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Former cop finds his way to the bench

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TRIAL NOTEBOOK

STEVEN P. GARMISA
Hoey & Farina

Ginsburg reasserts federal say

Mims v. Arrow Financial Services

When Marcus D. Mims sued Arrow Financial Services in a Florida federal court for allegedly violating the Telephone Consumer Protection Act (47 U.S.C. § 227) by making unauthorized calls to his cellphone while trying to collect on a debt, he relied on 28 U.S.C. Section 1331, which gives district judges jurisdiction over claims "arising under the ... laws ... of the United States."

Although the TCPA grants federal courts "exclusive jurisdiction" over TCPA suits filed by state attorneys general, the statute's private-right-of-action provision says, "a person or entity may, if otherwise permitted by the laws or rules of court of a state, bring [a TCPA case] in an appropriate court of that state."

An order dismissing Mims' case for lack of jurisdiction was affirmed by the 11th U.S. Circuit Court of Appeals, but the Supreme Court granted certiorari to resolve a circuit split on whether Congress gave state courts exclusive jurisdiction over TCPA claims filed by individuals.

Reversing, the high court found "no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875." *Mims v. Arrow Financial Services*, 132 S.Ct. 740 (2012).

Here are highlights of Justice Ruth Bader Ginsburg's opinion (with omissions not noted in the text):

Because federal law creates the right of action and provides the rules of decision, Mims' TCPA claim, in 28 U.S.C. Section 1331's words, plainly arises under the laws of the United States.

Arrow agrees that this action arises under federal law, but urges that Congress vested exclusive adjudicatory authority over private TCPA actions in state courts.

In cases "arising under" federal law, we note, there is a "deeply rooted presumption in favor of concurrent state court jurisdiction," rebuttable if "Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim." *Tafflin v. Levitt*. 493 U.S. 455 (1990).

The presumption of concurrent state-court jurisdiction can be overcome "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore Co. v. Mobil Oil Corp.* 453 U.S. 473 (1981).

Arrow readily acknowledges the presumption of concurrent state-court jurisdiction, but maintains that 28 U.S.C. Section 1331 creates no converse presumption in favor of federal court jurisdiction. Instead, Arrow urges, the TCPA, a later, more specific statute, displaces Section 1331, an earlier, more general prescription.

Section 1331 is not swept away so easily.

When federal law creates a private right of action and furnishes the substantive rules of decision, the claim arises under federal law, and district courts possess federal-question jurisdiction under Section 1331. That principle endures unless Congress divests federal courts of their Section 1331 adjudicatory authority.

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IN THE NEWS

BY BETHANY KRAJELIS

Michael F. Bonamarte IV (right) of Levin & Perconti was toasted during the Justinian Society of Lawyers' nomination of officers meeting on Thursday, where he was nominated for the secretary position. *Natalie Battaglia*

IN THE LOOP

The Cook County government building, at 118 N. Clark St. in the Loop, was evacuated briefly this morning when what officials describe as a "suspicious" package was spotted on a statue carved into the east side of the structure.

The package — a small black box wrapped in red ribbon — was found to not constitute a threat. A spokeswoman for the Cook County sheriff's office said she had no information about the contents, if any, of the box. In addition to the sheriff's office, agencies responding to the call about the box were the Chicago Police Department, the Chicago Fire Department and the Department of Homeland Security.

IN THE LAW FIRMS

HeplerBroom LLC announced that **Andrew D. Dorn** and **Kimberly D. Musick** have joined the firm as associates.

Dorn comes to the firm from MacMunnis Inc., a company that provides businesses with lease administration assistance.

Musick comes to the firm from Fish Law Group LLC. Both attorneys will work in the firm's Chicago office and focus their practices on asbestos, toxic tort and product-liability matters.

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Franks, Gerkin & McKenna P.C. announced that its office manager, **Marilyn Belin**, will retire from the firm after about four decades.

She started working for the firm's managing partner, **Herbert H. Franks**, in the 1960s at a Rockford firm and followed him a decade later when he started his own firm in Marengo.

Belin's colleagues said she played an important role at the firm, serving as an assistant, negotiator, designer and compassionate co-worker who baked birthday cakes for the firm's members.

AROUND TOWN

The American Civil Liberties Union of Illinois will host a training session today as part of a new series of programs launched to educate demonstrators before the upcoming NATO summit.

The training session will be at 6:30 p.m. at the Chicago Temple Building, 77 W.

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Kimberly D. Musick

Paul P. Biebel Jr.

Marc Galanter

TURN INSIDE

CLEMENCY CASE

Science may reduce shaken baby claims

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IP INFRINGEMENT

Firm wins battle with re-examination

PAGE 3

LAWYERS' FORUM

Court delves into EMS System Act

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"The court held a defendant who merely refused to answer routine booking questions cannot be convicted of obstructing or resisting arrest."

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INTER ALIA

Novartis takes legal action in Britain

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Victims' rights amendment passes today

BY JOSH WEINHOLD
Law Bulletin staff writer

SPRINGFIELD — The Illinois Senate today overwhelmingly approved a constitutional amendment aimed at enhancing crime victims' rights.

The 55-1 vote means House Joint Resolution Constitutional Amendment 28 will likely appear on the ballot for voters to consider in the November election.

The House, which easily passed the measure earlier this year, now must first approve the simplified version adopted by the Senate.

The amendment guarantees victims a right to be present at trials and hearings in their case and to provide impact statements to the court.

It also allows a victim or an attorney to assert those rights by filing complaints in either the trial or appellate courts.

"This ensures folks who have

VICTIMS, *Page 24*

Attorneys give views regarding Arizona law

BY JOHN FLYNN ROONEY
Law Bulletin staff writer

A Chicago lawyer expressed concern that the U.S. Supreme Court will allow Arizona to enforce a state law provision to check the immigration status of people they suspect are in the country illegally.

The Supreme Court heard arguments today in the high-profile immigration case in Washington, D.C.

The Supreme Court appears ready to allow Arizona to enforce the provision requiring police to question people about their immigration status if they suspect that an individual is in the country illegally, The Associated Press said.

"I think I'm not alone in being worried that the Supreme Court will uphold at least some of the provisions in this case," including the law enforcement provision, said Charles G. Roth, director of litigation for the Heartland Alliance's National Immigrant Justice Center (NIJC).

Charles G. Roth

The justices strongly suggested today that they are not buying the Obama administration's argument that the state exceeded its authority when it made the records check part of a controversial state law aimed at driving illegal immigrants out of the state, The Associated Press said.

It remained unclear what the court would do with other aspects of the law that were put on hold by

ARIZONA, *Page 24*

Senate considers residency

Proposal requires state's attorneys to live within Illinois

BY JOSH WEINHOLD
Law Bulletin staff writer

SPRINGFIELD — A constitutional amendment currently under consideration in the Illinois Senate seeks to ensure that state's attorneys actually live in Illinois.

State Sen. Mike Jacobs, D-East Moline, said he always assumed the position's title meant the officeholder must reside in the state. He recently learned, though, that the constitution doesn't include such a requirement.

"If it wouldn't have happened in my own district," Jacobs said, "I might never have noticed it."

Jacobs, the sponsor of Senate Joint Resolution Constitutional Amendment 66, said the measure responds to former Rock Island state's attorney candidate Jack Allen Schwartz, owner of the Law Offices of Jack A. Schwartz in Rock Island.

Schwartz, who handles criminal defense, personal-injury and workers' compensation cases, finished third in the Democratic primary in March.

Schwartz lives in Iowa, Jacobs said, a fact that troubled him.

"I just think it makes a lot of sense to have the people who are elected ought to pay taxes in the state that they're elected in," Jacobs said.

Schwartz could not be reached for comment.

Jacobs' amendment seeks to make a simple change to the state constitution. The section that details candidacy requirements for state's attorneys indicates only that they must be a U.S. citizen and a licensed Illinois attorney.

The amendment, which the Senate Executive Committee advanced to the floor last week, would add that they also must be "a resident of this state."

Rupert Borgsmiller, executive director of the Illinois State Board of Elections, said no other part of Illinois law requires state's attorneys to be residents of Illinois.

"It's silent," he said. "It doesn't say one way or the other."

State law also doesn't require state's attorneys to live in the county they seek office in, Borgsmiller said.

Jacobs' amendment, if adopted, would not affect candidates or incumbents involved in elections this year. It would first apply to candidates seeking office in 2016.

Jacobs said he understands why no county residency requirement exists, as it allows office seekers from nearby areas to run when no interested or qualified candidates exist locally.

RESIDENCY, *Page 24*

Judge rules in favor of top prosecutor

Bianchi's McHenry County staff may aid in suit filed against him

BY PATRICIA MANSON
Law Bulletin staff writer

Ethics rules do not prevent attorneys in the office of McHenry County State's Attorney Louis A. Bianchi from defending their boss against a lawsuit filed by one of his former subordinates, a federal judge has ruled.

In an opinion made available Tuesday, U.S. District Judge Philip G. Reinhard conceded that Bianchi might be disqualified from representing himself and the other defendants named in the suit because of his status as a material witness.

But Reinhard rejected the argument that all the other attorneys in Bianchi's office also were disqualified under the American Bar Association's Model Rule of Professional Conduct 3.7.

The U.S. District Court for the Northern District of Illinois follows the ABA model rules in most situations.

Rule 3.7 bars an attorney in most circumstances from acting as an advocate at a trial in which the attorney is likely to be a "necessary witness."

The attorney's colleagues may act as advocates in the trial unless they have a conflict of interest.

Plaintiff Kirk R. Chrzanowski alleges that Bianchi fired him as an assistant state's attorney in retaliation for his truthful testimony before a grand jury and later at the

COUNSEL, *Page 24*

EEOC declares bias laws cover transgender people

BY SAM HANANEL
Associated Press writer

WASHINGTON — The agency that enforces the federal job discrimination laws has for the first time ruled that transgender people are protected from discrimination in the workplace.

In a groundbreaking decision late last week, the Equal Employment Opportunity Commission (EEOC) said a refusal to hire or otherwise discriminate on the basis of gender identity is by definition sex discrimination under federal law.

While some federal courts have reached the same conclusion in recent years, employment law experts say the EEOC decision sets a national standard of enforcement that offers employers clear guidance on the issue.

"This decision is important because the EEOC is the agency with lead authority to interpret and enforce the nation's employment rights laws," said Jennifer Pizer, legal director of the UCLA School of Law's Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy.

The case involved a California woman who claimed she was denied a contractor job with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) after the contractor learned she had undergone a procedure to change her gender from male to female.

Mia Macy, an Army veteran and former police detective, initially applied for the position as a man and was told that she was qualified for the job as a ballistics technician.

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