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FERNANDEZ V. CALIFORNIA AND THE EXPANSION OF THIRD-PARTY
CONSENT SEARCHES

Fernandez v. California, 134 S. Ct. 1126 (2014)

*Anna P. Hayes**

Imagine a day when the police come knocking at your door: you open the door, and the police ask you if they may conduct a warrantless search of your residence. As any good constitutional law student would, you explain to them that you are well aware of your rights under the Fourth Amendment, and that they should come back with a warrant. Because the dutiful officers believe that you have committed a crime, they arrest you on the spot, rather than obtaining a search warrant for the premises. After arresting you and removing you from the premises, the officers then ask your roommate for permission to search the premises—not as well schooled in Fourth Amendment law, your roommate signs over his consent.¹ You protest: “I refused to consent to the search!” you say—“the police can’t ignore my objection!” The Supreme Court in *Fernandez v. California* recently ruled that the Fourth Amendment does not forbid a search such as the one discussed above.² This Comment will discuss the history behind the consent exception to the Fourth Amendment warrant requirement, the *Fernandez* decision, and its implications for future police activity.

The *Fernandez* case began in 2009, when an assailant, armed with a knife, committed a gang-related robbery.³ Police investigating the robbery drove to an alley they knew to be frequented by members of the gang.⁴ Upon their arrival in the gang’s territory, a man approached the officers and told them that “the guy is in the apartment.”⁵ The man, who “appeared very scared,” then repeated: “He’s in there. He’s in the apartment.”⁶ Immediately thereafter, the officers witnessed another man

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1. As there is no *Miranda*-esque requirement that police make statements to any person whose residence they search warning the subject of the search that he or she has a right to refuse to give consent, this situation is likely to continue to occur. *Schneckloth v. Bustamonte*, 412 U.S. 218, 231–32 (1973) (citation omitted) (stating that the suggestion that police inform the subject of the search that he has a right to refuse consent has been consistently rejected because “these situations are still immeasurably far removed from ‘custodial interrogation’ where, in *Miranda v. Arizona*, we found that the Constitution required certain now familiar warnings”).

2. *Fernandez v. California*, 134 S. Ct. 1126, 1130 (2014).

3. *Id.*

4. *Id.*

5. *Id.* (alteration omitted) (internal quotation marks omitted).

6. *People v. Fernandez*, 145 Cal. Rptr. 3d 51, 53 (Cal. Ct. App. 2012), *aff’d*, 134 S. Ct. 1126 (2014).

run from the alley into an apartment building, another known gang hideout.⁷ After the man entered the apartment, the officers heard screams and other sounds of fighting emitting from the residence.⁸

After waiting for backup to arrive, the officers knocked on the door of the residence from which they had heard the screams.⁹ A woman opened the door—she “appeared to be crying[, h]er face was red, . . . she had a large bump on her nose,” and her hand and shirt were stained with seemingly fresh blood.¹⁰ She told the officers that she had been in a fight, and when the officers asked her if anyone else was in the apartment, she told them that she was alone with her son and that no one else was present.¹¹ When the officers asked her if she would step outside so that they could conduct a protective sweep of the apartment, a man—the petitioner, dressed only in his underwear and seemingly agitated—appeared in the doorway.¹² The man objected to the search, stating: “You don’t have any right to come in here. I know my rights.”¹³ The officers suspected domestic violence and immediately removed the man from the residence and placed him under arrest.¹⁴ After the victim of the robbery identified the man as his attacker, officers escorted the man to the police station for booking.¹⁵

One hour after the initial arrest, officers returned to the apartment, informed the woman that they had arrested the petitioner, and again asked for permission to search the premises.¹⁶ The woman consented to the search.¹⁷ In the apartment, police found gang paraphernalia, a weapon and clothing similar to those used by the robbery suspect, ammunition, and a sawed-off shotgun—however, the police never found any of the items stolen from the robbery victim.¹⁸ Using the evidence they did find, the government charged the petitioner with “robbery, infliction of corporal injury upon a spouse, cohabitant, or

7. *Id.*

8. *Fernandez v. California*, 134 S. Ct. at 1130.

9. *Id.* Note that this Comment does not discuss whether the police would have been justified in entering the premises on the basis of exigent circumstances, a widely recognized exception to the warrant requirement of the Fourth Amendment. *See, e.g., United States v. Karo*, 468 U.S. 705, 718 (1984) (“[I]f truly exigent circumstances exist no warrant is required under general Fourth Amendment principles.”).

10. *Fernandez v. California*, 134 S. Ct. at 1130.

11. *Id.*

12. *Id.*

13. *Id.* (internal quotation marks omitted).

14. *Id.*

15. *Id.*

16. *Id.* This Comment does not address whether this search could be deemed a valid search incident to arrest.

17. *Id.*

18. *Id.* at 1130–31; *People v. Fernandez*, 145 Cal. Rptr. 3d 51, 54 (Cal. Ct. App. 2012), *aff’d*, 134 S. Ct. 1126 (2014).

child's parent, possession of a firearm by a felon, possession of a short-barreled shotgun, and felony possession of ammunition.”¹⁹

At his trial, the petitioner moved to suppress the evidence found during what he characterized as a warrantless search of his apartment in violation of the Fourth Amendment.²⁰ He claimed that the consent exception to the warrant requirement was not met in his case, because he had objected to the search before the police forcibly removed him from the premises. However, the Supreme Court found that the search was lawful and that the consent given by the petitioner's coresident validated the warrantless search.²¹

Generally, the Supreme Court's Fourth Amendment jurisprudence dictates that officers may search a jointly owned residence if one of the occupants consents to the search and that police may discover and use evidence against an absent, nonconsenting co-occupant.²² However, the Supreme Court carved out a narrow exception to the consenting coresident rule in *Georgia v. Randolph* and held that consent from any coresident to a warrantless search is invalid when another coresident is present and objects to the search.²³ How then, under *Randolph*, was the search conducted in *Fernandez* lawful? Before analyzing the soundness of the *Fernandez* ruling and its ramifications, this Comment will discuss the establishment of the third-party consent exception to the Fourth Amendment warrant requirement and *Randolph*'s narrowing of that exception.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”²⁴ The courts have interpreted “unreasonable” to mean without a warrant—meaning that any search performed without a warrant is *per se* unreasonable.²⁵ In *United States v. Matlock*, the Supreme Court made clear that a warrantless search is nevertheless valid when “permission to search [is] obtained from a third party who possessed common authority over . . . the premises.”²⁶ However, the Court later narrowed the consent exception in *Georgia v. Randolph*. In

19. *Fernandez*, 134 S. Ct. at 1131 (citations omitted).

20. *Fernandez*, 145 Cal. Rptr. 3d at 58.

21. *Fernandez*, 134 S. Ct. at 1130.

22. *Id.* at 1129 (citing *United States v. Matlock*, 415 U.S. 164 (1974)).

23. 547 U.S. 103, 114 (2006) (“Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.”).

24. U.S. CONST. amend. IV.

25. *See, e.g.*, *Katz v. United States*, 389 U.S. 347, 357 (1967) (“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (footnotes omitted)).

26. *United States v. Matlock*, 415 U.S. 164, 170–71 (1974).

Randolph, the Court held that even if one cotenant gives permission to search, “a physically present co-occupant’s stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him.”²⁷

In *Randolph*, the police arrived at the residence of a married couple after the wife reported a domestic dispute.²⁸ When the officers arrived at the residence, the wife alleged that her husband was a cocaine user who had drug paraphernalia stored inside their house.²⁹ The police requested permission to search the marital residence, and the husband “unequivocally refused.”³⁰ Immediately after his refusal, the officer “turned to [the wife] for consent to search, which she readily gave.”³¹ Inside the home, the police discovered a substance that they suspected was cocaine and other evidence of drug use.³² At his trial, the husband moved to suppress the evidence found, but the trial court rejected the motion because the wife “had common authority to consent to the search.”³³

The Supreme Court granted certiorari to resolve the question that had arisen as to whether one coresident can give consent that can override the Fourth Amendment warrant requirement “against a cotenant *who is present* and states a refusal to permit the search.”³⁴ The Court held that a warrantless search conducted over the express refusal of a physically present resident is not reasonable, even if another coresident does consent to the search.³⁵ In its opinion, the Court emphasized that the key consideration for consent searches is not technical property law, but “the great significance given to widely shared social expectations.”³⁶ Social norms dictate that a guest would not feel welcome to enter a residence if one resident stood at the door calling the guest to come in, while another coresident stood in the same doorway warning the guest to stay out.³⁷ As the Court surmised, “[N]o

27. *Randolph*, 547 U.S. at 106.

28. *Id.* at 107.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 107–08.

34. *Id.* at 108 (emphasis added).

35. *Id.* at 120.

36. *Id.* at 111 (stating also that these social expectations “are naturally enough influenced by the law of property, but [are] not controlled by its rules”); see also *id.* at 120–21 (“[T]he ‘right’ to admit the police to which *Matlock* refers is not an enduring and enforceable ownership right as understood by the private law of property, but is instead the authority recognized by customary social usage as having a substantial bearing on Fourth Amendment reasonableness in specific circumstances.”).

37. *Id.* at 113.

sensible person would go inside under those conditions;” and therefore, the consent exception to the warrant requirement cannot overcome a present objector.³⁸ The Court cited several examples where social customs would *not* dictate acceptable entry, including a landlord–tenant relationship (where no person would reasonably expect that a tenant would allow a landlord to let visitors into the residence), and a hotel manager (where no one would expect anyone but hotel employees to be allowed access into occupied rooms).³⁹ However, the Supreme Court admitted to drawing a fine line—the line which became the very issue of *Fernandez*: when the police have a nearby coresident, a potential objector, the officers do not have to “invite[] [the nearby coresident] to take part in the threshold colloquy, [who then] loses out.”⁴⁰ Thereafter, a question remained for the *Fernandez* court: What side of the “fine line” does a search fall on when it occurs after a formerly present defendant is present and objects, but the police remove the defendant before asking the cotenant for permission to search?⁴¹

In *Fernandez*, the Court held that the “narrow exception” to the consent rule created by *Randolph*⁴² did not apply when a cotenant gave police consent to search a residence even when a defendant objected to the search, because the defendant was not physically present when the cotenant consented to the search.⁴³ The only significant difference between the facts in *Randolph* and the facts in *Fernandez* was that the police removed the objector before asking the cotenant for permission to search.⁴⁴ The Court noted that *Randolph* “went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is present.”⁴⁵ This emphasis on physical presence spurred the *Fernandez* Court to rule constitutional a search where the defendant was not physically present at the time his cotenant consented to the search—even when the police caused the absence of the defendant–objector.⁴⁶ The defendant in *Fernandez* made two arguments: first, that the physical “presence of the objecting occupant is not

38. *Id.* at 1114–15 (“Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.”).

39. *Id.* at 112.

40. *Id.* at 121.

41. *Fernandez v. California*, 134 S. Ct. 1126, 1130 (2014).

42. *Id.* at 1133.

43. *Id.* at 1134 (stating that the petitioner’s arguments that “his absence should not matter since he was absent only because the police had taken him away,” or that the fact that he objected to the search while physically present on the premises should have remained effective until he no longer wished to keep the police out of his home, were both unsound).

44. *Compare id.*, with *Randolph*, 547 U.S. 103.

45. *Fernandez*, 134 S. Ct. at 1133–34.

46. *Id.*

necessary when the police are responsible for his absence,”⁴⁷ and second, that the defendant’s “objection, made at the threshold of the premises that the police wanted to search, remained effective until he changed his mind and withdrew his objection.”⁴⁸

The *Fernandez* Court rejected the first argument and brushed off any suggestion of impropriety arising when police remove an objecting cotenant after his objection to the search, stating that the mere suggestion of improper motive should not invalidate a removal that is objectively justified.⁴⁹ Here, the Court went astray from the ruling in *Randolph* and cases prior—it failed to “jealously and carefully draw[]” the consent exception to the warrant requirement.⁵⁰ The Court refused to examine the motives of the police because it felt that the arrest was unquestionably justified.⁵¹ When it ignored the possible motive of the police to skirt the Fourth Amendment, the Court seriously blurred the line governing police conduct during a warrantless search. Even more, the Court disregarded *Randolph*’s warning that there should be “no evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection.”⁵² In doing so, the Court has opened the door to serious police confusion and even potential misconduct. *Fernandez* allows courts to ignore concerns that police may have incentives to purposefully evade the Fourth Amendment. Given the growing public distrust of the police arising from officer misconduct in places such as New York City⁵³ and Ferguson, Missouri,⁵⁴ the *Fernandez* Court’s decision to turn a blind eye to the potentially illicit motivations of police officers contrasts sharply with public demands to bring police practices under the microscope.⁵⁵

47. *Id.* at 1134.

48. *Id.* at 1135.

49. *Id.* at 1134.

50. *Jones v. United States*, 357 U.S. 493, 499 (1958).

51. *Fernandez*, 134 S. Ct. at 1134.

52. *Georgia v. Randolph*, 547 U.S. 103, 121 (2006).

53. *See, e.g.*, Chris Francescani, *Silent March to Protest NYPD’s “Stop-and-Frisk” Policy*, REUTERS (Jun. 17, 2012, 7:36 PM), <http://www.nyclu.org/news/decision-moves-city-one-step-closer-stop-and-frisk-reform>.

54. In Ferguson, Missouri, a black teenager was shot six times and killed by a police officer. This shooting triggered days of violent protests, looting, hundreds of arrests, and the governor of Missouri calling out the National Guard to help stop the riots. *See, e.g.*, Monica Davey, John Eligon & Alan Blinder, *National Guard Troops in Ferguson Fail to Quell Disorder*, N.Y. TIMES, Aug. 19, 2014, at A1, available at <http://www.nytimes.com/2014/08/20/us/ferguson-missouri-protests.html>; Alan Scher Zagier, *Tensions Subside After Peaceful Ferguson Protests*, ABC NEWS (Aug. 24, 2014, 4:42 AM), <http://abcnews.go.com/US/wireStory/streets-ferguson-stay-calm-violent-nights-25095870> (stating that one resident believes “some of the frustration is dying down because more information is coming out”).

55. *See also* Erwin Chemerinsky, *How the Supreme Court Protects Bad Cops*, N.Y.

The Court has repeatedly in Fourth Amendment cases rejected invitations to examine the investigating officer's mindset and instead has reached for objective standards with which to analyze searches and seizures.⁵⁶ However, the *Fernandez* Court refused to consider that there were objective reasons as to why a police officer would remove a potential objector from the premises to avoid hearing an objection that could undermine the search. The temptation for unjustified removal becomes all the more powerful when a police officer can remove a coresident who has already objected to the search; for then, the officer has the opportunity to persuade remaining coresidents to consent.

Not only has the Court implicitly allowed possible police misconduct to occur undeterred, but it has undermined the good intentions of even the most honest and law-abiding civil servants. How should an officer know when he can remove an objecting cotenant and still receive permission to search the premises? On one hand, the police officer knows he is not supposed to act in direct contravention of the spirit of the warrant requirement.⁵⁷ On the other hand, if the officer does not conduct the search, he may lose valuable evidence that could keep a dangerous criminal off of the streets. The Court also left open the question of whether a police officer must wait after hearing an objection and removing the objector to get consent to search—an hour was deemed reasonable in *Fernandez*,⁵⁸ but what about thirty minutes? Ten minutes? Two?⁵⁹

TIMES, Aug. 27, 2014, at A23, available at http://www.nytimes.com/2014/08/27/opinion/how-the-supreme-court-protects-bad-cops.html?_r=0 (asserting that the Supreme Court has also made civil suits against police officers extraordinarily difficult to pursue).

56. See, e.g., *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968) (“The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?” (footnote omitted) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)); see also *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) (“An action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of mind, ‘as long as the circumstances, viewed *objectively*, justify [the] action.’ The officer’s subjective motivation is irrelevant.” (alteration in original)).

57. See, e.g., *Berkemer v. McCarty*, 468 U.S. 420, 433 (1984) (internal quotation marks omitted) (discussing the *Miranda* warnings and stating generally that courts “have no doubt that . . . the police behave responsibly and do not deliberately exert [inappropriate] pressures upon the suspect[s]” but that bright-line rules, such as those set in place by *Miranda* are to ensure against the rare police misconduct, relieve “inherently compelling pressures,” and “as much as possible to free courts from the task of scrutinizing individual cases”).

58. *Fernandez*, 134 S. Ct. at 1130.

59. It would seem that the Court in *Fernandez*, by not dictating a timeframe requirement, has made it possible for an officer to hear an objection, remove the objector from the premises,

Interestingly, the majority concluded that the petitioner's second argument (that an objection lasts for as long as the objector desires) is unworkable because of practical problems arising from any permanent objection,⁶⁰ but also rejected the argument that the objection should last only for a "reasonable" time.⁶¹ However, the problems with allowing objections to last for a "reasonable" time are mirrored in the majority's solution that the objector must be physically present—for it is doubtful that the *Randolph* Court envisioned a day when police could remove a physically present objector from the premises, only to receive consent seconds later.⁶² The Court in *Fernandez* should have more seriously considered the argument that the objection last for a "reasonable time," especially because "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'"⁶³ Fourth Amendment jurisprudence has repeatedly emphasized the importance of drawing clear lines to help the police adhere to the standards set forth by our forefathers when they drafted the Bill of Rights⁶⁴—*Fernandez* blurs a formerly clear line, seemingly without regard to its future implications.

The majority in *Fernandez* addressed the concern with societal norms echoed in *Randolph*, maintaining that if a social caller were to request entry, the caller would be concerned only with obtaining permission to enter only from those residents who are physically

and immediately ask the remaining cotenant for permission to search, all in the space of a few minutes.

60. *Fernandez*, 134 S. Ct. at 1135–36 (imagining a situation where a coresident would never be able to consent to a search, even decades after the original objection).

61. *Id.* at 1136 ("Nor are we persuaded to hold that an objection lasts for a 'reasonable' time. '[I]t is certainly unusual for this Court to set forth precise time limits governing police action,' and what interval of time would be reasonable in this context? A week? A month? A year? Ten years?" (alteration in original) (citation omitted)).

62. Presumably, after a time period this short, a court would be forced to examine any "evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection." *Georgia v. Randolph*, 547 U.S. 103, 121 (2006).

63. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

64. *See United States v. Robinson*, 414 U.S. 218, 235 (1973) ("A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick *ad hoc* judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search."). Police officers arguably need easy, bright-line rules to follow—in the heat of the moment, police should not be required to undergo a complicated analysis, compile all the case law the officer knows, and make a fact-based determination based on the facts he knows in that moment. What an officer needs in order to promote justice and equality is a bright-line, easy-to-apply rule—for instance, a rule that says an officer may not perform a consent search once an objection has been made from a cotenant who was physically present—even if the objector is no longer present when a different cotenant gives the officer permission to perform such a search. *See also, e.g., Dunaway v. New York*, 442 U.S. 200, 213–14 (1979) ("A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.").

present.⁶⁵ The Court found it quite obvious that a caller would not be deterred from entry if the caller heard an objection, but the objector then left the premises and the caller received an invitation to enter.⁶⁶ *Fernandez* emphasized that a social caller would be even more likely to enter “when [the caller] know[s] that the objector will not return during the course of the visit.”⁶⁷ The treatment of social norms in *Fernandez*, in stark contrast with the decision under *Randolph*,⁶⁸ adopted this cursory treatment of societal norms to reach the conclusion that its decision did not contradict the reasoning behind *Randolph*. Although the Court addresses this question of social expectations with ease, the reasoning in *Randolph* seems to contradict the *Fernandez* majority’s quick treatment of the issue. After all, “when people living together disagree over the use of their common quarters, a resolution must come through voluntary accommodation, not by appeals to authority.”⁶⁹ *Randolph* imagined that upon hearing a cotenant object to entry, a social caller would be reluctant to disregard that person’s authority and still enter the premises.⁷⁰ Indeed, “no sensible person would go inside under those conditions.”⁷¹

Justice Ginsberg’s dissent asserted that the majority opinion in *Fernandez* “shrinks to petite size our holding in *Georgia v. Randolph* that ‘a physically present inhabitant’s express refusal of consent to a police search [of his home] is dispositive as to him, regardless of the consent of a fellow occupant.’”⁷² Indeed, *Fernandez* could eliminate altogether the usefulness of the *Randolph* exception to the consent rule.⁷³ The dissent also recognized that the significant facts recognized in *Randolph* are mirrored in *Fernandez*: a warrantless search, not subject to exigent circumstances, was purposed on finding evidence to use against a suspect; the suspect, while physically on the premises—in fact, inside the doorway—objected to the search; and the officers could easily have secured the premises for the time necessary to obtain a warrant.⁷⁴ Finally, investigating officers are often extraordinarily concerned with the destruction of evidence in the time required to

65. *Fernandez*, 134 S. Ct. at 1135.

66. *Id.*

67. *Id.*

68. *Georgia v. Randolph*, 547 U.S. 103, 111 (2006).

69. *Id.* at 113–14.

70. *Id.* at 113.

71. *Id.*

72. *Fernandez*, 134 S. Ct. at 1139 (Ginsberg, J., dissenting) (alterations in original) (citation omitted).

73. Because the majority refused to adopt a “reasonable time” for an objection to last, a police officer after *Fernandez* may hear an objection, remove the objector, and go immediately back to the residence to obtain consent from a remaining coresident. *Id.* at 1136 (majority opinion).

74. *Id.* at 1139 (Ginsberg, J., dissenting).

obtain a warrant; however, this was not a drug case or a case with similarly destructible evidence—“with the objector in custody, there was scant danger to persons on the premises, or risk that evidence might be destroyed or concealed, pending request for, and receipt of, a warrant.”⁷⁵

The majority did recognize several legitimate problems with allowing a formerly present objector to override consent given by a coresident upon the absence of the objector: Fourth Amendment jurisprudence shies away from fuzzy, subjective standards, and to institute a “reasonable time” for which a formerly present objector could override consent would be difficult for police to implement.⁷⁶ However, as discussed above, the police will likely find the *Fernandez* standard just as difficult to work with, given that officers must avoid “remov[ing] the potentially objecting tenant from the entrance for the sake of avoiding a possible objection.”⁷⁷ Courts, too, will find it problematic to determine whether police attempted to remove an objector purely to avoid the warrant requirement—an issue made especially difficult after *Fernandez* confirmed a precedent of ignoring the subjective motives of the police.⁷⁸

The majority also spotted the problem of “the procedure needed to register a continuing objection;” that is, whether preemptive objections could be made, or even whether a potential defendant could put in a “standing objection” with the local police.⁷⁹ Finally, the Court noted that problems would arise with regards to which police officers would be bound by a prior objection—would the objection extend to officers who were not on scene at the moment of the objection?⁸⁰ Could a different law enforcement agency (such as the Federal Bureau of Investigation) be bound by the previously present objector, even if those officers were not on scene?⁸¹

Although these problems are legitimate, lower courts are capable of handling these case-by-case questions as they inevitably arise. More serious questions are raised by the majority’s solution: can our communities trust police officers not to coerce unknowing residents to consent to searches by threatening removal of any objectors?⁸² How can

75. *Id.*

76. *Id.* at 1136. Moreover, the Court acknowledged its own reticence to “set[ting] forth precise time limits governing police action.” *Id.* (internal quotation marks omitted).

77. *Georgia v. Randolph*, 547 U.S. 103, 121 (2006).

78. *Cf. id.* at 122.

79. *Fernandez*, 134 S. Ct. at 1136.

80. *Id.*

81. *Id.*

82. In the wake of police misconduct such as the stop-and-frisk procedures deemed unconstitutional in New York City, it is unlikely that communities, especially those made up of targeted minorities, will put such faith in their officers. *See, e.g.*, Joseph Goldstein, *Judge Rejects*

police officers be expected to guard themselves against the temptation to violate constitutional rights when the courts are turning a blind eye? Should police officers bear the burden of determining where the blurry consent search line can be drawn in each instance, when even the highest Court in the country is constantly redefining the metes and bounds of the Fourth Amendment?⁸³

Under the facts in *Fernandez*, the Court could have deemed the search unreasonable and unconstitutional in light of *Randolph*, and should have done so in light of the policy concerns highlighted in this Comment. Because the defendant was physically present at the time of the objection, and because of the short time period between his objection and his cotenant's consent to search the premises,⁸⁴ this search should have been deemed unreasonable under the Fourth Amendment, especially when considering societal norms.⁸⁵ Although the majority may have toed the "fine line"⁸⁶ drawn in *Randolph*, it did so without considering its ramifications. This adherence to the letter of the law without regard to the spirit of the law⁸⁷ is bound to cause confusion in our justice system and impede the ability of honorable civil servants from protecting constitutional rights. The Court in *Fernandez* blurred the line between the consent exception to the warrant requirement and an unreasonable search in violation of the Constitution—because this standard is unworkable, confusion will result when both police and courts apply the reworked consent standards. This confusion will likely lead to more violations of the Constitution, and "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures"⁸⁸ will be less secure because of this decision.

New York's Stop-and-Frisk Policy, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html> (reporting that the judge "concluded that the stops, which soared in number over the last decade as crime continued to decline, demonstrated a widespread disregard for the Fourth Amendment"). Even if the majority of police officers in our country do the best they can to ensure peace while respecting individual rights, can society expect officers to know when to draw the line?

83. In 2011 and 2012 alone, the Supreme Court decided nine cases dealing with the Fourth Amendment. Orin Kerr, *Review of the Court's Fourth Amendment Cases*, SCOTUSBLOG (July 8, 2011, 1:22 PM) <http://www.scotusblog.com/2011/07/review-of-the-courts-fourth-amendment-cases/>; Orin Kerr, *Reviewing the Fourth Amendment Cases of OT2011*, SCOTUSBLOG (Aug. 10, 2012, 2:05 PM), <http://www.scotusblog.com/2012/08/reviewing-the-fourth-amendment-cases-of-ot2011/>.

84. *Fernandez*, 134 S. Ct. at 1130.

85. *Georgia v. Randolph*, 547 U.S. 103, 111 (2006).

86. *Id.* at 121.

87. *See Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892) ("It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers.").

88. U.S. CONST. amend. IV.