



The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. The previews include an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

AMERICAN BROADCASTING COMPANIES, INC. V. AEREO, INC. (13-461)

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

Oral argument: April 22, 2014

Issue

Does a company “publicly perform” a television program when it retransmits that program to thousands of paid subscribers over the Internet?

Question as Framed for the Court by the Parties

A copyright holder possesses the exclusive right “to perform the copyrighted work publicly.” 17 U.S.C. §106(4). In the Copyright Act of 1976, Congress defined the phrase “[t]o perform ... ‘publicly’” to include, among other things, “to transmit or otherwise communicate a performance or display of the work ... to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.” *Id.* §101. Congress enacted that provision with the express intent to bring within the scope of the public-performance right services that retransmit over-the-air television broadcasts to the public. Respondent Aereo offers just such a service. Aereo captures over-the-air television broadcasts and, without obtaining authorization from or compensating anyone, retransmits that programming to tens of thousands of members of the public over the Internet for a profit. According to the Second Circuit, because Aereo sends each of its subscribers an individualized transmission of a performance from a unique copy of each copyrighted program, it is not transmitting performances “to the public,” but rather is engaged in tens of thousands of “private” performances to paying strangers.

The question presented is:

Whether a company “publicly performs” a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the Internet.

Facts

Aereo allows its subscribers to watch and record locally broadcast television programs over the Internet for a monthly fee. It provides the functionality of a television, a digital video recorder (DVR), and a Slingbox. A user can watch a program currently being broadcast with a seven-second delay, or record the program for later viewing. Users can watch their programs on a number of devices, including computers, mobile devices, and tablets. Aereo retransmits the content without a license and without paying a fee to copyright holders.

Aereo’s facility in Brooklyn, N.Y., houses large antenna boards, each containing 80 individual, dime-sized antennas. A user recording or watching a program is assigned an antenna, with no two users ever sharing the same antenna simultaneously. Because each antenna creates a unique copy of the program, a watching user sees an individually created copy on his or her device. Each copy is accessible only to that user, and no other Aereo subscriber can ever view that particular copy.

The American Broadcasting Company (ABC) and other major broadcasters sued Aereo for copyright infringement, and moved for a preliminary injunction in the Southern District of New York. ABC sought to prevent Aereo from transmitting television programs while they were still being broadcast. Although ABC established a likelihood of suffering irreparable harm without an injunction, the district court concluded that ABC did not demonstrate a likelihood of success on the merits or a balance of hardship tipping in its favor. The court denied the preliminary injunction.

On appeal, a three-judge panel for the

Second Circuit Court of Appeals affirmed the district court decision. The court pointed to the 1976 Copyright Act’s language requiring copyright owners’ permission for public performances of their work. The court concluded that the plaintiffs did not demonstrate a likelihood of prevailing on the merits in their copyright infringement action. The Supreme Court granted *certiorari* on January 10, 2014.

Discussion

This case presents the Supreme Court with the opportunity to determine whether a company that retransmits television broadcasts to paid subscribers without appropriate licensing violates the Copyright Act. ABC and other major networks argue that Aereo’s unauthorized retransmissions are the type of copyright infringement that Congress intended to prevent with the Copyright Act. Aereo argues that it merely facilitates the private viewership that the Copyright Act allows. The Supreme Court’s determination will have broad implications for broadcast television’s business model and the rapidly changing distribution models for copyrighted content.

Economic Consequences of Validating Aereo’s Technology

In support of ABC, the Screen Actor’s Guild and others argue that allowing unlicensed streaming of broadcast content harms the public by destroying the economic incentives to create technological innovations and quality television programming. Additionally, ABC argues that Aereo threatens the very innovation that copyright protection is meant to foster. If the Supreme Court affirms the lower courts, ABC contends, retransmission and advertisement fees will sharply decline, making broadcast television a less financially attractive medium for distributing copyrighted content. The United States adds that networks will have no option but to move their content to paid cable networks, adversely impacting millions of households that rely on free tele-

vision programming as a principal source of information and entertainment. Two major sports leagues, the National Football League (NFL) and Major League Baseball (MLB), argue that although Aereo currently limits its services to retransmitting local programming, upholding the Second Circuit's interpretation of the Copyright Act could allow any user in the world to stream programming from anywhere, putting the United States in violation of its international obligations.

In support of Aereo, the Computer and Communications Industry Association (CCIA) and Mozilla Corporation argue that adopting ABC's position would endanger the emerging cloud computing industry, which has the potential to create 685,000 jobs over the next five years and generate \$1.1 trillion in revenue per year by 2015. Furthermore, it argues, a decision against Aereo could imperil socially beneficial innovations, like those of Google and Amazon, that build on the efficiencies promised by cloud computing. Similarly, various small and independent broadcasters contend that services like Aereo's enable them to provide broader television access to lower-income viewers that cannot afford cable or satellite subscriptions. The Electronic Frontier Foundation (EFF) and others argue that Aereo's versatile and creative technology will expand viewers' access to broadcast television, increasing revenues and allowing broadcast programming to better compete against cable programming. The EFF contends that if Aereo's business model cannot bring more value to its customers than those of other video technology providers, Aereo and similar technology will disappear from the market without court intervention.

Analysis

The Court must determine whether the Constitution's Copyright Clause allows a company to transmit television programs to its paying viewers over the Internet without the permission of the broadcasting network being viewed. ABC argues that Aereo's technology clearly infringes its public performance rights. On the other hand, Aereo argues that it has not publicly performed copyrighted works because its technology only enables private, lawful performances. ABC argues that the Second Circuit's decision was based on an incorrect reading of the transmit clause of the 1976 Copyright Act that clearly disregards Congress's intent. Aereo argues that copyright policy supports affirming the Second Circuit's decision.

The Meaning of "Public Performance"

ABC argues that Congress clearly intended to prevent companies from retransmitting broadcasts without permission. Reasoning that the Copyright Act unambiguously states that displaying a work publicly means to "transmit or otherwise communicate a performance ... of the work ... to the public, by means of any device or process," ABC argues that the fact that Aereo transmits broadcasts to subscribers' homes is irrelevant because Congress broadly included performances that were either received "at the same time or at different times." Moreover, ABC asserts that even though the Court has previously concluded that retransmitting over-the-air broadcasts was not public performances because the broadcasts were already made free to the public, Congress later rejected this determination in revisions of the transmit clause. ABC contends that the legislative history of the transmit clause shows that Congress believed a retransmission service is offering access to content, not just equipment, so it must be authorized by the copyright holder to do so. ABC states that Congress intended the clause to encompass all technology (even that which is not yet known) that transmits copyrighted works to the public. Additionally, ABC contends that Aereo's arguments neglect the sole purpose of the Copyright Act, namely to encourage individuals to advance the public welfare through authors' innovation. ABC further argues that Aereo's business model is solely based on the unauthorized exploitation of copyrighted broadcasts that it retransmits to subscribers for a lower fee. ABC fears that the transmit clause will be rendered useless if companies like Aereo can find simple ways to circumvent the statute.

Aereo argues that it does not publicly retransmit content because it uses individual antennas connected to DVRs to transmit to private parties in their own homes, only when they select "watch" or "record." Additionally, the recorded program is not saved permanently, so the transmission is generated from the individual recording of the program and not the broadcast itself. The Second Circuit determined that the relevant performance to determine if a work is publicly performed is the transmission itself; therefore, Aereo contends that its individual transmissions are private performances. It further argues that video-on-demand companies such as Netflix and Hulu would not be affected by this determination because they transmit performances to the public. Aereo also contends it cannot

be held liable for infringement because its equipment simply responds to subscribers' requests. Moreover, it maintains that it should not be held liable for copyright infringement because it is not directly engaged in infringing conduct. At most, Aereo contends, its conduct could only be liable for contributory infringement. Moreover, it argues that the government incorrectly asserts that Congress intended to impose direct liability on any company that offers technology to facilitate over-the-air broadcasts. To the contrary, Aereo asserts that when a cable company transmits frequencies to a user, the user's directions dictate Aereo's data stream.

Conclusion

The Supreme Court will decide whether a company that retransmits programming to paid subscribers over the Internet without appropriate licensing violates the Copyright Act. ABC and other major networks argue that Aereo's unauthorized retransmissions are the type of copyright infringement that Congress intended to prevent with the Copyright Act. Aereo argues that it merely facilitates the private viewership that the Copyright Act allows. The Court's determination will have broad implications for broadcast television's business model and the rapidly changing distribution models for copyrighted content. ©

Written by Paul Rodriguez and Melanie Senosiain. Edited by Chanwoo Park. The authors would like to thank former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

SUSAN B. ANTHONY LIST V. DRIEHAUS (13-193)

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

Oral argument: April 22, 2014

Issue

Whether a party can bring an anticipatory, pre-enforcement challenge to an Ohio law that prohibits the dissemination of a false statement concerning a political candidate during an election campaign, either knowing it to be false or with reckless disregard of whether it was false, if the statement is designed to promote the election, nomination, or defeat of the candidate?

Question as Framed for the Court by the Parties

I. To challenge a speech-suppressive law,

must a party whose speech is arguably proscribed prove that authorities would certainly and successfully prosecute him, as the Sixth Circuit holds, or should the court presume that a credible threat of prosecution exists absent desuetude or a firm commitment by prosecutors not to enforce the law, as seven other circuits hold?

II. Did the Sixth Circuit err by holding, in direct conflict with the Eighth Circuit, that state laws proscribing false political speech are not subject to pre-enforcement First Amendment review so long as the speaker maintains that its speech is true, even if others who enforce the law manifestly disagree?

Facts

In March 2010, Congress passed the Affordable Care Act (ACA). Susan B. Anthony (SBA) List is a pro-life nonprofit organization that opposes the ACA, claiming that the law uses taxpayer money to fund abortions. Prior to the 2010 general elections, SBA List planned to release advertisements critical of Rep. Steve Driehaus (D-OH), who voted in favor of enacting the ACA and who was up for re-election. In particular, SBA List intended to put up a billboard that read, “Shame on Steve Driehaus! Driehaus voted FOR taxpayer-funded abortion.” Ultimately, though, the billboard owner decided not to put up the advertisement after Driehaus threatened to bring a lawsuit if the company aired SBA List’s message.

On Oct. 4, 2010, Driehaus filed a complaint with the Ohio Elections Commission (OEC) against SBA List, claiming that the advertisement violated Ohio Rev. Code §§ 3517.21(B) (9)-(10). The first section makes it unlawful for any person to knowingly make a false statement about a candidate’s voting record during a campaign for political office with the intent to affect the outcome of that campaign. The second section prohibits posting or otherwise disseminating any false statement about a candidate if the statement is designed to defeat the candidate.

Under Ohio law, any person can file a complaint with the OEC alleging a violation of state election laws, and if the Secretary of State knows of such a violation, he or she must file a complaint. If such a complaint is filed shortly before an election, the OEC will refer the complaint to a panel of members for an expedited hearing. At that hearing, the panel will determine whether probable cause exists for the full commission to hear the complaint. If a matter is referred to the full OEC, it must decide whether there is clear and convincing

evidence that a violation occurred. If so, the OEC can refer the matter to the prosecutor, but the prosecutor is not obligated to act. The full OEC or the probable-cause panel may also determine that a complaint is frivolous and order the complainant to pay attorney’s fees and/or the OEC’s own costs. A party may appeal an adverse final OEC decision in state court.

Driehaus and SBA List agreed to postpone the full OEC hearing until after the November 4 election. Driehaus lost the election and later withdrew his OEC complaint. On December 21, SBA List filed a complaint alleging that the OEC proceedings chilled its speech and associational rights.

SBA List’s case was consolidated with a case brought by the Coalition Opposed to Additional Spending and Taxes (COAST), an anti-tax advocacy organization that filed a similar federal action, though COAST did not allege that it was ever involved in an OEC proceeding. The district court granted the defendants’ motions to dismiss on standing, ripeness, and mootness grounds.

The Sixth Circuit affirmed the dismissal, holding that both SBA List’s and COAST’s claims were unripe for adjudication. On Jan. 10, 2014, the Supreme Court granted SBA List’s petition for *certiorari*.

Discussion

This case presents the Supreme Court with the opportunity to determine when a party may challenge an election law as an unconstitutional abridgment of freed speech.

First Amendment Concerns

SBA List and supporting *amici* argue that the current enforcement regime of the Ohio election laws violates the First Amendment based on the chilling effect it has on speech. *Amicus* 1851 Center for Constitutional Law contends that the right to open political discourse is the touchstone of the American system of democracy. The Supreme Court, *amicus* argues, has time and again recognized the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Amicus* Center for Constitutional Jurisprudence agrees, maintaining that the Ohio law condemns would-be critics of political candidates from speaking even if they believe a fact is true. This is the case, *amicus* claims, because under the current framework, critics may fear that their speech will result in a commission hearing, and the time and

expense of such a hearing, in addition to possible criminal and civil sanctions, is far too burdensome. In particular, numerous *amici* argue that speech that is critical of public officials is an important type of protected speech under the First Amendment.

Driehaus concedes the importance that SBA List and supporting *amici* place on the First Amendment, noting that “all can agree that courts have gone, and should go, to great lengths to nurture free speech.” However, notwithstanding the significant First Amendment issues at stake, Driehaus maintains there are other important interests that weigh in favor of “postpon[ing] judicial decision on ‘far reaching’ First Amendment issues.” One of those is the promotion of federalism. Driehaus points out that it is the role of the state courts to resolve matters of state law, and that federal courts should only step in when a concrete controversy arises. The fact that a constitutional issue—here the First Amendment—is involved in a case does not automatically create federal jurisdiction. If the Court finds that SBA List has standing to challenge the law, Driehaus believes that the courthouse door will be open to future plaintiffs wishing to challenge laws as unconstitutional when an actual case or controversy does not exist.

Analysis

This case presents the Supreme Court with several questions pertaining to the justiciability of claims challenging the constitutionality of state laws that prohibit false political speech during election campaigns. Along with petitioner COAST, SBA List argues that not only is its case ripe for review, but that its merits are supported by First Amendment jurisprudence. The respondent counters that the petitioner has not met the requisite threshold for its case to be heard and that its free speech concerns are too speculative to be legally defensible.

Justiciability

SBA List and COAST argue that the Sixth Circuit erred in holding that their claims were not ripe for review. They cite *Babbitt v. United Farm Workers Nat’l Union*, where the Court held that a pre-enforcement challenge is ripe for review if “the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.” They contend that every other circuit presumes that a credible

threat of prosecution exists if the plaintiff's intended speech *arguably* violates the law, whereas the Sixth Circuit holds that such a credible threat exists if the authorities will "*certainly and successfully*" prosecute the plaintiff. They argue that this distinction is especially important in the First Amendment context because, if the Court applies the higher standard of evidence required by the Sixth Circuit, then more people will choose to censor themselves rather than risk prosecution, and self-censorship produces the exact type of chilling effect on free speech that the First Amendment seeks to prevent.

State respondents counter that petitioners' characterization of the Sixth Circuit's standard is incorrect. They cite *Clapper v. Amnesty Intern. USA*, where the Court stated that a future injury "must be *certainly* impending," and that "[a]llegations of *possible* future injury are not sufficient." They argue that petitioners must allege more than a mere "intent to speak" because the Court has not exempted threat-of-enforcement cases from Article III's requirement that plaintiffs need to allege a "concrete, imminent, and direct injury."

First Amendment Values

SBA List and COAST also argue that the rationales advanced by the Sixth Circuit in support of its decision are incompatible with basic First Amendment values. According to the Sixth Circuit, petitioners failed to establish that their claim was ripe for review because they would not concede that their statements were and would be false, as is required by the Sixth Circuit for pre-enforcement First Amendment challenges. They contend that this is irrelevant because the credible-threat test turns on an objective, rather than a subjective, inquiry (i.e., it matters only that the authorities believe the speech is false). Moreover, they argue that no final determination as to whether their speech was illegal is required to establish a credible threat of prosecution because it is that credible *threat* that creates the impending injury, and this threat continues to exist so long as the authorities do not disavow prosecution. Finally, petitioners argue that the fact that anyone can bring a claim against them under the OEC's current procedures makes the threat of prosecution more, rather than less, credible.

State respondents counter that the petitioners' allegations are too speculative. According to the respondents, the fact that the petitioners continue to assert that their

statements were and would be truthful makes them "another degree removed" from Article III's specific grievance requirement. With regard to the OEC's finding of probable cause, respondents reiterate the importance of the fact that it did not constitute a final adjudication. Finally, despite the fact that anyone can bring a complaint against petitioners under the OEC's current procedures, state respondents argue that such complainants do not actually enforce the laws, that prosecutors must actually decide to enforce the laws, that the prosecutors may only exercise such discretion if the OEC agrees with the complainants, and that state courts may still reject the OEC's decision.

Conclusion

This case presents the Supreme Court with several important questions concerning justiciability and the First Amendment. If the Court determines that petitioners do have standing in this case, it will then consider whether the First Amendment's protection of free speech extends to false political statements made during election campaigns, a form of speech that is still proscribed by law in about one-third of the states. The outcome of this case is likely to have an immediate impact on the upcoming midterm elections, as well as a long-term impact on the Court's ripeness doctrine. ☉

Written by Jordan Kobb and Craig Steen. 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.

CTS CORPORATION V. PETER WALDBURGER (13-339)

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

Oral argument: April 23, 2014

In 2009, respondent Peter Waldburger and other landowners discovered that their well water was contaminated with chemicals similar to the ones stored by CTS Corporation when it owned the land 20 years earlier. About two years after this discovery, Waldburger and the other landowners brought a nuisance action, subject to North Carolina law, against CTS Corporation. North Carolina requires that suits involving real property be brought within three years of the injury becoming discoverable (a statute of limitation) and within 10

years of the defendant's last act (a statute of repose). In attempting to prevent dismissal of this case, Waldburger argues that this latter 10-year requirement is preempted by § 9658 of the Comprehensive Environmental Response, Compensation, and Liability Act. CTS Corporation argues that § 9658 does not apply to statutes of repose, only statutes of limitations. The Supreme Court now has to consider whether § 9658 applies to statutes of repose. Resolution of this case will have far-reaching consequences, affecting both potential defendants, including industrial companies and the U.S. government, and potential victims of contamination and hazardous waste—which could include anyone who does not know that they are suffering injury from undiscovered hazardous waste. Full text is available at www.law.cornell.edu/supct/cert/13-339. ☉

Written by Jacob Brandler and T. Sandra Fung. Edited by Dillon Horne.

LANE V. FRANKS (13-483)

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

Oral argument: April 28, 2014

Edward R. Lane is the former director of the Community Intensive Training for Youth Program (CITY) at Central Alabama Community College (CACC); Steve Franks is the former president of CACC. As director of CITY, Lane conducted an audit and discovered that Alabama state Rep. Susan Schmitz (D) was on CITY's payroll but had not come into work at the office or performed any work outside the office for CITY. Lane terminated Schmitz's employment after she refused to report to work. After Schmitz's termination, the FBI began to investigate Schmitz for mail fraud and fraud concerning a program receiving federal funds. Lane was subpoenaed and testified at both of Schmitz's criminal trials. Lane testified that Schmitz had not been reporting to work at CITY and was only receiving paychecks. Following the Schmitz's criminal trials, Franks terminated Lane. Lane filed suit against Franks in his official capacity and his individual capacity, alleging that he violated Lane's First Amendment rights by terminating him in retaliation for Lane testifying against Schmitz. The Eleventh Circuit affirmed the district court's ruling that because Lane's speech was made under his

official duties as CITY's director, Lane did not state a claim for retaliation. This case will determine the scope of the First Amendment as it relates to protecting testifying public employees from retaliation by their employers. Full text is available at www.law.cornell.edu/supct/cert/13-483. ©

Written by Rose Petoskey and Katherine Hindertie. Edited by Stephen Wirth.

LIMELIGHT NETWORKS, INC. V. AKAMAI TECHNOLOGIES, INC. (12-786)

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

Oral argument: April 30, 2014

Akamai Technologies, Inc. sued Limelight Networks, Inc., for infringing on a patent for a method of delivering web content. Limelight had itself performed all but one step of the patented method, leaving its customers to perform the remaining step. The Federal Circuit ruled that Limelight's conduct constituted inducement infringement under 35 U.S.C. § 271(b). Akamai argues the Federal Circuit's new standard more comprehensively protects the rights of patent owners. Limelight argues that, in order for there to be a violation of § 271(b), a single entity must have directly infringed on a patent under § 271(a), and there is no such violation here. On the other hand, Akamai argues that the Federal Circuit's new rule is consistent with common law tort principles and with Supreme Court precedent. Full text is available at www.law.cornell.edu/supct/cert/12-786. ©

Written by Kalson Chan and Alex Kerrigan. Edited by Allison Nolan.

NAUTILUS, INC V. BIOSIG INSTRUMENTS INC. (13-369)

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

Oral argument: Apr. 28, 2014

Since the 1990s, Nautilus, Inc. and Biosig Instruments, Inc., have been involved in a series of patent disputes. The technology at issue in the current lawsuit is a new model of heart rate monitors that are mounted on exercise equipment. Nautilus argues that Biosig's

patent is indefinite as a matter of law and is therefore invalid. Biosig argues that a patent should be broad enough to protect innovators and their still-developing products. The Federal Circuit held that the patent was valid because it was not insolubly ambiguous. How the Supreme Court decides this case will impact the requirements inventors and drafters must meet in order to patent new technologies. The decision will affect what inventions and improvements can and cannot be patented and the degree of specificity that each patent must meet. Full text is available at www.law.cornell.edu/supct/cert/13-369. ©

Written by Sean Mooney and Brett Mull. Edited by Jeremy Amar-Dolan.

POM WONDERFUL LLC V. COCA-COLA COMPANY (12-761)

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

Oral argument: April 21, 2014

The Coca-Cola Company sells a "Blueberry Pomegranate" beverage blend containing less than 1 percent pomegranate and blueberry juice. Federal statutes and regulations provide specific guidelines for juice labeling, which are enforced by the Food and Drug Administration (FDA). However, the FDA has not sued Coca-Cola, and Coca-Cola asserts that it has followed the federal law. Pom Wonderful LLC, a competitor that sells pomegranate juice, alleges that Coca-Cola's juice label constitutes an unfair trade practice and sued Coca-Cola under the Lanham Act. The Court's decision will impact the uniformity of food-labeling rules and private parties' right to sue for unfair trade practices in the food and drug industries. Full text is available at www.law.cornell.edu/supct/cert/12-761. ©

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

THE REPUBLIC OF ARGENTINA V. NML CAPITAL, LTD. (12-842)

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

Oral argument: April 21, 2014

In December 2001, Argentina defaulted on

its external debt payments. As a result, several bondholders agreed to debt restructurings with the country. However, NML Capital opted to file 11 different actions against Argentina in the Southern District of New York, with the district court ruling for NML in each action. Argentina has not satisfied any of the judgments, forcing NML to pursue Argentinian property located in the United States and abroad to try to attach and execute that property. NML subpoenaed two banks that are not parties to the litigation, seeking information about assets related to Argentina held at those banks. The Supreme Court will now consider whether a court can compel discovery of all assets, regardless of location, of a sovereign state in a post-judgment proceeding that would help enforce the judgment against that state. This decision could affect diplomatic relations between the United States and countries that give reciprocal treatment of judicial decisions. Full text is available at www.law.cornell.edu/supct/cert/12-842. ©

Written by Paul Kang and Oscar Lopez. Edited by Angela Lu.

RILEY V. CALIFORNIA (13-132)

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

Oral argument: April 29, 2014

In August 2009, David Riley was pulled over for having expired tags on his car and a suspended driver's license in San Diego, Calif. As per police department policy, the officer impounded Riley's car and conducted a warrantless search of the car. The officer found two handguns that were later linked to a shooting that had taken place a few weeks prior. During the arrest, the officers confiscated and rummaged through the data on Riley's smartphone without a warrant. Some of the data on the phone linked Riley to gang activity and the shooting and was entered into evidence at the trial, where Riley was convicted on three charges. Riley argues that allowing police officers to search through data on his cell phone without a warrant is an unacceptable intrusion on personal privacy. The respondent asserts that police officers need to be able to confiscate cell phones without first obtaining a warrant for safety reasons and to prevent destruction of

Supreme Court continued on page 111

Northern Dist. of California

† Frank Burke
 * Stephen H. Cassidy
 † Jennifer Estremera
 † Aaron Field
 † David William Hall
 † Nicole Horowitz
 * Jeffrey B. Kirschenbaum
 † Adrianna Nusbickel
 † Courtland Reichman
 † Patrick Richard

Orange County

* Kyra E. Andrassy
 * Louis J. Knobbe
 † Charles E. Pell
 † Leo Presiado

Oregon

† William Barquin
 † Andrea M. Barton
 † Jasmine Hites
 † Jane Hawkins Shoemaker
 * Emily Q. Shults

Phoenix

† Marvin D. Beauvais
 † Samuel Russell Cook
 Crowfoot
 † Jennifer M. Dahlberg
 * Cary L. Lackey

Sacramento

† Angela Clifford
 † Bobby Dale Sims
 † Camil A. Skipper

San Diego

† Curtis Grant Carl
 † Lori Y. Chiu
 † Blake L. Currey
 * James R. Lance

William D. Browning—Tucson

† Richard B. Bacal
 † Suzanne McKee
 † David Valadez
 * Jane L. Westby

TENTH CIRCUIT

† Lisa A. Christian
 † Christine Coleman

Colorado

* Ann J. Atkinson
 † Dion James Custis
 † Bryon M. Large
 † Brian L. Lewis
 † Heather Dawn Thompson

New Mexico

† Ellen Frick

Oklahoma City

* Trenton D. Boaldin
 * Ken Feagins
 * Fred A. Fugitt
 † Justin P. Hill
 * Mark R. Widell

Utah

† Autumn Fitzgerald
 † Naziol S. Nazarinia Scott
 † Jason B. Richards

ELEVENTH CIRCUIT

† Carlos Luis Diaz
 † Chelsea Rae Enright
 † Elisabeth Anne Fontugne
 † Jessica J. Lyublanovits
 † Matt D. Schulz
 † Chad E. Stewart
 † Jeffrey Allen Zachman

Atlanta

* Tony G. Powers
 † James Rusert

Birmingham

† Harold Patrick Hahn

Broward County

† Amanda P. Bennis
 * Gordon James III

Montgomery

† Christopher D. Glover
 † P. Leigh O'Dell

North Alabama

† Kevin C. Gray

North Central Florida

† Ian J. Dankelman
 † Arielle S. Eisenberg
 † Adolph J. Posey

Orlando

† Kirsten D. Blum
 * Jean D. Fortin
 * Joshua A. Mize
 † Martin White

South Florida

† Cary Oren Aronovitz
 † Enjoliue Dion Aytch
 * Daniel Cervantes
 * Robert A. Cuevas Jr.
 † Andrea D. England
 † Peter Forand
 * David O. Markus
 † Annette Torres
 † Michéle Celeste van Meeteren

Tallahassee

† Granville Petrie

Tampa Bay

* Erin M. Bradford
 † Amanda G. Chafin
 † Natalie K. Khawam
 † John William Landkammer
 † Charlene Lisa Lee
 † Lauren Louise Lewis
 * Marcio W. Valladares

D.C. CIRCUIT

† Susan C. Ervin
 † Charles W. Galbraith
 † Peter G. Patterson
 † Yihong Zhang

Capitol Hill

† Jonathan Alexander
 † Michelle Johnson-Weider
 † Ryan Majerus
 † Mariel Murray
 * Michael L. Whitlock

District of Columbia

† Leslie David Alderman III
 † Ariel Eva Applebaum-Bauch
 † Loren Andrea Friedel
 † Robert W. Helm
 * Silvio A. Krvaric
 † Nicholas Metcalf
 † James R. Shanahan Jr.

OVERSEAS

† David A. Melson

SUPREME COURT continued from page 99

evidence. The Supreme Court's decision in this case will affect the balance between those two concerns. Full text is available at www.law.cornell.edu/supct/cert/13-132. ©

Written by Gabriella Bensur and Jennifer Brokamp. Edited by Dillon Horne.

UNITED STATES V. CLARKE (13-301)

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

Oral argument: April 23, 2014

The Internal Revenue Service (IRS) investigated the tax returns of Dynamo Holdings Limited Partnership (DHLP) and in 2010 notified the partnership of deficiencies in its tax returns. The IRS issued summonses to third parties associated with DHLP, including the chief financial officer of the partnership, respondent Michael Clarke. None of the parties responded to the summonses. DHLP challenged the IRS's determination in tax court, and in April 2011, it sought enforcement of the unanswered summonses in federal dis-

trict court. The United States argues that the summonses should be enforced without an evidentiary hearing because the IRS has broad authority to issue summonses, and the evidence fails to show that the IRS had issued the summonses for an improper purpose. Clarke argues that he is entitled to an evidentiary hearing because he sufficiently alleged and demonstrated evidence to show that the IRS issued the summonses to gain an unfair litigation advantage, which is an abuse of power. Full text is available at www.law.cornell.edu/supct/cert/13-301. ©

Written by So Yeon Chang and Madeline Weiss. Edited by Chamwoo Park.

UNITED STATES V. WURIE (13-212)

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

Oral argument: April 29, 2014

Boston police officers arrested Brima Wurie in 2007 for distributing crack cocaine.

Without first obtaining a warrant, officers looked through the phone's call log, and with that information they determined the address of a residence in which they found drugs, a firearm, and ammunition. The court found Wurie guilty of possession with intent to distribute, distributing cocaine base, and being a felon in possession of a firearm and ammunition. On appeal, the First Circuit Court of Appeals reversed the district court's denial and vacated Wurie's conviction, holding that the Fourth Amendment requires the police to obtain a warrant before searching an arrestee's cellular phone. The Supreme Court's ruling in this case will help to shape the contours of the Fourth Amendment's protections against unreasonable searches and seizures in light of new information technologies. Full text is available at www.law.cornell.edu/supct/cert/13-212. ©

Written by Daniel Rosales and Jordan Manalastas. Edited by Stephen Wirth.