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**Subject:** CRA Gives Trump Potent, But Risky, Tool To Nix Climate Regs

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## PUBLIC POLICY

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Monday, November 21, 2016

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### TOP NEWS

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#### Analysis

### **CRA Gives Trump Potent, But Risky, Tool To Nix Climate Regs**

President-elect Donald J. Trump and the Republican-controlled Congress are poised to begin dismantling President Barack Obama's environmental legacy by using the Congressional Review Act to quickly roll back climate change regulations, but experts warn that the CRA is a blunt tool that's been sparingly used because it can carry big political risks.

#### Analysis

### **Sessions' History Is Short But Not Silent On Antitrust**

Sen. Jeff Sessions, R.-Ala., may be best known for his conservative stances on immigration and civil rights, but the former prosecutor and longtime lawmaker has waded into antitrust issues ranging from baseball's exemption to generic drug prices over the years. Here, Law360 looks at the competition matters that have piqued the interest of Donald Trump's pick for attorney general.

### **State Regulators Aim To Fill Trump's Vacuum**

With many expecting the incoming Trump administration to dial back on his predecessor's enforcement of financial regulations, attorneys general and financial regulators from states that did not support Trump are expected to step in where they can to police financial markets.

#### Analysis

### **What You Should Know About The DHS Job Flexibility Rule**

A new rule on job flexibility for foreign workers clocks in at a whopping 336 pages, containing helpful items including a two-month grace period between jobs and ways for immigrants to keep their spot in the green card line. Here, experts offer an overview of the provisions in the final rule immigration attorneys should know about.

### **US Senate Passes Northern Border Security Review Bill**

The U.S. Senate on Wednesday passed a bill that would require the U.S. Department of Homeland Security to conduct a threat assessment of the border between the U.S. and Canada.

### **Trump Taps Jeff Sessions To Be Attorney General**

President-elect Donald Trump announced on Friday that he has chosen Sen. Jefferson Sessions, R-Ala., to become the next U.S. attorney general.

### LAW FIRMS

A&L Goodbody  
Addleshaw Goddard  
Akerman  
Alston Hunt  
Archer & Greiner  
Arnold & Porter  
Baker Donelson  
Ballard Spahr  
Bancroft PLLC  
Bays Lung  
Bracewell  
Bronster Hoshibata  
Bryan Cave  
BuckleySandler  
Carlton Fields  
Cinnamon Mueller  
Covington & Burling  
Crowell & Moring  
DLA Piper  
Davis Wright Tremaine  
Dean Ringers  
Debevoise & Plimpton  
Dentons  
Dewey & LeBoeuf  
Dorsey & Whitney  
Dowd Bennett  
Earthjustice  
Epstein Becker Green  
Farrell Fritz  
Fox Rothschild  
Frost Brown Todd  
Gibson Dunn  
Greenberg Traurig  
Greenspoon Marder

## BANKING & SECURITIES

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### SEC Chair Calls For Further Expansion Of Agency Power

Departing U.S. Securities and Exchange Commission Chair Mary Jo White praised the agency's expansion of its enforcement efforts during her tenure in a speech Friday, but urged lawmakers to consider new laws that could further strengthen the agency's power after she steps down in January.

### State GOPs Ask 6th Circ. To End Muni Pay-To-Play Rule

Several state Republican parties have urged the Sixth Circuit to upend pay-to-play restrictions on municipal advisers approved by the U.S. Securities and Exchange Commission, saying the rules violate the First Amendment and that the SEC didn't have the authority to approve them.

### CFTC Urged To Hold Back 'Controversial' Rules

The House Agriculture Committee's Republican chair on Friday urged the U.S. Commodity Futures Trading Commission to hold off on implementing "controversial" proposals before President-elect Donald Trump takes office in January.

### The Fed Broadens Post-Employment Restrictions

The Federal Reserve Board is more than doubling the number of people covered by a rule that bars certain senior staff members from leaving a Federal Reserve Bank and going right to work for a bank they had supervised, the Fed announced Friday.

## ENERGY & ENVIRONMENTAL

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### White House Unveils Environmental Regulatory Agenda

The White House on Thursday released its environmental regulatory agenda for the coming year, and outlined policy aspirations that appear unlikely with the recent election of Donald Trump, who has articulated a very different vision for the U.S. Environmental Protection Agency.

### EPA Gives Flint To-Do List Before Switching Water Again

The U.S. Environmental Protection Agency on Friday amended its emergency order to Flint, Michigan, in the wake of the city's lead-tainted drinking water crisis, outlining steps the city must complete before implementing a switch to a new drinking water source.

### Maine's Suit Against EPA Over Tribal Water Regs Trimmed

A federal judge on Friday tossed a claim from the state of Maine's suit seeking to compel the U.S. Environmental Protection Agency to recognize the state's power to regulate tribal waters, saying the agency was required to review but not necessarily approve state water standards under the Clean Water Act.

### Oil Industry, ND Spurned From EPA Waste Regs Suit

A D.C. federal judge on Friday rejected a bid by industry groups and North Dakota to step into a fight between the U.S. Environmental Protection Agency and environmental groups over whether the agency needs to update its regulations for waste disposal from oil and gas operations.

### Obama Offshore Drilling Plan Closes Off Atlantic, Arctic

The Obama administration on Friday unveiled the final version of its five-year

Growe Eisen

Haynes and Boone

Hilyard Bogan

Hogan Lovells

Holland & Knight

Hooper Lundy

Jones Day

K&L Gates

Kamer Zucker

Kaye Scholer

Kilpatrick Townsend

King & Spalding

Kirkland & Ellis

Knobbe Martens

McCorriston Miller

Merchant & Gould

Michael Best

Mintz Levin

Morgan Lewis

Morrison & Foerster

Organ Cole

Pinsent Masons

Priddy Cutler

Pyle Rome

Quarles & Brady

Reed Smith

Seward & Kissel

Sidley Austin

Simmons & Simmons

Siskind Susser

Skadden

Snell & Wilmer

Squire Patton Boggs

Sullivan & Worcester

Telecommunications Law  
Professionals

Wiley Rein

## COMPANIES

AT&T Inc.

Align Technology, Inc.

America Fujikura Ltd.

American Bar Association

American Civil Liberties Union

American Clinical Laboratory  
Association

American Federation of Labor &

offshore drilling plan, which puts the Atlantic and Pacific Oceans off limits and shuts off drilling in new regions of the Arctic Ocean, handing a victory to environmentalists and a defeat to the U.S. oil industry.

### **9th Circ. Buries 3 Hawaii Counties' GMO, Pesticide Regs**

The Ninth Circuit on Friday rejected regulations in three Hawaii counties governing pesticides and genetically modified crops, agreeing with agriculture companies and industry groups that the local rules are preempted by state and federal laws.

### **FDA Pauses Stronger Lab Test Oversight**

The U.S. Food and Drug Administration won't use the final days of the Obama administration to finalize its controversial proposal to begin regulating lab tests as medical devices, a source confirmed Friday.

## **HEALTH & LIFE SCIENCES**

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### **Adapt Pharma Urges FDA Hurdles For Teva Overdose Generic**

Adapt Pharma wants the U.S. Food and Drug Administration to require Teva's generic version of overdose drug Narcan to undergo special scrutiny in order to win approval, according to a newly released citizen petition.

## **TRANSPORTATION & INFRASTRUCTURE**

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### **Port Authority Scores Win In AAA Toll Hike Dispute**

The Port Authority of New York and New Jersey scored a win in a suit alleging its 2011 plan to raise tolls was inflated to impermissibly include capital costs for other projects, after a federal judge ruled Friday that the tolls didn't discriminate against interstate commerce and weren't excessive.

### **St. Louis Cabbies Insist Uber Stole Future Business**

St. Louis taxi drivers told a Missouri federal judge Thursday that they've sufficiently alleged Uber has crushed their future business prospects by intentionally flouting city regulations requiring all for-hire drivers to get fingerprinted and obtain commercial drivers' licenses to make the ride-hailing giant more appealing to riders.

### **Judge Urged To Ax Unequal Taxi, Ride Hailing Regs Suit**

The Philadelphia Parking Authority urged a federal judge on Thursday to dismiss a lawsuit alleging that taxi companies in the city had suffered irreparable business damage after ride-hailing services such as Uber and Lyft had been allowed to operate largely unchecked in the city.

## **REAL ESTATE**

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### **5th Circ. Won't Rehear Macy's Bargaining Unit Ruling**

A split full Fifth Circuit on Friday declined to rehear a panel's ruling that backed the certification of a collective bargaining unit for workers at a Macy's department store in Massachusetts and that upheld a relevant National Labor Relations Board standard.

## **EMPLOYMENT**

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### **DOL Watchdog Outlines Host Of Challenges Facing Agency**

The U.S. Department of Labor faces an uphill battle on multiple fronts in the

Congress of Industrial Organizations

American Immigration Council  
American Immigration Lawyers Association

American Petroleum Institute  
Apple Inc.

BASF SE

Burford Capital LLC

CPA Global

Citrin Cooperman

Dow Chemical Co.

Electronic Frontier Foundation

Facebook

Franklin Data Ventures Inc.

Google Inc.

International Brotherhood of Teamsters

JPMorgan Chase & Co.

Johnson & Johnson

Konica Minolta Holdings

LinkedIn Corp.

Lyft Inc.

Macy's Inc.

Major League Baseball Inc.

Microsoft Corporation

Minnesota Twins

Monsanto Company

National Consumer Law Center

National Immigration Law Center

Natural Resources Defense Council

New York Times Co.

PayPal Inc.

PricewaterhouseCoopers

Pulmonx Corp.

Royal Dutch Shell PLC

Ryman Hospitality Properties Inc.

San Francisco Giants

Sierra Club

Sinclair Broadcast Group, Inc.

Spotify Technology SA

St. Louis Metropolitan Taxicab Commission

State Bar of California

Syngenta AG

Teva Pharmaceutical Industries

coming years, including preventing discrimination against workplace-safety whistleblowers, guarding its information systems and keeping violence out of its local job training centers for at-risk youths, according to a report released Thursday.

### **Part Of Ky. Right-To-Work Law Valid, 6th Circ. Says**

The Sixth Circuit ruled Friday that a portion of a Kentucky county's right-to-work ordinance that bars employers from requiring union membership is not forbidden by the National Labor Relations Act, while also concluding that ordinance's hiring-hall and dues-checkoff provisions are preempted by the NLRA.

### **No Circuit Split Over Tip Pool Rule, Workers Tell Justices**

Casino workers Friday urged the Supreme Court to refuse to hear an appeal from Las Vegas casino owner Steve Wynn over a Ninth Circuit ruling on the tip pooling rule, arguing the district conflict claimed by Wynn does not exist.

## **PRIVACY & CONSUMER PROTECTION**

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### **Lawmakers Want More Time To Mull Warrant Rule Expansion**

A bipartisan group of federal lawmakers moved on Thursday to postpone the looming implementation of a judicial rule change that would expand courts' ability to issue warrants for access to electronic communications by floating a legislative proposal that would give Congress until July to address the controversial amendment.

### **EU To Press Internet Providers On Data Access, Official Says**

The European Commission is working on a proposal that would push internet service providers to work more closely with law enforcement to provide access to key digital evidence, according to a top commissioner who also called on businesses to cooperate with the government to help fortify systems against cyberattacks.

### **11th Circ. Urged To Revive Privacy Suits Over Fla. Driver Info**

A Florida couple made a second appearance before the Eleventh Circuit on Friday to argue that a lower court wrongly dismissed cases they brought against local governments and their workers claiming their personal information was improperly accessed hundreds of times through state driver and motor vehicle records.

## **INTERNATIONAL TRADE**

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### **Azevêdo Frets Over Sluggish Pace Of New WTO Talks**

World Trade Organization Director-General Roberto Azevêdo said Thursday that he is concerned about a lack of engagement among delegations as they work to craft a new negotiating agenda for the organization, particularly in areas like agricultural and fisheries subsidies.

### **Agencies Tweak Arms Export Rules For Aircraft, Engines**

The U.S. departments of State and Commerce issued a pair of final rules Friday intended to clarify and adjust which aircraft, gas turbine engines and related equipment are subject to export control regulations as defense items.

### **US Wood Producers Take Aim At Chinese Imports**

A U.S. industry group on Friday asked the Obama administration to slap hefty

Limited

Twitter Inc.

Uber Technologies Inc.

United Food and Commercial Workers International Union

Verizon Communications

XO Communications LLC

eBay Inc.

## **GOVERNMENT AGENCIES**

Animal and Plant Health Inspection Service

Bureau of Indian Affairs

Bureau of Industry and Security

Bureau of Land Management

Bureau of Ocean Energy Management

Centers for Medicare & Medicaid Services

Central Intelligence Agency

Commodity Futures Trading Commission

Congressional Research Service

Consumer Financial Protection Bureau

Defense Intelligence Agency

Department of Commerce

Drug Enforcement Administration

Employment and Training Administration

European Commission

Executive Office for Immigration Review

Executive Office of the President

Federal Bureau of Investigation

Federal Communications Commission

Federal Reserve Bank of NY

Federal Reserve System

Federal Trade Commission

Financial Conduct Authority

Florida Department of Highway Safety and Motor Vehicles

Food and Drug Administration

Government Accountability Office

Health Resources and Services Administration

Internal Revenue Service

remedial tariffs on imports of hardwood and decorative plywood, alleging that the merchandise has been illegally subsidized and sold in the U.S. market at unfairly low prices.

## IMMIGRATION

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### Detainments A 'Vital' Part Of Immigration Law, Justices Told

The federal government has doubled down on its efforts to overturn a Ninth Circuit ruling that certain immigrants are entitled to automatic bond hearings following six months of detention, saying immigrant detention is vital and controlling law proves the three-judge panel got it wrong.

### Executive Action Suit Pause Sought Until Trump Inauguration

A case in Texas challenging President Barack Obama's executive actions on immigration should be halted until after President-elect Donald Trump is inaugurated, 26 states and the federal government said on Thursday.

## NATIVE AMERICAN

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### RI Tribal Council Says Ousted Leader Won't Let Go Of Power

The Narragansett Indian Tribe urged a Rhode Island federal court Thursday to validate a tribal council election and block the tribe's chief sachem, allegedly removed by a council vote, from spending the tribe's funds or otherwise continuing to act as the tribe's leader.

## TELECOMMUNICATIONS

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### Analysis

### Top 4 Groups Lobbying The FCC

The Federal Communications Commission may now be moving into a period of slowed action on major policy issues, but companies and trade associations have continued to make their case over the last month on topics such as rolling out telecom services, mergers and reform of the business data services market. Here, Law360 looks at the top organizations lobbying the FCC in the past month.

### FCC Says TCPA's Autodialing Restrictions Apply To Texts

The Federal Communications Commission on Friday warned that autodialed text messages, known as robotexts, are subject to the limits placed on automated calls by the Telephone Consumer Protection Act, which the agency expanded last year in a move that drew ire from businesses and spurred a D.C. Circuit challenge.

### FCC Channel Shift Plan Too Rigid, Broadcaster Says

The Federal Communications Commission must abandon its rigid approach and unrealistic timetable for migrating broadcast stations to new channels following auctions to allocate current broadcast spectrum to wireless providers, a Maryland broadcast group told the commission in a filing on Tuesday.

### DC Circ. Rejects FCC Rule On VOIP Switching Charges

The D.C. Circuit reversed a Federal Communications Commission ruling that retroactively required traditional carriers to pay switching charges to local phone companies for over-the-top voice-over-internet-protocol calls, agreeing Friday with AT&T Inc. that the commission provided insufficient reasoning for

International Trade Commission  
Municipal Securities Rulemaking Board

Narragansett Indian Tribe

National Aeronautics and Space Administration

National Institute of Standards & Technology

National Labor Relations Board

New York Attorney General's Office

New York State Department of Financial Services

Occupational Safety and Health Administration

Office of the Comptroller of the Currency

Pension Benefit Guaranty Corp

Port Authority of New York & New Jersey

Securities and Exchange Commission

Texas Attorney General's Office  
U.S. Army

U.S. Customs and Border Protection

U.S. Department of Defense

U.S. Department of Energy

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of Labor

U.S. Environmental Protection Agency

U.S. House of Representatives

U.S. Senate

U.S. Supreme Court

United Nations

its decision.

## **2 Senate Dems Drop Hold On FCC Reappointment**

Democratic Federal Communications Commissioner Jessica Rosenworcel cleared a barrier to her reappointment put up by her own party when Democratic Senators Ed Markey and Ron Wyden on Friday withdrew holds they had placed on her nomination after major items were pulled from the agenda of Thursday's FCC meeting.

## **PEOPLE**

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### **Health Hires: Merchant & Gould, Davis Wright, Greenspoon**

Intellectual property firm Merchant & Gould PC has added a medical device partner from Dorsey & Whitney LLP; Davis Wright Tremaine LLP is expanding its health care group in Los Angeles with a payments-focused partner from Hooper Lundy & Bookman PC; and Greenspoon Marder PA is launching a cannabis law practice group in Oregon.

## **EXPERT ANALYSIS**

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### **Tax Policy In The Trump Era: Part 2**

Nearly three decades have passed since the last major overhaul of the U.S. tax code. Republican and Democratic policymakers agree (often for different reasons) that reform is needed. In the second of a three-part series, attorneys with Squire Patton Boggs consider the prospects for reform of business and individual tax policy, and of the U.S. system of international taxation.

### **BLM Final Rule Streamlines Renewables On Public Lands**

Last week, the Bureau of Land Management issued its final rule governing solar and wind energy on public lands, creating a new program that uses competitive leasing and incentives to encourage renewable development across six states. It may have a significant impact even if the new administration seeks to repeal it, say Tara Kaushik and Stephen Humes of Holland & Knight LLP.

### **The Unintended Impact Of DEA's New Registration Policy**

The U.S. Drug Enforcement Administration recently announced a significant change to its registration renewal process whereby it will no longer allow a grace period for registrants who fail to file a timely renewal application. This could have unintended consequences that will place pharmacies and other providers at risk, says Larry Cote of Quarles & Brady LLP.

### **Preparing For Contractor Paycheck Transparency**

A day before it was scheduled to take effect, a Texas federal court preliminarily enjoined implementation of most aspects of the Fair Pay and Safe Workplaces final rule, leaving only its paycheck transparency requirements to proceed. Attorneys at Dentons LLP offer insight into the steps necessary to meet requirements for this aspect of the rule.

### **FTC Study On Patent Assertion Entities Is Incomplete**

The Federal Trade Commission said the purpose of its study on the activities of patent assertion entities in the U.S. was to examine their impact on innovation and competition. But unfortunately this important goal was not even close to achieved, says Justin Daniels of Burford Capital LLC.

## **LEGAL INDUSTRY**

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## Dewey Judge Says Retrial May Be Another Marathon

A New York state judge on Friday said the coming retrial of two former top executives of Dewey & LeBoeuf LLP accused of defrauding lenders and investors before the megafirm's collapse could wind up taking as much time as the nearly five-month first trial.

## Legal Tech Download: On-Demand Lawyers & Immigration AI

The world of legal technology is quickly evolving as new products aimed at aiding lawyers are created and launched in rapid succession. Here, Law360 takes a look at nine of the biggest legal tech-related news developments over the past two weeks.

## GC Cheat Sheet: The Hottest Corporate News Of The Week

The internet of things gets a long-awaited security guide, JPMorgan forks over \$130 million for running a nepotistic hiring program in violation of the Foreign Corrupt Practices Act and the U.S. Department of Homeland Security gives skilled immigrant workers some leeway. Those stories top the corporate legal news you may have missed last week.

## Calif. Attys Must Pay Bar Dues Held Up By Stalled Bill

The California Supreme Court on Thursday ordered the state's lawyers to pay base dues to the State Bar of California given the annual bill that usually sets and approves financial support for the body has been subject to stalled political wrangling for months.

## In Case You Missed It: Hottest Firms and Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

## Rainmaker Q&A: Sullivan & Worcester's Aidan Browne

In some industries, legal services are viewed principally as a cost burden and not in terms of added value. Overcoming these perceptions can be challenging, but it's possible to defeat such institutional biases by consistently performing above the expectations, says Aidan Browne, director of business development at Sullivan & Worcester LLP.

## Rainmaker Q&A: Michael Best's Jorge Leon

I pride myself on my level of responsiveness and truly believe that letting clients know they are being heard is the most important and challenging part of being a rainmaker, especially when you're trying to maintain a healthy work-life balance and are unable to predict when a crisis will come up, says Jorge Leon, partner at Michael Best & Friedrich LLP.

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