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Subject: Gov't Band-Aid Funding Debate Stalled By Senate

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## PUBLIC POLICY

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Tuesday, September 20, 2016

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### TOP NEWS

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#### [Gov't Band-Aid Funding Debate Stalled By Senate](#)

Senate leadership punted a planned vote on a stopgap government funding measure Monday, while the two sides said there was progress on including money to fight the Zika virus in the package.

#### [US Chamber, Others Say DOL Fiduciary Rule Is Overreach](#)

The U.S. Chamber of Commerce and other groups suing the U.S. Department of Labor over a new fiduciary rule the agency says aims to protect Americans' retirement savings asked a Texas federal judge on Friday to end the case in their favor because the action amounted to federal overreach.

#### [WilmerHale Attys Warn About Impeaching IRS Chief Fairly](#)

WilmerHale attorneys for IRS Commissioner John Koskinen confirmed Friday that he will testify under oath at a congressional hearing Wednesday on his possible impeachment, but warned that the process cannot substitute for formal impeachment proceedings consistent with constitutional requirements.

#### [EPA Finalizes Revisions To Air Quality Limit Exemptions](#)

The U.S. Environmental Protection Agency on Friday finalized revisions to its rule for so-called exceptional events, such as wildfires and volcanic eruptions, that would allow regions to avoid being penalized for temporarily exceeding ozone limits and other national ambient air quality standards.

#### [Firms Push For Quick Win In 'Persuader Rule' Challenge](#)

A group of law firms challenging the U.S. Department of Labor's so-called "persuader rule," which requires employers to report arrangements to persuade workers regarding union representation, urged a Minnesota federal court Friday to strike down the regulation, arguing it doesn't comport with federal law.

#### [Think Tank Skewers Trump's Policy, Warns Of 'Trade War'](#)

Presidential contender Donald Trump's proposal to sharply raise tariffs on China, Mexico and other international trading partners could lead to a "trade war" that hurts export-dependent U.S. industries, the Peterson Institute for International Economics said Monday in a new report.

#### [Party Talk Needs No Clarification, Ky. Judicial Panel Says](#)

The Kentucky Judicial Conduct Commission said Monday the Sixth Circuit does not need to clarify its own recent ruling in a lawsuit over the state's

### LAW FIRMS

Allen & Overy  
Arnold & Porter  
Baker & McKenzie  
BakerHostetler  
Barnes & Thornburg  
Bean Kinney  
Brune Law PC  
Cleary Gottlieb  
Cooley  
Coudert Brothers  
Covington & Burling  
Crowell & Moring  
Davis Wright Tremaine  
Diamond McCarthy  
Earthjustice  
Eimer Stahl  
Fenwick & West  
Foley & Lardner  
Frankfurt Kurnit  
Fredericks Peebles  
Freund Freeze  
Gibson Dunn  
Greenberg Traurig  
Hogan Lovells  
Jones Day  
K&L Gates  
Kellogg Huber  
Kleinbard LLC  
Levenfeld Pearlstein  
McGlinchey Stafford  
Millberg Gordon  
Miller & Chevalier  
Miller Morton  
Miller Shakman

limitations on judges' political speech, saying there is no dispute that judicial candidates can disclose the party affiliation of themselves or a rival.

## Christie Knew About GWB Closures, Feds Say At Start Of Trial

Prosecutors in the George Washington Bridge lane-closing trial indicated Monday in their opening statement that New Jersey Gov. Chris Christie was aware of a plot to cause a massive traffic jam as political payback against a local mayor for not endorsing him for re-election.

## ANALYSIS

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### 5 Tax Code Changes That Multinational Businesses Want

European investigations that have left companies such as Apple and Starbucks on the hook for billions of dollars collectively in back taxes may be the impetus that experts say is needed for corporate tax reform in the U.S. Here are some of the changes multinational businesses would like to see in the U.S. corporate tax code.

## BANKING & SECURITIES

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### Tilton Can't Get Quick Win In \$200M SEC In-House Suit

An administrative law judge for the U.S. Securities and Exchange Commission denied private equity magnate Lynn Tilton's bid to toss claims that she defrauded investors in three distressed-debt investment funds, saying Friday that Tilton hadn't used undisputedly factual evidence in her motion.

### UniCredit Takes Croatia To ICSID Over Loan Currency Policy

Two units of Italian financial powerhouse UniCredit SpA will haul the Croatian government before arbitrators with the International Centre for Settlement of Investment Disputes, in a bid to win compensation for a borrower relief policy that infuriated European lenders, the arbitration forum said Monday.

## ENERGY & ENVIRONMENTAL

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### Fracking Rule Foes Ask 10th Circ. To Bury Agency's Regs

The four states, industry groups and Native American tribe that persuaded a federal judge to strike down the U.S. Bureau of Land Management's fracking regulations urged the Tenth Circuit on Friday not to revive the measures, arguing the bureau has an inflated view of its authority.

### Mass. Gov. Orders GHG Caps For Climate Plan Overhaul

Massachusetts Republican Gov. Charlie Baker on Friday ordered state regulators to establish decreasing limits on greenhouse gas emissions as part of an overhaul of the state's climate change program, after the state Supreme Judicial Court recently ruled that the state's existing efforts weren't sufficient.

### Calif. Continues Climate Push With Cuts To Super Pollutants

California Gov. Jerry Brown continued his push on legislation directed at climate change on Monday, signing into a law a bill that would require massive cuts in so-called super pollutants that come from petroleum fuels, cows, air conditioning and other sources.

## HEALTH & LIFE SCIENCES

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Nelson Mullins  
Nixon Peabody  
O'Melveny & Myers  
Orrick Herrington  
Proskauer Rose  
Pryor Cashman  
Seaton Peters  
Shawe & Rosenthal  
Sidley Austin  
Stone Pigman  
Thompson Coe  
Wilkinson Barker  
WilmerHale

## COMPANIES

AOL Inc.  
AT&T Inc.  
Abengoa SA  
Altice SA  
American Bar Association  
American Civil Liberties Union  
American Council of Life Insure  
American Petroleum Institute In  
American Society Of Composer  
Authors & Publishers  
Apple Inc.  
Bayer AG  
Broadcast Music Inc.  
Business Roundtable  
CFA Institute  
Chevron Corporation  
Chicago Bar Association  
Conservation Law Foundation  
Deloitte Touche  
E. I. du Pont de Nemours and  
Company (DuPont)  
Erste Group Bank  
Facebook  
Ford Motor Company  
Franciscan Alliance Inc.  
Friedman LLP  
Frontier Communications  
Corporation  
General Motors  
Google Inc.  
HCA Healthcare  
Illinois Transportation Trade

## After Searing Debate, FDA Clears Unproven Sarepta Drug

The U.S. Food and Drug Administration on Monday cleared a \$300,000 drug from Sarepta Therapeutics for muscular dystrophy despite unproven benefits, capping an extraordinary review process that saw the agency's top drug regulator overrule scientists who opposed approval.

## Herbicide In Monsanto's Roundup 'Unlikely' To Cause Cancer

The U.S. Environmental Protection Agency said Friday it has proposed to classify glyphosate, the active ingredient in Monsanto's ubiquitous herbicide Roundup, as "not likely" to cause cancer in humans, following a scientific review of the substance.

## IP & TECHNOLOGY

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### Music Rights Orgs Can't Rest Easy After Surprise Ruling

A New York federal judge on Friday issued a bombshell judgment dismantling the U.S. Department of Justice's interpretation of antitrust consent decrees governing music performance licenses, but experts said the decision is likely only an early salvo of a lengthy war in the courts and in Congress.

### DOD Will Open More Tech Outreach Offices, Carter Says

The recently opened third office of the Pentagon's Defense Innovation Unit Experimental in Austin, Texas, won't be the last outpost for the technology industry outreach unit, Defense Secretary Ashton Carter said Monday, indicating more DIUx units would follow.

## TRANSPORTATION & INFRASTRUCTURE

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### Pa. Turnpike Agency Beats Ex-CEO's Reimbursement Suit

A Pennsylvania appeals court on Monday dismissed a suit brought against the Pennsylvania Turnpike Commission by the agency's former CEO, seeking \$300,000 in legal fee reimbursements from a pay-to-play case in which he pled to a felony charge, finding the agency is immune to certain claims and that others weren't properly brought.

## EMPLOYMENT

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### NC Drops Suit Against DOJ Over Transgender Bathroom Law

Citing the expense of fighting "duplicative" legal cases, North Carolina Gov. Pat McCrory on Friday withdrew a lawsuit that asked a federal court to uphold a state law that limits transgender state employees' access to restrooms and curbs anti-discrimination protections.

### ACLU Wants In On Suit Over HHS' ACA Transgender Rule

The American Civil Liberties Union of Texas and a Nebraska-based transgender advocacy organization on Friday asked a Texas federal court to let them intervene in a suit where several states and religious medical groups are challenging a federal regulation barring discrimination against transgender people under the Affordable Care Act.

## COMPETITION

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### Posner Says Ride-Hailing And Cabs 'Clearly Different'

Seventh Circuit Judge Richard A. Posner rejected a Chicago taxi trade

Association

Immigrant Legal Resource Cen

Immigration Reform Law Institu

Institute for Justice

International Business Machine  
Corporation

International Centre for Settlem  
of Investment Disputes

Intesa Sanpaolo

LinkedIn Corp.

Lyft Inc.

Monsanto Company

NRG Energy Inc.

National Basketball Association

National Collegiate Athletic  
Association

National Federation of  
Independent Business

National Hockey League

Natural Resources Defense  
Council

New Hampshire Bar Associatio

New York City Bar Association

New York State Bar Associator

NextEra Energy Inc.

Philip Morris USA Inc.

Planned Parenthood Federatio

Raiffeisen Bank

Regal Entertainment Group

Sarepta Therapeutics Inc.

Sberbank

Sierra Club

Skype Technologies SA

SolarCity Corp.

Southern California Gas Co.

Starbucks Corporation

State Bar of California

SunEdison LLC

Temple University

Tesla Motors Inc.

The Boeing Company

TiVo Inc.

Turner Broadcasting System In

Twitter Inc.

U.S. Chamber of Commerce

UniCredit

Verizon Communications

association's argument that the city's regulation structure unconstitutionally hinders cab companies from competing with ride-hailing apps like Lyft and Uber, saying Monday that differential treatment is appropriate because there are "clearly differences" between the products.

## PRIVACY & CONSUMER PROTECTION

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### Commerce Head Wants 'Bold' Plan From Cybersecurity Panel

U.S. Secretary of Commerce Penny Pritzker on Monday called on a presidential committee tasked with developing a plan to strengthen the nation's cybersecurity to craft "bold" and "creative" recommendations to enhance coordination between the public and private sectors and tackle recruitment and funding shortcomings within the government.

## INTERNATIONAL TRADE

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### Obama Pursues Ex-Im Bank Gambit As Conservatives Dig In

President Barack Obama nominated a former executive of the Export-Import Bank of the United States to the bank's board of directors Friday as he looks to establish the three-member quorum needed to finance deals exceeding \$10 million.

## TAX

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### US CEOs Urge EU Members To Reject \$14.5B Apple Tax Ruling

Business Roundtable, an association of chief executive officers of major U.S. corporations, urged European government leaders to reject a ruling ordering Apple Inc. to pay \$14.5 billion in back taxes to Ireland, saying in a letter on Friday that the ruling will disrupt trade and investment.

### PolS To Investigate Solar-Energy Firms Over Tax Incentives

U.S. Senate and House of Representatives leaders have told seven residential solar industry companies and solar utilities companies they are going to be formally investigated over whether they wrongfully received billions in tax credits from the government, expanding on an inquiry that started earlier this year.

## IMMIGRATION

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### 10th Circ. Finds INA Definition Of 'Crime of Violence' Vague

The Tenth Circuit on Monday vacated a Board of Immigration Appeals ruling deporting a Moldovan citizen who was convicted of failing to stop at a police officer's command, finding that the Immigration and Nationality Act's definition of "crime of violence" is unconstitutionally vague.

### DHS Knocks Washtech's 'Copycat' Case In Latest OPT Fight

The U.S. Department of Homeland Security on Friday urged a D.C. federal court to throw out a suit from a technology workers union over the newest work rule for student visa holders, slamming its "copycat lawsuit" and accusing it of rehashing arguments.

## NATIVE AMERICAN

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### Wash. Can Prosecute Tribe Members For Cig Sales: Judge

A Washington federal judge on Friday tossed claims by Native American tribe

Washington Post Co.

## GOVERNMENT AGENCIES

Bureau of Indian Affairs  
Bureau of Land Management  
California Environmental Protection Agency  
Department of Commerce  
Drug Enforcement Administration  
European Commission  
Export-Import Bank of the United States  
Federal Aviation Administration  
Federal Communications Commission  
Federal Deposit Insurance Corporation  
Federal Reserve System  
Federal Trade Commission  
Food and Drug Administration  
Immigration and Customs Enforcement  
Internal Revenue Service  
Muckleshoot Indian Tribe  
NAFTA  
National Credit Union Administration  
National Highway Traffic Safety Administration  
National Labor Relations Board  
Office of the Comptroller of the Currency  
Port Authority of New York & New Jersey  
Securities and Exchange Commission  
U.S. Army  
U.S. Attorney's Office  
U.S. Census Bureau  
U.S. Customs and Border Protection  
U.S. Department of Defense  
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

members against state judges and prosecutors seeking to block them from pursuing criminal cases for the illegal sale of cigarettes on Indian land, saying that the members' arguments had been shot down in an earlier state Supreme Court case.

### [Okla. Tribal Member Can't Halt Special Tribal Election](#)

A federal judge on Friday rejected a member of the Kiowa Indian Tribe of Oklahoma's bid to halt a special business committee election, saying he had made only a "speculative and conclusory" showing of potential harm.

## TELECOMMUNICATIONS

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### [AT&T Slams Verizon's Motives On FCC's Special Access Regs](#)

Verizon and competitive group INCOMPAS are falsely presenting their negotiated proposal for Federal Communications Commission regulation in the special access market as an industry compromise, AT&T told the FCC Friday, saying Verizon would benefit from a "nakedly self-serving" plan that is not in the public interest.

### [States Urge DC Circ. To Uphold FCC Inmate Call-Rate Rule](#)

The states of Illinois, Massachusetts, Minnesota, New Mexico, New York and Washington, as well as Washington, D.C., on Monday urged the D.C. Circuit to uphold the FCC's new rate caps on phone calls from prison inmates and to deny a company's challenge to the very existence of those caps.

### [Frontier Pushes FCC For More Relief In Set-Top Box Plan](#)

The Federal Communications Commission should give midsize pay-TV providers more time to comply with its proposed plan to promote competition in the set-top box market by forcing companies to release apps, Frontier and a trade association have told the agency as they advocated limiting the burden on smaller companies.

### [FCC Should Drop ISP Privacy Plan, 16 State AGs Say](#)

Sixteen attorneys general are urging the Federal Communications Commission to scuttle highly anticipated broadband privacy rules that would require internet service providers to clearly disclose how customer data is being used, in a letter released Monday.

### [DOT To Release Guidelines On Driverless Vehicles](#)

The U.S. Department of Transportation plans to unveil new policy Tuesday regarding the safe development and deployment of automated vehicles on U.S. roads, the federal agency said Monday in a media advisory and preview of the announcement.

## EXPERT ANALYSIS

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### [Hirozawa's NLRB Term Ends With A Pro-Union Bang](#)

Last month, National Labor Relations Board member Kent Hirozawa's term came to an end. Not surprisingly, his final month saw a rash of pro-union board decisions breathtaking in their scope, all of which are a continuation of the board's ongoing efforts to make union organizing easier, and unions more powerful and relevant, says Mark Keenan of Nelson Mullins Riley & Scarborough LLP.

### [FDIC Plan To Improve Appeal Process Doesn't Go Far Enough](#)

[U.S. Department of Transportal](#)

[U.S. Department of Veterans Affairs](#)

[U.S. Department of the Interior](#)

[U.S. Department of the Treasur](#)

[U.S. Environmental Protection Agency](#)

[U.S. Senate](#)

[U.S. Supreme Court](#)

[Ute Indian Tribe](#)

[World Health Organization](#)

Current Federal Deposit Insurance Corp. guidelines contain numerous deficiencies that significantly curtail a bank's access to the intra-agency appeal process. While recently proposed amendments address some of the long-standing failings, they have significant shortfalls, say attorneys with Pryor Cashman LLP.

### Counting FCA Penalties: It's All In The Claims

Last month, the civil penalty range under the False Claims Act nearly doubled. Much of the conversation surrounding this development has focused on the excessive fines clause of the Eighth Amendment and the due process clause. However, it has also placed a renewed focus on the proper method for counting the number of FCA penalties, arguably an even more important issue, say attorneys at Miller & Chevalier Chartered.

### Why California Teachers Will Celebrate Senate Bill 1413

The California Legislature recently passed Senate Bill 1413, which authorizes school districts to establish programs that will help teachers and school district employees secure affordable housing. This timely bill is intended to address the potentially troubling future of California's teaching industry, say Gregory Korbel and Rosanna Moreno of Miller Morton Caillat & Nevis LLP.

## LEGAL INDUSTRY

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Feature

### Lawyers Flocking To Social Media Find Old Rules Don't Hold Up

The legal industry is embracing social media, but danger lurks in the Twitterverse.

### How To Score A Lateral Rainmaker

Partners with big books of business have a buffet of choices when considering a move to a new law firm, creating a tough task for firms vying to lure lateral rainmakers. Here, experts offer four tips for snagging a big fish.

### K&L Gates Announces New Firm Leaders Starting March 2017

K&L Gates LLP has chosen its new leadership after the impending exit of Peter J. Kalis, the firm announced Monday, with the selection of Michael S. Caccese as chairman of the global management committee and James J. Segerdahl as global managing partner.

### 5 Things To Know About The Heller Ehrman Clawback Case

It's been eight years since Heller Ehrman LLP imploded amid defections and debt, scattering partners across BigLaw. Finally, the California Supreme Court is ready to answer a knotty question: Who "owns" the unfinished hourly work partners take with them when their firm goes bankrupt? Here are five things you need to know about the Heller Ehrman clawback case.

### Atty Pleads Guilty To Role In Bean Kinney Leader Attack

A Virginia trademark attorney pled guilty to charges related to her role in a vicious attack on the former managing partner of Bean Kinney & Korman PC after the trademark lawyer had lost her job at the firm, according to reports on Monday.

## Pro Bono Firm Of 2016: Cleary Gottlieb

After a year of victories in cases that pitted individuals against the government, including settlements with immigration officials over a man's wrongful imprisonment and a girl's injury from a botched sting operation, Cleary Gottlieb Steen & Hamilton LLP has earned a spot on Law360's Pro Bono Firms of 2016.

## Context Is Key For Judicial Reasoning, Paper Says

Claims that judges overstep their bounds by analyzing more than the literal interpretation of the law in complex and controversial legal decisions are unhelpful and unnecessary because judges should always focus on contextual aspects of the law, a paper released Friday said.

## Rainmaker Q&A: Crowell & Moring's Daniel Sasse

Most of us are told no and fail at bringing in business far more often than we succeed. Especially early in your career, being told no just means you are in the game and getting better. You have to be appropriately persistent and keep trying, says Daniel Sasse, partner at Crowell & Moring LLP.

## Rainmaker Q&A: Levenfeld Pearlstein's Lauren Wolven

Too many attorneys wait until they are a year out from partnership to begin building their network. By then it's too late. It takes three to five years from when you plant a seed to have it fully mature into part of your trusted network, says Lauren Wolven, a partner in the trusts and estates group at Levenfeld Pearlstein LLC.

Op-Ed

## Consider Requiring Personality Testing For Lawyers

With the overwhelming stresses placed on attorneys today, contributing to attorney psychological problems and resulting in destructive behavior, should pre-employment personality testing be required of attorneys entering law firms to identify the ones most susceptible? The answer may be yes.

### JOBS

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