Protecting Individual Rights

Week 11

Overview

- This class teaches us that “public administrators in general are liable for their unconstitutional or illegal encroachments upon the rights of individuals if they violate clearly established rights of which they should have known” (Rosenbloom et al 2010, 306).

Clearly Established Rights

- What are some “clearly established rights” you know or have learned about in this class?

Role of Law - Revisited

- What is the role of the courts?
  - “[T]he judiciary has developed a mechanism that creates strong incentives for public administrators to be cognizant of constitutional and judicial values” (Rosenbloom et al 2010, 303).

Role of Law – Revisited (2)

- “[T]he courts . . . intervene directly in public administration to the extent of taking control of entire public administrative systems in efforts to bring them up to constitutional standards”(Rosenbloom et al 2010, 303-304).

Role of Law – Revisited (3)

- Courts have expanded constitutional protections to citizens, legal residents, public employees, and government contractors (Rosenbloom et al 2010).

Role of Law – Revisited (4)

- As we discussed previously, individuals often use litigation and the court system to challenge or overturn administrative activities. Stated differently, individuals use the court system to "vindicate their rights" (Rosenbloom et al 2010, 267).

- One of the most common statutes used by citizens to bring suit against public agencies and their employees for violations of constitutional rights is 42 U.S. § 1983.

Role of Law – Revisited (5)

- According to Rosenbloom et al (2010), the use of litigation must satisfy several conditions (pp 267-268):
  - Litigation needs to be “under judicial direction”
  - The judiciary needs to provide an avenue for individuals to “vindicate” their rights
  - The judiciary needs to be able “to offer the individual sufficient promise of reward”
  - Litigation must “have a deterrent value in serving to diminish the likelihood of future violations of individual rights”
  - Individuals must not be able to use litigation “to harass public administrators with frivolous lawsuits and threats”

Review 5th and 14th Amendment

- Discuss the scenarios 1 & 2 with your small groups.
  - What are the likely relevant arguments on both sides?

Fourth Amendment

- The Fourth Amendment protects individuals against unreasonable searches and seizures.

- What happened in the two assigned cases?

Fourth Amendment (2)

- Threshold issue: Was there a “search” or a “seizure”?
- If yes,
  - “In order to invoke [the protection of the 4th Amendment] an individual must have a reasonable expectation of privacy under the circumstances of the search” (Rosenbloom et al 2010, p. 159).
    - The government does NOT have to prove a compelling interest.

Review – 4th Amendment

- Discuss the scenarios 3 & 4 with your small groups.
  - What are the likely relevant arguments on both sides?

Liability of Public Administrators

- Individuals may bring suit under the Constitution. However, individuals may also bring suit under 42 USC Section 1983 for damages.

Immunity

- In order to prevent individuals from using litigation “to harass public administrators with frivolous lawsuits and threats,” limits have been placed on the “ability of individuals to recover damages from public officials” (Rosenbloom et al 2010, p. 268 and p. 275).

Absolute Immunity

- Absolute immunity, in some jurisdictions, provides some government officials complete immunity from civil suit as long as they are acting within the scope of their jobs.

- What happened in *Nixon v. Fitzgerald* (1981)?

Qualified Immunity

- In contrast to absolute immunity, qualified immunity places additional conditions on the limitations of liability.
- In *Harlow v. Fitzgerald* (1982), the Court held "that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known . . ." (Rosenbloom et al 2010, 282).

Qualified Immunity (2)

- What are clearly established statutory or constitutional rights of which a reasonable person would have known . . .”? (Rosenbloom et al 2010, 282).
  - This means that public administrators have been given “fair warning” that certain actions may be unconstitutional (p. 283). These directives may come from:
    - Previous court cases
    - Internal policies and procedures
    - statutes

Qualified Immunity (3)

Why is it important that public administrators pay attention to these “fair warnings”?

State Action Doctrine

- As you may know, collaborative partnerships and public-private partnerships are becoming more and more popular.

- For an individual to sue a private party for violations of constitutional rights, the “private party [must] be considered a state actor” and “its actions must be ‘fairly attributable’ to government itself” (p. 295).

Sources

- Rosenbloom, David H., Rosemary O'Leary, and Joshua Chanin (2010). *Public Administration and Law*. 3rd Ed. CRC Press.
- Rosenbloom, David H. (2015). *Administrative Law for Public Managers*. Routledge.