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**To:** <[REDACTED]>  
**Subject:** Senate Rules Axed To Speed Judicial, Administration Picks  
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## PUBLIC POLICY

Thursday, April 4, 2019



### TOP NEWS

#### **Senate Rules Axed To Speed Judicial, Administration Picks**

Senate Republicans voted to ax the chamber's nominee debate rules Wednesday, potentially opening the floodgates for dozens of President Donald Trump's trial judge and lower-level administrative nominees to be confirmed.

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#### **Kirkland, Cuneo Gilbert Tops In Antitrust Cases**

Kirkland & Ellis LLP was the most prolific member of the antitrust defense bar between 2016 and 2018, while Cuneo Gilbert & LaDuca LLP filed more private antitrust litigation than any other law firm due to its role in multidistrict litigation, according to a new Lex Machina report.

[Read full article »](#)

#### **Analysis**

#### **Court Rulings Take Toll On Private Antitrust Plaintiffs**

Private plaintiffs have a better than 50-50 chance of winning antitrust cases that make it to trial, according to a new report from Lex Machina, but getting there is a trial in itself due to court rulings making it harder to win class certification and fend off dismissal motions and summary judgments.

[Read full article »](#)

#### **House Dems Request Trump's Tax Returns From IRS**

The Democratic chairman of the House Ways and Means Committee on Wednesday asked the Internal Revenue Service to furnish President Donald Trump's tax return information for the past six years, taking the first step in a likely contentious legal battle.

[Read full article »](#)

#### **House Judiciary OKs Subpoena Of Full Mueller Report**

House Judiciary Committee Democrats voted Wednesday to issue subpoenas compelling the release to Congress of grand jury materials underlying special counsel Robert Mueller's probe of the 2016 election, a move Republicans ripped as an attempt to end-run the legal process.

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#### **Kavanaugh's Law School Gig Faces Student Backlash**

Students at George Mason University are demanding that the school reverse its decision to hire U.S. Supreme Court Justice Brett Kavanaugh as a law school lecturer this summer in light of decades-old sexual misconduct claims against him that surfaced during his confirmation hearing.



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### LAW FIRMS

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**Feature**

## How To Argue Merger Cases And Win Over Judges

What's the best way to wage a merger case in federal court? According to a group of sitting and retired federal judges, attorneys should ground complex economics in real world-examples and be willing to collaborate with opposing counsel to make sure cases move forward quickly.

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## BANKING & SECURITIES

### CRA Update Could Be Done Within Year, Top Regulators Say

The heads of the Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency signaled Wednesday that momentum is building behind an interagency effort to modernize Community Reinvestment Act regulations, saying that they could be finished with the project by next year.

[Read full article »](#)

### SEC Says ICO Doesn't Need To Register As Security

Officials at the U.S. Securities and Exchange Commission issued a no-action letter Wednesday allowing an unregistered initial coin offering to proceed, finding it didn't meet the definition of a security laid out in staff guidance released alongside the letter.

[Read full article »](#)

### House Says Private Email Off-Limits In Collins Case

The U.S. House of Representatives has urged a New York federal court to adopt a broader interpretation of the Constitution's speech or debate clause than the government has presented in its insider trading case against U.S. Rep. Christopher Collins, implying prosecutors overstepped their bounds in seizing legislative materials.

[Read full article »](#)

## ENERGY & ENVIRONMENTAL

**Analysis**

### Judge Throws Wet Blanket On State Water Quality 'Variance'

A Montana federal judge broke legal ground recently with a decision to curtail an exemption to state water quality standards approved by the U.S. Environmental Protection Agency, a ruling that suggests other states will have to stay within strict parameters if they adopt similar "variances."

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### Colo. Lawmakers Tighten Reins On Oil, Gas Drilling

Colorado state lawmakers on Wednesday passed legislation that would dramatically overhaul state oil and gas regulations by tightening health and safety standards and giving local governments expanded authority over where drilling activity takes place.

[Read full article »](#)

### Entergy Launches 3rd Suit Seeking Nuclear Fuel Costs

A nuclear plant owned by Entergy rang the bell this week for a third round of litigation over the government's alleged failure to dispose of its spent nuclear waste in Michigan.

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### 5th Circ. Told EPA Ignored Risks To OK Gulf Driller Permit

The Center for Biological Diversity told a Fifth Circuit panel in oral arguments Wednesday that the U.S. Environmental Protection Agency didn't do enough

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## COMPANIES

[Alibaba Group Holding Ltd.](#)

[Allergan PLC](#)

[Amazon.com Inc.](#)

[American Bar Association](#)

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[American Petroleum Institute Inc.](#)

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[Center for Biological Diversity](#)

[Citrin Cooperman](#)

[Consumer Bankers Association](#)

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[Elliott Management Corp.](#)

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to evaluate the dangers posed to marine life before it signed off on a permit allowing offshore drillers in the Gulf of Mexico to dump wastewater.

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## HEALTH & LIFE SCIENCES

### 1st Circ. Perplexed By 'Odd' Trump Birth Control Argument

The First Circuit on Wednesday appeared to lean toward reviving Massachusetts' challenge to a Trump administration rule allowing exemptions to birth control coverage under the Affordable Care Act, with one judge finding it "odd" to argue women would not be denied contraception coverage and consequently turn to the state for funding.

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### Medical Pot Law Is Not A Right To Grow, Fla. Court Says

A Florida appeals court ruled Wednesday that a state constitutional amendment allowing the use of medical marijuana by qualified patients does not allow those patients to cultivate and process marijuana for their own use.

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### Legalization Advocate Pushes Pa. Court To Reclassify Pot

Pennsylvania's classification of marijuana as a Schedule I drug without any accepted medical use runs counter to the state's own medical marijuana program and should be eliminated, a defense attorney and legalization advocate told a Superior Court of Pennsylvania panel Wednesday.

[Read full article »](#)

## IP & TECHNOLOGY

### Trump Taking Aim At Online Counterfeit Market

President Donald Trump on Wednesday said he will soon formulate a new strategy to tackle what his administration believes is a rising tide of pirated and counterfeit goods being sold through online sellers such as eBay and Amazon.

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## EMPLOYMENT

### Acosta Defends DOL Rules, Epstein Case Handling At Hearing

Labor Secretary Alex Acosta was grilled during a budget hearing Wednesday over whether the U.S. Department of Labor has weakened worker protections under his watch and claims that he mishandled a decade-old sex crime case involving millionaire sex offender Jeffrey Epstein, with Acosta defending his actions on both fronts.

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## COMPETITION

### BMW's State Aid Appeal Should Be Tossed, EU Court Told

The European Commission didn't have to analyze the potential market impact for the portion of aid it made Germany cut from a planned €45 million (\$50.6 million) investment in a BMW electric car plant, an advocate general told the European Court of Justice on Wednesday.

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## CONSUMER PROTECTION

### Robocall Bill Clears Senate Commerce Committee

A bipartisan bill aimed at handing the Federal Communications Commission more firepower to combat robocalls sailed through the Senate

National Association of Manufacturers

Northeastern University

Raytheon Co.

Reed Elsevier

StubHub Inc.

Tronox Ltd.

Trump Organization Inc.

Twitter Inc.

U.S. Chamber of Commerce

United States Steel Corp.

Volkswagen

Warner Chilcott Limited

Washington Post Co.

Wayfair LLC

Wells Fargo & Co.

Wynn Resorts Ltd.

ZTE Corp.

eBay Inc.

## GOVERNMENT AGENCIES

Agency for Toxic Substances and Disease

Bureau of Ocean Energy Management

California Department of Tax and Fee Administration

California Environmental Protection Agency

Centers for Disease Control and Prevention

Colorado Supreme Court

Congressional Research Service

Energy Information Administration

European Commission

Executive Office of the President

Federal Aviation Administration

Federal Bureau of Investigation

Federal Communications Commission

Federal Deposit Insurance Corp.

Federal Reserve System

Federal Trade Commission

Florida Department of Health

Government Accountability Office

Internal Revenue Service

Joint Committee on Taxation

Massachusetts Gaming Commission

NATO

National Security Agency

Office of the Comptroller of the Currency

Committee on Commerce, Science and Transportation on Wednesday.

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## AEROSPACE & DEFENSE

### Trump May Allow Turkey To Keep F-35 Despite Russian Deal

Turkey's foreign minister said Wednesday that President Donald Trump has left the door open for Turkey to continue participating in the F-35 fighter jet program amid its contentious plan to purchase a missile defense system from Russia, despite defense officials recently moving to cut off Turkey's access to F-35 parts.

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### Ex-Pentagon Leaders Warn Against China-Backed 5G Network

Six former U.S. military and intelligence officials warned Wednesday that if the country's allies use Chinese tech to support 5G networks, Chinese espionage is inevitable and future U.S. military operations would be jeopardized.

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## TAX

### Analysis

#### Calif. Marketplace Law Won't Forgive Past Tax Errors

A bill quickly moving through California's Legislature to protect small vendors selling through online platforms from sales and use tax liability comes too late to help thousands targeted by a state tax agency's ramped-up demands for years of back taxes.

[Read full article »](#)

#### 'Varsity Blues' Parents May Have Violated Tax Laws: Sens.

Leaders of the Senate tax committee on Wednesday asked the Internal Revenue Service to crack down on inappropriate tax deductions that may have been claimed by participants in an alleged college admissions cheating scheme known as the "Varsity Blues" scandal.

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## IMMIGRATION

### 6th Circ. Won't Redo Panel Ruling On Iraqi Deportations

The full Sixth Circuit won't reconsider a split panel decision restricting the ability of Iraqi citizens to challenge their longstanding deportation orders in federal court, leaving those who were picked up in recent immigration sweeps in the lurch if Iraq now agrees to take them back.

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### Feds Try To Dodge Border Emergency Declaration Challenges

The Trump administration wants out of a pair of lawsuits filed in federal court by Texas landowners and environmental organizations challenging the president's national emergency declaration to fund his long-promised southern border wall.

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## NATIVE AMERICAN

### Bill Seeks Better Response To Violence Against Native Women

A bipartisan group of senators introduced legislation Wednesday that aims to create a coordinated federal government strategy in response to the disproportionately high number of Native American women who are murdered, trafficked or go missing each year.

Securities and Exchange

Commission

Solicitors Regulation Authority

Spirit Lake Tribe

U.S. Attorney's Office

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 State

U.S. Environmental Protection Agency

U.S. House Committee on Energy and Commerce

U.S. House of Representatives

U.S. Immigration and Customs Enforcement

U.S. Supreme Court

United Nations

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## TELECOMMUNICATIONS

### **FCC Needs Dedicated Robocall Unit, Rosenworcel Says**

The Federal Communications Commission should add a unit to specifically tackle the scourge of robocalls, FCC Commissioner Jessica Rosenworcel told a House subcommittee Wednesday.

[Read full article »](#)

### **Reps. Urge FCC To Correct Broadband Deployment Data**

Several Democratic members of the U.S. House are asking the Federal Communications Commission why faulty data may have been included in a draft of a major report on broadband deployment, and are urging the FCC to withdraw or correct inaccurate statements based on the data.

[Read full article »](#)

### **Reps. Divided Over FCC's Scope In Net Neutrality Bill**

House Energy and Commerce Committee leaders quibbled Wednesday over whether an amendment to a Democratic-backed net neutrality bill sufficiently prevents the Federal Communications Commission from imposing price controls and other regulations on broadband, as the panel readied the bill for a potential floor vote.

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## WHITE COLLAR

### **Warren Floats Bill To Expand Criminal Liability For Execs**

Democratic presidential hopeful Sen. Elizabeth Warren introduced a bill Wednesday that would make executives at large corporations criminally liable for their organization's misdeeds.

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### **Trump's Opposition To ACA Can't Kill Esformes Trial**

The Florida federal judge presiding over Philip Esformes' health care fraud trial rejected the nursing home mogul's bid to short-circuit the case based on the Trump administration's new position that the entire Affordable Care Act is invalid, finding Wednesday it does not affect the charges against him.

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## EXPERT ANALYSIS

### **Nev. Digital Excise Bill Represents Major Tax Policy Departure**

Nevada's proposed excise tax on the sale of digital goods and services would create inconsistencies with the Streamlined Sales and Use Tax Agreement — to which Nevada is a member — and may violate the Permanent Internet Tax Freedom Act, say attorneys at McDermott.

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### **What Restitution Could Mean For SEC Enforcement Cases**

A Senate bill would allow the U.S. Securities and Exchange Commission to pursue restitution in cases against members of the securities industry. But adding this power to the SEC's arsenal is a major leap that should only be taken after all stakeholders have carefully weighed its implications, says Stephen Crimmins of Murphy & McGonigle.

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### **Calif. Regulators Should Account For PFAS Uncertainty**

Given that California agencies have recognized that they lack sufficient data to draw credible conclusions regarding the health impact of per- and

polyfluoroalkyl substances, they should weigh potential costs and benefits before imposing burdensome actions, say attorneys at Alston & Bird.

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**Opinion**

## **Time To End 'Open Mind' Requirement In Agency Rulemaking**

A federal court recently found that U.S. Commerce Secretary Wilbur Ross had acted with an unalterably closed mind in choosing to include a citizenship question in the 2020 census. But the requirement for open-mindedness in rulemaking is fundamentally unsound, says Steven Gordon of Holland & Knight.

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## **LEGAL INDUSTRY**

### **Ex-Jones Day Associates Hit Firm With \$200M Bias Suit**

A group of former Jones Day associates hit the BigLaw powerhouse with a \$200 million pregnancy and gender discrimination suit Wednesday, accusing the firm of systematically underpaying women, devaluing the work of female associates and pushing out lawyers who have children.

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**Analysis**

### **GC Missteps Loom Large In Mass. Regulator's Wynn Probe**

Executives in the legal division of Wynn Resorts were among those flagged in a regulator's report detailing how sexual abuse allegations against ex-CEO and Chairman Steve Wynn were swept under the rug. Here, Law360 looks at how those attorneys may have failed to serve their ultimate client, the company.

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### **Stars, BigLaw Atty Make 'Varsity Blues' Court Debut**

Hollywood stars Lori Loughlin and Felicity Huffman, along with ex-Willkie Farr & Gallagher LLP co-chair Gordon Caplan, faced a federal judge for the first time Wednesday after being charged in the "Varsity Blues" college admissions scandal, attracting a crush of media and autograph-seekers to the waterfront Boston courthouse.

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### **Allen & Overy Atty For Weinstein Referred For Discipline**

An Allen & Overy attorney has been referred to a U.K. disciplinary tribunal following an investigation into alleged misconduct connected to the representation of disgraced movie mogul Harvey Weinstein and the use of nondisclosure agreements to hush up allegations of sexual assault.

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### **Court Staffer's Happy Hour Sparks Recusal Bid**

A Georgia man has asked a state court judge to remove herself from his divorce case, saying a member of the judge's staff never disclosed that she attends a monthly happy hour with a lawyer at the firm representing his ex-wife, even when she was asked.

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### **Amazon Atty Joins StubHub As New General Counsel**

StubHub has snagged former Amazon attorney Stephanie Burns to be its new vice president and general counsel, the online ticket exchange company announced Wednesday.

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**Interview**

## Law Firm Leaders: Bryan Cave's Mayhew And Pritchard

Wednesday marks the one-year anniversary of the transatlantic merger that formed Bryan Cave Leighton Paisner. The law firm's top leaders, Therese Pritchard and Lisa Mayhew, sat down recently with Law360 to chat about the combination and the law firm's future.

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