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Subject: Judicial Nomination Logjam Strangles Texas Docket

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## PUBLIC POLICY

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Monday, August 22, 2016

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### TOP NEWS

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#### Judicial Nomination Logjam Strangles Texas Docket

Houston, like the rest of Texas, has a problem. The Lone Star State is home to some of the busiest federal dockets in the country, but for more than a year, it's been plagued with the most judicial vacancies, allowing thousands more cases to pile up than almost anywhere else in the country.

#### Trump's Tax Plan: A Closer Look

Donald Trump is promoting his recently released economic vision for corporate America as one that will slash taxes drastically, but experts say it is wholly unclear if his proposed rate reductions for pass-through entities will actually result in fewer corporate taxes being paid. In the first of a two-part series, Law360 examines the tax plan of the Republican presidential nominee.

#### Google, Apple Assemble With FCC Robocall Strike Force

A call by the chairman of the Federal Communications Commission for help from industry leaders to combat robocalls has been answered, as a 33-member "strike force" that includes the likes of Apple, Google and every major mobile carrier met for the first time on Capitol Hill on Friday.

#### Split Texas Appeals Court Nixes City's Single-Use Bag Ban

A split Texas appeals court ruled Wednesday that the city of Laredo's proposed ordinance banning single-use plastic and paper bags in its retail stores is unenforceable, reversing a lower court decision and finding that a state statute governing solid waste management preempts Texas cities from restricting bag sales.

#### Planned Parenthood Gets Restrictive Fla. Abortion Law Axed

A Florida federal judge permanently shot down a law that would have defunded all services for two Planned Parenthood affiliates and tightened abortion restrictions, following an agreement the health care organization reached with the state earlier this month.

#### Don't Lift Ban On Wis. Election Laws, 7th Circ. Told

A pair of social justice advocacy organizations who successfully challenged voting laws in Wisconsin federal court told the Seventh Circuit Thursday it should allow a judge's ban to stand while the state appeals, saying the laws' impact on certain voters is too great to wait.

#### 9th Circ. Asked To Halt Conduct Claims Over Campaign Ad

### LAW FIRMS

Adams and Reese  
Allen & Overy  
Alston & Bird  
BakerHostetler  
Bracewell LLP  
Bressler Amery  
Cadwalader Wickersham  
Cravath Swaine  
DLA Piper  
DeGraff Foy  
Dickstein Shapiro  
Dorsey & Whitney  
Ervin Cohen  
Feldman Shepherd  
Finkelstein Blankinship  
Fox Rothschild  
Gibson Dunn  
Goldberg Segalla  
Greenberg Traurig  
Haynes and Boone  
Hogan Lovells  
Holland & Knight  
Hunton & Williams  
Jacoby & Meyers  
Jeffer Mangels  
Jenner & Block  
Jones Day  
Katten Muchin  
Kaye Scholer  
King & Spalding  
Kirkland & Ellis  
Latham & Watkins  
Mayer Brown  
Morgan Lewis

A Montana attorney running for a local judgeship urged the Ninth Circuit on Wednesday to halt a state disciplinary proceeding against him over allegedly false statements he's published about his opponent — an incumbent judge he's been sanctioned by — arguing that the disciplinary claims are “repugnant” to the U.S. Constitution.

### Jacoby's NY Stakes Suit Called 'Far-Fetched' In 2nd Circ.

Jacoby & Meyers LLP got a chilly reception in the Second Circuit on Friday as it pressed its effort to use the federal court system to undo New York's ban on allowing nonlawyers to invest in law firms, with one judge calling the use of a First Amendment class action to try to change the rule a major stretch.

## ANALYSIS

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### Industry Gears Up To Battle CFPB Arbitration Rule

The Consumer Financial Protection Bureau has faced several high-profile fights, but the coming battle over rules restricting mandatory arbitration clauses may be among the biggest, as banks and financial firms, consumer advocates and lawmakers gear up for a struggle that could make its way to the courts.

### FCC's Vote Won't Be Final Word On Media Ownership Limits

The Federal Communications Commission disappointed many industry stakeholders in recent days by refusing to relax media ownership restrictions that some say don't apply to the new media landscape, but experts say the decision remains fragile and subject to the views of the Third Circuit and shifts in Congress.

### Alaska's Trust Ceasefire Likely To Ease Acrimony With Tribes

Alaska's recent decision to stop challenging the U.S. Department of the Interior's authority to take land into trust for Native Americans in the state will go a long way toward salvaging Gov. Bill Walker's relationship with tribes, which was sorely tested by the state's earlier refusal to abandon a D. C. Circuit appeal over the department's land-into-trust rules.

### Sports Betting In Hands Of Congress After Court Fight Fails

The idea of legalizing sports betting has been gaining traction in recent years amid shifting attitudes and a widespread underground market, but the Third Circuit struck a blow to that momentum earlier this month by shooting down New Jersey's attempt to allow it. Although some experts have said that other states could take up the issue and force a split in the courts, others now contend change will have to come through Congress.

## ENERGY & ENVIRONMENTAL

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### Ex-DOI Bigs Push To Revive Fracking Rule At 10th Circ.

Four former U.S. Department of the Interior leaders Friday asked the Tenth Circuit to reinstate a federal rule for hydraulic fracturing on federal and Native American lands, saying a lower court's nix of the rule threatens the government's ability to protect its lands.

## HEALTH & LIFE SCIENCES

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### FDA Needs Plan To Regulate Clinical Software, Group Says

Morrison & Foerster  
Native American Rights Fund  
O'Melveny & Myers  
Paul Hastings  
Paul Weiss  
Perkins Coie  
Prichard Hawkins  
Proskauer Rose  
Sheppard Mullin  
Sidley Austin  
Siebman Burg  
Silverstein & Pomerantz  
Skadden  
Steptoe & Johnson LLP  
Susman Godfrey  
Thompson & Knight  
Thompson Hine  
Wilkinson Barker  
WilmerHale

## COMPANIES

AT&T Inc.  
Aetna Inc.  
Amazon.com Inc.  
American Bar Association  
American Civil Liberties Union  
American Insurance Association  
Anheuser-Busch Inbev SA/NV  
Apple Inc.  
BancorpSouth Inc  
Blue Cross and Blue Shield Association  
Blue Shield of California  
BlueLinx Holdings, Inc.  
Brattle Group  
Charlotte Hornets  
Cobham PLC  
Competitive Carriers Association  
Computer & Communications Industry Association  
Consumer Attorneys of California  
Consumer Reports  
Cornerstone Research Inc.  
DRI Corporation  
Deloitte Touche  
Dignity Health  
Dollar Tree, Inc.

A health technology group is urging the U.S. Food and Drug Administration to address narrow regulatory questions on clinical software products, a request that stems from years of delay in producing far-reaching guidance, according to a petition released Thursday.

## MEDIA & ENTERTAINMENT

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### NY State Sets Tax Terms For UFC, Mixed Martial Arts Events

Ultimate Fighting Championship and other mixed martial arts events will pay more than 8 percent tax on gross receipts, along with other tax terms in New York this fall, as the state sets the stage for allowing the first such events in almost two decades.

### Ex-Prosecutors To Push Libel Suits At Kane, Philly Paper

A pair of former Pennsylvania prosecutors implicated in a scandal over pornographic and other inappropriate material discovered on government email servers signaled their intent on Wednesday to pursue libel claims against former Attorney General Kathleen Kane and a Philadelphia Daily News reporter.

## TRANSPORTATION & INFRASTRUCTURE

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### Calif. Pols Unveil \$7.4B Transpo Package, Gas Tax Hikes

Two California lawmakers recently unrolled a proposed \$7.4 billion annual transportation package — funding sources for which will partly come from a 17 cent-per-gallon gas tax increase — a spokeswoman for one of the lawmakers confirmed with Law360 on Friday.

### Bridge Scandal Defendants, Feds Battle Over Trial Evidence

A former New Jersey official charged in the George Washington Bridge lane-closing scandal on Thursday blasted federal prosecutors' efforts to stop her from arguing at an upcoming trial that other parties caused the politically motivated traffic jam at the center of the case.

## EMPLOYMENT

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### GOP Senators Ask White House To Nix EEOC Pay Data Reg

A trio of top Republican senators have asked the Obama administration to halt a proposal by the U.S. Equal Employment Opportunity Commission to expand pay data collection, saying it imposes excessive burdens on businesses.

## COMPETITION

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### VA Botched \$20M In Medical Transpo Contracts, IG Says

The U.S. Department of Veterans Affairs' internal watchdog dinged the Veterans Health Administration on Thursday for awarding two nonemergency medical transportation contract task orders worth some \$20 million to a company that wasn't actually certified to do the work.

## PRIVACY & CONSUMER PROTECTION

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### Gov't Agencies To Get Broader Cybersecurity Contract Menu

Agencies across the federal government could soon have more options for cybersecurity contracts, as the General Services Administration recently

ESPN Inc.  
Eli Lilly and Company  
English Premier League  
Facebook  
Fannie Mae  
Ford Motor Company  
Freddie Mac  
GameStop Corp.  
Goodyear Tire & Rubber Co.  
Google Inc.  
HBR Consulting LLC  
Health Net, Inc.  
Hudson City Bancorp Inc.  
Intel Corporation  
International Association of Defense Counsel  
International Business Machines Corporation  
Kimberly-Clark Corporation  
Madison Square Garden, Inc.  
Major League Baseball Inc.  
Marvel Entertainment LLC  
MasterCard Incorporated  
McAfee, Inc.  
Mercedes-Benz  
Mexican American Legal Defense and Education Fund  
NBCUniversal Inc.  
NFL Enterprises LLC  
National Association of Attorneys General  
National Association of Manufacturers  
National Basketball Association  
National Cable & Telecommunications Association  
National Collegiate Athletic Association  
National Hockey League  
Netflix Inc.  
New Orleans Pelicans  
New Orleans Saints  
Nokia Corporation  
Oakland Raiders  
Pew Charitable Trusts  
Planned Parenthood Federation  
Quest Diagnostics Incorporated

published to its website a draft rollout of new categories under the Cybersecurity National Action Plan.

### New Orleans Wins All-Star Game Moved Over Bathroom Law

The NBA has chosen New Orleans to host the 2017 All-Star Game, the league announced Friday, completing the relocation of the game after deciding to move it from Charlotte over North Carolina's controversial transgender bathroom law.

## INTERNATIONAL TRADE

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### Lobbyists Ask DC Circ. For Fees In Trade Panel Suit

A group of trade lobbyists told the D.C. Circuit they were entitled to attorneys' fees for their challenge of an Obama administration policy that banned them from government advisory committees despite the fact the case settled, arguing the circuit's own rulings had rendered their victory inevitable.

### Russia Loses WTO Fight Over EU Pork Products

A World Trade Organization panel has ruled against Russia for the second time in a week, finding Friday that the country's 2014 ban on European Union pigs and pork was unjustified.

## TAX

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### Gillette, Others Push For High Court Review Of Tax Compact

Gillette and others have told the U.S. Supreme Court that the California Franchise Tax Board is wrongly opposing review of the Golden State justices' decision on an interstate agreement for calculating corporate franchise taxes, arguing the board either skirts over unwelcome points or is simply incorrect on contract law.

### IRS Proposes Higher Fees, New Online Payment Plans

The Internal Revenue Service plans to increase fees for its existing tax payment installment plans, the agency announced Friday, and add new, cheaper online payment options.

## IMMIGRATION

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### Calif. Outlaws Immigration Evidence In Injury Suits

California Gov. Jerry Brown has signed a bill into law that will bar the admission or discovery of evidence related to a person's immigration status in wrongful death and personal injury cases.

## TELECOMMUNICATIONS

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### Exec Branch Concerned About FCC Telecom Review Clock

The National Telecommunications and Information Administration raised "serious concerns" on behalf of the executive branch Thursday over the Federal Communications Commission proposal to subject Team Telecom national security reviews to a rigid 90-day review clock.

### Google-Backed Group Offers FCC Set-Top Box Compromise

The Computer & Communications Industry Association, whose members include Amazon.com Inc. and Google Inc., told the Federal

SJL Attorney Search LLC  
Sempra Energy  
Sigma-Aldrich Corporation  
Smoothie King Franchises Inc.  
Sonoco Products Co.  
Southern California Gas Co.  
Sprint Nextel Corporation  
T-Mobile USA Inc.  
Texas Instruments Inc.  
The DIRECTV Group, Inc.  
The Walt Disney Company  
Turner Broadcasting System Inc.  
Ultimate Fighting Championship  
United States Telecom Association  
Verizon Communications  
Wells Fargo & Co.

## GOVERNMENT AGENCIES

Bureau of Land Management  
California Franchise Tax Board  
California Transportation Agency  
Consumer Financial Protection Bureau  
Department of Commerce  
Equal Employment Opportunity Commission  
European Commission  
Executive Office of the President  
Federal Communications Commission  
Federal Deposit Insurance Corp.  
Federal Reserve System  
Federal Trade Commission  
Food and Drug Administration  
Government Accountability Office  
Internal Revenue Service  
International Trade Commission  
Judicial Conference of the United States  
National Credit Union Administration  
National Highway Traffic Safety Administration  
National Telecommunications and Information Administration  
New York State Department of Taxation and Finance

Communications Commission on Thursday the group had a way to “bridge the gap” between the agency's plan to bring competition to TV set-top boxes and an industry-backed, apps-based alternative.

## Competitive Carriers Lobby FCC On Mobile-Only Subsidies

The Competitive Carriers Association told the Federal Communications Commission on Thursday that the methodology it uses to determine funding for expanding mobile broadband services should “portray an accurate picture of the rural landscape” and use more metrics than those suggested by the agency's Michael O’Rielly.

Op-Ed

## My Dad, The 'Illegal Refugee' Who Hired Americans

At a recent rally in Maine, Donald Trump delighted followers by saying the U.S. should block access from certain countries, even to refugees who are otherwise legally eligible to come to America. My dad, a Hungarian refugee in 1949, faced similar attitudes and policies after the Holocaust.

### EXPERT ANALYSIS

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## FTC Alums: Focusing On The FTC With 2020 Vision

I wish the Federal Trade Commission and its dedicated officials well in their service to the public interest — but I also wish the agency would do still better in its adherence to these principles and in fulfilling the competition and consumer protection missions entrusted to it. That requires the insight to distinguish good intentions from wisdom and busyness from progress, says former FTC Commissioner Andrew Strenio, a partner at Sidley Austin LLP.

## High Court Inclusive Communities Ruling: 1 Year Later

The U.S. Supreme Court’s recognition of disparate impact liability in Texas Department of Housing and Community Affairs v. Inclusive Communities Project last summer was consistent with the position long held by federal regulators. As the impact of Inclusive Communities continues to make its way through the courts and regulatory enforcement, two ongoing developments are worth highlighting, say attorneys at WilmerHale.

## A Look At GAO Recommendations For Improving Patents

A recent Government Accountability Office report on the quality of patents issued by the U.S. Patent and Trademark Office comes at a time of upheaval in the intellectual property world. Different ideas exist on how to carry out reform, and the GAO report highlights the presence of at least two distinct camps within government agencies, say attorneys with Haynes and Boone LLP.

## Risk Management Tips For Attys Serving As Local Counsel

Often, the lead counsel in a case maintains sole contact with the client and makes substantive decisions, relying upon the local counsel only to serve in the requisite capacity to satisfy jurisdictional procedures. Therein lies the problem — absent appropriate precautionary measures, the local attorney faces equal malpractice exposure for the substantive, strategic decisions of

Office of the Comptroller of the Currency

Port Authority of New York & New Jersey

Securities and Exchange Commission

Texas Department of Housing and Community Affairs

U.S. Department of Defense

U.S. Department of Education

U.S. Department of Homeland Security

U.S. Department of Housing and Urban Development

U.S. Department of Justice

U.S. Department of Veterans Affairs

U.S. Department of the Interior

U.S. Department of the Treasury

U.S. Environmental Protection Agency

U.S. Forest Service

U.S. General Services Administration

U.S. House of Representatives

U.S. Patent and Trademark Office

U.S. Senate

U.S. Supreme Court

Wisconsin Department of Justice



the lead counsel, say Patrick (Sean) Ginty of CNA Global Specialty and Seth Laver of Goldberg Segalla LLP.

## LEGAL INDUSTRY

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### 5 Firms That Landed Major Rainmakers This Year

The reasons law firms pursue rainmaker laterals can range from specific needs to fill undermanned practice areas to bigger-picture goals like boosting brand reputation, but industry experts agree that landing a new hire with an established book of business can have many benefits that may not be readily apparent. Here, Law360 looks at five firms that have bolstered their business this year with leading client favorites.

### Litigation Powerhouse: WilmerHale

Adding to its long-running track record of success in high-stakes litigation, WilmerHale locked down major litigation victories over the past year for a number of high-profile clients including Apple, Intel and Ford, earning it a spot among Law360's Litigation Powerhouses.

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

An ambiguous privacy policy lets GameStop off the hook for data-sharing, the boundaries of transgender discrimination take shape, and general and outside counsels are on different pages when it comes to communication, efficiency and pricing. Those stories top the corporate legal news you may have missed this past week.

### 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.

### Recruiter Sues Holland & Knight Atty For Using Competitor

A Texas legal recruiting company is seeking up to \$1 million in damages from a Houston-area attorney who it says breached an oral agreement to work exclusively with the recruiter and then signed with Holland & Knight LLP through a rival.

### Rainmaker Q&A: Morgan Lewis' James Dragna

Twenty years ago, I would have said that to be a successful marketer all that was required was skill, a platform that supports your practice, and the ability to tirelessly and fearlessly look for work. These days that is no longer enough. You need to bring a broader skill set to the marketing table, says James Dragna, a partner at Morgan Lewis & Bockius LLP.

### Rainmaker Q&A: Ervin Cohen's Ellia Thompson

Too often, young lawyers just want to rush out and start chatting up prospective clients without knowing enough to understand what their prospective clients' needs are and without an understanding of how to handle the legal work. Become a good lawyer first, then focus on getting clients, says Ellia Thompson, a partner at Ervin Cohen & Jessup LLP.

## JOBS

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