degree of reliability. It takes into account the totality of the circumstances. The Court explained that where, as here, the 9-1-1 caller's statement indicated that she had personal knowledge of the criminal act (driving dangerously and running her off the road) and specifically identified the type of vehicle and its license plate number, the reliability of the statements was higher than might be the case in ordinarily (anonymous) tips. In addition, portions of the report, such as the presence of the pickup in question on the same road close in time to the reckless driving incident, confirmed the validity of the 9-1-1 caller's statement.

***Fernandez v. California*, No. 12-7822 (February 25, 2014)**

When a premises has multiple occupants, the consent of one occupant to search of the premises is sufficient to permit the search by police, unless another occupant, who is physically present, objects to the search. The fact that another occupant, who is no longer present because he has been arrested, objected to the search when he was present, does not prevent the remaining occupant from consenting to the search in his absence.

The police knocked on an apartment door because they suspect that a suspect from a robbery had just entered there. A woman, Roxanne Rojas, opened the door. She was bleeding and appeared to have been injured by someone. The police requested permission to enter the apartment to conduct a protective sweep, when Fernandez came to the door and objected to their entrance. Because the police suspect that Fernandez might have caused Rojas' injuries, they removed him and placed him under arrest. They subsequently identified him as the suspect from the robbery and took him to the police station. An officer returned later and asked Rojas for permission to search the premises. Rojas consented to the search and the officer found evidence connecting Fernandez to the robbery. At Fernandez' criminal trial, he sought to have the evidence suppressed because he had not consented to the search of his home. The motion to suppress the evidence was denied.

The Supreme Court affirmed the decision of the state court, refusing to suppress the evidence. The Court held that Rojas, as an occupant of the premises, could consent to the police search. Since Fernandez was not physically present, he could not object to the search. Fernandez argued that the search was not permissible because (1) he was only absent due to the actions of the police, and (2) he had objected to the search when he was present. The Court rejected Fernandez's arguments, explaining (1) an occupant who is absent to due a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason, and (2) only objections of occupants who are physically present would, in normal usage, be binding on someone entering the premises. Permitting an absent occupant to rely on prior objections would also create practical problems in that it would be unclear how long the prior objection remained in effect.

***Plumhoff v. Rickard*, No. 12-1117 (S. Ct. oral argument March 4, 2014)**

The Supreme Court should decide a new qualified immunity case within the next two months. The Sixth Circuit Court of Appeals denied qualified immunity to police officers on an excessive force claim relating to a high speed chase that resulted in the death of the suspect driver and his passenger. The driver and passenger were shot by the officers and the car crashed into a

building shortly thereafter. The Court heard oral arguments from the parties and from the Solicitor General of the United States on March 4, 2014. Based on the briefing and the oral argument, it appears that the Court is poised to grant qualified immunity. It also appears that there other important issues that may be decided by the Court in its opinion, including (1) whether the Court should decide if the police used excessive force when granting qualified immunity because the law was not clear, (2) whether the police officers, in fact, used excessive force, and (3) whether the Court should be bound, in an interlocutory qualified immunity appeal, by the district court's (erroneous) conclusion that there is a dispute of fact as to whether the fleeing driver attempted to run various police cars off the road. A podcast with a more extended discussion about the case and the oral argument is available at http://www.fed-soc.org/publications/detail/plumhoff-v-rickard-post-argument-scotuscast

United States Court of Appeals for the Fifth Circuit

***Zapata v. Melson*, No. 13-40762 (April 18, 2014)**

When a public official asserts the defense of qualified immunity in a motion to dismiss, the district court may not permit discovery without first explicitly analyzing the qualified immunity issue and determining whether the public official is entitled to qualified immunity. Failure to make this explicit analysis is an effective denial of the motion entitling the public official to take an interlocutory appeal.

The plaintiffs brought suit against various federal officials, alleging constitutional violations. The federal officials moved to dismiss based on qualified immunity under Federal Rule of Civil Procedure 12(b)(6). The district court deferred ruling on the defendants' threshold qualified immunity defense, instead issuing an order allowing the plaintiffs limited discovery on the issue of qualified immunity. The officials appealed, arguing that the district court abused its discretion. The Fifth Circuit agreed, holding that the district court had an obligation to make an initial determination as to whether the plaintiffs' allegations, if true, would defeat qualified immunity and then identify any questions of fact that needed to be resolved before it would be able to determine whether the defendants were entitled to qualified immunity. The Fifth Circuit vacated the decision of the district court and remanded for further proceedings.

***The Inclusive Communities Project, Inc. v. Tex. Dep't of Housing and Community Affairs*, No. 12-11211 (5th Cir. March 24, 2014)**

For a claim of disparate impact discrimination in violation of the Fair Housing Act, the following burdens of proof apply: (1) The charging party has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect; (2) Then, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant; and (3) finally, the burden shifts back to the charging party to prove that the substantial, legitimate, nondiscriminatory interests of the respondent or defendant could be served by another practice that has a less discriminatory effect.

The Inclusive Communities Project (ICP) sued the Texas Department of Housing and Community Affairs (Department) alleging intentional discrimination and disparate impact discrimination in violation of the Fair Housing Act (FHA). The Department is responsible for allocating federal funding that helps to provide low-income (Section 8) housing. After a bench trial, the district court found that ICP had failed to prove its intentional discrimination claim, but that it had established a disparate impact claim. The district court relied on evidence demonstrating that the Department had approved a higher percentage of development proposals in predominantly minority areas than in predominantly Caucasian areas.

After the district court issued its' ruling, the Department of Housing and Urban Development (HUD) enacted regulations regarding the burdens of proof in disparate impact housing discrimination cases. The Fifth Circuit concluded that the HUD regulations should be applied to the case and remanded the issue to the district court to evaluate the evidence under the new HUD regulations.

***Harris v. Serpas*, No. 13-30337 (5th Cir. March 12, 2014)**

A police officer is not required to believe that he is in actual, imminent danger of serious injury in order to use lethal force. Rather, so long as the officer reasonable believes that the suspect poses a threat of serious harm to the officer or to others, lethal force may be used.

Tyralyn Harris called the police because she was concerned that Brian Harris, her former husband, who she lived with, had taken an overdose of sleeping pills in an effort to take his own life. Brian had locked himself in his room. When the police arrived, Tyralyn provided them with keys to Brian's room and explained her concern. The police discovered that, in addition to locking the bedroom door, Brian had barricaded it. The police unlocked the door and forced their way in. Brian was lying on the bed, holding a knife. The police ordered him to drop the knife, and he refused. They attempted to Taser him twice, but the Tasers failed to operate properly both times. By that point, Brian was standing. The police continued to order Brian to drop the knife, but he continued to refuse. Brian raised the knife over his head and the police shot him. Brian died and his family brought suit, alleging excessive force and warrantless entry claims. The district court granted summary judgment to the police officers.

On appeal, Harris' family argued that the police used excessive force because (1) the police should not have breached Harris' bedroom door, and (2) the officers were not in imminent danger of being stabbed by Harris at the time of the shooting. The Fifth Circuit rejected the excessive force claim, explaining that the prior decision to enter the bedroom is irrelevant to the question of whether the force used was reasonable. Specifically, courts should consider whether the force was reasonable when it was used, not whether prior circumstances indicated that the need for the use of force could have been avoided. In addition, the Court held that the officers did not need to be in actual, imminent danger of serious injury in order to justify the use of lethal force. Rather, so long as they reasonably believed that Harris posed a threat of serious harm to one or more of them, lethal force could be used.