2014 YEAR IN REVIEW

SIGNIFICANT DECISIONS IN 2014:

CIVIL RIGHTS

By Josh Skinner

Police Searches and Use of Force

***Riley v. California*, No. 13-132 (June 25, 2014)**

The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.

Riley was stopped by the police for driving with expired registration tags. During the stop, the officer learned that his license was suspended. The car was impounded and Riley was arrested because an inventory of the car revealed that he was in possession of concealed and loaded firearms, in violation of California law. An officer searched Riley and found a cell phone (a smart phone) in Riley's pocket. The officer searched the smart phone and found information that be believed tied Riley to the "Bloods" street gang. At the police station, a detective examined the phone at length and found evidence tying Riley to an earlier shooting and attempted murder. Riley was ultimately charged with these later offenses. Riley moved to suppress the evidence from the phone, arguing that the search of the cell phone without a warrant violated the Fourth Amendment. The motion to suppress was denied, Riley was convicted and that the California court of appeals affirmed. After the state supreme court denied reviewed, the United States Supreme Court granted Riley's petition for writ of certiorari.

The Supreme Court held that, generally speaking, police must secure a warrant before searching the contents of an arrestee's cell phone. The cell phone does not pose any physical danger to police (unlike a concealed gun near the arrestee that justifies a search of the area around him) and there was virtually no evidence that securing a warrant would result in the arrestee or a confederate remotely destroying the data on the cell phone. In addition, unlike the items that a person could traditionally carry on his or her person, modern cell phones contain a substantial quantity of personal data that justifies a heightened expectation of privacy protection for them.

***Plumhoff v. Rickard*, No. 12-1117 (May 27, 2014)**

Police officers who used deadly force to stop a fleeing vehicle did not violate the Fourth Amendment and, alternatively, were entitled to qualified immunity. In addition, courts of appeals have jurisdiction of interlocutory appeals from the denial of qualified immunity and should use the normal standards of review as to factual disputes that are relevant to the qualified immunity analysis.

A police officer pulled over Rickard for a minor traffic violation and asked him to get out of his vehicle. Instead of complying, Rickard sped off and a high-speed pursuit ensued, including swerving around other vehicles on the highway. Rickard ultimately got off the highway in Memphis. He collided with a police car and the police attempted to box him in. He backed up and attempted to flee in the vehicle from the one remaining unguarded side. The police started shooting. Fifteen shots were fired, killing Rickard. The bullets and the resulting crash killed the passenger. Rickard's family filed suit against the police officers. The officers filed a motion for summary judgment, which was denied by the district court and the denial was affirmed by the court of appeals.

The Supreme Court held that the officers' conduct did not violate the Fourth Amendment because Rickard's reckless driving was a danger to the officers and the public and the officers were entitled to use deadly force to prevent Rickard from returning to the highway and resuming his high-speed flight. The Court also held that the officers were entitled to qualified immunity because the law was not clearly established at the time of the incident. In reaching the Fourth Amendment and qualified immunity issues, the Court also addressed a jurisdictional question. Courts of appeals only have limited jurisdiction over interlocutory appeals from the denial of qualified immunity. In particular, prior precedents appeared to exclude factual issues from that review. The Court, however, held that appellate courts have jurisdiction over all evaluations of the factual evidence that are relevant to the qualified immunity issue.

A podcast with a more extended discussion about the decision is available at http://www.fed-soc.org/multimedia/detail/plumhoff-v-rickard-post-decision-scotuscast

***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.

Free Speech and Religion

***Burwel v. Hobby Lobby Stores, Inc.*, No. 13-354 (June 30, 2014)**

For-profit corporations, like non-profit corporations, are entitled to assert religious exercise rights under the federal Religious Freedom Restoration Act (RFRA). If the religious exercise of the corporation (i.e., of the controlling members of its governing body) is "substantially burdened" by the federal government, the federal government carries the burden of proving that the government regulation or activity serves a compelling governmental purpose and that it is the least restrictive option. While the federal statute at issue in this case only applies to federal laws and agencies, many states, including Texas, have similar religious freedom laws and it is likely that courts will look to this decision in applying, for instance, the Texas Religious Freedom Restoration Act.

Hobby Lobby and various other for-profit corporations owned and operated by Christian individuals or families challenged the application of a regulation issued by the Department of Health and Human Services ("the HHS mandate") as part of the Affordable Care Act ("the Act"). The HHS mandate sets out types of medication and drugs that employers are required to provide in health care plans under the Act. Specifically, the HHS mandate includes under the category of required women's health services various medications and drugs classified as contraceptives. However, some of the medications and drugs work not merely to prevent conception, but also can prevent implantation of a conceived embryo. The owners of Hobby Lobby and the other plaintiffs believe that the prevention of implantation is a form of abortion, to which they are opposed on religious grounds.

The plaintiffs brought suit, requesting an injunction against the portion of the HHS mandate that they assert violates their religious beliefs. They argued, as relevant here, that the requirement that they provide insurance coverage for medications and drugs to which they have a religious objection violates their rights under RFRA. The federal circuits were split on the issue and the Supreme Court granted review. In a narrow 5-4 decision, the Supreme Court held that the plaintiffs' religious exercise rights under RFRA were violated by the application of the HHS mandate to them. The federal government had argued that RFRA did not apply to the plaintiffs because they were for-profit corporations. The majority rejected the government's exclusion of for-profit corporations from RFRA coverage because the statute does not explicitly exclude them and prior precedents already permitted non-profit corporations to assert RFRA rights.

***McCullen v. Coakley*, No. 12-1168 (June 26, 2014)**

A state law requiring a 35-foot buffer zone around abortion clinics was unconstitutional under the First Amendment because it effectively prevented "sidewalk counselors" from communicating with patients and was overly broad.

Massachusetts adopted a law that imposed a 35-foot buffer zone around medical facilities (other than hospitals) in which abortions were performed. The law largely prohibited anyone other than patients and employees acting in their official capacities from coming within the buffer zone. In support of the law, the Massachusetts legislature heard testimony indicating that the law would help to serve public safety, patient access to healthcare, and the unobstructed use of public sidewalks and roadways. The plaintiffs are "sidewalk counselors," individuals who attempt to engage in conversation with women considering abortion in order to explain alternatives to abortion. The plaintiffs are not protestors and believe that protesting, including yelling and holding up signs, is more likely to be counter-productive in regard to their effort to communicate their message to women entering abortion clinics. The plaintiffs stated that the buffer zone essentially prevented them from engaging in "sidewalk counseling" because it required them to be too far away from women entering the clinics.

The petitioners argued that, because the law only applies to abortion-providing facilities, the law is "content-based" and subject to strict scrutiny under the First Amendment. The Court rejected the application of strict scrutiny, noting that Massachusetts set forth a variety of non-speech related objectives in adopting the buffer zone. Instead, the Court concluded that the law must be "narrowly tailored to serve a significant governmental interest." Even under this lower standard, a unanimous Court struck down the law, holding that the buffer zone largely eliminated the plaintiffs' speech ("sidewalk counseling") and that it burdened substantially more speech than necessary to achieve the state's asserted interests.

***Town of Greece v. Galloway*, No. 12-696 (May 5, 2014)**

A municipality does not necessarily violate the First Amendment prohibition on establishments of religion by opening its monthly board meetings with a prayer.

The Town of Greece has a short prayer at the beginning of its monthly board meetings. The Town permits any minister or layperson (including an atheist) to give the invocation. However, since the practice was started in 1999 through 2007, all the participants were Christian. Similarly, nearly all of the congregations in town are Christian. The Town neither reviews in advance nor provides guidance as to their tone or content. Many prayers include explicitly Christian references. Two citizens brought suit alleging that the practice violates the First Amendment Establishment Clause. The Town moved for summary judgment, which the district court granted. On appeal, the Second Circuit reversed.

The Supreme Court upheld the invocations, holding that they do not violate the Establishment Clause. The Court further rejected claims that any prayers must be nonsectarian. However, if the course and practice over time shows that the invocations "denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion,"

the Court might come to a different conclusion.

Affirmative Action

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, including 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.