

## Courts Must Require Proof Of Hardship

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did not file a claim asserting undue hardship, but the bankruptcy court nevertheless endorsed the plan in 1993.

The loan company did not object until the U.S. Department of Education got involved in 2000 after the government was assigned the unpaid debt. In 2003, Espinosa then petitioned the bankruptcy court to stop the government from intercepting his income tax refunds on the grounds that he had already paid everything covered by his bankruptcy plan. This prompted United Student Aid to argue in a cross-motion that the 1993 order was void because there had been no finding of undue hardship.

A year later, Tucson, Ariz.-based bankruptcy judge, Eileen W. Hollowell, said she was bound by 9th Circuit precedent to find in favor of Espinosa. In 2006, U.S. District Judge Raner C. Collins in Arizona found in favor of the student loan company before the 9th Circuit reversed.

Justice Clarence Thomas wrote in the opinion issued Tuesday that the bankruptcy court's order was not void because it was a final judgment of which the loan company had failed to appeal.

The failure of the bankruptcy court to make an undue hardship finding was a legal error but did not void the final judgment, he added.

The Supreme Court differed with the 9th Circuit on one key point. Thomas wrote that bankruptcy courts should not sign off on a bankruptcy plan in such cases unless there is an undue hardship determination. Kozinski had suggested that courts could unless the creditor objected.

Thomas acknowledged that "unscrupulous debtors" could try to abuse the process by hoping that bankruptcy judges will overlook the undue hardship question, but he noted that both debtors and attorneys could face penalties for improper conduct under the bankruptcy code.

"The specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding Congress required," Thomas wrote.

Bob Murray, vice president of corporate communications at United Student Aid Funds, welcomed the clarifying language in Thomas' opinion that will "broadcast loud and clear" that bankruptcy judges have to ensure that undue hardship determinations are made before entering a final judgment.

Thomas had also sent "a pretty strong message" to debtors and their lawyers that should prevent any abuse, he added.

Murray noted that the loan company's own lawyers are also now much more proactive about monitoring all Chapter 13 plans to ensure that debtors don't attempt to circumvent the law.

Bankruptcy law expert G. Eric Brunstad, Jr., a partner at Dechert in Hartford, Conn. who filed an amicus brief in support of Espinosa, also had praise for the ruling because it recognizes the finality of bankruptcy plans endorsed by a judge.

"If you get a plan and the court approves it, that's a final order and creditors can't come and upset that," he said. "It's a great principle."

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## Supporting Nonprofits

Roughly 300 lawyers, judges, students and guests attended a dinner and auction for the UCI School of Law Public Interest Law Fund Saturday night to support students who will work in unpaid internship at nonprofit groups this summer. All 60 of the new law school's students have lined up summer jobs, including about 35 with public interest and government offices and 18 with federal and state trial and appellate judges. First-year student Lauren Davis and Professor Mario Barnes, above, auctioned off several of the more unusual items, including a poker game for seven with U.S. 9th Circuit Court of Appeals Chief Judge Alex Kozinski, which went for \$750. Law student Adam Brauner, right, who has landed a plum paid summer job with Gibson, Dunn & Crutcher in Irvine, bid on an item during the auction.



Photo by Greg Anderson / Courtesy of UCI School of Law

## Poll: Economy, Deficit, Top Voter Issues In California

By Juliet Williams  
Associated Press

SACRAMENTO — Voters rank California's abysmal economy and high unemployment rate, along with continuing uncertainty about the state's budget deficit, as the top issues facing the candidates vying to be governor, according to a Field Poll released Tuesday.

More than two-thirds of California voters ranked those issues as most important, followed by education, health care, taxes, immigration and water.

Democrats, Republicans and decline-to-state voters agree that jobs, the economy and the state budget are the most pressing problems facing the state this year, as California faces a 12.5 percent unemployment rate and another \$20 billion budget shortfall.

All three leading candidates for governor have been sounding similar themes as they stump for votes. Republicans Meg Whitman and Steve Poizner have argued for tax cuts, although they differ on the specifics, and creating a more business-friendly climate. They say those steps will go furthest in promoting an economic recovery.

The two are vying for their party's nomination in the June primary.

Whitman, the billionaire former chief executive of eBay, says she would focus on three priorities as governor: creating 2 million private sector jobs by 2015, cutting spending — partly by eliminating 40,000 state government jobs — and fixing education.

Poizner, the state's insurance commissioner and a wealthy Silicon Valley entrepreneur, argues that across-the-board tax cuts would create more investment in California and create jobs. In turn, that would lead to higher tax revenue.

State Attorney General Jerry Brown, who does not face a serious challenge in the Democratic primary, has not yet laid out a specific campaign platform. Yet he has signaled in interviews that he will campaign as a centrist with a similar mission of job-creation and fiscal restraint.

He also emphasized creating a realistic budget plan.

"I would lay it out, and it will be in deficit. There's no way it won't be. But we're going to face it honestly," Brown said during an interview with The Associated Press earlier this month.

## FBI Agent to Resign Post, Plead Guilty to Misusing Government Database

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FBI in West Covina over a decade ago, advanced to a position in Washington, D.C. and then returned to Southern California in the Santa Ana office to oversee a group of field agents mainly working on white collar criminal investigations. He recently worked on the Broadcom investigation and other high-profile cases, including investigations into former Orange County Sheriff Mike Carona and deceased Taiwanese financier Danny Pang. He also held a law degree from the University of LaVerne College of Law, but has been an inactive member of the California bar since 1995.

Norell and his attorneys, Thomas McConville of Orrick, Herrington & Sutcliffe in Irvine and John Cline in San Francisco, either did not return phone calls or declined comment.

According to attorneys familiar with the matter, who spoke on condition of anonymity because of the sensitive nature of criminal proceedings, federal prosecutors in San Francisco handling the case insisted Norell resign as part of his plea agreement.

Several attorneys familiar with the matter said prosecutors granted T.S. immunity from any crime that may have been committed against the investors in order to obtain a witness against Norell. But the lawyers either did not know or would not say who

T.S. is, and did not know whether a crime had been committed.

Assistant U.S. attorney Jeffrey Finigan, who handled the case, referred calls to a spokesman for the San Francisco U.S. attorney's office, who declined comment.

The plea agreement contained little information about the circumstances surrounding Norell's alleged transgressions. But it did state that the conduct occurred in August and September of 2005.

That would place the acts before the ill-fated Broadcom criminal investigation began.

A federal judge dismissed the charges against several defendants in that case in late 2009 and earlier this year because of prosecutorial misconduct.

Norell's departure follows that of Robb Adkins, a prosecutor in the Broadcom case and the former chief of the Santa Ana branch of the U.S. attorney's office in Los Angeles.

Adkins recently took a position in the Department of Justice in Washington, D.C.

"I was saddened and surprised to hear about this," said Thomas Bienert, of Bienert, Katzman & Miller in San Clemente and former federal prosecutor. "I've dealt with [Pete] on many occasions and had a favorable impression of him ... he's always been very professional."

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## Reform Done, States and Citizens Let the Lawsuits Fly

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excuse their residents from participating in the new federal health insurance mandate.

Observers have noted the importance of Idaho in the constitutional challenge because it raises the prospects that the 9th U.S. Circuit Court of Appeal could hear the case.

The sweeping health care legislation could ultimately end up at the steps of the U.S. Supreme Court at a time when the justices have swung steeply to the right on social issues.

Still, health law experts said they doubted the current Supreme Court would overturn the individual mandate even if given the chance.

"This is not a court likely to expand con-

stitutional protection of individual economic liberties," said Mark Hall, a professor of law and public health at Wake Forest.

Hall cited a 2005 Supreme Court case called *Gonzales v. Raich* that said Congress has the authority to ban the production of marijuana despite state laws in California and elsewhere that allow for it.

"If growing one seed or one marijuana plant is part of the overall Controlled Substance Act, then certainly regulating how insurance is bought and sold is part of one comprehensive scheme of regulation," Hall said.

In addition to Texas and Idaho, the other states involved in the lawsuit are Florida, South Carolina, Michigan, Utah, Pennsyl-

vania, Alabama, South Dakota, Louisiana, Nebraska, Washington and Colorado. Twenty-four other states have vowed to fight the new law.

Opponents said there is yet another, albeit far-fetched, method for the states to cause trouble for the health care reform bill: a Constitutional Convention.

"One power the states actually have is to call for an amendment convention, and if enough states start doing that you better believe Congress will repeal it," Georgetown University's Barnett said. "They're not going to want to open up that can of worms."

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