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WALDEN V. FIORE (12-574)

Appealed from the U.S. Court of Appeals for the Ninth Circuit

Oral argument: Nov. 4, 2013

Issues

1. Can a court exercise personal jurisdiction over a defendant whose only contact with the forum state is that he knew that the plaintiffs had contacts within the state?
2. Is the district where the plaintiff suffered injury a proper venue if all of the alleged events or omissions that gave rise to the claim were committed by the defendant in a different district?

Questions as Framed for the Court by the Parties

1. Whether due process permits a court to exercise personal jurisdiction over a defendant whose sole contact with the forum state is his knowledge that the plaintiff has connections to that state.
2. Whether the judicial district where the plaintiff suffered injury is a district “in which a substantial part of the events or omissions giving rise to the claim occurred” for purposes of establishing venue under 28 U.S.C. § 1391(b)(2) even if the defendant’s alleged acts and omissions all occurred in another district.

Facts

Respondents Fiore and Gipson arrived in the Atlanta airport with \$97,000 in cash gambling winnings in their carry-on bags. Drug Enforcement Administration (DEA) Agent Anthony Walden approached them as they were heading to their connecting gate. During their conversation, a drug-detection dog alerted Walden to Gipson’s bag, and Walden seized the \$97,000 on suspicion of illicit drug activity. Walden explained that the money would be returned to them if they could show that they had obtained it legitimately.

Upon returning to Las Vegas, respondents sent Walden documents proving that their money was legitimately obtained. They allege that, despite this proof, Walden and another agent prepared and submitted a false probable cause affidavit to the U.S. Attorney for the Northern District of Georgia to initiate a forfeiture action. Approximately seven months after the initial seizure, an assistant U.S. attorney determined that the government lacked probable cause to forfeit the cash, and the money was returned to the respondents.

They sued Walden in Nevada under the *Bivens* doctrine, alleging that he violated their Fourth Amendment rights when he confiscated the \$97,000 in Georgia. The district court dismissed the complaint for lack of personal jurisdiction, noting that Fiore and Gipson did not allege that Walden knew of their relevant Nevada connections or that he directed his conduct at Nevada when he seized the money. The court found that Walden’s conduct was expressly aimed at Georgia and had no relevant contacts with Nevada.

A divided panel of the Court of Appeals for the Ninth Circuit reversed the decision, accepting that the cash seizure was expressly aimed at Georgia, but holding that “the false probable cause affidavit aspect of the case” supported jurisdiction in Nevada. In denying rehearing en banc—despite eight dissenting judges—the Ninth Circuit upheld the panel’s decision but issued a new opinion, finding that Walden expressly aimed his actions at Nevada.

Discussion

This case presents the Supreme Court with the opportunity to consider whether a court can exercise personal jurisdiction over a defendant whose only contact with the forum state is the defendant’s knowledge that the plaintiffs had contacts with the state. The Supreme Court will consider whether the district where the plaintiff suffered injury is the proper venue when all of

the events giving rise to the claim occurred in another district.

Fairness Concerns and Practical Effects on Defendants

Walden’s supporters assert that the Ninth Circuit’s decision promotes unfair jurisdictional practices. According to these *amici*, the Ninth Circuit’s decision eliminates the Due Process Clause’s minimum-contacts requirement and relies heavily on the plaintiff’s forum connections when determining personal jurisdiction. They claim that the result is that persons who commit an intentional tort will be subject to jurisdiction wherever the plaintiff lives, despite their never having established minimum contacts there. Such an outcome is unfair, according to *amici*, because a defendant would be subjected to personal jurisdiction in the plaintiff’s home state if the defendant knew of the forum connection. *Amici* argue that only targeted conduct in the forum state where that state was the intended center of the harm merits personal jurisdiction.

Walden’s supporters also suggest several groups that would be heavily burdened by a ruling in favor of Fiore and Gipson, particularly groups that interact with citizens from a wide variety of jurisdictions. The United States contends that under the Ninth Circuit’s standard, federal law enforcement officers and other federal employees that frequently interact with people from all over the country would be at risk of being sued in the resident state of anyone they come into contact with while at work. Such a standard would impede officers from appropriately performing their jobs.

Ability of Plaintiffs to Seek Redress in Their Home States

Fiore and Gipson respond there is nothing unfair about subjecting a defendant to personal jurisdiction when the defendant intentionally targets an individual to suffer in another state. Pointing to examples of harm

occurring over the Internet or through other remote means, they argue that personal jurisdiction has evolved to hinge on where the plaintiff felt the actual harm rather than the location of the defendant's conduct.

The Workers' Injury Law & Advocacy Group argues that overturning the Ninth Circuit's decision will put workers at risk. According to *amici*, workers—especially those who relocate to perform work in jurisdictions outside their state—often travel through airline hubs; deal with Transportation Security Administration (TSA) agents, DEA agents, and immigration agents; and face significant risk of tortious injury. *Amici* assert that not allowing those workers to obtain justice in their forum state threatens their ability to seek remedy from the various torts they may encounter while on the job.

Analysis

In this case, the Supreme Court will decide whether a district court can exercise personal jurisdiction over a defendant whose only contact with the forum state was the knowledge that the plaintiff had contacts with the state. If the Court finds personal jurisdiction to be proper, it must then decide if venue is proper based on the defendant's alleged series of acts and omissions.

Can Nevada Exercise Personal Jurisdiction Over Walden?

Fiore and Gipson allege that Walden committed an intentional tort against them by seizing their gambling winnings without cause. Walden filed an affidavit of probable cause after the seizure, but the assistant U.S. attorney who reviewed the affidavit determined there was no probable cause and allowed the cash to be returned to the respondents. Both the petitioner and respondents agree that the *Calder* test should be used to evaluate whether Nevada may exercise personal jurisdiction over Walden. Under *Calder*, minimum contacts may be established where the defendants' intentional acts were expressly aimed or purposefully directed at the forum state.

Walden asserts that, under *Calder*, a defendant's conduct must be expressly aimed at the forum state. He draws a distinction between assessing a defendant's contacts with a state and a defendant's contacts with a plaintiff, arguing that he has no ties with Nevada, merely a tie to Nevada residents Fiore and Gipson. In *Calder*, an article written by Florida defendants formed

the basis of personal jurisdiction in California because California was "the focal point both of the story and of the harm suffered." Walden argues that harm alone does not suffice—the forum must also be the focal point of the tortious activity. According to Walden, Nevada was not the focal point of his allegedly tortious activity; therefore, he does not have minimum contacts with the state.

Fiore and Gipson respond that while negligent acts must be aimed at a state to satisfy the minimum-contacts requirement, intentional acts aimed at a state's residents satisfy that requirement. They first note that it is unclear what types of acts would be considered *aimed at a state*. Accordingly, they interpret *Calder* as testing whether a defendant knows that he is targeting a state resident, not simply the state. Respondents analogize to other forms of remote tortious activity, such as hacking into a bank account or cyber-stalking. Such tortious activity is aimed at states' *residents*—who can exercise personal jurisdiction over the hackers in their states, even where the injury occurred in a different forum from that in which the defendant's acts were committed.

Is Nevada a Proper Venue?

If the Court finds that Nevada may exercise personal jurisdiction over Walden, it must determine whether venue is proper in Nevada. Walden argues that the place where a plaintiff feels the effects of a tort is not the proper venue if the defendant's acts occurred elsewhere. He argues that Congress did not intend 28 U.S.C. § 1391(b) (2) to allow plaintiffs to choose any forum they wish. According to Walden, the statute permits venue only in districts where events or omissions that gave rise to the claim occurred. Walden contends that because the alleged conduct occurred in Georgia—and economic effects felt from that conduct do not fall into the categories of events or omissions—Nevada is not the proper venue.

Fiore and Gipson respond that that venue is not limited to the forum where wrongful conduct occurs; rather, any venue in which a substantial part of the events or omissions that give rise to the claim occur can be the proper venue. Fiore and Gipson assert that the filing of the false probable cause affidavit and the prolonged detainment of their winnings gave rise to this injury, and these actions were aimed at them while they were in Nevada, not in Georgia. They further argue that the location of the injury

is a relevant factor in determining venue because proving an injury is an element of a tort claim. Therefore, the respondents state that venue is proper in Nevada because a substantial portion of the events that gave rise to the claim—the filing of the affidavit and the economic injury suffered—occurred in or were directed at Nevada.

Conclusion

In this case, the Supreme Court will consider whether a state can exercise personal jurisdiction over a defendant whose sole contact with the state is the knowledge that the plaintiff had connections to the state. The Court's ruling may define the reach of the *Calder* jurisdiction test, affecting where plaintiffs can seek redress for torts committed outside their home states. The ruling may also have broader implications for victims of remote tortious activity in the digital age.

Written by Gabriella Bensur and Jennifer Brokamp. Edited by Stephen Wirth. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

BOND V. UNITED STATES (12-158)

Appealed from the U.S. Court of Appeals for the Third Circuit

Oral argument: Nov. 5, 2013

Issue

Whether the Commerce and Necessary-and-Proper clauses, read in connection with the treaty power, allow a statute enacted by Congress to enforce a treaty to serve as a valid basis for prosecuting a criminal defendant in Federal District Court.

Questions as Framed for the Court by the Parties

(1) Whether the Constitution's structural limits on federal authority impose any constraints on the scope of Congress' authority to enact legislation to implement a valid treaty, at least in circumstances where the federal statute, as applied, goes far beyond the scope of the treaty, intrudes on traditional state prerogatives, and is concededly unnecessary to satisfy the government's treaty obligations; and (2) whether the provisions of the Chemical Weapons Convention Implementation Act, 18 U.S.C. § 229, can be interpreted not to

reach ordinary poisoning cases, which have been adequately handled by state and local authorities since the framing, to avoid the difficult constitutional questions involving the scope of and continuing vitality of this Court's decision in *Missouri v. Holland*, 252 U.S. 416 (1920).

Facts

In 2006, Carol Anne Bond discovered that her friend, Myrlinda Haynes, was pregnant from an affair with Bond's husband. Seeking revenge, Bond acquired toxic chemicals, 10-chlorophenoxarsine and potassium dichromate, and used them repeatedly in an attempt to poison Haynes.

Bond was charged with violating 18 U.S.C. § 229, which prohibits "knowing possession or use, for nonpeaceful purposes, of a chemical that can cause death, temporary incapacitation or permanent harm to humans." Section 229 is part of a federal statute that implements a chemical weapons treaty ratified by the United States under the Chemical Weapons Convention of 1993. A grand jury in the Eastern District of Pennsylvania indicted Bond on two counts of possessing and using a chemical weapon, in violation of § 229(a)(1) and two counts of theft of mail, in violation of 18 U.S.C. 1708. Bond moved to dismiss the chemical weapons charges on the ground that Congress exceeded its Article I authority when enacting § 229. In support of her contention, Bond argued, "neither the Commerce Clause, nor the Necessary and Proper Clause in connection with the Treaty Power, could support [§ 229]."

On appeal, the Third Circuit found that Bond's conduct fell within the statutory language and that she was thus properly found guilty. It rejected Bond's constitutional objection to her conviction, emphasizing that the case did not present the question "whether an arguably invalid treaty has led to legislation encroaching on matters traditionally left to the police powers of the state." Following from its conclusion that the act is constitutional, the court declined to rule that the statute's application to Bond violated the constitutional balance of power between the federal government and the states. Bond again petitioned for certiorari, which the Supreme Court granted on January 18, 2013.

Discussion

This case presents the Supreme Court with the opportunity to consider the extent to

which Congress may expand its domestic legislative powers through a treaty. The United States maintains that Congress had authority under the Commerce Clause to enact such a statute. Bond claims that the statute is unconstitutional and that affirming the Third Circuit would grant Congress an unconstitutional police power. The Supreme Court's resolution of the case implicates a vigorous debate over the balance of federal and state powers, and the relationship between treaties among foreign nations and domestic law.

The Effects of Congressional Treaties on Individuals

The Cato Institute (Cato) and others, writing as *amici curiae*, argue the necessity of limiting Congressional power in this case to avoid setting a dangerous precedent. For example, the *amici* urge the Court to consider the language in *Holland*, "[i]f the treaty is valid there can be no dispute about the validity of the [implementing] statute under Article I, Section 8, as a necessary and proper means to execute the powers of the Government." The *amici* argue that this language may be interpreted to allow Congress to exceed its constitutionally enumerated powers when implementing a treaty. The *amici* worry that this would allow Congress to expand its legislative powers beyond those enumerated in the Constitution and that in fact the legislative power might extend to all subjects that may be addressed by treaty.

The respondent and three law professors argue that the Court should decline Cato's request to overrule *Holland*. They contend that, contrary to Cato's argument, *Holland*'s holding was "deeply rooted in history and precedent." Further, they maintain that Bond and Cato ignore the Necessary-and-Proper clause, which is designed to enable Congress "to enact laws in effectuation of ... enumerated powers that are not within its powers in isolation." Further, *amici* maintain that, under *Holland*, so long as a statute carefully tracks a treaty that the United States committed itself to, it shall not be struck down as outside the scope of Congressional authority.

Disputes Concerning Federalism

Cato et al. argue that the Third Circuit acknowledged the need for clarification from the Supreme Court on the proper scope and interpretation of the *Holland* ruling. In particular, these *amici* urge the Supreme Court to clarify the balance of power between the

federal government and the states. Also in support of the petitioner, the American Center for Law and Justice (ACLJ) claims that Bond's actions should be punished under state and not federal law. The ACLJ warns that, if the decision below is affirmed, the United States could enter into treaties, then Congress could enact statutes to enforce the treaties, that require, forbid, or regulate matters properly left to state law. The ACLJ's primary concern relates to "an unlimited Treaty Power [that] would run roughshod over ... the constitutional balance between the state and federal governments (federalism)."

In support of respondent, the Yale Law School Center for Global Legal Challenges (Yale) argues that the framers of the Constitution were mindful of the possibility for abuse of the treaty power and built in checks and safeguards to adequately protect federalism. First, Yale reminds the Court that the framers gave the power to ratify treaties to the Senate because the Senate, where all states are equally represented, is "uniquely suited to defend the interests of the [s]tates." Next, Yale contends that, because no Article II treaty exists in the first place without the consent of a foreign nation, a built-in diplomatic check underpins all treaties entered into, and that "[s]uggestions to the contrary lack any empirical support. ..."

Analysis

The Supreme Court will decide not only whether § 229 applies to ordinary poisoning cases, but also whether the Constitution's limits on federal authority constrain Congress' ability to implement treaties by enacting legislation. The Third Circuit dismissed Bond's constitutional challenge to § 229, relying on language in *Missouri v. Holland* that seemingly empowered Congress to pass statutes in furtherance of treaties, despite federalism concerns. In *Holland*, the Supreme Court appeared to claim that the validity of a treaty entails the validity of its implementing statute, as a necessary and proper means to execute Congress' treaty power. The Constitution requires only that the legislation be rationally related to the implementation of the treaty.

Does § 229 Apply to Domestic Conduct?

Bond argues that Congress intended § 229 to criminalize actions that, if undertaken by nation-states, would violate the convention. When undertaken by individu-

als, according to Bond, these actions would constitute terrorism. Bond contends that § 229's statutory history reinforces its connection with counter-terrorism.

The United States counters that the convention was aimed to end the use of chemical weapons in any circumstance. Although terrorism was an important concern, the United States argues that the convention and § 229 extended to all misuses of chemicals. The statute's broad scope, the United States contends, furthers the nonproliferation and free-trade goals of the convention.

Did Congress' Power to Regulate Commerce Authorize § 229?

The Tenth Amendment reserves for the states the powers not delegated to the federal government. Bond argues that the Constitution denies Congress a general police power. Criminal law, according to Bond, is primarily the interest of the individual states, unless the matter implicates national or international concerns. Bond claims that the Supreme Court has never accepted that Congress has the authority to regulate crimes without a nexus to a federal matter. Accordingly, Bond contends that federal attempts to criminalize broadly any malicious use of chemicals conflict with the Constitution's federal structure.

The United States counters that there exists a lucrative interstate market for chemicals, the regulation of which requires the prohibition of their misuse. Previously, the Supreme Court has held that Congress' power to regulate interstate commerce may reach noncommercial actions that fit within a larger regulatory scheme. Accordingly, the local nature of an action does not necessarily shield it from Congress' reach. The United States insists that to exempt Bond's conduct from Congress' reach would undermine Congress' ability to regulate chemical commerce. Thus, in the United States' view, Congress had the authority to prohibit conduct such as Bond's.

Did Congress' Power to Implement Treaties Authorize § 229?

The United States asserts that Congress' treaty power provides an independent justification for § 229. That authority, in the United States' view, is broad to empower the federal government to carry out its international obligations. Relying on *Holland*, the United States insists that § 229 is valid as a necessary and proper means to implement the convention. The United States distin-

guishes between the constitutional scope of treaties, which is limited by express constitutional prohibitions, and the subject-matter scope of treaties, which extends to all foreign concerns. According to the United States, Bond's conduct fits within the global regulatory scheme contemplated by the convention and § 229.

Bond counters that a treaty, even if valid, cannot grant Congress authority it would not have otherwise. To recognize such broad treaty power, Bond argues, would permit a circumvention of nearly every federal limitation. According to Bond, *Holland* only validates treaty-implementing statutes to the extent that they involve matters of national or international importance. Thus, Bond argues that Congress' treaty power cannot reach conduct, like Bond's, that has no nexus to a federal concern. If *Holland* cannot be reconciled with that principle of federal restraint, Bond urges the Supreme Court to overrule *Holland*.

Conclusion

This case presents the Supreme Court with an unusual combination of international treaties and domestic crime. This case will determine the proper scope of Congress' legislative authority resulting from a treaty signed in a modern context. Further, it will define the proper link between legislation aimed at curtailing international warfare and a domestic dispute involving a love triangle.

Written by Daniel Rosales and Jordan Manalastas. Edited by Allison Nolan. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

BURRAGE V. UNITED STATES (12-7515)

Appealed from the U.S. Court of Appeals for the Eighth Circuit

Oral argument: Nov. 12, 2013

In April 2010, Marcus Burrage sold heroin to Joshua Banka, which Banka used along with other drugs shortly before his death. Medical and toxicology reports concluded that although the heroin contributed to Banka's death, neither report stated that Banka would have lived if he had not taken heroin. After a grand jury charged and convicted Burrage with distribution of heroin causing death under § 841 (b)(1)(C), he

appealed, arguing the jury instructions were erroneous. Burrage proposed several instructions on the standard of causation to use under § 841 (b)(1)(C), arguing that "results from" requires the government to prove proximate cause and not just that the heroin "contributed to" the death. The district court concluded, and the court of appeals affirmed, that the "contributed to" instructions were consistent with the precedent in the Eighth Circuit. The Supreme Court's decision could bring clarity to the causation language of the statute. This case provides the Court with the opportunity to determine when someone who distributes drugs can be held criminally responsible for the death of the user and what the government must prove in such cases. Full text is available at www.law.cornell.edu/supct/cert/12-7515.

Written by Paul Rodriguez and Melanie Senosiain. Edited by Allison Nolan.

FERNANDEZ V. CALIFORNIA (12-7822)

Appealed from the Court of Appeal of California, Second District

Oral argument: Nov. 13, 2013

Walter Fernandez was convicted of second-degree robbery and domestic abuse charges. Following the alleged robbery, police came to Fernandez's apartment and asked for permission to search. The police proceeded to arrest Fernandez for the robbery and removed him from the apartment. A short time later, the police returned and obtained consent to search the apartment from Fernandez's girlfriend, another tenant of the apartment. At trial, Fernandez moved to suppress evidence found in his apartment that he claims was obtained as a result of an unreasonable warrantless search and seizure. Fernandez argues that his refusal of consent to search the apartment remained in effect after his lawful arrest. California argues that a co-tenant must remain present for his objection to override her consent. The California Court of Appeal found the search permissible under the Fourth Amendment as a result of Fernandez's girlfriend's consent to entry. One of the principal reasons for the Court of Appeal's holding was that it provides a clear rule for law enforcement to follow in the field. The Supreme Court's decision in this case will clarify its previous ruling in *Georgia v. Randolph*, which held that when one co-

tenant refused to consent to a search of the dwelling, the police could not immediately obtain consent from another co-tenant. The outcome of this case will also clarify procedures for law enforcement when obtaining consent to search. Full text is available at www.law.cornell.edu/supct/cert/12-7822.

Written by Rose Petoskey and Katherine Hinderlie. Edited by Angela Lu.

UNITE HERE LOCAL 355 V. MULHALL (12-99)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit

Oral argument: Nov. 13, 2013

On August 23, 2004, petitioner UNITE HERE Local 355 (Local 355) entered into an agreement with respondent Hollywood Greyhound Track, Inc. (Mardi Gras), employer of co-respondent Martin Mulhall. Under the terms of the agreement, Mardi Gras agreed to facilitate Local 355's unionization of its employees by remaining neutral in the process and providing Local 355 with access to its facilities and employee information. Additionally, if the unionization effort was successful, Mardi Gras agreed to recognize Local 355 as the exclusive bargaining agent for its employees. In exchange, Local 355 promised to support a Florida ballot initiative that would allow casinos to operate slot machines in Broward and Miami-Dade counties. Mulhall opposed the unionization effort and sought to enjoin enforcement of the agreement under § 302 of the Labor-Management Relations Act. Mulhall argues that Mardi Gras' promises are things of value under § 302 and that the promises constitute an illegal payment from an employer to a labor union. Local 355 argues that Mardi Gras' promises do not constitute things of value and that cooperative employer-union agreements have long been considered lawful. The Eleventh Circuit held that an employer's promises in union-organizing agreements may constitute things of value, implicating § 302. The Supreme Court's decision may impact the future of cooperative employer-union agreements and the contours of employees' and unions' efforts to unionize. Full text is available at www.law.cornell.edu/supct/cert/12-99.

Written by Kalson Chan and Alex Kerrigan. Edited by Chamwoo Park.

MEDTRONIC INC. V. BOSTON SCIENTIFIC CORP (12-1128)

Appealed from the U.S. Court of Appeals for the Federal Circuit

Oral argument: Nov. 5, 2013

In a traditional patent infringement suit, the patent owner has the burden of proving infringement. In *MedImmune, Inc. v. Genentech, Inc.*, the Supreme Court held that a patent licensee could bring a declaratory judgment action against a licensor without violating the agreement. Here, petitioner Medtronic entered a license agreement with respondent Mirowski Family Ventures (MFV) that allowed it to challenge the validity, enforceability, and scope of a medical device patent in a declaratory judgment action. The Supreme Court will decide whether the burden of proof remains with the patent owner or falls instead on the licensee in a declaratory judgment suit. Medtronic argues that the traditional assignment of the burden of proving infringement should apply in the declaratory judgment context, as this would promote fairness and consistency in judgments, further the public interest in determining the scope of a patent, and because a declaratory judgment action should not affect issues of substantive law. MFV argues that the burden of proving non-infringement should be on the licensee since it is the party seeking relief and because this will incentivize patent owners to enter license agreements. The Court's ruling in this case will have an impact on how declaratory judgment actions involving patent licenses will be litigated and may impact the incentives both for litigating license agreements and for entering them in the first place. Full text is available at www.law.cornell.edu/supct/cert/12-1128.

Written by Holly Tao and Chihiro Tomioka. Edited by Jeremy Amar-Dolan.

ROSEMOND V. UNITED STATES (12-895)

Appealed from the U.S. Court of Appeals for the Tenth Circuit

Oral argument: Nov. 12, 2013

On August 26, 2007, Justus Rosemond drove with two acquaintances to a local park where they planned to sell one pound

of marijuana to Ricardo Gonzales and Coby Painter. The deal went awry, with Gonzales and Painter fleeing with the marijuana without delivering payment. As Rosemond and his cohorts chased after Gonzales and Painter, one of the occupants of the car began firing a handgun at Gonzales. Rosemond was charged with aiding and abetting the use of a firearm in relation to a drug-trafficking crime. The issue before the Court is whether, as Rosemond argues, he is liable as an accomplice only if he intentionally facilitated or encouraged the use of the firearm; or, as the United States maintains and the Tenth Circuit ruled, the fact that he knew that one of his cohorts used a firearm during the crime suffices to impose accomplice liability. This case raises important concerns regarding the scope of prosecutorial discretion under § 924(c), as well as burden of proof establishing accomplice liability for aggravating offenses. Full text is available at www.law.cornell.edu/supct/cert/12-895.

Written by Jordan Kobb and Craig Steen. Edited by Stephen Wirth.

LAWSON V. FMR LLC (12-3)

Appealed from the U.S. Court of Appeals for the First Circuit

Oral argument: Nov. 12, 2013

Jonathan Zang and Jackie Hosang Lawson sued their respective Fidelity employers, alleging that the companies had retaliated against them for reporting what they believed to be securities law violations. Section 1514A of the Sarbanes-Oxley Act protects employees of public companies from retaliation after blowing the whistle on company wrongdoing. Zang and Lawson argue that § 1514A should also apply to employees of private contractors and subcontractors that contract with public companies since these employees may be in the best position to report problems. FMR LLC argues that Congress only intended § 1514A to apply to public employees and that extending coverage would create an unmanageable amount of litigation. The U.S. Court of Appeals, First Circuit, ruled that § 1514A only protects public employees and Congress must explicitly expand coverage if it wants to cover employees of private contractors. The Supreme Court's decision in this case will implicate whether and to what

extent Sarbanes-Oxley provisions apply to private companies. Also, this decision will affect whether employees of private companies that contract with public companies will be protected from retaliation if they report securities violations to the Securities Exchange Commission. Full text is available at www.law.cornell.edu/supct/cert/12-3.

*Written by Sean Mooney and Brett Mull.
Edited by Angela Lu.*

SPRINT COMMUNICATIONS CO. V. JACOBS (12-815)

Appealed from the U.S. Court of Appeals for the Eighth Circuit

Oral argument: Nov. 5, 2013

Sprint brought an action before the Iowa Utility Board to prevent Windstream, then called Iowa Telecom, from cutting off service to Sprint's customers. After refusing Sprint's request to cancel the hearing, the board required Sprint to pay interstate access charges to Windstream. Sprint, thinking that the Iowa Utility Board did not have jurisdiction to make this determination, initiated suits in federal and state courts against Elizabeth S. Jacobs and other members of the Iowa Utility Board in their official capacity. In the federal suit, the district court granted the board members' abstention motion under *Younger v. Harris*—which requires that the federal court abstain from interfering with certain ongoing state judicial proceedings. The Eighth Circuit affirmed the abstention. The Supreme Court will determine whether the *Younger* abstention applies to a federal suit when there is an ongoing remedial action in state court. The Court's ruling implicates important issues of federalism, including whether a party can seek federal judicial review of a state agency's decision after the party voluntarily initiated the action. Full text is available at www.law.cornell.edu/supct/cert/12-815.

Written by Jacob Brandler and T. Sandra Fung. Edited by Chamwoo Park.

TOWN OF GREECE V. GALLOWAY (12-696)

Appealed from the U.S. Court of Appeals for the Second Circuit

Oral argument: Nov. 6, 2013

In 1999, the Town of Greece, New York began starting its board meetings with a

moment of prayer. The town developed an informal practice of inviting clergy to give the opening prayer, and those clergy who accepted were given the "Chaplain of the Month" award. In 2008, Susan Galloway and Linda Stephens started complaining about the practice because they felt it aligned the town with Christianity. Over the next year, the town invited four non-Christian prayer-givers, but in January 2009, all prayer-givers were again Christian. Galloway and Stephens sued in the Western District of New York, claiming that the practice violated the Establishment Clause of the First Amendment. The district court granted summary judgment in favor of the town. On appeal, the Second Circuit reversed, concluding that a reasonable person could believe that the practice affiliated the town with Christianity. The town petitioned for a writ of certiorari, which the Court granted to determine the constitutionality of legislative prayer practices. This case will address the boundaries of the freedom of religion and the meaning of the Establishment Clause of the First Amendment. The Supreme Court's decision could effectively end long-standing governmental practices that contain religious connotations. Full text is available at www.law.cornell.edu/supct/cert/12-696.

*Written by Paul Kang and Oscar Lopez.
Edited by Jeremy Amar-Dolan.*

MISSISSIPPI V. AU OPTRONICS CORP. (12-1036)

Appealed from the U.S. Court of Appeals for the Fifth Circuit

Oral argument: Nov. 6, 2013

AU Optronics, et al., are companies who allegedly engaged in a massive price-fixing conspiracy on liquid crystal display (LCD) panels over the course of a decade. Following criminal trials and sentences, the State of Mississippi, along with 12 other states, filed a *parens patriae* action against the delinquent companies, seeking damages under state laws. AU Optronics, et al., removed the action to the respective district court under the Class Action Fairness Act (CAFA) of 2005, where the Court remanded the case. On appeal, the Fifth Circuit reversed the lower court's decision and held Mississippi's *parens patriae* action removable under CAFA. The Supreme Court's ruling will implicate the rights of certain

affected parties like the elderly and on scenarios of possible abuse of *parens patriae* actions should removal be disallowed. Full text is available at www.law.cornell.edu/supct/cert/12-1036.

Written by So Yeon Chang and Madeline Weiss. Edited by Dillon Horne.

SANDIFER V. U.S. STEEL CORP. (12-417)

Appealed from the U.S. Court of Appeals for the Seventh Circuit

Oral argument: Nov. 4, 2013

Petitioner Sandifer represents a group of former and current steelworkers from various plants owned and operated by respondent U.S. Steel. United Steelworkers, a labor union which has had a collective bargaining agreement in place with U.S. Steel since 1947, represents the steelworkers. The collective bargaining agreements have stipulated that workers will not be paid for the time it takes to put on their safety gear before they start working or for the time it takes to remove their safety gear after they stop working. The Fair Labor Standards Act requires employers to pay workers for these activities, but § 203(o) allows exceptions to payment for time spent changing clothes when labor unions and management specify otherwise in collective bargaining agreements. The steelworkers in this case argue that putting on safety gear is not encompassed by the phrase "changing clothes," which they contend only refers to changing from street clothes into work clothes. U.S. Steel argues that safety gear is included within that language and has been appropriately bargained over with the labor union. The decision in this case will clarify what activities are covered by § 203(o) and in doing so will provide clarity to management and labor unions when they collectively bargain over these issues. Specifically, the outcome of the case will determine whether unions may bargain away a statutory right of employees to be paid for time spent putting on and removing required safety gear for work. Full text is available at www.law.cornell.edu/supct/cert/12-417.

Written by Jennifer Breen and L. Alyssa Chen. Edited by Dillon Horne.