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Supreme Court Decisions Impact Higher Education

In recent weeks, the U.S. Supreme Court issued several key decisions that have – or may have in the future – implications for institutions of higher education. These rulings focused on the protection of digital information on cellphones, the Affordable Care Act's contraceptive mandate, the validity of patents, and severance payments.

A previous Husch Blackwell legal alert addressed the Supreme Court's decision in *Lane v. Franks*, which discussed First Amendment-protected speech for government employees and qualified immunity for government employers.

Cellphone Privacy

In *Riley v. California* and *Wurie v. United States*, the Supreme Court faced the question of whether the warrantless search of an arrestee's cellphone was constitutional. In *Riley*, the petitioner was stopped for driving with expired tags and was eventually arrested on weapons charges. The arresting officers took Riley's cellphone and accessed information on the phone that suggested Riley had gang ties. A closer examination connected him to an unsolved shooting from several weeks prior. Based on this information, Riley was charged in the earlier shooting and convicted despite moving to suppress the evidence obtained from his cellphone.

In *Wurie*, Wurie was arrested after being observed making an apparent drug sale. While Wurie was at the police station, his phone received repeated calls from "my house" that allowed the police to use an online directory to trace the phone to Wurie's apartment building. At the apartment complex, the police were able to identify Wurie's unit, obtained a search warrant, and executed the warrant. They found large quantities of drugs, paraphernalia, and weapons. During legal proceedings, Wurie moved to suppress the evidence, but his motion was denied. He was eventually convicted.

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These two cases required the court to analyze the reasonableness of a warrantless search incident to a lawful arrest and its application to modern cellphone use. In doing so, the court stated cellphones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of the human anatomy."

In the context of searches incident to lawful arrests, prior rulings determined the "reasonableness" of a search would be based on officers' need to protect themselves and prevent the concealment or destruction of evidence. The court concluded the data on a cellphone does not endanger arresting officers and once the phone has been physically confiscated there is little chance that the arrestee can destroy the evidence. Thus, the court held that a search warrant must be obtained prior to searching an arrestee's cellphone, though other exceptions to the warrant requirement could still be used if a particular case necessitates such use.

What this means for institutions of higher education

Campus security personnel at public institutions should not search a person's cellphone when making an arrest on campus without a warrant, unless another exception to the warrant requirement – such as the exception allowing a warrantless search in exigent circumstances – applies. The same is true for campus police at private institutions who have arresting authority, as they may be considered state actors and held to the same Fourth-Amendment standards.

The Contraceptive Mandate

In *Burwell v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties Corp. v. Burwell*, religious owners of closely held corporations challenged the contraceptive mandate of the Affordable Care Act (ACA) that requires these businesses to provide no-cost access to particular contraceptives such as the "morning-after" pill.

The Religious Freedom Restoration Act (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the government "demonstrates the application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb-1(a)-(b). The Supreme Court determined the RFRA's broad coverage applies to closely held corporations and that the contraceptive mandate substantially burdens the exercise of religion. The court went on to assume a compelling governmental interest in guaranteeing the challenged contraceptive methods but found the government was not using the least restrictive means for furthering its compelling interest because, for example, it could provide the access to these contraceptives to women who lacked coverage because of an employer's religious objection.

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What this means for institutions of higher education

This 5-4 ruling may not have an immediate impact on institutions of higher education, though it has laid the groundwork for, and perhaps provided insight into, future rulings involving religiously affiliated private institutions—some of which have already filed suit against the government and are working their way through the court systems. When considering the ruling, institutions that have filed suit, such as Wheaton College, Ave Maria University and others, or those that plan on filing suit now have significant support for the notion that the contraceptive mandate infringes upon their religious freedom.

Patent Validity

In *Nautilus, Inc. v. Biosig Instruments, Inc.*, Biosig filed a patent infringement suit against Nautilus when Nautilus sold exercise machines that contained technology patented by Biosig without obtaining a license. The issue was whether the patent filing fulfilled the "definiteness requirement" prescribed by the Patent Act. This requirement necessitates that a patent, viewed in light of specification and prosecution history, disclose to those skilled in the art the scope of the invention with reasonable certainty. If this requirement is not met, a patent is invalid for indefiniteness. The court held that definiteness should be evaluated (1) from the perspective of someone skilled in the relevant art, (2) by reading the claims in light of the patent's specification and prosecution history, and (3) from the viewpoint of a person skilled in the art at the time the patent was filed.

What this means for institutions of higher education

The impact of this decision is not limited to any particular technical field. Patent applicants will no longer be allowed to inject ambiguity into claims to provide flexibility in litigation. When drafting patent applications, applicants need to meet the standards for definiteness to ensure that, once granted, the patent is not invalidated for being indefinite.

Severance Payments

In *U.S. v. Quality Stores, Inc.*, the Supreme Court held 8-0 that severance payments made pursuant to an involuntary layoff when a company entered bankruptcy, and dependent upon the employees' positions in the company and their years of services, constituted "wages" under the Federal Insurance Contributions Act (FICA). In reaching its determination, the court discussed the relevant statutory language, specifically 26 U.S.C. § 3121(a)-(b).

Under the statute, "wages" constitute "all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash," and the term "employment" includes "any service, of whatever nature, performed…by an employee for the person employing him." Using these definitions, the court concluded severance payments should be

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considered “remuneration for employment” because they are similar to other types of benefits employers offer employees beyond salary payments, such as health and retirement benefits and bonuses, that may vary according to the function of the particular employee being terminated.

What this means for institutions of higher education

When entering into severance agreements with employees, consider the structure of severance payments and understand they will likely be considered “wages” for FICA purposes so that payroll taxes should be deducted accordingly.

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