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Under the U.S. Supreme Court: Privacy invasion on a parking ticket?

By MICHAEL KIRKLAND, UPI Senior Legal Affairs Correspondent | Feb. 10, 2013 at 3:30 AM

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WASHINGTON, Feb. 10 (UPI) -- A little noticed privacy case, seemingly insignificant but with large implications on how Americans actually live, is simmering away at the U.S. Supreme Court like a pot of hot coffee.

At issue is the personal information put on parking tickets in thousands of communities across the country, in this case the Village of Palatine, Ill., a suburb of Chicago.

The case is getting some attention after being chosen as a "petition of the day" by SCOTUSBLOG.com. It's also drawing attention from communities because it includes an \$80 million civil suit filed against the village for alleged privacy violations -- "\$2,500 in damages for each of the tens of thousands of parking tickets [the village] issued over a four-year period."

A brief filed by lawyers representing a ticketed driver tells the justices about what they consider the effects of putting personal information on tickets in plain sight of the public.

"If one holds to the side the obvious risks of identity and property theft that can foreseeably result from Palatine's perilous practices," the brief said, "there are other less obvious risks that can also follow. Sen. [Tom] Harkin [D-Iowa] pointed out one such risk."

Harkin co-sponsored the federal Drivers Privacy Protection Act in 1994, which the senator said "strikes a fair balance between reasonable interests of the state and the public in this information, and the rights of private citizens to be left alone."

The senator was quoted in the brief as saying: "I became aware of this issue through the plight of one of my constituents, Karen Stewart. Karen was a patient of Dr. Herbert Remer, a physician who specializes in

obstetrics and gynecological care in the Des Moines [Iowa] area. Because Dr. Remer performs abortions, his clinic has been the site of repeated protests by those who oppose a women's right to choose."

But Stewart was not going to the clinic to terminate her pregnancy. She wanted to save it.

"She was experiencing complications, and went to Dr. Remer for treatment," Harkin said. "Unfortunately, a few days after the visit, Karen suffered a miscarriage. And then she received the letter. Extremists from Operation Rescue sent a venomous letter apparently intended to traumatize Dr. Remer's patients. The letter spoke of 'God's curses for the shedding of innocent blood,' and 'the guilt of having killed one's own child.'"

Harkin said Operation Rescue got Stewart's name and address from the community's department of transportation records, "after they spotted her car parked near Dr. Remer's clinic."

"This real life example highlights why Palatine's policies are so dangerous," the brief said. "It would not be a stretch to imagine the consequences of getting a parking ticket in Palatine and having a venomous group stalk that person because they happened to park in the wrong place like close to an abortion clinic, mosque, church or temple.

"Fortunately, the village is nearly alone in publishing such a vast amount of private and unnecessary information on its parking tickets," the brief said. "This is evidenced by the fact that in the 18 years since Congress passed the DPPA, no other municipality has been sued for violating the act in this manner."

In its own petition asking the Supreme Court for review, Palatine takes quite a different view, saying it was just one among the many.

"Like many municipalities, the village of Palatine prints a recipient's identifying information on a parking ticket before affixing it to an illegally parked vehicle to effect service of process in the administrative proceeding the ticket initiates," the village petition said. "That kind of routine use of personal information by a state or local government has never been a subject of federal regulation. Nor did the federal Driver's Privacy Protection Act change that, for the rather obvious reasons that the act explicitly exempts disclosure of personal information for 'use in connection with any ... administrative ... proceeding ... including the service of process' and 'use by any government agency ... in carrying out its functions.'"

Despite those undisputed facts, the village petition told the high court, the full 7th U.S. Circuit Court of Appeals in Chicago "found those exemptions inapplicable. In the en banc court's view, Palatine's parking tickets were not compatible with the purpose' of those exceptions because they used 'too much' personal information. ... As a result, Palatine faces the prospect of more than \$80 million in damages for using personal information in a manner that Congress expressly excluded from the act's reach."

The petition asked the Supreme Court to determine whether "the Driver's Privacy Protection Act interferes with such quintessentially local government functions as a municipality's decision concerning how much information to include on a parking ticket."

The facts in the underlying case are fairly mundane.

"At 1:35 a.m. on Aug. 20, 2010, a Palatine police officer issued [Jason Senne] a parking citation for violating the village's overnight parking ban and left the citation affixed to his car," the village said.

The ticket listed Senne's name, "his address, driver's license number, date of birth, sex, height and weight," the village said, personal information that replicates personal information included on the uniform citation approved under the Illinois Supreme Court Rules for use in traffic violations.

"The citation also states the day, date, and time of the offense and what the officer who issued the citation observed -- the location of the vehicle, as well as its make, year, identification number, and license plate

number and expiration date," the village said. The citation tells the violator to pay the \$20 fine by mail or in person, or to request "an in-person administrative hearing date within 14 days."

The village said Senne discovered the ticket under his wiper blade about five hours after it was issued, at about 6:30 a.m.

Senne wasn't paying.

"One week later, he responded by filing a class action complaint against Palatine, alleging that it violated ... the DPPA by leaving the ticket on his car after printing his personal information on it," the village told the Supreme Court. "The complaint does not allege that anyone other than [Senne] or the issuing officer ever saw the ticket or any of the information it contained. It instead alleges that the information was 'disclosed' for purposes of the DPPA because the ticket 'could have' been viewed or removed by someone passing by his vehicle."

Senne also sought to represent a class of all individuals "whose personal information was included on a Palatine parking ticket without their consent within the four-year statute of limitations applicable to DPPA actions, and sought \$2,500 in liquidated damages for each of those purported DPPA violations," the village said.

Senne estimated Palatine issued more than 8,000 parking tickets in each of those years, the village said, "bringing his damages request to upwards of \$80 million. ... He also sought punitive damages, attorneys' fees, costs and equitable relief."

A federal judge agreed to dismiss the complaint, but Senne appealed. An appeals court panel agreed that the "disclosure" was permissible under the law, and upheld the dismissal.

However, the full circuit court of appeals threw out the panel's ruling and agreed to hear the case en banc, and in a 7-4 decision reversed, saying in effect any information on the ticket not necessary to process it was a violation of the federal law.

U.S. Circuit Judge Richard Posner, a Reagan appointee occasionally mentioned as a possible nominee to the U.S. Supreme Court, was among the dissenters.

Posner said he could see nothing in the act's text or legislative history to justify the majority's "free interpretation of the act. ... The act does not limit disclosure that falls within one of its exceptions to what is 'reasonable' or 'necessary,' or authorize judges to impose such a requirement."

Nor is there any "indication that without being able to express its intention in words Congress intended to forbid police to place personal information on a parking ticket." He said there was no evidence that anyone had ever used personal information on a parking ticket to "facilitate" crime, and questioned whether it is "wise to dislocate a statute in order to solve a problem that so far as anyone knows or can guess has never arisen and will never arise."

The village quoted Posner as being unhappy about "the magnitude of the liability that the opinion fixes on Palatine" and "every police department in the Seventh Circuit [Illinois, Indiana and Wisconsin] that has done such a thing within the four-year statute of limitations."

Posner said the appeals court majority ruling "is unlikely to do any good" and "is bound to do harm."

In its brief, Palatine said the majority's ruling "is irreconcilable with the text, structure and purpose of the DPPA, and violates settled principles of statutory construction" -- how courts understand a law. Congress intended the act to regulate states and municipalities when they engage in the "sale or release" of protected information in interstate commerce, the village said.

In asking the Supreme Court for review, the village petition said, "The extent to which state and local governments respect their citizens' privacy in carrying out quintessentially local functions -- as opposed to in the course of commercial transactions -- is not an obvious source of federal concern or power. Moreover, attempting to micro-manage how much information is included on a local parking ticket would be a radical change in Congress' normal reluctance to intrude upon such matters."

The petition warns the appeals court ruling "will have dramatic and immediate effects on states and municipalities throughout the nation."

A friend-of-the-court brief filed by a coalition led by the Illinois Association of Chiefs of Police agrees.

Police "throughout the country use information from state motor vehicle records on a daily basis," the chiefs brief in support of Supreme Court review said. "They prepare thousands (if not tens of thousands) of police reports daily, including, among others, accident reports, animal bite reports, arrest reports, evidence technician reports, general reports, hospitalization reports, juvenile reports, lock-out reports, lock-up reports, miscellaneous incident reports, missing person reports, motor vehicle theft reports, offense reports, property and evidence reports, supplemental reports, vehicle tow reports and worthless document reports. They also write parking and moving traffic citations, compliance citations, local ordinance citations, and prepare quasi-criminal misdemeanor and felony complaints. Any or all of such activity may involve information obtained from state motor vehicle records. In addition, they investigate the incidents associated with those reports and complaints, obtaining state motor vehicle record information by computer, as well as in person and over the police radio from a dispatcher.

"Those law enforcement agencies are now subject to an award of \$2,500.00 in liquidated damages per disclosure of state motor vehicle records under the Seventh Circuit's en banc opinion."

The chiefs warn, "The floodgates of class action litigation will open across the country" if the appeals court decision is allowed to stand.

The U.S. Supreme Court considered the case behind closed doors Jan. 18, and may decide soon on whether to review the case or reject it.

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