

# Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

JULY 24, 2020

Join us for our *Community Conversations* series on race and the criminal justice system, beginning July 24 at noon; all are welcome: [www.cbalaw.org](http://www.cbalaw.org).

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## ESTATE PLANNING CONSIDERATIONS UNDER THE SECURE ACT AND THE CARES ACT

The SECURE Act, the CARES Act and political uncertainty require rethinking some of our core estate planning principles. The rapid increase in the federal budget deficit, combined with potential political changes in November, may result in more uncertainty for the future of the Estate & Gift Tax Unified Credit. The new limitations to inherited IRAs and other income tax changes also require a reboot to our planning. It will be important for financial managers and tax advisors to understand the many implications created by these new Federal Acts.



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Partner, Isaac Wiles

accounts past age 70.5 is an acknowledgement of the reality that many middle-class Americans are working well into their 70s.

The new rules relating to “inherited IRAs” require that we adjust our overall planning for participants and beneficiaries. Where possible, we must consider retired or low-income beneficiaries vs. high-earning beneficiaries. Trusts and wills may require revisions to include provisions which treat potential IRA distributions as an “advance” to equalize distributions. We must also consider charitable giving and conversions of IRAs to Roth IRAs. While the interest in charitable-type trusts has been waning, this type of planning allows for distributions to a child, while avoiding or reducing the income tax consequences.

### SECURE ACT

Provisions for delaying Required Minimum Distributions is a welcome option and recognition of longer life expectancies. Likewise, allowing continued contributions to retirement

### CARES ACT

While most of the provisions under this legislation are temporary, the possibility of having tax filings delayed and allowing liberal withdrawals from retirement accounts could become permanent. In some circumstances, withdrawals in calendar year 2020 may be beneficial.

### FUTURE LEGISLATION

The federal subsidies extended to individuals and businesses to ease the pain of the pandemic will certainly require either a tax increase or reduction of benefits in the future. As neither party seems interested in reducing social spending, the likelihood of tax increases is high. The SECURE Act is, at its core, a tax increase. The possibility of a Biden administration with Democratic control of Congress would most certainly lead to tax increases. Candidate Biden has already signaled that he would like to repeal the Trump tax cuts and goes

further in suggesting that the “stepped-up” basis rules will also be eliminated. Once Congress initiates the process to reexamine the federal estate tax, it seems likely that the Unified Credit will be a focus, which is easier to implement than a “wealth tax”. In those circumstances where the family’s wealth exceeds \$3 million, and one of the spouses has died in 2019 or 2020 we should consider implementing the “portability election”. These returns must be filed within 24 months, after death.

Not knowing the future of the Unified Credit, or if/when it’s to be changed, we recommend:

- Gifting in calendar year 2020 to preserve the Unified Credit before it is reduced
- Participating in charitable gifting plans
- Accelerating income into 2020
- Pushing deductions into 2021

In periods of great uncertainty and potential changing legislation, careful planning and structure are paramount.

To register for Isaac Wiles’ upcoming webinar on this subject (July 28) go to: [https://zoom.us/webinar/register/WN\\_G307Pi\\_FQOCWEUoBd\\_Omlw](https://zoom.us/webinar/register/WN_G307Pi_FQOCWEUoBd_Omlw)

THE CBA IS OFFERING IN-PERSON BACKGROUND CHECKS MONDAY – FRIDAY FROM 11 A.M. – 2 P.M. BY APPOINTMENT ONLY. LEARN MORE: [CBALAW.ORG/NOTARY](http://CBALAW.ORG/NOTARY)

## U.S. SUPREME COURT HAS BLOCKBUSTER TERM

The COVID-19 pandemic forced U.S. Supreme Court oral arguments to be held remotely and delayed decisions until the second week of July, making this term one for the ages. The substance of the term was also groundbreaking – what SCOTUS-watchers would call a “Blockbuster” term, addressing issues like abortion rights, religious freedom, the president’s tax returns, and more.



**CARLY EDELSTEIN**  
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applies to sexual orientation and gender identity discrimination. This sweeping decision almost certainly applies not only in the employment context, but also in K-12 schools and universities that are subject to Title IX of the Education Amendments Act. In a dissent, however, Justice Alito warned that the Bostock decision would have huge consequences for religious liberties—perhaps foreshadowing his decision three

weeks later in *Our Lady of Guadalupe School v. Morrissey-Berru*.

In *Our Lady of Guadalupe*, Justice Alito wrote for the majority, explaining that the ministerial exception, which bars “ministers” from suing churches

and other religious institutions for employment discrimination, extends to all teachers in those settings, even if they are not ordained ministers. So while *Bostock* dramatically expanded LGBTQ rights in the workplace, *Our Lady of Guadalupe* constricted civil rights protections in religious institutional settings. Certainly we can expect to see more cases down the road addressing the fragile intersection between civil rights protections on the one hand and religious liberties on the other.

In *Department of Homeland Security v. Regents of the University of California*, the Court held that the Trump Administration acted improperly when it attempted to terminate the Deferred Action for Childhood Arrivals program. In a similar

vein, the Court held in *Department of Commerce v. New York* that the Trump Administration’s justification for adding a citizenship question to the census was pretext.

Both of these cases made huge waves in the media and were celebrated by some and lamented by others. Neither tells us whether the Trump Administration will ultimately end DACA or put a citizenship question on the census, but they do stand for an important check on executive authority: when the government acts, it must provide a reasoned explanation about the actual basis for the action. Both cases now return to the lower courts. While the Trump Administration has indicated that it will no longer pursue the census citizenship question, it certainly has another opportunity to comply with the Administrative Procedure Act and provide sufficient reasoning for terminating the DACA program. ■



📅 Thursday, July 30, 2020

🕒 12:00pm–1:00pm on Zoom

### ANALYSIS OF BOSTOCK vs. Clayton County

In a stunning victory, the U.S. Supreme Court held that workplace discrimination based on an individual’s sexual orientation or gender identity is prohibited by Title VII of the Civil Rights Act of 1964. This class will analyze the case, its history, and where we go from here. 1.0 CLE Hour.

Register:  
[www.cbalaw.org/cle](http://www.cbalaw.org/cle)

