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THREE TRENDS TO KEEP IN MIND — Who would have envisioned a decade ago the rapid change in society’s views regarding marijuana legalization, protections for LGBT concerns, and taxation of interstate mail order, telephone and Internet sales using computers and other mobile devices? *As Indiana and Arkansas and other states have learned and are learning on religious freedom laws vs. discrimination claims, and as state legislatures, regulators, courts and employers grapple with medical and recreational legalization of marijuana, and the (federal) Marketplace Fairness Act emerges on taxation of Internet sales, we all can see the times are changing - and fast!*

TRAVELERS TAKE NOTE: ALL SIGNS INDICATE RISING PRICES — If the predictions in the business press and other travel media are to be believed, travelers and especially business travelers can expect steadily rising prices for hotel rooms and airline fares in the next year or two. International travel costs will go up even faster. You better factor that into your travel budgets, and become creative on ways to hold down costs or swallow the increases. *Associations, this means your convention, meeting and trade show attendees will be looking at higher costs to attend, and more likely to query the value provided versus the cost, that basic cost-benefit analysis in a nutshell. Be ready.*

MORE WORD GAMES — “Porn” seems to be the new appendage to phrases to indicate disfavor, as in “poverty porn” which is described as using some media form exploiting the poor or miserable situations to generate sympathy (and donations), and may also mean media intended to cause anger or outrage. Another example is “ivory tower porn” which refers to wanting to attend an elite private school or university when a publicly funded state university will suffice. *“Famine porn” and “development porn” are other examples. Why resort to it? Because it is successful in generating donations or emotional reactions. Remember “shock and awe”?*

GOOD READING ... See you in June

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PILOT PLANS OR SIMILAR PAYMENTS CONTINUE TO EXPAND — Northwestern University in Evanston, IL, just north of Chicago, has announced it will contribute \$1 million annually to the City of Evanston. Meanwhile, a small group of students at the University of Pennsylvania is demonstrating to show support for PILOT payments (“Payment In Lieu Of Taxes”) to the City of Philadelphia. The university’s annual budget is larger than the city’s, and Penn is the wealthiest nonprofit in Philadelphia. The Republican Governor of Maine is pushing a plan to impose property taxes on nonprofit hospitals, private colleges and even summer camps payable to municipalities where they are located. His proposed tax scheme would target nonprofits with properties worth \$500,000 or more, and apply only to the values more than \$500,000, and at half the rate of property taxes on nonexempt properties. *As you can imagine, the nonprofit communities in most instances have immediately manned the barricades to oppose PILOT payments or property taxes, claiming they will undercut the services nonprofits provide. Meanwhile, they continue to rely on municipal services, fire-fighting, police, water, etc. Northwestern may be taking the wiser course to head off property taxes, which might amount to considerably more than \$1 million if ever imposed.*

ILLINOIS HIGH SCHOOL ASSOCIATION NOT SUBJECT TO FOIA DEMAND — A trial court judge in Chicago has dismissed a lawsuit by the Better Government Association (“BGA”) brought under the Illinois Freedom of Information Act (“FOIA”) against the Illinois High School Association (“IHSA”), ruling the IHSA is not a public body subject to the FOIA. The BGA was seeking certain contracts and other business records of the IHSA. The judge ruled that overseeing high school sports in Illinois is not a quasi-governmental activity bringing the IHSA within the scope of the FOIA. The judge also noted that a number of associations, including the Illinois Judges Association, have public employees as members but that does not make such associations public entities. *From time to time, associations receive FOIA requests for records, but as this decision illustrates, associations are private entities, not public bodies, and therefore not subject to FOIA requirements. One caveat: when seeking property tax exemptions, associations and other not-for-profit entities often argue they are performing government-type services. The BGA asserted the IHSA has claimed in other circumstances that it is a public entity performing governmental services.*

ALEC LOSES SOME LARGE CORPORATE MEMBERS — The American Legislative Exchange Council (“ALEC”) continues to lose some large corporate members, mostly due to ALEC positions on climate change. Among those that have left are British Petroleum, Occidental Petroleum, Google, Yahoo, Facebook, Microsoft, eBay and Yelp. ALEC identifies itself as the nation’s largest, nonpartisan, individual association of state legislators, with more than 2,000 individual members and over 300 corporate and private foundation members. The corporate member pay classifications are \$7,000, \$12,000 and \$25,000. ALEC’s website says ALEC stands for free markets, limited government, federalism and individual liberty. *A number of large corporate members in recent years have severed ties with ALEC, some saying they are simply not renewing after reviewing all their association ties, and others more explicitly stating they disagree with ALEC’s positions on climate change, and specifically its denial that any changes are due to human activities. It remains to be seen if FedEx, UPS, Verizon and other large players will remain in or opt out. ALEC is by no means the first association to find itself losing large corporate members over central policy issues.*

FEDERAL APPELLATE JUDGE SPELLS OUT “COLLUSIVE PRICING” — Federal appellate judge Richard Posner of Chicago is one of the foremost appellate court judges in the nation on economic matters, and when he writes an antitrust opinion, it is required reading. In April, he wrote an opinion upholding summary judgment in a class action price-fixing suit against four wireless network providers, AT&T, Verizon, Sprint and T-Mobile, and The Wireless Association. The lawsuit claimed the defendants had conspired to raise and fix prices of text messages which were priced per use (“PPU”), i.e., for each message. The plaintiffs alleged that PPUs are a declining share of the text message market as providers and customers have gone to bundled fixed-price blocks of messages and that the four companies must have colluded to jointly raise prices because if one did not, it would have taken market share from the others who did. They also claimed that the four companies regularly communicated with one another and at meetings of The Wireless Association. But after three years of discovery, the plaintiffs were unable to come up with evidence of collusion, or any agreements reached at or outside of association meetings. *And where Judge Posner’s opinion will be read and cited at great length was his explanation of collusive pricing in two formats, one legal, the other not. He distinguishes “follow the leader” pricing, also called “tacit collusion” or “conscious parallelism,” which does not violate the Sherman Act, from “express collusion,” which does. He noted some professors argue that tacit collusion should be deemed an antitrust violation but said that would result in an almost utility-like regulation of markets, as regulators decided how much competition in various phases of a company’s business was necessary, not just pricing, an impossible burden. Of course, his comments on the necessity to demonstrate specific evidence that antitrust violations occurred at association meetings, not just inferences or speculations, will also be cited in future antitrust litigation.*

FTC SAYS COMMON CARRIERS MAY PROVIDE CALL-BLOCKING — The Federal Trade Commission, by a unanimous 5-0 vote, commented that there were no legal barriers or policy considerations preventing common carriers from providing call-blocking technology to consumers that allows them to block unwanted calls. The FTC said unwanted calls still trouble consumers, and many originate outside the U.S. using low-cost technology to make illegal telemarketing calls. Common carriers have declared they are not permitted by Federal Communications Commission rules to offer call-blocking. *The FTC comment was provided to the FCC in response to the FCC seeking public comment on call-blocking. The FTC concluded by saying an affirmative statement from the FCC saying common carriers may provide call-blocking to consumers would be in the public interest of consumers.*

THE FIRST BUT NOT THE LAST, WE ANTICIPATE — The Justice Department’s Antitrust Division has announced its first Internet-based price-fixing conspiracy prosecution, this one against a seller of posters on the Amazon Marketplace. The seller developed an algorithm, which he used with other poster sellers to collude on prices for posters. The seller has agreed to a fine of \$20,000. *This conspiracy was caught quickly. The penalties could have been much, much worse for the seller, including serious prison time and a \$1 million fine. Take note. Federal authorities go after little price-fixing schemes as well as the big ones. A key takeaway: this was the first criminal antitrust prosecution involving the Internet. Don’t be the next.*

PRESIDENT VETOES EFFORT TO OVERTURN NLRB QUICK ELECTION RULE — To no one’s surprise, President Obama vetoed a Republican effort to overturn the National Labor Relations Board’s expedited union election rule, meaning unions will be able to organize a company’s employees at length, and when the union is ready, demand an election on as little as two weeks’ notice. That is intended to greatly reduce the time a company’s management has to respond to union blandishments with its own arguments. *This quick response by President Obama was anticipated. He has promised to wield more vetoes in his last two years, and the NLRB continues its own efforts in favor of union positions.*

EMPLOYMENT LAW DEVELOPMENTS

ARE YOU FAMILIAR WITH THIS NLRB MEMO ON EMPLOYEE HANDBOOKS? — The National Labor Relations Board’s Office of the General Counsel recently issued a thirty-page memorandum entitled Report of the General Counsel Concerning Employer Rules, Memorandum GC 15-04, dated March 18, 2015. The report is the NLRB’s most recent advisory on what the NLRB considers acceptable and unacceptable employer rules governing employee activities, especially any activity the NLRB considers related to employees’ legal rights to engage in concerted activity. This goes well beyond union organizing activities but cannot be totally separated from that concern. The most telling phrase is “chilling effect,” covering an employer action that might be deemed to prohibit protected activity, or to deter union or other protected activity, or to restrict the exercise of protected rights. *All employers should be aware of this most recent pronouncement from the NLRB. It may not be entirely consistent with previous NLRB guidance or court decisions, but have it in mind when reviewing your own HR rules and employee handbook and practices. You can download the report or ask us to provide it to you.*

FORD WINS TELECOMMUTING LAWSUIT ON APPEAL — *H&H Report Update* — Readers will recall last year that a three-judge appellate panel reversed a trial court’s dismissal of a terminated employee’s Americans With Disabilities Act claim against Ford Motor Company. The employee claimed, or the EEOC did in filing a lawsuit on her behalf, that telecommuting four days a week was a reasonable accommodation to her chronic bowel movement syndrome disability. Ford had claimed that interactive work in the office was a reasonable expectation, and her performance working two days a week from home was substandard. Ford appealed the three-judge panel’s decision to the entire 13-judge appellate *en banc* panel, which reversed the three-judge panel decision and dismissed the EEOC’s lawsuit on summary judgment. *This was not a slam-dunk decision, as the panel split 8-5 in ruling Ford had acted reasonably in expecting the employee to be present at Ford to work, and noted her substandard performance evaluations when working from home. So, the fear that telecommuting demands might become the norm is abated for now, but don’t expect the EEOC to give up bringing such claims. Employers are well advised to show in job descriptions why employees are expected to be physically present to do their jobs. Another point to keep in mind is that appeals to en banc panels are usually turned down.*

MEETINGS & TRAVEL LAW DEVELOPMENTS

WHOSE FOURTH AMENDMENT RIGHTS ARE AT STAKE HERE? — The U.S. Supreme Court has heard arguments on a Los Angeles ordinance that requires hotels to keep detailed guest registers, including names and addresses, vehicle identification, check-in and out data, room numbers and payment method, and to make the registers available to the Los Angeles police upon request. No search warrant is required. Los Angeles, supported by such *amici* as the United States, the State of California, the California State Sheriffs’ Association and others, argued such inspections help to deter crimes such as prostitution, drugs and gambling by permitting unannounced inspections of guest records. The Los Angeles Lodging Association and representative hotels and motels argue the ordinance on its face violates the Fourth Amendment’s unreasonable search and seizure restrictions and interferes with guests’ privacy expectations. *Perhaps the police do have a good reason to check guest registers, in which case, the hotel operators say, take it to a judge and get a subpoena or some kind of judicial review. Is there more at stake here than the hotels’ desire to be free of such police searches without a warrant? The Supreme Court’s decision will affect similar laws in other states and cities, and may address just what expectations businesses should have in protecting their records against such searches. We will be reporting on the outcome of this appeal when the Supreme Court rules which is expected by the end of June.*

TSA WANTS YOU! — “The Transportation Security Administration wants you” - to apply for its trusted traveler program, to shorten those airport security lines and to allow TSA to focus more on travelers who might pose some sort of threat. Various airlines have their own PreCheck programs and TSA has its GOES (Global Online Enrollment System) program, which permit travelers to go through airport security in expedited fashion with shorter lines, wearing shoes, belts, computers in bags, and all-around less hassle and inconvenience. *TSA wants to quadruple the number of trusted travelers in the next four years. For an application fee of \$85 for GOES status, or \$50 for SENTRI and NEXUS status, which permit use of expedited driving lanes to and from Mexico and Canada border crossings along with expedited airport security status, trusted traveler status is a bargain for frequent flyers. Try it; you’ll like it.*

YOU WOULD THINK THEY MIGHT KNOW BETTER BY NOW — A legislator in Louisiana is proposing yet another version of a “religious freedom bill,” which appears at first reading to have many of the same flaws as bills in Indiana and Arkansas before they were challenged and two governors hurriedly backed down as their business communities raised a storm of protest. Now, it’s Louisiana in the crosshairs, and predictably the first shot across the bow in opposition was by the CEO of the New Orleans Convention and Visitors Bureau, who told the legislator to throw the bill out entirely, not simply modify it. *“You are messing with the third largest industry in Louisiana, and New Orleans is even more dependent on the hospitality industry than Indianapolis or the State of Arkansas,” the Bureau executive said. You have to wonder, what are they thinking? Or are they thinking?*

INTELLECTUAL PROPERTY & COMPUTER LAW DEVELOPMENTS

DO YOU ANTICIPATE DOING BUSINESS IN CUBA SOMEDAY? — If you anticipate ever doing business in Cuba after relations are “normalized,” whatever that means and if and when it happens, one piece of advice you might want to consider is registering your trademarks now before the rush, and before infringers beat you to the punch. It seems U.S. law, which forbade so many business relations with Cuba, provided an exception for registering trademarks and other marks. Cuba, like the U.S., is a signatory to the Madrid Protocol, greatly simplifying the process. *Protect your marks now for minimal cost. It may cost more later.*

TAX LAW DEVELOPMENTS

THOUSANDS OF FEDERAL WORKERS OWE BILLIONS OF BACK TAXES — As Andy Rooney used to say on *60 Minutes*, does this make you as mad as it makes me? Various news reports say thousands of federal workers owe billions in unpaid income taxes. But when you get into the details, the various news reports seem to vary on how many federal workers, how many billions, and whether the military is included among the tax miscreants. And when you get deeper into the details, you learn such things as the number of current and retired delinquents are down from 2013, although their overall debt is up, and the overall delinquent federal population rate as of 9/30/2014 was about 3.1%. *The general public’s delinquency rate is about 8% to 9%. Let him without sin cast the first stone.*

SPORTS AT NONPROFIT AND PUBLIC COLLEGES AND UNIVERSITIES — Let’s see now. The new college football playoffs and all those bowl games generated record revenues of nearly half a billion dollars over the 2014 year-end holidays, up nearly \$200 million from 2013 year-end holiday figures, and the NCAA’s “March Madness” also generates about a billion dollars annually. That’s a lot of money flowing to the NCAA and the big conferences in particular. So, exactly how does this benefit the student-athletes, that overused term the NCAA loves to use? And just why is all that revenue exempt from taxation? Should it be? *The same question is often asked about pro football, hockey and golf, among others. The teams’ and players’ income is taxable but not the income of the NFL, NHL or PGA, which are treated as Section 501(c)(6) tax-exempt entities. Thank you, Congress. We do love our bread and circuses.*

OTHER ISSUES, TRENDS & DEVELOPMENTS

WILL THE U.S. SUPREME COURT LOOK AT BASEBALL AGAIN? — The U.S. Supreme Court is being asked by attorneys for the City of San Jose, CA to overturn Major League Baseball's antitrust exemption, which dates back to a 1922 Supreme Court decision that baseball was not the sort of business the Sherman Act was intended to regulate. The current litigation arises out of San Jose's frustrated deal to build a new stadium to house the Oakland Athletics baseball team, which would move to San Jose from Oakland. The San Francisco Giants are blocking the deal, claiming it infringes on the Giants' exclusive territorial rights in the South Bay area, and the MLB is not inclined to ask the other team owners to vote on the proposed deal. San Jose claims the nearly century-old exemption is obsolete and not reflective of today's baseball business. Last January, a federal appellate court in San Francisco relied on the 1922 precedent, two later Supreme Court interpretations in 1953 and 1972 still upholding the exemption, and the Curt Flood Act passed by Congress in 1998 removing the exemption as to labor matters only, in denying San Jose's challenge. *The 1953 and 1972 Supreme Court interpretations rely on long-standing practices and reasoning that Congress has never addressed Major League Baseball's antitrust exemption except for the 1998 Curt Flood Act. Baseball is the only professional sport with an antitrust exemption. The ties between major and minor league baseball are also unique in professional sports. The odds against San Jose prevailing are about the same as the Chicago Cubs getting to the World Series.*

BOB GATES: BOY SCOUTS' BAN ON GAY LEADERS IS UNSUSTAINABLE — Bob Gates, former Secretary of Defense under two presidents and now National President of the Boy Scouts of America, told the annual meeting of the Boy Scouts this month that its long-time ban on gay leaders was no longer sustainable. Member councils in New York and Denver have already challenged the policy. *One more example of the times they are A'chargin.*

H & H DEVELOPMENTS

John Peterson spoke at an association meeting about concealed carry laws and identity theft.

Sam Erkonen presented a session on contract legal issues other than hotel contracts to a chapter event for meeting professionals in Perry, Iowa.

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Contributors to this issue...

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