



Alaska Constitutional Law Update

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1.0 General CLE Credits

Faculty

Erwin Chemerinsky joined the Duke Law faculty July 1, 2004, where he is the Alston and Byrd Professor of Law. Between 1983 and 2004, he was a professor at the University of Southern California Law School, where he was the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science.

Professor Chemerinsky graduated with honors from Northwestern University (B.S., 1975), and Harvard Law School (J.D., 1978). He was a trial attorney at the United States Department of Justice in Washington, D.C., and an attorney at Dobrovir, Oakes, and Gebhardt, in Washington, D.C. He has taught at DePaul, Duke, Loyola of Los Angeles, and UCLA Law Schools.

Professor Chemerinsky frequently argues appellate cases, including in the United States Supreme Court and the United States Courts of Appeals. He has testified many times before committees of the United States Congress, the California Legislature, and the Los Angeles City Council.

He is the author of four books, over 100 law review articles, and also writes a regular column on the Supreme Court for California Lawyer, Los Angeles Daily Journal, and Trial Magazine. Professor Chemerinsky is a frequent contributor to newspapers, magazines and news channels.

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Alaska Conference

Alaska Court Decisions Concerning Constitutional Law April 26, 2006

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I. Equal protection

Alaska Civil Liberties Union v. State, 122 P.3d 781 (Alaska 2005). Spousal limitations in benefits paid to public employees violates the equal protection clause of the state constitution as applied to employees with same-sex domestic partners.

State v. Morgan, 111 P.3d 360 (Alaska Ct.App. 2005). Requiring younger offenders to stay on probation longer does not violate equal protection.

II. Due process

Reust v. Alaska Petroleum Contractors, Inc., 127 P.3d 807 (Alaska 2005). Application of punitive damages cap does not violate due process. Statutory requirement to allocate 50 percent of punitive damages to state did not result in unconstitutional taking.

Casciola v. F.S. Air Service, Inc., 120 P.3d 1059 (Alaska 2005). An award of punitive damages ten times more than the actual damages did not violate due process. The large award was necessary to deter fraud and Alaska law gives notice that a high ratio between actual and punitive damages is possible for extremely reprehensible conduct.

Myers v. Municipality of Anchorage, ___ P.3d ___ (Alaska Ct.App. April 7, 2006). City's drug paraphernalia ordinances prohibiting the possession and sale of items connected with the manufacturing, dispensing, storing, and use of controlled substances were unconstitutional in violation of due process.

Jeff A.C. v. State, 117 P.3d 697 (Alaska 2005). Due process does not guarantee a parent an absolute entitlement to participate in an adjudication hearing (as to whether the "child is in need of aid") prior to a hearing to terminate parental

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rights.

III. Elections Law

State, Division of Elections v. Metcalfe, 110 P.3d 976 (Alaska 2005). The legislature did not act unreasonably by requiring a political party to receive three percent of the vote in the previous gubernatorial election to appear on the ballot or by requiring an individual to collect signatures of voters equal to one percent of the voters in the previous gubernatorial election to appear on the ballot.

State, Division of Elections v. Green Party of Alaska, 118 P.3d 1054 (Alaska 2005). State election law requiring each political party to have its own primary ballot violates the Alaska Constitution because it substantially burdens a party's associational rights.

IV. Criminal procedure

A. Fourth Amendment

Nevers v. State, 123 P.3d 958 (Alaska 2005). The exclusionary rule is not applicable to license revocation proceedings.

State v. Koen, 113 P.3d 675 (Alaska Ct.App. 2005). A warrant application was defective and insufficient because it did not identify the house that was searched as the defendant's residence and did not explain the connection between the premises and the evidence being sought.

B. Fifth Amendment - Privilege against self-incrimination

Munson v. State, 123 P.3d 1042 (Alaska 2005). A criminal defendant's confession was inadmissible because he had unambiguously invoked his right to remain silent before he gave his confession. Early in his interrogation by police he said, "Well, I'm done talkin' then." The police continued to question him and he confessed to the murder.

State v. Anderson, 117 P.3d 762 (Alaska Ct.App.2005). Sending in a "false friend" to geta jailed suspect to make incriminating statements does not violate the Fifth Amendment or *Miranda v. Arizona*.

C. Sixth Amendment – Confrontation clause

Anderson v. State, 111 P.3d 350 (Alaska Ct. App. 2005). The confrontation clause does not bar the admission of an out-of-court statement made by an injured person at the scene of a crime.

D. Sixth Amendment - Jury trials

1. Batson challenges

Mooney v. State, 105 P.3d 149 (Alaska Ct.App. 2005). A defendant who brings a Batson challenge must do so before the jury venire is released and the jury is sworn in.

2. Availability of a jury trial

Vandergriff v. State, 125 P.3d 360 (Alaska Ct.App. 2005). A judge may impose a consecutive sentence greater than the maximum term for the defendant's most serious offense without submitting the case to the jury when necessary to protect the public. This does not violate the Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004).

State v. Kalmakoff, 122 P.3d 224 (Alaska Ct. App. 2005). The Supreme Court's decision in *Blakely v. Washington* does not apply to juvenile waiver proceedings because they are not sentencing proceedings, but determinations of jurisdiction.

State v. Gibbs, 105 P.3d 145 (Alaska Ct.App. 2005). Blakely v. Washington does not apply when a defendant was sentenced to three years for a second count, less than the four year presumptive term for second offenders.

Edmunds v. State, 118 P.3d 17 (Alaska Ct.App. 2005). Blakely v. Washington was not violated by a partially consecutive sentence that exceeded the presumptive term for the defendant's most serious offense.

Ned v. State, 119 P.3d 438 (Alaska Ct.App. 2005). A defendant's right to have a jury decide certain facts at trial is not grounds for reversal when a judge's determination of those facts constitutes harmless error.

E. Alaska law

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1. DNA testing

Osborne v. State, 110 P.3d 986 (Alaska Ct.App. 2005). Due process under the Alaska Constitution requires a defendant seeking post-conviction DNA testing to meet a three-part test: 1) the conviction rested primarily on eyewitness identification evidence; 2) there was a demonstrable doubt concerning the defendant's identification as the perpetrator; and 3) scientific evidence would likely be conclusive on the issue.

2. Victim's rights

Cooper v. District Court, __ P.3d ___ (April 14, 2006). Victim had no standing to challenge sentence imposed by district court. Office of Victims' Rights had no independent standing to challenge sentence;

3. Appellate review

Michael v. State, 115 P.3d 517 (Alaska 2005). De novo review applies to reviewing a superior court's application of aggravating and mitigating factors to particular facts in sentencing.