



ENGROSSMENT*



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HAPPY NEW YEAR!

We at LIS wish all of our clients a Happy Holiday Season and a successful New Year in 2014.

Our founder, Tom Stallard, will be adding to his very busy community-oriented life the role of mayor of Woodland, where our main office is located, just outside of Sacramento, CA. Tom will begin his new duties in July of 2014. Our main office is in a late-1800s historical building in downtown Woodland that Tom restored to its original glory. We have always enjoyed the fact that we research very old statutes from all over the country and also get to work in such a beautiful historical old setting.

LEGISLATIVE HISTORY RESEARCH: STATUTORY INTERPRETATION FROM THE INSIDE

Professor Abbe R. Gluck, Associate Professor of Law at Yale Law School, and Professor Lisa Schultz Bressman, Associate Dean for Academic Affairs and David Daniels Allen Distinguished Professor of Law at Vanderbilt University, collaborated on two articles that were published in the STANFORD LAW REVIEW in 2013 (April and November). The authors also surveyed 137 congressional drafters about the doctrines of statutory interpretation and administrative delegation.

Their two-part series investigated and provided in-depth discussion and analysis of federal legislative history, use of the interpretive principles applied by the courts, legislative intent, best evidence of congressional intent, and the Supreme Court's history with legislative intent. You can find their articles at:

April 4, 2013: Part I:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2244952

November 21, 2013: Part II:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2358074

We bring both articles to our clients' attention because we have been successfully researching legislative history of federal statutes for decades and have discovered effective strategies for uncovering relevant documents and materials to aide in the interpretation of federal laws. These two articles remind us at LIS that federal legislative history research is fluid and challenging – both elements we embrace when we conduct federal legislative history research.

MORE CALIFORNIA BILLS SIGNED

In our last issue of *Engrossment*, we discussed a few of the bills signed by Gov. Jerry Brown at the end of the 2013 legislative session. Below, we discuss a few more of these bills.

SOCIAL MEDIA BULLYING BY STUDENTS CAN BE STOPPED

Public schools may now suspend or expel students for bullying by an electronic act that originated off school grounds. Bullying via an "electronic act" means the creation and the transmission of a communication by means of an electronic device to send texts or tweets or photos that was originated on or off the school site.

According to A/M Christina Garcia, the purpose of this bill is simply to clarify that when an administrator suspends or recommends expulsion of a student for bullying via an electronic act, the electronic act (the text or social network Internet Web site post, etc.) may not need to have been generated while at school, nor while coming to and from school, nor during a school-sponsored activity.

The author asserts that AB 256 is not inconsistent with how school administrators or the courts have interpreted state law. Students will not be suspended or expelled solely because of activities

conducted away from the school site; there must be some type of impact on students, as specified under the definition of bullying. The courts have ruled that disciplinary action as a result of bullying via a social network site is contingent on whether the action causes a substantial disruption to school activities or work of a school, regardless of where the action took place. Otherwise, if a student is suspended or expelled and the activity is not found to have caused substantial disruption, it can then constitute a violation of freedom of speech.

IMPLYING OR FALSIFYING MILITARY ENDORSEMENT

California is currently home to over 2 million veterans and large numbers of elder veterans, who are often targeted by unscrupulous businesses and individuals using military insignia and patriotic logos to get to their pensions, retirement assets, Social Security, or property. Various interested stakeholders, which included the Veterans of Foreign Wars, Vietnam Veterans of America and California Advocates for Nursing Home Reform, sponsored SB 272 to restrict the use of military or government terms, symbols, and content that reasonably could be interpreted or construed as implying a connection, approval, or endorsement of any product or service. Existing federal law prohibits the use of any seal, insignia, trade or brand name that could reasonably be interpreted or construed as implying any federal government connection, approval, or endorsement unless the mailing has a notification on its face, cover or wrapper that it is not affiliated with any federal government agency. With the enactment of SB 272, California now prohibits any nongovernmental entity from these prohibited practices.

ELDER FINANCIAL ABUSE EXPANDED

AB 140 would modernize the definition of undue influence for *elder financial abuse* and related probate matters, a definition that has not been revised since 1872. As enacted in 1872, Civil Code § 1575 defined “undue influence” as using the confidence of or real or apparent authority over another, taking an unfair advantage over another person's weakness of mind, or taking a grossly oppressive and unfair advantage of another person's necessities or distress.

The new definition that AB 140 would create defines undue influence as *excessive persuasion that causes an elder to act or refrain from acting and that results in inequity*. Inequity considerations may include, but are not limited to, the economic consequences to the alleged victim, any divergence from the alleged victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, and the reasonableness of the change in light of the length and nature of the relationship.

Cases brought pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), referred to “undue influence” as defined under Civil Code § 1572 of 1872. A/M Roger Dickinson argued that the existing definition of undue influence that has been utilized since 1872 focuses primarily on civil contract disputes. As such, it did not fully provide an adequate definition for probate and elder abuse cases under the Act.

Therefore, the intent of this statute is to modernize the definition of undue influence so that it is consistent with contemporary views of vulnerability, mental health, and fairness, which would bring greater clarity to the determination of when excessive persuasion had become exploitative.

FREE MCLE

For CA attorneys whose last names start with “N-to-Z”, the deadline for reporting the completion of their MCLE requirements is **February 3, 2014**. LIS offers *two* California State Bar approved self-study exams, each approved for one hour: **ethics** and **legislative process**, available 24/7 at: <http://www.legintent.com/free-mcle-credits/>. We will grade and email your certificate in a timely manner.

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