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PUBLIC POLICY

Wednesday, February 1, 2017

SUPREME COURT

Analysis

3 Gorsuch Opinions You Need To Read Right Now

President Donald Trump's U.S. Supreme Court nominee Judge Neil Gorsuch is a 10-year veteran of the Tenth Circuit and has under his belt hundreds of opinions that can be mined for clues as to what kind of Supreme Court justice he would be. Here are three opinions by Judge Gorsuch to read right now.

Gorsuch's Credentials Could Prove Troubling To Opposition

The praise for Tenth Circuit Judge Neil Gorsuch following his nomination to the U.S. Supreme Court Tuesday night came from many prominent legal figures, reflecting how it will be hard for Democrats to challenge President Donald Trump's selection given the judge's impeccable resume.

Analysis

Gorsuch Likely To Restore Scalia-Era High Court Balance

With a solid conservative bent, President Donald Trump's nominee for the U.S. Supreme Court, Circuit Judge Neil Gorsuch, is unlikely to shift the high court's jurisprudence significantly away from where it stood with the late Justice Antonin Scalia, legal experts say.

Trump Nominates Judge Gorsuch For High Court Seat

President Donald Trump on Tuesday nominated Tenth Circuit Judge Neil Gorsuch to fill a Supreme Court seat that has remained vacant since the death of Justice Antonin Scalia in February 2016, picking a well-respected figure in the conservative legal establishment who would restore the nation's top bench to a Republican majority and likely break the recent spate of 4-4 ties.

TOP NEWS

Analysis

Yates 'Betrayal' Marks Rocky Start To Trump's DOJ

Former acting Attorney General Sally Yates' bold refusal to defend President Donald Trump's immigration ban and her subsequent firing has injected turbulence into a relatively orderly transition at the U.S. Department of Justice, former agency attorneys and officials say.

Analysis

Law360 Cheat Sheet: Immigration Order Challenges So Far

LAW FIRMS

Akin Gump
Balch & Bingham
Cleary Gottlieb
Cooper & Kirk
Cooper Levenson
Cravath Swaine
DLA Piper
Dewey & LeBoeuf
Dorsey & Whitney
Duane Morris
Earthjustice
Gibson Dunn
Greenberg Traurig
Hogan Lovells
Holland & Knight
Jenner & Block
Kellogg Huber
King & Spalding
Kirkland & Ellis
Latham & Watkins
Levy Ratner
Littler Mendelson
Mayer Brown
McKool Smith
Milberg LLP
Morgan Lewis
Morvillo Abramowitz
Pitt McGehee
Schulte Roth
Searcy Denney
Seward & Kissel
Sheppard Mullin
Sidley Austin
Steptoe & Johnson LLP

Numerous complaints have been filed since Saturday challenging President Donald Trump's executive order that placed a temporary ban on immigration from seven predominantly Muslim countries and suspended the nation's refugee program. Here, Law360 offers a roundup of some of the key suits.

Senate Dems Delay Vote On Sessions For AG Post

Senate Democrats pushed back a committee vote on President Donald Trump's pick for attorney general on Tuesday, as debate continues over both the record of Sen. Jeff Sessions, R-Ala., and Trump's own executive actions on immigration.

Analysis

New Privacy Regs Face Steeper Climb With Trump Order

President Donald Trump's recent executive order requiring two regulations to be nixed for every new one is likely to bring to a grinding halt emerging efforts to regulate developing technologies such as connected-home appliances, as well as the longstanding drive to create a nationwide data security standard.

What To Expect From VA Nominee David Shulkin

Although lower profile than other Trump cabinet nominees, prospective Veterans Affairs Secretary David Shulkin has a long track record in business and is renowned as a hospital turnaround specialist, experience he will likely be grilled about in a Wednesday confirmation hearing.

Trump To Tap Ex-Obama Appointee For DHS Deputy Secretary

President Donald Trump on Monday announced his intention to nominate Elaine C. Duke, former undersecretary for management at the Department of Homeland Security, to serve as the department's deputy secretary.

Business Groups Clamor For Action On Commerce Nominee

A collection of some 400 businesses and trade associations on Tuesday began pressuring the U.S. Senate to confirm President Donald Trump's nominee to lead the U.S. Department of Commerce, billionaire investor Wilbur Ross, whom they endorsed as uniquely skilled to reshape the country's manufacturing policy.

Dems Boycott Vote On Trump's HHS, Treasury Noms

Senate Democrats on Tuesday staged a rare boycott of committee votes on President Donald Trump's choices to lead the U.S. Department of the Treasury and the U.S. Department of Health and Human Services amid questions on whether the nominees gave false statements in testimony.

BANKING & SECURITIES

Fed Eases Stress Test Reviews For Midsize Banks

The Federal Reserve on Monday followed through on a promise to make the stress test process easier for midsize and regional banks by eliminating a requirement that they go through a "qualitative review" of their capital levels.

GOP Set To Halt SEC's Extraction Payment Disclosure Rule

Republican lawmakers in Congress will vote Wednesday to disapprove a U. S. Securities and Exchange Commission rule requiring oil and gas extraction companies to disclose their payments to foreign governments, potentially preventing the agency from implementing the regulation.

Stroock & Stroock

Sullivan & Cromwell

Vaka Law Group

Weil Gotshal

White & Case

Wiley Rein

WilmerHale

Winston & Strawn

Young & Associates

COMPANIES

Advocate Health Care Inc.

American Bar Association

American Civil Liberties Union

American Immigration Council

American Petroleum Institute In

Apple Inc.

Associated Press

Association of Corporate Couns

Atlantic Health System Inc.

Bank of America Corporation

CSP Inc.

Carbonite Inc.

Chevron Corporation

Citizens for Responsibility and
Ethics in Washington

DISH Network Corporation

Facebook

Financial Industry Regulatory
Authority Inc.

Financial Services Roundtable

Globalstar, Inc.

Goldman Sachs Group Inc.

Hobby Lobby Stores

Juniper Networks

LM Ericsson Telephone Compa

Murray Energy Corp.

National Association of
Manufacturers

National Public Radio Inc.

Natural Resources Defense
Council

New York Times Co.

OneWest Bank Group LLC

Oracle Corp.

Rabobank Nederland

Revel AC Inc.

2 More Directors Leave The SEC, Making 3 In Week

The U.S. Securities and Exchange Commission said Monday two more officials are leaving the agency, raising the total to three departures in a week for the regulator, which is already undergoing a change in leadership coinciding with the arrival of the Trump administration.

ENERGY & ENVIRONMENTAL

Flint Residents File \$772M Suit Saying EPA Ignored Lead

A group of about 1,700 residents of Flint, Michigan, filed a \$772 million joinder suit in Michigan federal court on Monday against the federal government, alleging that the U.S. Environmental Protection Agency injured local residents by ignoring the dangers of elevated lead found in the city's drinking water.

Republicans Move To Block Obama Stream, Methane Rules

Republican lawmakers from both congressional chambers floated pieces of legislation Monday to repeal controversial Obama administration rules aimed at minimizing coal mining's harm to surface water and groundwater and limiting methane releases from drilling operations on federal and Native American lands.

Trump's Interior, Energy Noms Coast To Final Senate Vote

Secretary of the Interior nominee Ryan Zinke and Secretary of Energy nominee Rick Perry were easily approved by the Senate Committee on Energy and Natural Resources on Tuesday, paving the way for their likely confirmation by the full Senate.

FEC Beats Suit Over Lack Of Probe In Murray Energy Donation

A D.C. federal judge on Monday tossed a lawsuit challenging the Federal Election Commission's decision not to investigate allegations that Murray Energy Corp. and its president strong-armed employees into making donations to coal-friendly federal political candidates and the company's political action committee.

HEALTH & LIFE SCIENCES

Fla. Justices Say Lawmakers Can't Impair Atty Fee Contracts

The Florida Supreme Court on Tuesday limited lawmakers' power to cap attorneys' fee awards in cases against public facilities, ruling in a medical malpractice fee dispute that doing so would unconstitutionally limit litigants' access to courts.

Trump 'Sabotaging' ACA By Curbing Outreach, Dems Say

The Trump administration is "sabotaging" Affordable Care Act sign-ups by curtailing consumer outreach, and it should allow extra enrollment time to offset the damage, prominent congressional Democrats said in a letter Monday.

MEDIA & ENTERTAINMENT

NJ Developer Can't Dodge Casino License Requirement

The New Jersey Casino Control Commission said Tuesday that the owner of the defunct Revel Atlantic City resort must obtain a license in order for his tenant to operate a new casino because he'll still retain control of a portion of

The Cato Corporation

Twitter Inc.

U.S. Chamber of Commerce

United Technologies Corporatic

Warner Chilcott Limited

Washington Post Co.

eBay Inc.

GOVERNMENT AGENCIES

Bureau of Land Management

Bureau of Safety and
Environmental Enforcement

Centers for Medicare & Medical
Services

Central Intelligence Agency

Competition and Markets Authc

Connecticut Public Utilities
Regulatory Authority

Department of Commerce

European Commission

Executive Office of the President

Federal Aviation Administration

Federal Communications
Commission

Federal Election Commission

Federal Maritime Commission

Federal Reserve System

Federal Trade Commission

Food and Drug Administration

Government Accountability Offi

Immigration and Customs
Enforcement

Internal Revenue Service

International Maritime
Organization

International Telecommunicatio
Union

International Trade Commissior
Maritime Administration

Michigan Department of
Environmental Quality

Michigan Department of Health
Human Services

Mississippi Public Service
Commission

NAFTA

National Institute of Standards &
Technology

the facility.

TRANSPORTATION & INFRASTRUCTURE

Senate Swiftly Confirms Chao As DOT Secretary

The full Senate confirmed Elaine L. Chao on Tuesday as President Donald Trump's transportation secretary, garnering bipartisan support to advance the department's infrastructure investment programs as debate over the administration's controversial new immigration ban targeting citizens of seven predominantly Muslim countries dominated Capitol Hill hearings.

COMPETITION

EU Official Says Tax Rulings May Condone Illegal State Aid

European Commissioner for Competition Margrethe Vestager said Tuesday that probes into member states' tax rulings did not mean that the commission objects to tax rulings in principle, as they can give companies clarity on their tax bills, but are about investigating special treatment.

PRIVACY & CONSUMER PROTECTION

Trans Prof Can't Enter Obama Bathroom Rule Row, States Say

Texas, Oklahoma and other states challenging an Obama administration guidance that students be allowed to use restrooms matching their gender identity asked the Fifth Circuit on Monday to disallow participation in the case by a transgender college professor involved in a separate discrimination suit against Oklahoma.

House Passes DHS Internal Security, Israel Sharing Bills

The House passed a series of bills Tuesday to alter U.S. cybersecurity policy, ranging from greater internal controls against the next leaker at the U.S. Department of Homeland Security to international cooperation with Israel.

GOVERNMENT CONTRACTS

LGBT Rules For Fed. Contractors To Stay, White House Says

The Trump administration said Tuesday it would keep in place anti-discrimination protections for lesbian, gay, bisexual and transgender employees of federal contractors that President Barack Obama extended in a 2014 executive order.

INTERNATIONAL TRADE

WTO Members Lining Up To Monitor Chinese Aluminum Case

Some of the most powerful nations in the World Trade Organization have opted to take a closer look at the far-reaching U.S. case against Chinese aluminum subsidies, with Russia and Canada becoming the newest members to join the fray Tuesday as third-party observers.

TAX

IRS Issues Long-Awaited Guidance On Large Business Audits

The Internal Revenue Service on Tuesday publicly released its first set of major focus areas that it will target during audits of the largest corporations with assets greater than \$10 million since it first announced an overhaul of

National Security Agency
New Jersey Casino Control
Commission
New York Attorney General's
Office
Office of Surface Mining
Reclamation and Enforcement
Peace Corps
Securities and Exchange
Commission
Transportation Security
Administration
U.S. Army
U.S. Coast Guard
U.S. Customs and Border
Protection
U.S. Department of Defense
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 the Interior
U.S. Department of the Treasur
U.S. Environmental Protection
Agency
U.S. House of Representatives
U.S. Senate
U.S. Supreme Court
United Nations

these audit procedures nearly two years ago.

IMMIGRATION

DHS Officials Try To Clarify Exec. Order Amid Confusion

Homeland Security officials on Tuesday attempted to address confusion over President Donald Trump's executive order temporarily banning nationals from several Muslim majority countries, with the DHS secretary insisting it was "not a ban on Muslims," and a U.S. Customs and Border Protection official clarifying that dual nationals won't be affected.

San Francisco Sues To Challenge Trump Sanctuary City Order

San Francisco sued President Donald Trump Tuesday in California federal court over his executive order directing the government to withhold federal funds from cities that have sanctuary policies limiting local involvement with federal immigration enforcement, blasting it as "a severe invasion of San Francisco's sovereignty."

Mass. AG To Sue Trump Over Immigration Order

Flanked by the state's educational, health care and technology leaders, the Massachusetts attorney general announced Tuesday that she was intervening in a federal lawsuit against President Trump's immigration executive order.

TELECOMMUNICATIONS

FCC's Pai Favors 'Open Internet' But Mum On Plans

Federal Communications Commission Chairman Ajit Pai said he favors a "free and open internet" while opposing the reclassification of broadband providers under common carrier regulation at his first meeting as chief Tuesday, focusing instead on action to close the digital divide.

New FCC Won't Defend At DC Circ. Parts Of Inmate Call Caps

Republicans newly at the helm of the Federal Communications Commission told the D.C. Circuit Tuesday that the commission will not defend two aspects of an attempt to cap inmate calling rates by the previous FCC in court next week, backing off from capping intrastate rates.

Globalstar Can Use Its Bandwidth For Broadband, FCC Says

Satellite telecommunications provider Globalstar Inc. has gotten the green light to use its current spectrum for terrestrial broadband after narrowing an earlier request for expansion, according to a final rule the Federal Communications Commission published in the Federal Register Tuesday.

Franken Urges Pai, A Net Neutrality Foe, To Keep It Alive

Sen. Al Franken, D-Minn., pressed the Federal Communications Commission's brand-new chairman, Ajit Pai, on Monday to reverse his opposition to the commission's 2015 order enshrining the principle of net neutrality, calling it the "First Amendment issue of our time."

FCC Is Asked To Reopen Broadcast Communication Channels

Washington, D.C., law firm Wiley Rein LLP urged the Federal Communications Commission Monday to drop rules barring certain communications by TV broadcasters during the ongoing broadcast incentive auction, saying their portion of the sale is complete and there is no risk of an effect on bids or

strategies.

States Urge DC Circ. to Reject FCC Lifeline Change

A coalition of 12 states and state utility commissions urged the D.C. Circuit Monday to quash a move by the Federal Communications Commission to create a federal process to confer eligibility to telecom companies to deliver Lifeline broadband services.

EXPERT ANALYSIS

Some Context For Trump's New Immigration Executive Order

President Donald Trump's recent immigration-related executive order has sown confusion and spurred anger in the few days it has been in effect. In addition, arguments are raging over the White House's claims of precedent for the order and the implications of implementing "extreme vetting," says Jonathan Meyer, partner at Sheppard Mullin Richter & Hampton LLP and former deputy general counsel of the U.S. Department of Homeland Security.

An Analysis Of Wilbur Ross' Stance On Trade Remedies

In his testimony before the U.S. Senate Committee on Commerce, Science and Transportation, President Trump's nominee for Secretary of Commerce touched on several issues relevant to the administration of U.S. anti-dumping and countervailing duty law — suggesting that enforcement in this area could become more aggressive, says Eric Emerson of Steptoe & Johnson LLP.

Tracking Global Merger Control Changes For 2017

This year introduces new layers of complexity to the already challenging task of identifying which countries around the world will claim jurisdiction to review a given M&A transaction. Multiple jurisdictions are modifying their merger filing thresholds, and several other countries have newly introduced merger reporting requirements, say Joshua Holian and Amanda Reeves of Latham & Watkins LLP.

FDA's Streamlined Requirements For Combination Products

The U.S. Food and Drug Administration recently issued final guidance on how makers of combination medical products — which may contain both drug and device components — can comply with current good manufacturing practice requirements. Central to understanding the FDA's approach to combination products is that each component retains its regulatory status after being combined, say attorneys from Sidley Austin LLP.

A Look Back At A Year Of Record-Setting HIPAA Enforcement

Last year saw unprecedented levels of enforcement actions, fines and, as a result, aggregate Health Insurance Portability and Accountability Act penalties being assessed. This year, the question on many HIPAA-watchers' minds, however, is whether 2016 is the "new normal" or if it was aberrational, says David Saunders of Jenner & Block.

Understanding Arcane Policy Decisions About Spectrum

By 2020, the internet of things is expected to increase network traffic six-fold with the introduction of 50 billion wireless devices. The industry is growing faster than ever before, but regulation of the radio spectrum remains a cumbersome and lengthy process that sometimes requires decades before final actions are approved, say attorneys with DLA Piper.

Maritime Cybersecurity Regulation On The Horizon: Part 2

Cybersecurity for ships, ports, terminals and offshore facilities is becoming an increasing concern for energy companies. As Congress considers relevant legislation, and agencies including the U.S. Coast Guard, the Department of Homeland Security and others begin exploring maritime cybersecurity regulations, energy firms must stay abreast of developments, say attorneys from King & Spalding LLP.

LEGAL INDUSTRY

Nearly Half Of GCs May Fire A Firm In 2017

In-house hiring has stabilized, outside budgets are rising, and a third of general counsels anticipate that they'll increase the amount of work they outsource, according to a survey of chief legal officers. But the news is not all rosy, as some law firms may face the chopping block.

Greenberg Says Giuliani, Not Firm, Acted On Immigration Ban

Greenberg Traurig LLP acknowledged controversial comments made by former New York Mayor Rudy Giuliani related to President Donald Trump's executive order temporarily banning immigrants from seven Muslim-majority nations from the U.S., but distanced itself from the remarks, saying Giuliani acted in his own personal capacity.

How GCs Can Build A Cohesive Outside Team

Assembling the best outside counsel teams typically means hiring experts from different firms, which can lead to miscommunication, competition and infighting. Here's how GCs can assert their leadership skills to create a united, effective team.

Obsolete Legal Tech Hurting Lawyer Morale, Innovators Say

Clunky document systems, stultifying client intake work, and repetitive fill-in-the-blank tasks are killing lawyer moral along with opportunities to win new clients or build on the work they already have, a group of legal technology leaders said at a Tuesday panel in New York.

Security Experts See Client Disconnect On Hacker Defense

BigLaw and their corporate clients may be more aware than ever of the dangers of hacking and online attacks, but that doesn't mean negotiating the best way to handle sensitive information is getting any easier.

Dewey Exec Wants Ex-Firm Head On The Witness Stand

An attorney for the former chief financial officer of Dewey & LeBoeuf LLP on Tuesday told a New York state judge they want to call former Dewey Chairman Steven Davis to the witness stand in the second trial stemming from the fallout of the law firm's collapse.

JOBS

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