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NINTH CIRCUIT RULES, “NO RIGHT TO CARRY CONCEALED GUNS” — On June 9, two days before the shooting massacre in Orlando, the U.S. Court of Appeals for the Ninth Circuit ruled that carrying concealed weapons in public is not a Second Amendment right under the U.S. Constitution. The court upheld a California law that requires individuals to show “good cause” to obtain a concealed-carry permit. Law enforcement officials can require applicants to demonstrate they are in immediate danger or have another good reason for a permit beyond self-defense. Simply expressing a desire for personal safety is not enough. The Ninth Circuit’s rulings are binding in nine western states. *Most people don't realize how many concealed gun carriers are poorly trained and inexperienced. In eight states, no permit or training is required to carry a concealed gun. In 25 states, individuals are not required to show they know how to shoot a gun to get a permit. The Supreme Court of the U.S. has held that Americans have the constitutional right to possess a weapon in their homes. This decision allows the states to impose restrictions on concealed carry. No doubt this Ninth Circuit ruling heralds the next battleground of the gun control debate. This case will most likely be appealed to the Supreme Court.*

LABOR, MINORITY REPS REQUIRED FOR ECONOMIC DEVELOPMENT GROUPS — The Illinois General Assembly has passed legislation requiring that economic development councils receiving public money have at least two full members of a labor council (union) and at least two members from two separate minority groups, women being considered a “minority.” An economic development council would be any organization “promoting the development, establishment or expansion of industries,” and public moneys would include any funds from federal, state or local governments or agencies. *This legislation is broad enough to apply to many 501(c)(3), (4) and (6) groups. Passed on May 26, the legislation now goes to the Governor's desk for signing into law or a veto, which appears more likely. Governor Bruce Rauner, a Republican, will have 60 days to veto the new legislation after it is presented to him, and the General Assembly, in which Democrats are a majority, could then override his veto by a three-fifths vote of all members of each of the two houses in the Assembly.*

GOOD READING ... See you in July

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NOT-FOR-PROFIT LAW DEVELOPMENTS

CHINA PASSES LAW FOR NONPROFIT SURVEILLANCE — China’s lawmakers have passed a new law, effective next January, giving police authority to supervise the activities of foreign nonprofit groups in that country. Those that “threaten national security or ethnic harmony” will be punished. Overseas groups operating in China are required to register with the Ministry of Public Security and publish annual reports online, including financial information on all activities. Police are authorized to search nonprofit offices and summon their representatives for questioning at will. Exempted from the law’s reach are professional exchanges and cooperative efforts involving foreign hospitals, schools and science and engineering groups. *Every time we feel inclined to criticize how the U.S. government operates (and this election season, there is plenty to complain about,) we need to remember that things are very different in other countries.*

INTELLECTUAL PROPERTY & COMPUTER LAW DEVELOPMENTS

GOOGLE AND ORACLE CONTINUE MAJOR COPYRIGHT DISPUTE — *H&H Report Update* — Alphabet Inc.’s Google and Oracle Corp. are headed back to court in their continuing battle to determine whether Google, in building its Android mobile operating system, made fair use of certain copyrighted application software interfaces, or APIs, that were created by Sun Microsystems Inc., which Oracle later acquired. Oracle says Google should have licensed the APIs from Sun, while Google says it made fair use of the APIs under a rule that allows limited uses of copyrighted materials by someone other than the copyright owner or its licensees. The case has bounced through several courts, including the U.S. Supreme Court, and now it’s in a U.S. District Court in San Francisco for a trial that could be very helpful in defining the limits of fair use for those who would incorporate some elements of a previously copyrighted work into their own creations. The final decision could also cost Alphabet billions of dollars in damages. However, both parties have indicated that, no matter how the San Francisco court rules, there will be further appeals. *Nonprofits often create copyrightable works, and they sometimes incorporate portions of other works owned by someone else into what they have produced, even if they are just brief snippets, or they can find their own copyrighted materials used in that manner. Unfortunately, the final decision in this case is likely months, if not years, away.*

REGULATORY LAW DEVELOPMENTS

VIOLATION OF FCRA WON’T SUPPORT SUIT FOR DAMAGES WITHOUT HARM — The Supreme Court of the United States has held that a suit for damages under the federal Fair Credit Reporting Act cannot succeed unless complainants have suffered a risk of real harm. The Act specifies that victims of false consumer reports can sue for damages of up to \$1,000 without having to show that they suffered any specific harm. But the Supreme Court has held that a bare procedural violation of the Act won’t support such a lawsuit, and a complainant can’t sue for damages under the Act unless there is at least the risk of some real harm to him arising from a false consumer report. The ruling came in a suit filed against an Internet search site that posted online information riddled with errors about an individual’s age, education, employment and marital status. The Supreme Court remanded the case to a lower court for more consideration as to whether there was a risk of real harm from the publication of that information. *Nonprofits sometimes publish information about individuals that could be considered part of a consumer report governed by the Act. Some companies providing consumer information have been concerned that this case might result in their being exposed to billions of dollars of liability for even minor violations of the Act and other statutes protecting consumer privacy rights.*

FTC CRACKS DOWN ON PRODUCT ENDORSERS — The Federal Trade Commission recently cracked down on those who are paid by marketers to promote products. The FTC wants to make sure that consumers know when endorsers have been paid in some way for their favorable recommendations. Many product supporters are ordinary customers, bloggers, and tweeters who have no relationship to the manufacturer, retailer or advertiser. However, others are financially compensated or receive free product in exchange for their endorsements. The FTC feels that consumers have the right to know if the endorser is independent or has a material connection to a product. Without full disclosure, consumers may not be able to distinguish between the endorser and the brand. Consequently, such advertising can sometimes violate the Federal Trade Commission Act Section 5, which prohibits unfair or deceptive advertising. *The FTC has said an endorser is obligated to fully disclose any connection between the advertiser and the endorser. Additionally, it clarified its definition of an endorser as a person or entity paid by an advertiser to favorably mention a product in exchange for money or something of value. Disclosure requirements apply to all written and online testimonials including video or product photo posting on social media platforms because they can convey an individual's approval of a product. For more information, see www.ftc.gov for the FTC 2009 endorsement guidelines, updated in 2015 with a Q&A guidance, "The FTC Endorsement Guides: What People Are Asking?"*

MICROSOFT SUES OVER SECRET DEMANDS FOR CUSTOMER INFORMATION — Microsoft is suing the U.S. government in a Seattle federal court over demands from the Justice Department that the company turn over customer emails and online files without informing the customer. Microsoft says it has received more than 5,600 demands for customer records and correspondence in the past 18 months, with half of them requiring that Microsoft keep the demands secret from the customers. Microsoft was complying until the government threatened sanctions against Microsoft for contesting a particular demand. *This dispute comes as the FBI is trying to compel Apple's assistance in obtaining data stored on iPhones. Is the government asking you for your customer/member data? If not, it's probably just a matter of time.*

TAX LAW DEVELOPMENTS

EVEN SMALL EXEMPT ORGANIZATIONS MUST FILE TAX RETURNS — Just because your organization has been declared tax-exempt by the federal government, that doesn't mean it doesn't have to file tax returns with the Internal Revenue Service. The IRS is reminding nonprofits that even the smallest exempt organization must file an annual information return on Form 990-N, an "e-postcard" return that is filed electronically. Larger organizations must file paper returns in the Form 990 series. Exceptions apply to churches, religious associations and auxiliaries. The due date is the 15th day of the fifth month after the close of an organization's accounting year. *Keeping up with the annual filing is important. If an organization fails to file for three straight years, its tax exemption will be automatically revoked and it will have to apply to the Service to reclaim its exemption.*

FREEDOM FROM RELIGION REFILES PARSONAGE EXEMPTION CHALLENGE — *H&H Report Update* — The Freedom From Religion Foundation has filed a new complaint seeking a court order that the parsonage exemption from federal income taxes is unconstitutional. The Foundation is trying to avoid the "standing" issue that doomed a previous complaint, which failed because it was insufficient in alleging an injury that the exemption caused to the complainants. This time, the Foundation is joined as plaintiffs by individual Foundation employees who were paid a housing allowance by the Foundation, included it in their taxable income when filing federal income tax returns, and then unsuccessfully sought a refund of taxes paid based on the allowance. *The parsonage exemption is available only for amounts used to provide housing for "ministers of the gospel," which the Foundation's employees are not. The new complaint, like the previous one, alleges that the exemption provides preferential and discriminatory tax benefits to such ministers in violation of the U.S. Constitution's equal protection requirements and its prohibition on the enactment of laws "respecting an establishment of religion."*

TEST REQUIREMENTS DIDN'T VIOLATE ADA — A three-judge panel of the U.S. Court of Appeals for the Seventh Circuit has affirmed a lower court decision dismissing a suit filed against the City of Chicago by firefighters who alleged that the City's failure to hire them violated the Americans with Disabilities Act. The firefighters applied for positions with the City and passed all of the City's requirements for hiring. But they were not hired because other applicants were considered ahead of them in the City's first come, first served hiring procedure while the complaining firefighters were busy taking and passing certain medical examinations that the City mandated. The complainants argued that the City's medical requests were unreasonable and did not give individuals with disabilities time to comply. But the panel of the Court of Appeals has held that the Act did not require medical requests by employers to be reasonable or that disabled applicants be given sufficient time to comply. Consequently, even if the firefighters were delayed in complying with the City's medical requirements because of their disabilities, they still did not make out a claim against the City under the ADA. *This decision may now go to the full Court of Appeals for further review.*

JUDGE DISMISSES CONFIDENTIALITY CLAIM AGAINST WHISTLEBLOWER — A federal judge has dismissed a claim brought by a company against its employee for sending the federal government information about the employer's alleged violation of Medicare regulations. The company charged that the employee violated a company privacy policy and a confidentiality agreement by providing the government with information protected by the federal Health Insurance Portability and Accountability Act. The court balanced the employer's reasonable expectations that confidential information would remain confidential against "the need to protect whistleblowers and prevent chilling their attempts to uncover fraud," which is protected by federal and state law. *Key to the court's decision was its conclusion that the employee had not provided the government with more confidential information than was necessary to support his claim that the employer was violating Medicare regulations. Consequently, the decision should give employees reason not to go overboard in providing officials with confidential employer information even in a whistleblower situation.*

NEW MOTHER LOSES SUIT OVER TRANSFER — How much do employers need to accommodate new mothers who want to breast feed at work? Only so far, as one mother recently discovered. While on unpaid leave to have her baby, she requested that her employer transfer her to a facility nearer her home after her return to work. That request was granted, but, upon her scheduled date for reporting to the new facility, she was told that it had no private space to pump breast milk, which she said she wanted. At that point, her employer told her that the new facility could not be retrofitted to accommodate her breast feeding, but she could continue to work at her old facility, which had two private offices she could use for that purpose. She then refused to report to work or to respond to communications from her employer and was dismissed, after which she sued the employer for alleged violations of the federal Fair Labor Standards Act and the Illinois Nursing Mothers in the Workplace Act. But now, a trial court has dismissed her claims, finding that she was fired because she had failed to report to work and the employer's offer that she could continue to work at her old facility was a legitimate attempt to accommodate her needs. *In deciding the case, the court assumed, but did not decide, that breast feeding was a protected activity under the laws that were cited by the new mother in her complaint. The court found that, even if it was, she still didn't have a valid claim against her employer. Further, the court rejected her argument that she shouldn't have been fired for not reporting to work because her old workplace was fully staffed on the days she failed to appear for work and she wasn't needed there. The court cautioned that it did not sit as a "super-personnel department that second guesses employer policies that are facially legitimate."*

EMPLOYER WITHOUT NOTICE OF DISABILITY DIDN'T DISCRIMINATE — A worker suffering from chronic fatigue syndrome couldn't sue her employer for disability discrimination when she only informed the employer that she was suffering from anxiety, which is not a disability. That was the conclusion of a federal appeals court in Chicago when an employee quit her job and accepted another position over her former employer's refusal to place a counter or partition between the worker and members of the public after several of them had been abusive to her. Agreeing that chronic fatigue syndrome was a disability, the Court of Appeals found that the employer had not been given enough information about the employee's condition so that it could determine whether she had a disability and an accommodation was required. *Another issue in the case was the proper defendant for the employee to sue, since both the County of Winnebago and the State of Illinois had some control over her workplace. She sued the County of Winnebago, though her requests to be separated from the public were apparently denied by employees of the State of Illinois. The Court of Appeals concluded that, had the employee demonstrated disability discrimination, the county could have been held liable for the actions of the state employees. She just didn't make the case that she had given anyone adequate notice of her disability.*

MEETINGS & TRAVEL LAW DEVELOPMENTS

WHERE SHOULD THOSE NOISY PLANES GO? — They have to go somewhere. But if your organization is located in a flight path at a major airport, you may have some views on the subject, positive or negative. That is the case with a “fly quiet” plan being tested for Chicago's O'Hare International Airport by the Federal Aviation Administration. The plan is intended to “spread the pain” related to late night and early morning flights, meaning that more flights are supposed to be going over suburbs heretofore unbothered by loud airplanes at such hours, while fewer will be going over some of the suburbs and parts of Chicago that have, until now, been getting the most air traffic overhead when people on the ground are trying to sleep. The local governments of Des Plaines, Palatine, Arlington Heights, Rolling Meadows and Hoffman Estates have said they don't like the plan at all, while some near western suburbs like Bensenville and polls from the wards of northwestern Chicago are favoring it. Other suburbs don't know how the plan is going to affect them, and they haven't taken a position on the measure yet. *The “fly quiet” plan won't affect most daytime air traffic. Further, this being a plan of the Federal Aviation Administration, how local government officials feel about it may be irrelevant. For sure, the same kind of conflict will play out whenever flight plans change at any major airport.*

AIRLINE WI-FI PROVIDER'S CONTRACT TERMS HELD UNENFORCEABLE — A federal judge in New York has invalidated certain terms of Wi-Fi provider Gogo LLC's contract that consumers agreed to online during air travel, as the judge found that Gogo's form contract did not adequately explain to consumers the importance of critical terms. Among other things, the contract included provisions for automatic monthly renewal and mandatory arbitration of disputes in Illinois, where Gogo is located. Now, the judge has allowed a consumer class action suit to proceed against Gogo in New York based on allegations that the company tricked the complainants into signing up for automatic renewals of Wi-Fi connections. *Times are tough for Gogo. Only a couple of months ago, we reported that American Airlines had sued Gogo in an attempt to get out of a contract for Wi-Fi service. That suit was settled after Gogo agreed to install faster satellite service on American's planes.*

OTHER ISSUES, TRENDS & DEVELOPMENTS

JUDGE LIMITS APPLICATION OF ATTORNEY-CLIENT PRIVILEGE — A U.S. Magistrate Judge in Chicago has ruled that audio recordings of interviews conducted by a company’s outside legal counsel in a lawsuit were not protected from discovery by the opposing parties. The interviews were conducted with employees who were suspected of giving confidential information to three former executives the company had sued for alleged misuse of that information. The Magistrate Judge found that the interviews were not protected by attorney-client privilege because Illinois law only recognizes the privilege for an attorney’s communications with “decision-makers” of a company having the understanding that the communications would remain confidential. Here, the employees interviewed were not such important managers or advisers that “the company would not normally make a decision without the employee’s advice or consent.” *Although the interviews themselves were not protected from discovery in this case, the outside counsel created notes containing the attorney’s impressions on the interviews, and the Magistrate Judge found that such notes should be redacted from the recordings before they were turned over for discovery. Consequently, the attorney-client privilege was found to be at least somewhat applicable.*

SELLING DONATED ITEMS CARRIES RISK — A college in Connecticut, after closing a museum housed on campus, planned to hire an auction house and sell many donated items, including many letters from Presidents of the U.S., campaign posters and pins and advertisements dating back to the 18th century. The college says the items, many of which have never been exhibited to the public, were donated without restrictions. But one donor says he received assurances that artifacts he donated would never be sold, and he’s threatening to sue. Meanwhile, another concerned collector has written to a U.S. Attorney, asking for an investigation of the sale, which he believes was prohibited by the federal government as a condition for funding the museum. *Receiving donated items sometimes carries obligations, including compliance with donor wishes regarding how donations are used. Some donors will hand out a gift with one hand and a list of demands with the other. Failure to comply, even many years later, may result in thorny legal problems.*

H & H DEVELOPMENTS

Naomi Angel presented “Legal Report on Trends and Developments” to a mid-year meeting of manufacturers in Chicago.

Jonathan Howe presented “Market Negotiations and Contracts — What’s Up Doc?” to meeting professionals for a meeting at the British Colonial in the Bahamas.

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