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**Subject:** ABA Shies From Trump 'Libel Bully' Article, Citing Suit Risk

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## PUBLIC POLICY

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Tuesday, October 25, 2016

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### TOP NEWS

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#### [ABA Shies From Trump 'Libel Bully' Article, Citing Suit Risk](#)

The American Bar Association has declined to publish a scholarly article calling presidential candidate Donald Trump a "libel bully" and pressing for more anti-SLAPP laws, saying the piece's language would "increase the risk" of a Trump lawsuit against the organization, according to an email obtained by Law360 Monday.

#### [Ex-Pa. AG Gets 10 To 23 Months Following Perjury Conviction](#)

Pennsylvania's disgraced ex-attorney general was led out of court in handcuffs on Monday afternoon after being sentenced to at least 10 months in prison following her conviction on charges that she lied to a grand jury about her role in leaking confidential investigative material to a reporter.

#### [Pa. AG Candidates Vow To Clean Up Scandal-Plagued Office](#)

The candidates for Pennsylvania's top prosecutor both sought to distance themselves from disgraced ex-officials in a contentious debate Tuesday, promising to clean up the Office of the Attorney General in the wake of Kathleen Kane's conviction on corruption charges and the pornographic emails scandal involving the state judiciary.

#### [Atlantic City Approves 5-Year Fiscal Recovery Plan](#)

Atlantic City, New Jersey, officials on Monday approved a five-year financial plan, including a multimillion-dollar land sale and employee layoffs, to help it recover from a fiscally crippling spate of poor gambling revenue and successful tax appeals, and avert a state takeover.

#### [Ex-Christie Aide Says Gov. Knew About GWB Lane Closures](#)

A former aide to New Jersey Gov. Chris Christie fought back tears Monday in recounting her panic and confusion when the governor said publicly he had been unaware of the George Washington Bridge lane closures although she recalled speaking to him about them once before the shutdowns and twice while they were underway.

#### [Feds Hammer House's ACA Suit At DC Circ.](#)

The Obama administration on Monday pressed the D.C. Circuit to preserve billions of dollars in Affordable Care Act subsidies, saying a district judge made a "stark departure" from legal tradition by letting the U.S. House of Representatives challenge the spending in court.

#### [Backpage Lacks Standing For Sex-Trafficking Lawsuit: Judge](#)

### LAW FIRMS

Arnstein & Lehr  
Audet & Partners  
Ballard Spahr  
Boardman & Clark  
Carter Ledyard  
Choate  
Cuneo Gilbert  
Davis Wright Tremaine  
Fredericks Peebles  
Gibson Dunn  
Greenberg Traurig  
Holland & Hart  
Holland & Knight  
Hunton & Williams  
Husch Blackwell  
Kilpatrick Townsend  
Latham & Watkins  
Littler Mendelson  
Locke Lord  
Maier Pfeffer  
Maxey Wann  
Mayer Brown  
McManimon & Scotland  
Morrison & Foerster  
Nossaman LLP  
Pietragallo Gordon  
Pillsbury Winthrop  
Rubin Glickman  
Silverstein & Pomerantz  
Simpson Thacher  
Smigel Anderson  
Stoel Rives  
Stradley Ronon  
Van Ness Feldman

A D.C. federal judge held Monday that Backpage.com LLC lacks standing to challenge the constitutionality of an act barring the advertising of sex with minors or people being forced into sex, determining that the classifieds website didn't allege a sufficient injury-in-fact.

## ANALYSIS

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### Airline Rules May Fall Short For Consumers, Attys Warn

The Obama administration's push to regulate how airlines market their flights online and reimburse passengers for service lapses is raising questions about government overreach and whether the proposed regulations might actually make things worse, not better, for the consumers they're intended to protect.

### Tape Leak Puts Spotlight On Fla. Solar Measure's Purpose

Call it the election of the leaked tape: Shortly after a damaging "Access Hollywood" tape of Republican presidential candidate Donald Trump made headlines, another leak has sideswiped utility companies' pitch for a Florida referendum to purportedly expand solar power generation, casting it as mere "political jujitsu" that will do the opposite.

## BANKING & SECURITIES

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### CFTC Considering Limits To New Automated Trading Rules

The U.S. Commodity Futures Trading Commission is continuing its efforts to regulate automated trading mechanisms in U.S. futures markets, but will consider certain ways to limit the scope of its proposals, CFTC Chairman Timothy Massad said Monday.

### Hong Kong Sets Volatility Controls For Derivatives Market

The Hong Kong Stock Exchange owner on Monday said that it plans to roll out a volatility control mechanism for its derivatives market, including a five-minute cooling-off period when certain triggers are met, in effort to better align its rules with international norms.

### SEC Chair Seeks More Oversight In Gov't Securities Trading

Mary Jo White, chair of the U.S. Securities and Exchange Commission, said in a speech Monday that she wants to expand reporting and oversight of the market for U.S. Treasury securities.

### MetLife Should Keep 'Too Big To Fail' Tag, DC Circ. Told

The federal government fought to reinstate MetLife's "too big to fail" designation in a closely watched case before a D.C. Circuit panel Monday, arguing regulators weren't required to prove the insurance giant is likely to collapse before imposing heightened scrutiny on the company.

### SEC Challenger Misread High Court Finding, DC Circ. Told

The U.S. Securities and Exchange Commission on Friday urged the D.C. Circuit to stand by its decision denying the appeal of an investment adviser who claims the agency's in-house judges require presidential appointment, saying he misinterpreted a U.S. Supreme Court decision in his bid for rehearing.

## ENERGY & ENVIRONMENTAL

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WilmerHale  
Winston & Strawn  
Wright & Talisman  
Zeldes Haeggquist

## COMPANIES

AARP Inc.  
AT&T Inc.  
Air Transport Association of America  
Ameren Corporation  
American Bar Association  
American Cable Association  
American Civil Liberties Union  
American Council of Life Insure  
American Express Company  
American Health Care Associat  
American International Group I  
American Petroleum Institute  
Anheuser-Busch Inbev SA/NV  
Arctic Slope Regional Corp.  
Bain Capital Ventures  
Carlyle Group LP  
Center for Biological Diversity I  
Charter Communications Inc.  
Comcast Corporation  
Competitive Carriers Associatio  
Duke Energy Corporation  
Electronic Privacy Information  
Center  
Expedia Inc.  
Financial Industry Regulatory  
Authority Inc.  
Florida Power & Light Co.  
Franciscan Alliance Inc.  
Frontier Communications  
Corporation  
H&R Block Inc.  
Hong Kong Exchanges and  
Clearing  
Houlihan Lokey  
Intuit Inc.  
JPMorgan Chase & Co.  
Kimberly-Clark Corporation  
Kroll Ontrack  
LinkedIn Corp.  
Los Angeles Times

## 9th Circ. Backs Climate Predictions In Seal Listing Appeal

The National Marine Fisheries Service reasonably relied on climate-change projections to find that an Arctic seal population would be endangered by the end of the century, a Ninth Circuit panel ruled Monday, reversing a district court judge who found the conclusion too speculative.

## EPA Methane Rule Foes Want To Split Up Court Fight

Opponents of the U.S. Environmental Protection Agency's methane regulations for new and modified oil and gas infrastructure asked the D.C. Circuit on Friday to put their challenge of the rules' implementation on hold so they can focus on arguments that the EPA lacked the legal authority to issue them.

## Enviros Sue EPA Over Drinking Water Radiation Guidelines

The U.S. Environmental Protection Agency is wrongfully withholding information related to guidance on how to protect people from the harmful effects of radiation in drinking water following an emergency, according to a lawsuit filed Monday by environmentalists.

## High Court Should Undo Refusal-Rights Ruling, Ameren Says

Ameren Services Co. has turned to the U.S. Supreme Court in an effort to reinstate rights of first refusal in a Midwest energy transmission organization that gave incumbent transmission owners the first crack at building new projects, cautioning against a "chilling effect" on new investments if a Seventh Circuit decision rejecting the practice is allowed to stand.

## HEALTH & LIFE SCIENCES

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### States Ask For Quick Win In ACA Transgender Rule Fight

Five states, plus three influential religious medical groups, asked a Texas federal judge on Friday for summary judgment in their case against the U.S. Department of Health and Human Services over a regulation redefining "sex" under the Affordable Care Act to include gender identity.

### Nursing Homes Say CMS Arbitration Ban Should Wait On Suit

The Centers for Medicare & Medicaid Services shouldn't be allowed to enforce its new rule banning mandatory arbitration, the nursing home industry's top trade group and three providers told a Mississippi federal court Monday, saying that the status quo should remain while they litigate their challenge to the rule.

## TRANSPORTATION & INFRASTRUCTURE

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### DOT Issues Guidance On Car Cybersecurity

The U.S. Department of Transportation on Monday unveiled a set of best practices aimed at guarding against malicious hacks and other cybersecurity risks in cars connected to the internet and to other vehicles.

### NHTSA To Look At New Safety Regs For Older Drivers

The National Highway Traffic Safety Administration will examine new ways to improve the safety of older drivers in the next five to 10 years, possibly paving the way for new federal regulations, a notice set to be published Tuesday in the Federal Register said.

### Drivers Insist Calif. Toll System Violates Due Process

MGM Resorts International

MetLife Inc.

Moody's Corporation

NANA Regional Corporation

NGL Energy Partners LP

National Association of Insurance Commissioners

National Association of Manufacturers

National Rifle Association of America

New York Times Co.

Otter Tail Corp.

Philadelphia Energy Solutions I

RBC Capital Markets

Robert Half International Inc.

Sierra Club

Southwest Airlines Co.

Spectrum Equity Investors LP

Starbucks Corporation

State Bar of California

TechFreedom

The Blackstone Group L.P.

The Cato Corporation

Travelocity.com LP

U.S. Chamber of Commerce

Verizon Communications

Washington Legal Foundation

Wells Fargo & Co.

## GOVERNMENT AGENCIES

Agua Caliente Band of Cahuilla Indians

Alaska Department of Law

Bureau of Citizenship and Immigration Services

Bureau of Indian Affairs

Centers for Medicare & Medicaid Services

Citizen Potawatomi Nation

Commodity Futures Trading Commission

Consumer Financial Protection Bureau

Department of Commerce

Equal Employment Opportunity Commission

Executive Office of the President

The operators of a cashless toll system in Orange County, Calif., cannot dodge a proposed class action alleging they levied inflated fines and deprived drivers of meaningful opportunities to challenge those fines, in violation of drivers' due process rights, a federal judge was told Friday.

## EMPLOYMENT

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### AARP Sues EEOC Over Wellness Program Incentives

The AARP sued the U.S. Equal Employment Opportunity Commission in D.C. federal court Monday seeking an injunction against its wellness program regulations, saying they violate anti-discrimination provisions by punishing employees who choose to keep confidential health information private.

### Labor Violation Reporting Requirement Halted By Texas Judge

A Texas federal judge on Monday blocked parts of the controversial Fair Pay and Safe Workplaces rule from taking effect, saying it likely exceeds executive authority and is preempted by other federal labor laws, in a win for construction and security industry groups.

## COMPETITION

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### FCC Seeks Feedback On Proposed Rules for Video Diversity

The Federal Communications Commission on Monday issued and sought feedback on proposed rules that would block certain practices that programmers use in negotiating carriage contracts, practices the commission says could stifle competition, innovation and diversity in the video marketplace.

### Competitive Carrier Chief Looks Toward Post-Election Reset

Washington's "musical chairs" will soon be up for grabs after an election that will reboot telecom policy even if the balance of power remains the same, bringing uncertainty but also hope for bipartisan action, Competitive Carriers Association Chief Steven K. Berry told Law360.

### ABA Sections Seek More Clarity On Aussie Competition Regs

Proposed guidelines by Australia's antitrust watchdog on how it would enforce proposed amendments to the nation's competition laws should be clarified to better illustrate how they would be used, according to the comments submitted by the Antitrust Law and International Law sections of the American Bar Association.

## PRIVACY & CONSUMER PROTECTION

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### CFPB Aims To Help Fintech Shake Up Consumer Finance

The Consumer Financial Protection Bureau on Monday said that its ongoing financial technology innovation program would look for ways for new market entrants to bring changes to how consumers access their financial data, credit reports are processed, mortgages are serviced and other ways consumers control their finances through technology.

## GOVERNMENT CONTRACTS

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### GSA Further Streamlines Schedules For Small Vendors

The U.S. General Services Administration on Monday kicked off a new phase of an initiative intended to help small and emerging companies do business

Federal Acquisition Regulatory Council  
Federal Aviation Administration  
Federal Communications Commission  
Federal Energy Regulatory Commission  
Federal Reserve Bank of NY  
Federal Reserve System  
Federal Trade Commission  
Financial Stability Oversight Council  
Flandreau Santee Sioux Tribe  
Internal Revenue Service  
Inupiat Community of the Arctic Slope  
Keweenaw Bay Indian Commu  
National Highway Traffic Safety Administration  
National Institute of Standards & Technology  
National Labor Relations Board  
National Marine Fisheries Servi  
National Oceanic and Atmosph  
Administration  
National Park Service  
National Security Council  
North Fork Rancheria of Mono Indians  
Occupational Safety and Health Administration  
Office of Federal Procurement Policy  
Picayune Rancheria of Chukchansi Indians  
Pipeline and Hazardous Materie  
Safety Administration  
Poarch Band of Creek Indians  
Port Authority of New York & N  
Jersey  
Securities and Exchange Commission  
Seminole Tribe of Florida  
Smithsonian Institution  
Tulalip Tribes of Washington  
U.S. Agency for International Development  
U.S. Department of Defense  
U.S. Department of Health and

with the federal government, saying it would make further changes to improve the program.

### USAID Issues Final Contractor Nondiscrimination Rule

The U.S. Agency for International Development on Monday issued a final rule requiring its contractors not to discriminate against recipients of USAID-funded benefits based on characteristics such as ethnicity, social status, religion, gender or sexual orientation.

### Pentagon Acquisition Chief Touts Progress In New Report

The U.S. Department of Defense's top acquisition official said in a report on Monday that the Pentagon is making continued progress on improving its procurement processes, bringing acquisition cost growth to a 30-year low, and urged Congress not to undo that progress with unneeded legislative changes.

## INTERNATIONAL TRADE

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### Senators Urge U.S., Canada To Notch Lumber Agreement

A group of 24 U.S. senators urged President Barack Obama to continue attempts to reach a new softwoods lumber trade accord with Canada on the terms he and Canadian Prime Minister Justin Trudeau committed to over the summer.

## TAX

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### Atheist Group Lacks Standing In Clergy Housing Tax Dispute

A Wisconsin federal judge on Monday told an atheist group that it lacks standing to argue that a tax exemption afforded to clergy members on the rental value of a parsonage is unconstitutional, agreeing with the government that the group was never denied the exemption and can't seek remedy.

### Justices Asked To Reconsider States' Franchise Tax Compact

Just two weeks after the U.S. Supreme Court declined to hear The Gillette Co.'s case opposing California's breakaway from an interstate agreement for calculating corporate franchise taxes, Kimberly-Clark Corp. filed its own petition hoping to prevent Minnesota from doing the same.

### IRS Hikes Enrolled-Agent Exam Fees By More Than 600%

The Internal Revenue Service is proposing to increase user fees for a special examination for those seeking to become enrolled agents by more than 600 percent, from \$11 to \$81, according to an announcement Monday.

## IMMIGRATION

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### House Panel Pushes DOJ For Info On Private Prison Plan

The U.S. House Committee on Oversight and Government Reform on Monday said that the U.S. Department of Justice must provide a long list of previously requested information so the committee can review a proposal to phase out private prison contracts.

### USCIS Unveils Guidance On Extreme Hardship Determinations

U.S. Citizenship and Immigration Services on Friday released policy guidance on extreme hardship determinations regarding certain relatives, making good on one of the lesser known initiatives announced under

Human Services

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of State

U.S. Department of Transportal

U.S. Department of the Interior

U.S. Department of the Treasur

U.S. Environmental Protection Agency

U.S. General Services Administration

U.S. House of Representatives

U.S. Secret Service

U.S. Supreme Court

President Barack Obama's executive actions on immigration.

## NATIVE AMERICAN

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### Calif. Tribe Can Step Into Challenge To DOI Rulings On Casino

A California federal judge on Friday allowed the North Fork Rancheria of Mono Indians to intervene in a rival gaming tribe's suit against the U.S. Department of the Interior over its approval for the North Fork's casino plans, saying the government may not adequately represent the tribe's interests.

## TELECOMMUNICATIONS

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### FCC Must Go Further With Emergency Alert Reforms: NYC

The Federal Communications Commission should take its reforms of the wireless emergency alert system a step further with more capabilities and better targeting, law enforcement and other emergency officials have said, pushing for changes including more multilingual options.

### Comcast Presses FCC Not To Subsidize A Competitor

The Federal Communications Commission shouldn't let Frontier Communications Corp. use subsidies for rolling out rural broadband in areas that Comcast already services, the company said Friday, pressing the FCC to ensure it's using current census block data.

### Rep. Pallone Aide Pushes FCC Privacy Rules As Good Step

The Federal Communications Commission should move forward with new privacy rules for broadband service providers, an aide to the top Democrat on the House Energy and Commerce Committee said Monday, adding harmonization across regulators would be optimal but the agency must act now.

### Charter Pushes FCC Against Ethernet Rate Regs

Charter Communications Inc. on Friday urged the Federal Communications Commission to resist capping Ethernet rates as it creates new regulations to promote competition in the market for business data services, arguing that doing so would have "a devastating impact."

## EXPERT ANALYSIS

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### When Your Client Is The President

My experience with the Nixon pardon, the Nixon tapes, the construction of the White House swimming pool, and other matters well out of the ordinary for a president's lawyer taught me that in the practice of law one should learn to expect and cope with the unexpected, says William Casselman, who served as White House counsel for President Gerald Ford.

### 2016 Native American Tax Litigation Roundup

This year, there has been considerable litigation related to Indian tribes' ability to impose tax on business activities on reservations free from state and local taxation. Catherine Munson and Claire Newman of Kilpatrick Townsend & Stockton LLP discuss several major court of appeals cases, and the important issues that they raise.

### Renewable Fuels Producers Burned By ID Number Fraud

An uptick in recent federal enforcement actions involving renewable fuel

credits signals that market participants can expect more fraud investigations and prosecutions as federal regulators strive to maintain control over the renewable fuel credit program. The enforcement actions involve the trading of Renewable Identification Numbers under the Renewable Fuels Standard program, says Jason Moore of Husch Blackwell LLP.

### [What To Know About PHMSA's New Emergency Authority Rule](#)

A new interim final rule recently published by the Pipeline and Hazardous Materials Safety Administration gives the agency authority to issue emergency orders to owners and operators of gas or hazardous liquid pipelines. The new tool is intended to augment PHMSA's existing authorities by providing the ability to respond swiftly to conditions that pose a substantial threat to health and safety, say Katie Thomson and Bob Fleishman of Morrison & Foerster LLP.

### [Theft Of Genetic Information: A Wrong Without A Remedy](#)

In the majority of states, the nonconsensual collection of an individual's DNA is not illegal — in fact, it is doubtful that even a civil lawsuit could be successfully brought, say Franklin Zemel and Ariel Deray of Arnstein & Lehr LLP.

## LEGAL INDUSTRY

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### [What To Do If Your Partnership Plans Fall Apart](#)

Associates often begin their careers brimming with hope, dreaming of making partner and then, a few years later, they're hit with the hard reality that their vision of a corner office isn't going to materialize. Here are four alternative career paths for associates for whom BigLaw partnership isn't in the cards.

### [1st Circ. Tosses Harvard Law Grad's Defamation Suit](#)

The First Circuit on Monday affirmed the dismissal of a defamation suit brought by a Harvard Law School graduate who lost a lucrative job offer due to a notation of plagiarism on her transcript, saying that no reasonable student would have believed the school's plagiarism policy didn't apply to her submission to a student-run journal.

### [ABA Takes Steps To Crack Down On Low Bar Passage Rates](#)

Law schools with lousy bar passage rates could lose their accreditation under a proposal favored Friday by a section of the American Bar Association.

### ['Lawyer-Warrior' Myth Fosters Gender Bias, Academic Says](#)

The mythology of the lawyer as classical warrior, with a deep, booming voice and commanding physical presence in the courtroom, contributes to the legal profession's issues surrounding gender inequality, a recently published academic paper suggests.

### [Artificial Intelligence May Help Predict Case Outcomes: Study](#)

Whether jurists will be replaced by robots and how artificial intelligence will alter the legal industry in the long run is yet to be seen, but a study released Monday indicates that machines may be able to predict the outcome of court proceedings with more accuracy than pure chance.

### [Carlyle-Backed LDiscovery Grabs Competitor In \\$410M Deal](#)

Private equity-backed e-discovery company LDiscovery LLC on Friday said that it will buy competitor Kroll Ontrack, which also specializes in data

recovery and destruction, for \$410 million in cash, expanding its presence around the world.

### Rainmaker Q&A: Choate's Christian Atwood

I'm not a huge fan of the term "rainmaker," as I think it connotes someone doing something on his or her own. In reality, the opposite is true — no one who generates any meaningful amount of business can do so on their own, says Christian Atwood, partner at Choate Hall & Stewart LLP.

### Rainmaker Q&A: León Cosgrove's John Bosco

The vast majority of time spent on business development does not directly lead to a tangible payoff in the short term. One of the best things I have learned from my legal mentors is not to look for immediate gratification, says John Bosco, partner at León Cosgrove LLC.

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