VOL. 11 NO. 1, SEPTEMBER 24, 2014 *The Newspaper of the Western State College of Law Student Bar Association*

THE PRECEDENT

Letter from the Editor

Dear Students, Scholars, Alumni, and Friends of WSCL,

Last school year, I accepted the post of Editor-in-Chief of *The Precedent* with the goal of connecting the WSCL student body to the rest of the WSCL community and other key groups so we can share valuable information, keep abreast of important developments, and learn more about some of the amazing people here and in our field. Fortunately, I have the privilege to work with a team of tireless and talented writers and editors as well as a tremendously supportive faculty and administration here at WSCL.

This year, with several of our writers and editors now serving in their second year at *The Precedent* and my second year as Editor-in-Chief combined with my new role as SBA Vice-President, we have even greater access to information from student organizations here at WSCL as well as a variety of other entities relevant to our community – including the American Bar Association, the Orange County Superior Courts and Orange County Legal Aid Society, and various federal courts in the Ninth Circuit.

We know that as law students, attorneys, scholars, community leaders, or others working in the law that our challenges and opportunities are many, much is expected from us, and there is no single map telling us exactly where to go or even how to get there. Therefore, on behalf of the editorial team at *The Precedent*, we strongly encourage all our readers to share their stories, accomplishments, goals, and other relevant material so that we can inform and inspire the WSCL community as we learn, grow, and thrive together.

We invite you to share your thoughts about *The Precedent* or contribute your own material for publication. Please submit your articles, comments, questions, graphics, videos, or any other relevant material to: Editor, *The Precedent,* 1111 N. State College Blvd., Fullerton, CA 92831 or via email to: *wsclprecedent@gmail.com*.

Kevin Khoa Nguyen
Editor-in-Chief

IN THIS ISSUE

THE PRECEDENT welcomes contributions from the WSCL student body, administration, faculty, staff, and alumni.

If you have an essay, article, or illustration you would like us to consider for publication, please contact us at:

WSCLPrecedent@gmail.com

The new Western State College of Law at Argosy University logo seal behind the desk in the front lobby was hand-crafted by our own wonderful Facilities Team: **Eric Miller** and **Jon Evans**. A job well done!

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CAREER SERVICES

CEB: Your Partner in Practice

Special thanks to Pamela Davidson, Assistant Dean, Career Resources, and Julie Brook, Blog Manager for CEB.com, for providing this information.

Do you know about Continuing Education for the Bar (CEB)? You should! CEB is a great resource for California law students and lawyers. CEB is a self-supporting program of the University of California that is cosponsored by the State Bar of California. CEB's mission is to provide practical resources to help California lawyers achieve success.

CEB is particularly useful to prepare law students and new lawyers as they get established in their practice.

So, how might CEB help you?

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Twitter: ***@CEB_CA*** tweets squib summaries with case links for all California, Ninth Circuit, and U.S. Supreme Court cases daily.

YouTube: You can find informative videos and video blog posts on topics like legal writing and advice at ***youtube.com/CEBCLE***

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CEB also provides free Law Alerts and podcasts to keep the California legal community apprised on what's happening in their legal world. Visit ***ceb.com*** frequently to stay on top of new legal developments.

OPINION

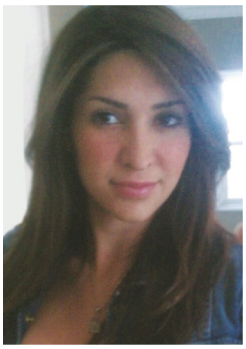
Paving the Way for New "Religious" Exemptions from Federal Laws

By Neda Mohammadzadeh, Staff Writer

Although 2014 has been filled with a series of discussion -worthy events and cases, the one that tends to be brought up most often -- with opposing views going head to head -- is the U.S. Supreme Court's 5-4 decision in *Burwell v. Hobby Lobby*. The case addressed regulations set forth by the Department of Health and Human Services (HHS) under the Affordable Care Act of 2010 (ACA) which required certain employers to have group health plans that provide women with "preventative care and screenings." Specifically, employers were required to provide coverage for the twenty FDA approved contraceptive methods, with only religious employers such as churches and religious non-profit organizations being exempt from the contraceptive mandate. Three closely held for-profit companies -- Hobby Lobby, Conestoga, and Mardel -- challenged the contraceptive mandate arguing that not only should the personal religious beliefs of the companies' owners exempt them from the contraceptive mandate, but that requiring them to provide coverage for the four contraceptive methods to which they object is contrary to their religious beliefs and violates the Religious Freedom Restoration Act (RFRA).

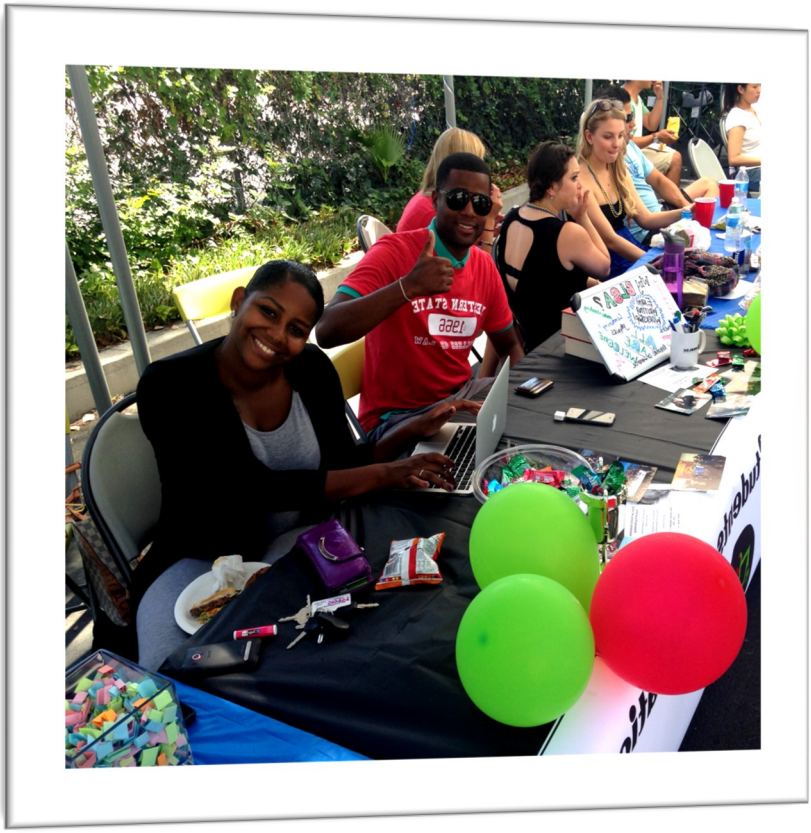
The issue presented before the Supreme Court was whether the religious exemptions from the Affordable Care Act's (ACA) contraceptive mandates should extend to these closely held corporations because they are owned by individuals with conflicting religious beliefs. Justice Alito, joined by Justices Roberts, Scalia, Kennedy, and Thomas, answered this question in the affirmative, holding that the RFRA applied to regulations governing closely held for-profit organizations, and the contraceptive mandate violates the RFRA for failing to satisfy its least restrictive means requirement.

So what's all the fuss about? Who cares if some employers are exempt from the contraceptive mandate, or are not required to provide coverage for four of the twenty FDA approved contraceptive methods? Why is allowing certain entities to be exempt from federal laws because of their religious beliefs so troublesome to those who are opposed to the *Hobby Lobby* decision? The concerns of many are perhaps best articulated in Justice Ginsburg's dissenting opinion. Stating that the Court "has ventured into a minefield" as a result of this ruling, Justice Ginsburg wrote that the *Hobby Lobby* decision will inevitably result in approving and accommodating some religious claims while failing to do so for others, which could be "perceived as favoring one religion over another;" the very "risk the Establishment Clause was meant to preclude." (*Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2807 (2014)).



Furthermore, the decision seems to be leading toward stripping women of their right and ability to control their reproductive lives. Women employed by companies whose owners' religious beliefs exempt them from the contraceptive mandate are essentially stripped of their ability to be covered for contraceptive methods, or at the very least stripped of their ability to get coverage for four of the twenty contraceptive methods (which in many instances may be their most or only viable contraception options). It seems as though women's rights took one step forward and then two steps back. For the most part, federal laws are enacted with public policies that benefit the people. The contraceptive mandate is undeniably a means to ensure women are provided "preventative care and screenings," which include coverage for contraceptive methods. Establishing this mandate was meant to protect the safety and health of women, but the *Hobby Lobby* decision established that religious claims may serve as a means to exempt an array of people or entities from these federal laws. Such actions give rise to the question: from what else will religious claims allow companies or others to exempt themselves?

Back-to-School SBA and Student Org BBQ



On September 6, 2014, the Student Bar Association of Western State College of Law held its annual Back-to-School Barbeque. The event featured great food and refreshments, opportunities for students to connect with our school's outstanding student organizations, games and prizes, and an all-around great time!

The event was a great way for new and returning students to meet and mingle, and it was a delight to have professors and faculty join in for the festivities as well.

If you missed out on this event, there will be plenty of student social events throughout the year put on by the Student Bar Association and Student Organizations. Check out the list below for some of the upcoming events!

Upcoming Events

Saturday, September 27
BLSA Exam Writing Workshop with Dean Charles Sheppard (1:00—3:00 PM)

Wednesday, October 1
Student Ambassador Information Session - Room 105 (12:00 P.M. & 5:30 PM)
Snack Provided

*If you would like **The Precedent** to include your organization's events in upcoming issues, please contact **WSCLPrecedent@gmail.com***

Thank you everyone for joining us at our Back-to-School BBQ!

NEWS

CRIMINAL LAW CORNER

Riley v. California: The 4th Amendment Goes Digital

By Steve Bell, President of Criminal Law Association

On June 25, 2014, in arguably its most far-reaching criminal law decision since 1966's *Miranda v. Arizona*, the U.S. Supreme Court held 9-0 that, absent exigent circumstances, police must obtain a warrant before searching the contents of a cellphone.

The Fourth Amendment was intended to protect people from unreasonable searches by the government. Because a warrantless search is presumptively unreasonable, it violates the Fourth Amendment unless it falls within one of the recognized exceptions to the warrant requirement.

One such exception is a police search of an arrestee's person and the area under his/her immediate control, typically including purses, wallets, briefcases, etc. As the Court set forth in *Chimel v. California*, such a warrantless search incident to arrest is a reasonable exception to the warrant requirement given society's interest in the safety of the arresting officer and the preservation of evidence that might otherwise be destroyed.

The question before the Court in *Riley* was whether cellphones raised significantly different privacy concerns from those things which police historically have been allowed to search incident to arrest without a warrant. The government argued that there was no difference, that cellphones are just like anything else carried on the person, and that "[e]vidence of crime should not be insulated . . . [simply] because the arrestee maintains it in a technologically sophisticated [digital] form."

The Court unanimously disagreed. As Chief Justice Roberts initially noted, 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 human anatomy."

The decision examined how cellphones differ from briefcases or purses, noting their "immense storage capacity" and their ability to function variously as "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." Collectively, such functionality and storage capacity makes a cellphone the equivalent of a small computer and suggests that searching an arrestee's phone potentially could produce more private information than searching his/her home.

Further, the Court found that because cellphones are able to access personal information stored within the internet "cloud," which is not even arguably "on the arrestee's person," a cellphone search easily could exceed the allowable scope of a warrantless search incident to arrest. In addition, the Court noted that the two traditional justifications for such a warrantless search – officer safety and evidence preservation – were not factors when searching digital data. As the Chief Justice summarized: "Our answer to the question of what police must do before searching a cellphone seized incident to an arrest is accordingly simple – get a warrant."

Read the complete decision: *Riley v. California*, __ U.S. __, 134 S. Ct. 2473 (2014).

NEWS

Peruta v. County of San Diego: Recent Developments in American Gun Rights

By Emma Popiolkowski & Kevin Khoa Nguyen

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
- Second Amendment to the U.S. Constitution

Recently in *Peruta v. County of San Diego* a three judge panel of the U.S. Court of Appeals for the Ninth Circuit tackled the issue of whether law enforcement agencies in California may require a showing of good cause in issuing concealed carry permits without violating the Second Amendment. In a controversial opinion by Judge Diarmuid O'Scannlain, which specifically rejected recent holdings by the Second, Third, and Fourth Circuit Courts of Appeal affirming similar laws, the bitterly divided panel held that such a requirement is a violation of the Second Amendment. Previously, applicants for concealed carry permits in California would have to convince the issuing local law enforcement agency that they were in some sort of danger by producing evidence such as a restraining order, or that they are in a particularly precarious situation -- as in one who regularly carries large amounts of cash or has an unusually dangerous occupation. In *Peruta*, Judge O'Scannlain (joined by Judge Consuelo María Callahan) concluded that applicants for a concealed carry permit need only declare that they want the guns for self-defense, meaning that they do not have to show that they are in any particular danger. The *Peruta* decision is currently under review for possible en banc rehearing by a larger Ninth Circuit panel.

Though the consensus among court watchers is that *Peruta* will likely be overturned by the Ninth Circuit sitting en banc, it is less certain what will happen if this case makes it to the U.S. Supreme Court in light of its similarly controversial 5-4 decision in *District of Columbia v. Heller*. In *Heller*, the Supreme Court reversed the long standing view, last articulated by the Court in its unanimous 1939 decision in *U.S. v. Miller*, that the "obvious purpose" of the Second Amendment was to "assure the continuation and render possible the effectiveness" of state militias rather than guaranteeing individuals an unfettered right to keep and bear arms.

Edward Peruta's main argument was that a requirement of good cause placed an undue burden on his ability to exercise his purported Second Amendment "right to bear arms." The court explored whether the Second Amendment affords the right to carry firearms outside the home for self-defense. The court analyzed what it called the simple meaning of the Second Amendment language as well its view of the "historical context." Here, the court focused on one phrase in the Second Amendment: "keep and bear." The court looked to *Heller* for a historical interpretation of those particular words. What the *Peruta* court found is that the word "bear" conveys an idea of taking outside the home for a particular reason, possibly self-defense. One may infer, continued the majority in *Peruta*, that if the Framers meant for arms to never leave the home, they would have omitted the word "bear." The court concluded that the Second Amendment does allow an individual to carry a handgun for self-defense on a restricted basis outside the home.

Next, the majority in *Peruta* explored whether this right is infringed by a restriction that one must show good cause to obtain a concealed carry permit. The court stated that the requirement of good cause bars the typical citizen from obtaining a concealed carry permit because by design, applicants must show that they are unique in their need for the permit. Thus, the court concluded that the policy of requiring good cause does infringe on the typical citizen's Second Amendment right.

Quick action was taken by the State of California, backed by the California Police Chiefs Association, the Brady Campaign to Prevent Gun Violence, and the Law Center to Prevent Gun Violence, among others, to appeal the *Peruta* decision. It is expected the Ninth Circuit will issue a stay of the *Peruta* decision when it agrees to hear the case en banc.

While the vast majority of law enforcement agencies in California, including the Los Angeles County and San Diego County Sheriff Departments, are waiting for final word from the Ninth Circuit before issuing new concealed carry permits under the relaxed *Peruta* standards, the Orange County Sheriff's Department and a few other agencies in California, including the Ventura County Sheriff's Department, are now issuing concealed carry permits on the basis of simple self-defense.

According to an August 31, 2014 article in the *Los Angeles Times*, the Orange County Sheriff's Department has issued approximately 1000 concealed carry permits under the relaxed *Peruta* standards, with over 7000 additional people having already applied or requesting appointments to file their applications. These numbers contrast sharply with the 900 total active concealed carry permits in OC prior to *Peruta.* The OC Sheriff's Department is also instructing applicants that they can apply under the relaxed *Peruta* "self-defense" standard, or under the previous higher "good cause" standard to help ensure their permits remain valid if *Peruta* is reversed.

The question of what constitutes appropriate and permissible gun control is one of the most polarizing issues facing society. A total ban on guns may effectively leave law-abiding citizens without protection, and criminals as the only ones armed. Deregulation will make it easier for people with bad intentions to obtain and use guns for criminal purposes, or for more law-

(Continued on page 8)

Gun Rights (*Continued from page 7)*

abiding citizens to obtain guns that ultimately are used to kill family members or wind up the wrong hands -- while also making guns far more difficult to trace. While most Americans seem to support some reasonable middle ground, the debate tends to get especially heated in the aftermath of high profile mass killings. Elliot Rodger's killing spree in May, where 7 young people including Rodger died, is still fresh in the minds of many. The Columbine, Aurora, and Sandy Hook tragedies also instilled widespread sadness while stoking public demand for meaningful gun control.

One response to the Rodger shootings and other recent gun violence is an effort to keep guns out of the hands of potentially dangerous people. California's AB-1014, which the California Senate passed in August, proposes to make it easier for judges to order people found dangerous to surrender their firearms. California Assembly approval is expected, and Governor Brown has signalled he would sign AB-1014. Some traditional proponents of gun control legislation assert that AB -1014 does not go far enough, is too vague, or may be difficult to enforce. However, given the *Peruta* court's relaxation of California's concealed carry rules, the legislature is likely cognizant that more restrictive laws may be deemed unconstitutional when challenged in court.

The issue of gun control may remain unsettled for quite some time, as society is conflicted with seeking to protect gun ownership privileges while reeling from the latest senseless gun violence.

SOURCES:

Gun Violence Restraining Orders, Assembly Bill No. 1014. Introduced by Members Skinner and Williams. *California Legislature*. State of California, 2013.

Adam Nagourney and Michael Cieply, *Before Brief, Deadly Spree, Trouble Since Age 8: Elliot O. Rodger's Killings in California Followed Years of Withdrawal,* THE NEW YORK TIMES (June1, 2014) <http://mobile.nytimes.com/2014/06/02/us/elliot-rodger-killings-in-california-followed-years-of-withdrawal.html>

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