

From: Public Policy Law360 <news-q@law360.com>  
To: Adams, ChaneyChaneyAdams@gov.sc.gov  
Date: 8/4/2016 4:04:52 AM  
Subject: Justices Pause Transgender Bathroom Mandate During Appeal

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## PUBLIC POLICY

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Thursday, August 4, 2016

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### TOP NEWS

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#### [Justices Pause Transgender Bathroom Mandate During Appeal](#)

The U.S. Supreme Court on Wednesday stayed a Fourth Circuit ruling requiring schools to allow transgender students to use the bathroom that fits their gender identity, while a Virginia school board petitions the high court to consider its appeal of the Title IX decision.

#### [NY Gov. Signs Bill Legalizing Daily Fantasy Sports](#)

New York Gov. Andrew Cuomo on Wednesday signed a bill legalizing daily fantasy sports in New York, ending a major legal challenge for the beleaguered industry's leaders DraftKings and FanDuel, which faced lawsuits brought by the state's attorney general alleging their contests violated anti-gambling laws.

#### [IRS Voluntary Certification Program Survives AICPA Challenge](#)

The American Institute of Certified Public Accountants lost its bid to scrap the Internal Revenue Service's voluntary certification program for unlicensed tax return preparers when a D.C. federal court ruled Wednesday that the accounting trade body lacks a proper cause of action to challenge the program.

#### [Texas, Civil Rights Groups Reach Voter ID Terms For November](#)

Texas and the civil rights groups wrangling over whether the state's voter identification law is discriminatory reached terms Wednesday that would allow voters lacking the stricter ID required by the law to vote if they sign a declaration that they couldn't easily get the new documents.

#### [Entrepreneur Parole Rule Finally Lands At The OMB](#)

A new proposed rule on parole for entrepreneurs landed at the Office of Management and Budget for review Monday, signaling that the long-awaited regulation for startup founders from abroad may finally be around the bend.

### ANALYSIS

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#### [New White House GHG Guidance Should Help Clear The Air](#)

New guidance released by the White House on how federal agencies should

### LAW FIRMS

Best Best  
Beveridge & Diamond  
Brown Goldstein  
Buchanan Ingersoll  
Chiesa Shahinian  
Constangy Brooks  
Dechert  
Dorsey & Whitney  
Earthjustice  
Fisher Phillips  
Foley & Lardner  
Gibson Dunn  
Gray & Associates  
Harman Claytor  
Jackson Lewis  
Kirkland & Ellis  
Loeb & Loeb  
Marshall Dennehey  
Mayer Brown  
Nilan Johnson  
Norton Rose Fulbright  
O'Melveny & Myers  
Ogletree Deakins  
Pietragallo Gordon  
Pillsbury Winthrop  
Proskauer Rose  
Reed Smith  
Richards Rodriguez  
Shook Hardy  
Silverstein & Pomerantz

factor greenhouse gas emissions into National Environmental Policy Act reviews of projects ranging from freeway off-ramps to large-scale forest management plans makes clear for the first time that even small undertakings should get some GHG emissions analysis, a move experts say should reduce confusion.

### More Than Words At Stake In Pa. Judge Retirement Age Row

A case before the Pennsylvania Supreme Court on a referendum to increase the state's mandatory judicial retirement age could impact an already tight contest and the fate of the court's political makeup by reviving allegedly clearer wording that lawmakers previously axed and establish guidelines on crafting such ballot questions and who can challenge them, experts say.

### 4 Ways Employers Can Prepare For EEOC Pay Data Expansion

The U.S. Equal Employment Opportunity Commission's recent revision of a rule expanding pay data collection alleviated some burdens on employers but left the rule's core requirements to collect earnings and hours worked data intact. Here, experts share four tips for how employers should get prepared to comply with the rule.

## BANKING & SECURITIES

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### FINRA Challengers Must Face SEC First, SEC Tells 4th Circ.

The U.S. Securities and Exchange Commission on Wednesday told the Fourth Circuit that Scottsdale Capital Advisors Corp. must first face a Financial Industry Regulatory Authority disciplinary action and appeal to the SEC before it can bring a challenge of FINRA's authority before an appellate court.

## ENERGY & ENVIRONMENTAL

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### Calif. Floats Clean Power Plan Compliance Proposal

The California Air Resources Board on Tuesday unveiled a plan for coming into compliance with the Obama administration's Clean Power Plan, using the state's existing cap-and-trade program as the foundation of the proposal.

### Lawmakers Want Army Corps To Explain Coal Terminal Denial

A House committee asked the U.S. Army Corps of Engineers on Tuesday to explain why it separately considered tribal treaty rights in denying a permit for the proposed Gateway Pacific coal terminal in Washington state before an environmental impact statement for the project was completed.

### 5th Circ. Haze Ruling Not Linked To CPP, EPA Tells DC Circ.

The U.S. Environmental Protection Agency told the D.C. Circuit on Tuesday that a recent Fifth Circuit decision staying an EPA haze plan in Texas and Oklahoma doesn't undermine the legality of the agency's Clean Power Plan, responding to more than a dozen states who said otherwise.

### EPA Gets Hard Deadline To Set Wash. Water Quality Standards

A Washington federal judge on Wednesday gave the U.S. Environmental Protection Agency a hard deadline to finalize state water quality standards, which are being updated to accurately reflect the amount of fish eaten in the state, resolving a lawsuit brought by environmental and fishing groups.

## HEALTH & LIFE SCIENCES

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Sprague & Sprague

Susman Godfrey

Winston & Strawn

### COMPANIES

AARP Inc.

AT&T Inc.

AbbVie Inc.

American Bar Association

American Civil Liberties Union

American Pharmacists Associati

Amgen Inc.

Anheuser-Busch Inbev SA/NV

Apple Inc.

Arch Coal Inc.

BlueMountain Capital  
Management LLC

CTIA

CenturyLink Inc.

Comcast Corporation

Dollar Tree, Inc.

DraftKings Inc.

FanDuel Inc.

Financial Industry Regulatory  
Authority Inc.

Ford Motor Company

Franklin Resources Inc.

Frontier Communications  
Corporation

Goodyear Tire & Rubber Co.

Google Inc.

Health Net, Inc.

Hewlett Packard Enterprise Co.

International Business Machines  
Corporation

Kimberly-Clark Corporation

Lawyers' Committee for Civil  
Rights Under Law

Lionbridge Technologies, Inc.

Merck & Co Inc.

MetLife Inc.

Microsoft Corporation

NFL Enterprises LLC

National Association of  
Manufacturers

National Cable &  
Telecommunications Associator

Natural Resources Defense

## FDA's Biosimilar Labeling Vision Stirs Up Discord

Drugmakers, consumer groups and patient advocates remain sharply divided over U.S. Food and Drug Administration proposals for the labeling of biosimilars, newly released correspondence shows.

## NY AG Takes Aim At False Zika Prevention Claims

New York Attorney General Eric Schneiderman on Wednesday told seven companies to stop using false advertising that touts certain products as able to fend off mosquitoes and prevent transmission of the Zika virus, saying the products don't work.

## Catholic III. Docs Must Refer Patients To Abortion Providers

Female patients of Catholic hospitals seeking to end their pregnancies will have to be directed to an alternative health care provider under an amendment to Illinois' Right of Conscience Act recently signed by Gov. Bruce Rauner.

## ADL, Others Urge 3rd Circ. To Uphold Birth Control Mandate

The Anti-Defamation League and other religious and civil liberties organizations on Monday got behind the federal government's stance against a secular anti-abortion nonprofit's bid to be exempt from providing health insurance covering contraception, telling the Third Circuit "the Constitution does not require government to treat every nonprofit organization like a church."

## TRANSPORTATION & INFRASTRUCTURE

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### Ex-NJ DOT Chief Appears In Court In Airline Bribery Case

New Jersey's former transportation chief made his first appearance on Wednesday in New Jersey federal court on a charge of conspiring with David Samson, the former Port Authority of New York and New Jersey chairman, to pressure United Airlines Inc. into reinstating a flight from Newark to an area near Samson's South Carolina house.

## EMPLOYMENT

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### Think Tank Says NLRB Joint Employer Rule Harmful To Biz

The National Labor Relations Board's new standard relaxing the test for determining joint employment will result in reduced business opportunities for employers and hinder job creation, a conservative think tank said in a report issued Wednesday.

### Pa. Election Chief Defends Judicial Retirement Question

Pennsylvania's secretary of state on Wednesday defended actions surrounding the approval of allegedly misleading language in a controversial ballot measure that would raise the mandated retirement age for judges, telling state justices that he has acted with diligence during a "cycle of uncertainty" over the questions' phrasing.

### NJ Leader Seeks Probe Of Alleged Union Threats On Pension

New Jersey Senate President Stephen M. Sweeney on Wednesday urged authorities to investigate allegations that the state teachers' union has threatened to withhold political contributions unless the Senate posts and passes a constitutional amendment to ramp up pension payments — a move the legislator called criminal.

Council

Netflix Inc.

Oracle Corporation

PhRMA

Planned Parenthood Federation

Prism Technologies LLC

SSA Marine Inc.

Sigma-Aldrich Corporation

Sonoco Products Co.

Sprint Nextel Corporation

Star Scientific, Inc.

T-Mobile USA Inc.

Twilio Inc.

U.S. Chamber of Commerce

Uber Technologies Inc.

United Continental Holdings Inc.

Wal-Mart Stores Inc.

## GOVERNMENT AGENCIES

Agua Caliente Band of Cahuilla Indians

Army Corps of Engineers

Bureau of Citizenship and Immigration Services

Bureau of Indian Affairs

Bureau of Ocean Energy Management

California Environmental Protection Agency

California Franchise Tax Board

Centers for Disease Control and Prevention

Columbia Metropolitan Airport

Council on Environmental Quality

Equal Employment Opportunity Commission

European Commission

Executive Office of the President

Federal Aviation Administration

Federal Bureau of Investigation

Federal Communications Commission

Federal Motor Carrier Safety Administration

Financial Stability Oversight Council

Fish and Wildlife Service

Food and Drug Administration

## PRODUCT LIABILITY

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## FMCSA Cautions Drivers Over E-Cig Fire, Explosion Hazards

The Federal Motor Carrier Safety Administration on Wednesday told commercial vehicle drivers to be aware of potential fire and burn risks associated with electronic smoking devices, saying they should exercise good judgment while using or charging devices around hazardous materials.

## WHITE COLLAR

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### Pa. Justices Urged To Nix AG's Bid To Toss Criminal Charges

Prosecutors urged the Pennsylvania Supreme Court on Wednesday to reject an emergency petition from Attorney General Kathleen Kane aimed at axing the perjury charges she faces at a trial set for next week over her alleged lying about her role in leaking confidential investigative material to a reporter.

### 7th Circ. Slashes Casinos' Blagojevich Bribe Award To \$26M

The Seventh Circuit on Tuesday affirmed a nearly \$26 million verdict against a pair of Illinois racetrack businesses whose owner was accused of bribing disgraced former Illinois Gov. Rob Blagojevich, but said the damages couldn't be tripled because a pattern of racketeering activity hadn't been established.

## INTERNATIONAL TRADE

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### 6 GOP Pols Warn Against Lame-Duck TPP Vote

The Republican Party's unexpected crusade against the Trans-Pacific Partnership forged ahead this week as six members of the U.S. Congress implored President Barack Obama not to bring the deal up for a vote in the lame-duck legislative session this year, citing concerns over currency manipulation.

## TAX

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### Calif. Board Says Tax Pact Doesn't Need Top Court Review

The California Franchise Tax Board urged the U.S. Supreme Court Monday to leave intact the state high court's decision on an interstate agreement for calculating corporate franchise taxes, saying that petitioner Gillette Co. and other companies that weren't parties to the agreement don't have the right to interfere in a state's tax policies.

### 'Netflix Tax' On Digital Downloads Takes Effect In Pa.

Pennsylvania residents are having to pay more to watch movies online from streaming services such as Netflix after a new law imposing a 6 percent sales tax on digital downloads went into effect Monday.

## IMMIGRATION

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### Immigration Advocacy Group Launches New Reform Push

The immigration advocacy group launched by former New York City mayor Michael Bloomberg rolled out a new campaign Wednesday aimed at highlighting the ways immigration issues affect various communities in the U.S., with an eye toward impacting immigration reform in 2017.

## NATIVE AMERICAN

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### Calif. Water Agency Tells 9th Circ. Tribal Fee Rule Hurts

Internal Revenue Service  
Lummi Nation  
National Labor Relations Board  
National Marine Fisheries Service  
New Jersey Department of Transportation  
New Jersey Legislature  
New York State Gaming Commission  
Pipeline and Hazardous Materials Safety Administration  
Port Authority of New York & New Jersey  
Securities and Exchange Commission  
U.S. Army  
U.S. Coast Guard  
U.S. Department of Education  
U.S. Department of Energy  
U.S. Department of Health and Human Services  
U.S. Department of Homeland Security  
U.S. Department of Justice  
U.S. Department of Labor  
U.S. Department of Transportation  
U.S. Department of the Interior  
U.S. Department of the Treasury  
U.S. Environmental Protection Agency  
U.S. Senate  
U.S. Supreme Court  
Wampanoag Tribe of Gay Head

A California water agency urged the Ninth Circuit Wednesday to revive its suit challenging a federal rule barring states from collecting fees from hotels and other buildings on tribal lands, arguing it has standing because the mere existence of the rule has harmed the agency.

## TELECOMMUNICATIONS

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### Google Fiber Knocks Industry Set-Top Alternative At FCC

Representatives from competitive communications group INCOMPAS and Google Fiber have cautioned the Federal Communications Commission that there are issues in an industry alternative option to the FCC's proposal to "unlock" the set-top box, saying it wouldn't fulfill key objectives.

### FCC Told Its Special Access Plan Would Distort Market

The Federal Communications Commission's plan to create new regulations in the market for business data services is based on inaccurate, outdated data and will "distort and deter" competition, according to a Tuesday filing from CenturyLink and Frontier Communications.

### More Than 50M Twilio Texts Blocked This Year, FCC Told

More than 50 million "consented" texts sent over Twilio's automated messaging service have been blocked by wireless carriers so far in 2016, the company has told the Federal Communications Commission in a regulatory filing in support of its request to protect texts under the Open Internet Order.

## EXPERT ANALYSIS

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### Following The Cape Wind Project's Road Toward Approval

Over the years, the Cape Wind offshore wind energy project near Cape Cod has been fiercely opposed by a number of environmental and government groups. However, now that the D.C. Circuit has validated the project's existing regulatory approvals, the end may finally be in sight, says Anthony Cavender of Pillsbury Winthrop Shaw Pittman LLP.

### Payne Avoids Falling Into A Funk In Pa.

Ever since the Pennsylvania Supreme Court issued its 2013 plurality decision in Robinson Township we have watched the status of the court's 1973 decision in Payne to see if it continues to serve as a benchmark for evaluating Environmental Rights Amendment-related claims. Had there been any doubt about its continued viability, it was dispelled immediately by the court's recent decision in Ashley Funk v. Tom Wolf, say attorneys at Buchanan Ingersoll & Rooney PC.

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## Bad Legal Writing Cut Down To Size In Age Of Short Attention Spans

Standards for what's considered good writing in the legal profession are changing, and lawyers wedded to the ways of old run the career-damaging risk of angering clients and judges.

## Assault On Patent Trolls Leaves NPE Model In Peril

The America Invents Act has left behind a trail of invalidated patents, and IP plaintiffs are being battered by a slew of unfavorable Supreme Court decisions. Will nonpracticing entities find a way to adapt and thrive in this new world?

## Sandy Hook Victims Search For Weaknesses In Gun Makers' Legal Shield

Federal law gives gun makers broad protections from lawsuits over non-defective weapons, but a new interpretation of a common legal theory could pave the way for mass-shooting cases if a Connecticut judge signs off.

### LEGAL INDUSTRY

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#### Litigation Powerhouse: Gibson Dunn

The litigation team at Gibson Dunn handles each case as if it's going to trial, creating a mindset that regularly brings in courtroom victories, such as recent high-profile wins for Apple, MetLife and T-Mobile, and that has earned the firm a spot on Law360's list of Litigation Powerhouses.

#### How To Snuff Out The Lone Wolf Law Firm Culture

Many law firms today are plagued by a lone wolf mentality in which lawyers fail to collaborate when bringing in business and instead stick to a philosophy of "eat what you kill," destroying the possibility of a productive partnership in the process. Here, experts look at ways to create a more collaborative law firm culture.

#### LA Atty Accuses Deputy DA Of Sharing Private Photos

Three Los Angeles lawyers caught up in a messy love triangle are now also caught up in a lawsuit after a deputy district attorney allegedly pilfered photos of her estranged husband's public-defender girlfriend and started sharing them around the office, according to a recent complaint.

#### How BigLaw Is Finally Accommodating Attys With Disabilities

Lawyers with disabilities are an oft-neglected minority class with dismal numbers in the profession, and some law firms are trying to change that. Whether disability diversity is a newer concept in your firm or it's been a long-standing part of the disability conversation, here are some cornerstones to consider as part of initiatives both formal and informal.

#### Law Schools Should Be Teaching Emotional IQ, Paper Says

The practice of law is often treated as a science in which logic rules and emotion has no place, but an academic paper posits that the profession has it all wrong. According to the author, emotion not only has a place in the law, it's something that law firms and law schools would benefit from embracing.

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