

Supreme Court: October Term 2013

Eighth Circuit Judicial Conference

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Erwin Chemerinsky

Dean and Distinguished Professor of Law

Raymond Pryke Professor of First Amendment Law

University of California, Irvine School of Law

I. Criminal Procedure

A. Fourth Amendment

Fernandez v. California, 134 S.Ct. 1126 (2014). Under Georgia v. Randolph, a defendant must be personally present and objecting when police officers ask a co-tenant for consent to conduct a warrantless search.

Navarette v. California, 134 S.Ct. 1683 (2014). The Fourth Amendment does not require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle.

Riley v. California, 134 S.Ct. 2473 (2014). The contents of a cell phone cannot be searched as part of a search incident to arrest without a warrant unless there are exigent circumstances.

B. Capital punishment

Hall v. Florida, 134 S.Ct. 1986 (2014). The Florida scheme for identifying intellectually disabled defendants in capital cases as those with IQs below 70 violates *Atkins v. Virginia*.

II. First Amendment

A. Freedom of Speech

McCutcheon v. Federal Election Commission, 134 S.Ct. 1434 (2014). The aggregate contribution limits of the Bipartisan Campaign Finance Reform Act -- an individual contributor cannot give more than \$46,200 to candidates or their authorized agents or more than \$70,800 to anyone else per two year election cycle (and within the \$70,800 limit a person cannot contribute more than \$30,800 per calendar year to a national party committee) -- violate the First Amendment.

McCullen v. Coakley, 134 S.Ct. 2518 (2014). The First Amendment is violated by a Massachusetts law which makes it a crime for speakers other than clinic “employees or agents . . . acting within the scope of their employment” to “enter or remain on a public way or sidewalk” within 35 feet of an entrance, exit, or driveway of a “reproductive health care facility.”

B. Religion

Town of Greece v. Galloway, 134 S.Ct. 1811 (2014). A Town Board does not violate the Establishment Clause if over a long period virtually every meeting is begun with an explicitly Christian prayer.

Burwell v. Hobby Lobby, 134 S.Ct. ____ (June 30, 2014). The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §§ 2000bb et seq., which provides that the government “shall not substantially burden a person’s exercise of religion” unless that burden is the least restrictive means to further a compelling governmental interest, is violated by a requirement that closely held for-profit corporations that provide insurance to employees must include contraceptive coverage for women.

III. Civil rights litigation

A. Constitutional equality

Schuette v. Coalition to Defend Affirmative Action, 134 S.Ct. 1623 (2014). An initiative that prohibits affirmative action by prohibiting the discrimination or preferences based on race or gender does not violate equal protection.

B. Qualified immunity

Plumhoff v. Rickard, 134 S.Ct. 2012 (2014). Police did not violate the Fourth Amendment through the use of deadly force to stop a high speed chase and may continue to shoot until the car they are chasing has been stopped. Also, officers were protected by qualified immunity.

Wood v. Moss, 134 S.Ct. 2056 (2014). Secret service agents were protected by qualified immunity when they moved anti-Bush demonstrators further and allowed pro-Bush demonstrators to be closer to the President.

Lane v. Franks, 134 S.Ct. 2369 (2014). A government employee’s First Amendment rights are violated when he is fired for truthful testimony given pursuant to a subpoena, but the defendant is protected by qualified immunity.

IV. Separation of powers

A. Recess appointments

National Labor Relations Board v. Noel Canning, 134 S.Ct. 2550 (2014). The President's recess-appointment power may be exercised when the Senate is convening every three days in pro forma sessions.

B. Authority of bankruptcy judges

Executive Benefits Insurance Agency v. Arkison, 134 S.Ct. 2165 (2014). De novo review by an Article III court is sufficient to permit a decision by a bankruptcy court on a state law claim.

Wellness Intern. Network Ltd. v. Sharif, 376 F.3d 720 (7th Cir. 1013), *cert. granted*, 134 S.Ct. ____ (July 1, 2014). Is a constitutional objection based on *Stern v. Marshall* waivable?