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*December 2010*

*Message from the Chair*

Greetings!

I hope that 2010 has been productive and rewarding for you. As this newsletter reveals, it certainly has been for the Education Law Section. Our section members’ continued commitment to advancing education law scholarship, doctrine, and policy never fails to impress me.

As you may know, the section program at the AALS Annual Meeting traditionally alternates between focusing on elementary/secondary education and higher education. This is a “higher education” year and we have chosen to present a program entitled “Immigration and Higher Education,” which the Immigration Law Section has generously agreed to co-sponsor with us. We are excited about the importance and timeliness of this program. Presenters will discuss many issues: the increasing immigration of students and faculty in both the U.S. and European context; legal issues relevant to both documented and undocumented students; and immigration issues relevant to legal education (and licensing) as well as also higher education generally. The panel will feature presentations by Professor Philip Altbach (Boston College), Professor Danielle Holley-Walker (South Carolina), Professor Karla McKanders (Tennessee), and Professor Laurel Terry (Penn State). I have no doubt that their presentations will be intriguing and thought provoking. The law review at my home institution, Michigan State, is excited to publish a collection of papers from these presenters and also from Professor Kevin Brown (Indiana) and Professor Victor Romero (Penn State) during spring 2011.

You may be wondering exactly where the panel will be held. To enable participation from the greatest number of our section members and other interested colleagues, and in deference to the union boycott, the section executive committee requested that our program be moved to the Parc 55 or the Hotel Nikko, both very near the Hilton. As of the date this newsletter went to press, sections had not been notified whether their relocation requests had been granted. If we learn the location of our panel before the Annual Meeting begins, we will send an email message to the membership to let you know where our panel will be; if you don’t hear from us, please make a note of our location in the materials the AALS distributes. Regardless of the location, the time and date will remain the same: 10:30 a.m. – 12:15 p.m., on Friday, January 7.

Please note that the Section business meeting will be held immediately following the program. If you are interested in serving on the Executive Committee or becoming involved in the Section please email me at [kristi.bowman@law.msu.edu](mailto:kristi.bowman@law.msu.edu).

Finally, I would like to thank Kimberly Jenkins Robinson, Section Secretary, for her work on this newsletter, Mark Weber, Section Treasurer, for his budget work, and Emily Gold Waldman for her work as chair-elect this past year, for coordinating the call for papers for our extraordinary panel, and for agreeing to serve as Chair in 2011.

I look forward to seeing you all in San Francisco.

Best regards,  
Kristi Bowman  
Chair, Education Law Section,  
AALS  
Associate Professor of Law  
Michigan State University College of Law

*Inside This Issue*

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## Supreme Court Round-up

Last Term, the Supreme Court decided *Christian Legal Society Chapter of University of California, Hastings College of Law v. Martinez*, a case that examined whether Hastings Law School could constitutionally deny recognition of the Hastings Christian Fellowship because the group requires members and officers to conform to its religious beliefs. In the 2010-11 Term, the Court has granted certiorari on five education law cases, *Camreta v. Greene*, *J.D.B. v. North Carolina*, *Arizona Christian School Tuition Organization v. Winn*, *Mayo Foundation for Medical Education and Research v. United States* and *Board of Trustees of Stanford University v. Roche Molecular Systems, Inc.* This newsletter provides an overview of each of these cases.

### Case Digests

In the 2010-11 Term, five cases have emerged to date on the Supreme Court's docket that may have a significant impact on education. These cases are:

In *Arizona Christian School Tuition Organization v. Winn*, argued on November 3, 2010, the Supreme Court will analyze an Arizona law that grants income tax credits to taxpayers who make contributions to non-profit organizations that then award private school scholarships to children. The Court will decide whether the program violates the Establishment Clause (insofar as many of the contributions, for which the donors receive tax credits, go to organizations that use the money to subsidize religious school tuition), and also whether the plaintiffs, whose only allegation of injury arises from their status as Arizona taxpayers, have standing to challenge the program.

In *Camreta v. Greene*, not yet scheduled for argument, the Court will decide, among other things, whether the Fourth Amendment requires a search warrant or court order to be obtained before non-school officials, such as a police officer or social worker, may interview children at school about sexual abuse allegations. The Ninth Circuit held that in the absence of exigent circumstances, a court order, a warrant or parental consent the interview of the student in the case for law enforcement purposes violated the Fourth Amendment.

In *J.D.B. v. North Carolina*, not yet scheduled for argument, the Supreme Court will decide whether a thirteen-year-old special education student was entitled to receive *Miranda* warnings when police came to his school to question him about recent neighborhood burglaries. In its opinion below, the North Carolina Supreme Court held that the questioning, which took place in a school conference room, was not custodial in nature and thus did not require *Miranda* warnings.

*Mayo Foundation for Medical Education and Research v. United States*, argued on November 8, 2010, presents the question of whether the Treasury Department can categorically exclude all medical residents and other full-time employees from the definition of "student" in 26 U.S.C. § 3121(b)(10). The relevant statutory provision exempts from Social Security taxes "service performed in the employ of a school, college, or university" by a "student who is enrolled and regularly attending classes at such school, college, or university." The Eighth Circuit had previously held that medical residents qualified as students, but after the issuance of a subsequent Treasury Department regulation excluding medical residents from coverage, the Eighth Circuit upheld the amended regulation. The Supreme Court will assess the reasonableness of that regulation.

In *Board of Trustees of Stanford University v. Roche Molecular Systems, Inc.*, not yet scheduled for argument, the Court will review a decision of the Federal Circuit that dismissed a lawsuit brought by Stanford University that sought to enforce its rights to patents that were obtained on inventions of federally-funded research. A federal law vests ownership of inventions created at a university using federal funds in the university. A Stanford researcher assigned the rights to his work to a company. The Court must decide the validity of the federal law to vest patent rights in federally funded inventions.

### *Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010)

On June 28, 2010, the Supreme Court decided *Christian Legal Society v. Martinez*. Hastings College of the Law, part of the University of California system, gives official recognition to student groups that are "RSOs," registered student organizations.

*Christian Legal Society v. Martinez, 130 S. Ct. 2971 (2010)*

These organizations may obtain school funds, as well as use the school's facilities, channels of communication, its name and its logo. The Christian Legal Society (CLS) at Hastings excluded from affiliation anyone who engages in unrepentant homosexual conduct or holds religious convictions different from the CLS's statement of faith. Hastings rejected CLS's application for RSO status on the ground that it failed to comply with the school's nondiscrimination policy for RSOs, which, as interpreted by the school, mandates organizations to allow any student to participate, become a member, and seek leadership positions, regardless of the student's status or beliefs. The CLS sued for injunctive and declaratory relief under 42 U.S.C. § 1983, alleging that the refusal of RSO status violated its rights to free speech, expressive association, and free exercise of religion. In the district court, CLS lost on cross motions for summary judgment. The Ninth Circuit affirmed.

The Supreme Court affirmed the decision for the defendant and remanded for further proceedings. In an opinion for the Court joined by Justices Stevens, Kennedy, Breyer, and Sotomayor, Justice Ginsburg first declared that the CLS was bound by a stipulation in which it agreed that the policy was indeed a requirement that RSOs accept all students and not, as CLS later argued and as the actual language of the policy suggested, a prohibition against discrimination only on specified grounds that included religion and sexual orientation. On the topic of the proper frame for analysis, Ginsburg stated that the Court's precedents regarding speech in limited public forums would apply to CLS's speech and association claims. The Court rejected strict-scrutiny analysis, an approach that would invalidate the key characteristic of a limited public forum, the exclusion of speakers who are not within the class for whose special benefit the forum was created. Doing otherwise would keep schools from excluding nonstudents from official student groups; moreover, the CLS was in effect seeking a state subsidy, and so faced only indirect pressure to modify its membership policies. The opinion interpreted the precedents dealing with recognition of student groups at public universities as requiring that the state not exclude speech where the distinction is unreasonable in light of the purpose served by the forum, and that it not discriminate against speech on the basis of viewpoint.

The Court ruled that the Hastings policy was reasonable, taking into account the function of the RSO forum and the surrounding circumstances. It reviewed the school's justifications for the all-comers requirement with appropriate regard for the administrators' judgment. These justifications were (1) ensuring that the opportunities afforded by RSOs are available to all students, (2) helping the school enforce the

written terms of its nondiscrimination policy without the onerous job of inquiring into the RSO's motivations for membership limits, (3) encouraging the bringing together of individuals with diverse backgrounds and beliefs, thus promoting tolerance and development of conflict-resolution skills, and (4) conveying the school's decision not to subsidize conduct of which the people of California disapprove, by means of a policy subsuming state-law prohibitions on discrimination. The Court reinforced its decision on reasonableness by finding that substantial alternate channels of communication remained open to the CLS. The Court rejected CLS's arguments that the school's policy should permit groups to form around specific viewpoints, that the policy rendered RSOs vulnerable to hostile takeovers, and that there was no legitimate interest in forcing religious groups not to favor co-religionists. On the final point, the opinion declared that when a school is caught in a conflict between a group's desire to exclude and students' demand for equality of access, the school could draw a line by permitting all organizations to express what they wanted while not allowing groups to discriminate in membership.

The Court then ruled that the policy was viewpoint neutral. Not only did the policy embody neutrality, but it also served purposes unrelated to the content of expression. The policy was directed at an organization's exclusion of students, not at speech. In a footnote, the opinion stated that existing precedent also ruled out the Free Exercise claim, in that otherwise valid regulations of general applicability that incidentally burden religious conduct are permissible. CLS also argued that the school policy was a pretext, but the lower courts had not addressed the argument, and the Court declined to do so. The Court said that the issue would remain open on remand if it had been properly preserved.

Justice Stevens wrote a concurrence defending the school's policy as written, rather than as interpreted by the stipulation, arguing that it is content and viewpoint neutral. Justice Kennedy's concurrence distinguished *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), from the case at hand and said that limits on membership of student organizations would contradict a legitimate purpose of creating the limited forum, that of exposing students to diverse viewpoints.

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*Christian Legal Society v. Martinez, 130 S. Ct. 2971 (2010)*

Justice Alito, joined by Chief Justice Roberts, and Justices Scalia and Thomas, dissented. The lengthy dissent argued, among other things, that the policy in fact was not interpreted as the Court suggested and contended that the Court ignored evidence that the policy was a pretext to justify viewpoint discrimination.

Important issues remain open after this decision, including the constitutionality of policies that do not mandate official student organizations to accept all students, but simply forbid discrimination on selected grounds. Of the majority, only Justice Stevens, who has now left the Court, rendered an opinion on that issue. What might constitute persuasive evidence of pretext and what may be the significance of a finding that a policy is pretextual also remain open questions.

- Mark Weber

### *Education Law Section Events*

In San Francisco

Section Program. Friday, January 7, 2011, 10:30 to 12:15. "Immigration and Higher Education. The Education Law Section will co-sponsor a panel with the Section on Immigration Law. Many students attend U.S. colleges and universities who are not U.S. citizens, and many of those students become faculty in the U.S.—especially in the science, technology, engineering and math disciplines. The citizenship of these individuals gives rise to numerous legal issues. This panel will address several of these issues both in the U.S. and abroad, including: whether undocumented students in the U.S. should pay in-state or out-of-state tuition as disputed in current litigation in California and Kansas; how universities in the EU operate in terms of out-of-country tuition; and also the licensing of professionals across national borders.

Speakers:

Professor Philip Altbach (Boston College)  
 Professor Danielle Holley-Walker (South Carolina)  
 Professor Karla McKanders (Tennessee)  
 Professor Laurel Terry (Penn State)

Papers will be published in a 2011 issue of the *Michigan State Law Review* by some of the presenters, and also Professor Kevin Brown (Indiana) and Professor Victor Romero (Penn State).

The section meeting will be held immediately following the section program. We will elect the next year's officers and start to plan the 2012 AALS program. The brief meeting provides a good opportunity to become involved in the Section.

### *Upcoming Conferences*

January 5-8, 2011: AALS Annual Meeting in San Francisco, California.

February 5-8, 2011: National Conference on Law and Higher Education, Higher Education in Transition: Responsibilities, Challenges and Opportunities. Sponsored by Stetson University College of Law, in Orlando, Florida. This is an annual event.

March 28 and 29, 2011: The 15th Annual Texas Higher Education Law Conference, sponsored by the UNT College of Education and the Center for Higher Education, in Denton, Texas.

November 9-12, 2011: Education Law Association Annual Conference, in Chicago, Illinois.

January 2012: AALS Education Law Section Program in Washington, D.C.

### *Student Writing Award*

#### **George Jay Joseph Education Law Writing Award**

The purpose of this national competition is to generate increased interest in and recognition of education law among not only graduate students in education schools but also, in particular, to students in law schools. The winner of the competition will be recognized at the annual conference of the Education Law Association (ELA), and the manuscript will be published in the *Journal of Law and Education*. Additionally, the winner will be invited to present on the topic of the article at the ELA annual conference and receive a commemorative plaque, a year's membership in ELA, waiver of the registration fee for

## *Student Writing Award*

the 2010 conference, and national recognition via an ELA press release.

Doctoral dissertations are not eligible; they are subject to a different ELA award; however, manuscripts that synthesize dissertations may be submitted provided that they meet the specifications. The author must submit the manuscript via email (as an attachment in Word format) to the chair of the selection committee for the Joseph Award Committee.

### **Criteria:**

- subject matter: one or more legal issues within any of the various contexts of education, including public and private K-12 schools and institutions of higher education, especially current and emerging issues in elementary and secondary public education
- format: double-spaced, with 12-point font and one-inch margins, with footnotes on each respective page (rather than at the end) carefully conforming to Blue Book citation style
- length: between 35 and 55 pages including the footnotes
- status: not previously published and not under review elsewhere for publication
- authorship: single-authored by a law student or a student in a graduate program in education

The deadline for submission is July 15, 2011 by or before 4:00 p.m. EST. Nominations may be submitted by email at <http://educationlaw.org/nominations.php#Joseph>.

Selected

## Recent & Forthcoming

### Education Law Publications

The SSRN Education Law Journal is the primary source for the following list of publications.  
Most of these publications are available for downloading at <http://ssrn.com/lsn>.

- DIANE MARIE AMANN, *John Paul Stevens and Equally Impartial Government*, 43 UC DAVIS LAW REVIEW 885 (2010).
- JUDITH AREEN, *Governing Board Accountability: Competition, Regulation, and Accreditation*, 36 JOURNAL OF COLLEGE AND UNIVERSITY LAW 691 (2010).
- ABBYE JO ATKINSON, *Race, Educational Loans, and Bankruptcy*, \_\_ MICHIGAN JOURNAL OF RACE & LAW \_\_ (forthcoming).
- SCOTT R. BAURIES, *Foreword: Rights, Remedies, and Rose*, 98 KENTUCKY LAW JOURNAL \_\_ (2010).
- SCOTT R. BAURIES, *State Constitutional Design and Education Reform: Process Specification in Louisiana*, 40 JOURNAL OF LAW AND EDUCATION \_\_ (forthcoming 2011).
- SCOTT R. BAURIES, *State Constitutions and Individual Rights: Conceptual Convergence in School Finance Litigation*, 18 GEORGE MASON LAW REVIEW \_\_ (forthcoming 2011).
- KRISTI L. BOWMAN, *Before School Districts Go Broke: A Proposal for Federal Reform*, \_\_ UNIVERSITY OF CINCINNATI LAW REVIEW \_\_ (forthcoming).
- KRISTI L. BOWMAN, *Pursuing Educational Opportunities for Latino/a Students*, 88 NORTH CAROLINA LAW REVIEW 911 (2010).
- JENNIFER GERARDA BROWN, *Peacemaking in the Culture War Between Gay Rights and Religious Liberty*, 95 IOWA LAW REVIEW 747 (2010).
- NANCY CANTALUPO, *How Should Colleges and Universities Respond to Peer Sexual Violence on Campus? What the Current Legal Environment Tells Us*, 3 NASPA JOURNAL ABOUT WOMEN IN HIGHER EDUCATION 49 (2010).
- XINGLONG CAO, *China's Law Harbors Academic Misconduct*, CHINA LAW & POLICY, March 2010.
- AARON H. CAPLAN, *Freedom of Speech in School and Prison*, 85 WASHINGTON LAW REVIEW 71 (2010).
- JENNIFER CARTER-JOHNSON, *Unveiling the Distinction Between the University and its Academic Researchers: Lessons for Patent Infringement and University Technology Transfer*, 12 VANDERBILT JOURNAL OF ENTERTAINMENT AND TECHNOLOGY LAW 473 (2010).
- DANIELA CARUSO, *Autism in the US: Social Movement and Legal Change*, 36 AMERICAN JOURNAL OF LAW AND MEDICINE \_\_ (2010).
- DAVID S. COHEN, *The Stubborn Persistence of Sex Segregation*, \_\_ COLUMBIA JOURNAL OF GENDER AND LAW \_\_ (forthcoming).
- KALENA E. CORTES, *Do Bans on Affirmative Action Hurt Minority Students? Evidence from the Texas Top 10%*, ECONOMICS OF EDUCATION REVIEW (forthcoming).
- MARTHA F. DAVIS, *Learning to Work: A Functional Approach to Welfare and Higher Education*, 58 BUFFALO LAW REVIEW \_\_ (2010).
- JOHANNA K. P. DENNIS, *The Renaissance Road: Redesigning the Legal Writing Instructional Model*, 38 SOUTHERN UNIVERSITY LAW REVIEW \_\_ (forthcoming 2010).
- VICTORIA J. DODD, PRACTICAL EDUCATION LAW FOR THE TWENTY-FIRST CENTURY, 2nd ed., Carolina Academic Press, 2010.
- TOM DONNELLY, *A Popular Approach to Popular Constitutionalism: The First Amendment, Civic Education, and Constitutional Change*, 28 QUINNIPIAC LAW REVIEW 321 (2010).
- TOM DONNELLY, *Our Forgotten Founders: Reconstruction, Public Education, and Constitutional Heroism*, 58 CLEVELAND STATE LAW REVIEW 115 (2010).
- SUSAN DUNCAN, *College Bullies – Precursors to Campus Violence: What Should Universities and College Administrators Know About the Law?*, 55 VILLANOVA LAW REVIEW 2 (2010).
- MARC EDELMAN & DAVID ROSENTHAL, *A Sobering Conflict: A Call for Consistency in the Messages Colleges Send About Alcohol*, 20 FORDHAM INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW JOURNAL \_\_ (2010).
- NIVA ELKIN-KOREN, ET AL., *Fair Use Best Practices for Higher Education Institutions: The Israeli Experience*, \_\_ JOURNAL OF THE COPYRIGHT SOCIETY OF U.S.A \_\_ (forthcoming).
- PAUL ENRIQUEZ, *Deconstructing Transnationalism: Conceptualizing Metanationalism as a Putative Model of Evolving Jurisprudence*, \_\_ VANDERBILT JOURNAL OF TRANSNATIONAL LAW \_\_ (forthcoming).

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## Recent & Forthcoming

Education Law Publications (cont.)

- MARIE A. FAILINGER, *Finding the Right Metaphor for Our Community*, 30 THE HAMLINE REVIEW 55 (2010).
- ROBERT A. GARDA, *The Politics of Education Reform: Lessons from New Orleans*, \_\_ JOURNAL OF LAW & EDUCATION \_\_ (forthcoming).
- ROBERT A. GARDA, *The White Interest in School Integration*, \_\_ FLORIDA LAW REVIEW \_\_ (2010).
- SHAILINI GEORGE, *Do Sexual Harassment Plaintiffs Get Two Bites of the Apple?: Sexual Harassment Litigation After Fitzgerald v. Barnstable County School Committee*, \_\_ DRAKE LAW REVIEW \_\_ (forthcoming).
- LLEWELLYN JOSEPH GIBBONS, *Tech Transfer: Everything (Patent) is Never Quite Enough*, \_\_ UNIVERSITY OF LOUISVILLE LAW REVIEW \_\_ (forthcoming).
- ERICA RACHEL GOLDBERG & KELLY SARABYN, *Measuring a 'Degree of Deference' - Institutional Academic Freedom in a Post-Grutter World*, \_\_ SANTA CLARA LAW REVIEW \_\_ (forthcoming).
- JENNIFER S. HENDRICKS & DAWN HOWERTON, *Teaching Values, Teaching Stereotypes: Sex Ed and Indoctrination in Public Schools*, 13 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW \_\_ (2010).
- WENDY FRITZEN HENSEL, *Vouchers for Students with Disabilities: The Future of Special Education?*, 39 JOURNAL OF LAW & EDUCATION 291 (2010).
- REBECCA J. HUSS, *Canines in the Classroom: Service Animals in Educational Institutions*, 4 JOURNAL OF ANIMAL LAW & ETHICS \_\_ (2010).
- AZIZ Z. HUQ, *Easterbrook on Academic Freedom*, 77 UNIVERSITY OF CHICAGO LAW REVIEW 1055 (2010).
- OSAMUDIA R. JAMES, *Dog Wags Tail: The Continuing Viability of Minority-Targeted Aid in Higher Education*, 85 INDIANA LAW JOURNAL 851 (2010).
- DAVID R. KATNER, *Delinquency & Daycare*, 4 HARVARD LAW & POLICY 49 (2010).
- THOMAS KLEVEN, *Federalizing Public Education*, 55 VILLANOVA LAW REVIEW 369 (2010).
- KIMBERLY D. KRAWIEC, *The Dark Side of Commodification Critiques: Politics and Elitism in Standardized Testing*, \_\_ WASHINGTON UNIVERSITY JOURNAL OF LAW AND POLICY \_\_ (forthcoming).
- JUSTIN R. LA MORT, *Generation Debt and the American Dream: The Need for Student Loan Reform*, 4 HARVARD LAW AND POLICY REVIEW \_\_ (2010).
- MEHBUBUL HASSAN LASKAR, *Rethinking Reservation in Higher Education in India*, 1 ILI LAW REVIEW 25 (2010).
- MICHAEL C. MACCHIAROLA & ARUN ABRAHAM, *Options for Student Borrowers: A Derivatives-Based Proposal to Protect Students and Control Debt-Fueled Inflation in the Higher Education Market*, 20 CORNELL JOURNAL OF LAW AND PUBLIC POLICY \_\_ (2010).
- AZHAR MAJEED, *Putting Their Money Where Their Mouth Is: The Case for Denying Qualified Immunity to University Administrators for Violating Students' Speech Rights*, 8 CARDOZO PUBLIC LAW, POLICY AND ETHICS JOURNAL 515 (2010).
- AARON T. MARTIN, *Homeschooling in Germany and the United States*, 27 ARIZONA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 225 (2010).
- TONI M. MASSARO, *Christian Legal Society v. Martinez: Six Frames*, 38 HASTINGS CONSTITUTIONAL LAW QUARTERLY \_\_ (forthcoming 2011).
- STEVEN MENASHI, *Toward a 'More Enlightened and Tolerant View': Educational Choice and the Regulation of Religious Institutions*, 66 NYU ANNUAL SURVEY OF AMERICAN LAW 31 (2010).
- THOMAS M. MENGLER, *Why Should a Catholic Law School be Catholic?*, 6 JOURNAL OF CATHOLIC SOCIAL THOUGHT \_\_ (2010).
- MARTHA MINOW, IN BROWN'S WAKE: LEGACIES OF AMERICA'S EDUCATIONAL LANDMARK, Oxford University Press (2010).
- MICHAEL A. OLIVAS, *The Political Economy of the Dream Act and the Legislative Process: A Case Study of Comprehensive Immigration Reform*, \_\_ WAYNE LAW REVIEW \_\_ (2010).
- ANGELA ONWUACHI-WILLIG, *Complimentary Discrimination and Complementary Discrimination in Faculty Hiring*, 87 WASHINGTON UNIVERSITY LAW REVIEW \_\_ (2010).
- CHAI PARK & MARGARET RYZNAR, *The Proper Guardians of Foster Children's Educational Interests*, 42 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 147 (2010).
- RICHARD M. PETERSON, *The Persistence of Low Expectations in Special Education Law Viewed Through the Lens of Therapeutic Jurisprudence*, \_\_ INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY \_\_ (forthcoming).
- ROBERT PIKOWSKY AND JOHN A. MILLER, *Taxation and the Sabbatical: Doctrine, Planning and Policy*, 63 TAX LAWYER \_\_ (2010).

Selected

*Recent & Forthcoming*

## Education Law Publications (cont.)

- DEAN HILL RIVKIN, *Truancy Prosecutions of Students and the Right [To] Education*, 3 DUKE FORUM FOR LAW & SOCIAL CHANGE \_\_ (forthcoming).
- KIMBERLY JENKINS ROBINSON, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated Schools*, 88 NORTH CAROLINA LAW REVIEW 787 (2010).
- LAURA ROTHSTEIN, *Higher Education and Disability Discrimination: A Fifty Year Retrospective*, 36 JOURNAL OF COLLEGE AND UNIVERSITY LAW 843 (2010).
- JAMES E. RYAN, *FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA*, Oxford University Press (2010).
- KELLY SARABYN, *Free Speech at Private Universities*, 39 JOURNAL OF LAW & EDUCATION 145 (2010).
- PAUL M. SECUNDA, *The Story of Pickering v. Bd. of Education: Unconstitutional Conditions and Public Employment*, FIRST AMENDMENT LAW STORIES, Richard W. Garnett & Andrew Koppelman eds., 2010.
- JEFFREY SHULMAN, *Whose Education Is It, Anyway?: The Parent as (Mere) Educational Trustee*, 88 NEBRASKA LAW REVIEW \_\_ (2010).
- KATHARINE BAIRD SILBAUGH, *Sprawl, Family Rhythms, and the Four-Day Work Week*, 42 CONNECTICUT LAW REVIEW 1267 (2010).
- DAVID A. SIMON, *Teaching Without Infringement: A New Model for Educational Fair Use*, 20 FORDHAM INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW JOURNAL \_\_ (forthcoming).
- CHRISTOPHER A. SUAREZ, *Courthouse, Statehouse, or Both? Redefining Institutional Roles in School Finance Reform*, \_\_ YALE LAW & POLICY REVIEW \_\_ (forthcoming).
- CHRISTOPHER A. SUAREZ, *School Discipline in New Haven: Law, Norms, and Beating the Game*, 39 JOURNAL OF LAW AND EDUCATION 503 (2010).
- LINDA SUGIN, *Lifting the Museum's Burden from the Backs of the University: Should the Art Collection be Treated as Part of the Endowment?*, 44 NEW ENGLAND LAW REVIEW \_\_ (2010).
- LORI L. TAYLOR, *Competition and Teacher Pay*, 48 ECONOMIC INQUIRY 603 (2010).
- WILLIAM E. THRO, *Judicial Humility: The Enduring Legacy of Rose v. Council for Better Education*, 98 KENTUCKY LAW JOURNAL 761 (2010).
- WILLIAM E. THRO, *The Title IX Implications of Eliminating an Intercollegiate Sports Team*, 8 NACUA NOTES No. 10 (2010).
- WILLIAM E. THRO, *Rosenkranz's Constitutional Subjects and School Finance Litigation*, \_\_ EDUCATION LAW REPORTER \_\_ (forthcoming).
- WILLIAM E. THRO & R. CRAIG WOOD, *The Constitutional Text Matters: Reflections on Recent School Finance Cases*, 251 EDUCATION LAW REPORTER 520 (2010).
- WILLIAM E. THRO & CHARLES J. RUSSO, *A Serious Setback for Freedom: The Implications of Christian Legal Society V. Martinez*, \_\_ EDUCATION LAW REPORTER \_\_ (forthcoming 2011).
- WILLIAM E. THRO AND CHARLES J. RUSSO, *Preserving Orthodoxy on Secular Campuses: The Right of Student Religious Organizations to Exclude Non-Believers*, 250 EDUCATION LAW REPORTER 497 (2010).
- JOSEPH A. TOMAIN, *Cyberspace is Outside the Schoolhouse Gate: Offensive Online Student Speech Receives First Amendment Protection*, 59 DRAKE LAW REVIEW \_\_ (forthcoming).
- ROBERT K. VISCHER, *Whom Should a Catholic Law School Honor?: If Confusion is the Concern, Context Matters*, \_\_ JOURNAL OF CATHOLIC LEGAL STUDIES \_\_ (2010).
- EMILY GOLD WALDMAN, *Badmouthing Authority: Hostile Speech About School Officials and the Limits of School Restrictions*, 19 WILLIAM & MARY BILL OF RIGHTS JOURNAL \_\_ (forthcoming 2011).
- EMILY GOLD WALDMAN, *Regulating Student Speech: Suppression versus Punishment*, 85 INDIANA LAW JOURNAL 1113 (2010).
- FÁBIO WALTENBERG, *Essential Educational Achievements as the Currency of Educational Justice*, 29 CUADERNOS DE ECONOMÍA No. 52 (2010).
- KEVIN K. WASHBURN, *Elena Kagan and the Miracle at Harvard*, \_\_ JOURNAL OF LEGAL EDUCATION \_\_ (forthcoming).

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Selected

## Recent & Forthcoming

Education Law Publications (cont.)

- MARK C. WEBER, *A New Look at Section 504 and the ADA in Special Education Cases*, \_\_ TEXAS JOURNAL ON CIVIL LIBERTIES AND CIVIL RIGHTS \_\_ (forthcoming).
- MARK C. WEBER, *Settling Individuals with Disabilities Education Act Cases: Making Up Is Hard to Do*, 43 LOYOLA-LOS ANGELES LAW REVIEW 641 (2010).
- MARK C. WEBER, *Special Education from the (Damp) Ground Up: Children with Disabilities in a Charter School-Dependent Educational System [Symposium on Education in New Orleans After Katrina]*, 11 LOYOLA JOURNAL OF PUBLIC INTEREST LAW 217 (2010).
- MARK C. WEBER, *Fitzgerald, Safford, and the Future of Section 1983 Education Litigation*, 252 WEST'S EDUCATION LAW REPORTER 8 (2010).
- CLELAND B. WELTON II, *The Future of Locke v. Davey*, 96 VIRGINIA LAW REVIEW 1453 (2010).
- ARJEN VAN WITTELOOSTUIJN & GJALT DE JONG, *Ecology of National Rule Birth: A Longitudinal Study of Dutch Higher Education Law, 1960-2004*, 20 JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY 187 (2010).
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