

# [Energy Department Seeks Input on Regulatory Reform](#)

The Department of Energy has published a request for information soliciting guidance on potential regulations that should be modified or repealed to reduce burdens and costs, [reports K&L Gates](#).

“This is part of a government-wide initiative to overhaul the federal government’s regulatory regime, set in motion with an executive order signed by President Trump just after his inauguration. This RFI also comes after President Trump signed an executive order, ‘Promoting Energy Independence and Economic Growth,’ which seeks to review all regulatory actions that hamper the domestic production of fossil fuels and nuclear energy,” according to the article.

Authors [Tim L. Peckinpaugh](#), [David L. Wochner](#), [Kathleen L. Nicholas](#) and [David L. Benson](#) write that the RFI sets a July 14, 2017, deadline for public comment.

[Read the article.](#)

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## [Emoluments Clause Lawsuits](#)

# Could Expose Trump Tax Filings

Lawsuits against President Trump for alleged violations of the foreign emoluments clause of the U.S. Constitution could result in the pretrial production of his personal tax returns, explains [Paul Barrett](#) for [Bloomberg Businessweek](#).

“The plaintiffs say one of their first steps will be to demand, via pretrial discovery, copies of Trump’s elusive personal tax filings,” Barrett writes. “How better to assess the scope of the president’s international business affairs—and perhaps to discover why he has hidden his returns so defiantly?”

Trump’s refusal to divest himself of his business empire led to the suits, partly based on the use of Trump International Hotel in Washington by representatives of the governments of Kuwait, Saudi Arabia, Turkey and Georgia.

[Read the Bloomberg article.](#)

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# More States Likely to Sue over Opioid Epidemic



Texas lawyer [Kent Sullivan](#), who helped build a potent state health care fraud unit as the No. 2 lawyer in the Texas Attorney General's office, is convinced that more states will follow Mississippi and Ohio in suing to recover damages related to the opioid epidemic, reports a post on the website of [Androvett Legal Media & Marketing](#). Sullivan, now a partner in the Austin office of [Jackson Walker LLP](#), says states wield "a huge hammer" over defendants through their tough anti-fraud laws.

*"I expect a national trend, a significant wave of lawsuits against the companies and organizations connected with the spread of these powerful prescription drugs. States will be very tempted by the significant potential damages that may be awarded in court to try to recoup some of the costs of treatment.*

*"There is, of course, a way to successfully defend these cases, but at the beginning, state governments have a huge advantage under Medicaid fraud and consumer protection statutes. There is an easier burden of proof and enhanced damages available under these laws. Intent or negligence often is not required to prove liability. You have a huge hammer over these companies' heads, and they can be at risk of losing more than actual damages. The damages are often multiplied if you're found liable, and the states can often recover attorneys' fees.*

*"As government health care has expanded, so have anti-fraud actions by states. These lawsuits are not part of the traditional private party litigation framework, where the burden of proof is higher. In many cases, the defendants consider settlement to avoid the significant risk and high cost of litigation. It is fairly unusual for these cases to go to trial but, as I often tell clients, the way to obtain the best settlement is to be totally ready for trial."*

Sullivan, a former appeals court judge, was chief deputy AG to then-Attorney General Greg Abbott and ramped up the state's Civil Medicaid Fraud Division from four lawyers to over 40. In 2012, Texas won a \$158 million settlement from Johnson & Johnson over its improper marketing of the anti-psychotic drug Risperdal to patients on Medicaid from 1994-2008. It was the largest Medicaid settlement in Texas history and is believed to be the first settlement paid at that time to any state in the nationwide litigation over Risperdal.

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## [Industry Lawyers Were Granted Ethics Waivers to Work in Trump Administration](#)

Documents released this week reveal that lawyers, lobbyists and industry executives who can now shape policies benefiting their former clients and companies have been allowed to work in the Trump administration, even with the president's vow to "drain the swamp" of influence peddling, reports [\*The New York Times\*](#).

The report by [Eric Lipton](#) and [Danielle Ivory](#) begins with an example:

Lance Leggitt helped collect \$400,000 in fees last year while working as a lobbyist to try to influence Medicare policy at the Department of Health and Human Services – an

agency where he now serves as chief of staff.

Under an executive order signed by President Trump in January, lobbyists were banned from that kind of government work. But Mr. Leggitt is among a half dozen officials across the federal government who have been granted special waivers to disregard ethics rules, according to a new set of documents released Wednesday.

[Read the NYT article.](#)

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## [White-Collar Lawyers See Opportunity in Trump Scandals](#)

[Politico reports](#) that the Russia investigations are bad news for President Donald Trump, but they're a blessing for white-collar lawyers and crisis consultants whose careers are primed to take off as the criminal probes unfold.

"More than a dozen attorneys and crisis communications specialists have already started working for Trump associates touched by the unfolding Russia scandal, according to a POLITICO tally. People close to the probes say that number is expected only to grow as more than 20 other senior campaign aides and White House officials begin receiving subpoenas, grand jury summonses and other requests from special counsel Robert Mueller as well as congressional committees," write [Darren Samuelsohn](#) and [Andrew Restuccia](#).

The authors quote Harlan Loeb, a crisis management expert who worked for Enron and other corporate clients and now chairs Edelman's crisis and risk practice: "If you're doing it right, it's a career maker. This is the material that great books are made of."

[Read the Politico article.](#)

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## [Client of Disgraced Lawyer: 'Everybody Knew He Would Run'](#)

At the time he was arrested for defrauding taxpayers of \$600 million, disability attorney Eric Conn spoke multiple languages, had crossed the border 140 times in the past decade and had told at least six people he would flee the country instead of going to jail, reports the [Associated Press](#).

A federal judge released Conn on \$1.25 million bail last year, and then on Saturday, one month before a judge was supposed to sentence him to prison, Conn removed his electronic monitoring device and disappeared, writes the AP's Adam Beam.

Some of his former clients who lost their primary source of income because of his scheme said their only surprise was that the system that let him leave.

[Read the AP article.](#)

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# [Big Law Attorneys Think Twice About Trump Labor Gig](#)



The well-established revolving door from big law to a GOP Labor Department may need extra grease under President Donald Trump, writes [Ben Penn](#) for [Bloomberg Law](#).

The search for political appointees to the department appears to be impeded by a shrinking pool of private attorneys willing to incur a lifelong Trump association. And the search isn't helped by the steep pay cut, grueling confirmation process, and a post-work lobbying ban.

Penn writes that the shortage of lawyers in the DOL could make it difficult for the department to get to work on undoing large parts of the Obama administration's labor agenda.

[Read the Bloomberg article.](#)

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# CVS's Omnicare to Pay \$23 Million to Resolve U.S. Kickback Case

Reuters [is reporting](#) CVS Health Corp's Omnicare unit has agreed to pay \$23 million to resolve a whistleblower lawsuit alleging that it took kickbacks from a drugmaker to promote two antidepressants, according to settlement papers.

The agreement comes out of a 2007 lawsuit against the pharmacy operator by two former employees of drugmaker Organon USA Inc on behalf of the federal government and various states.

"The lawsuit claimed that from 1999 to 2005, Omnicare and certain pharmacies it acquired sought and received kickbacks from Organon in the form of discounts in exchange for promoting the antidepressants Remeron and Remeron SolTabs," writes [Nate Raymond](#).

Former Organon employees Richard Templin and James Banigan filed the suit, which reached a related \$31 million settlement in 2014.

[Read the Reuters article.](#)

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# Bradley Partner Paul Compton to be Nominated to Serve as U.S. HUD General Counsel



President Donald J. Trump has nominated [Paul Compton](#), a partner in [Bradley Arant Boult Cummings LLP](#)'s Birmingham office, to serve as General Counsel of the U.S. Department of Housing and Urban Development (HUD). The appointment is subject to Senate confirmation.

Compton currently serves as leader of the firm's Affordable Housing and Community Development practice.

"The firm congratulates Paul Compton on his expected nomination by the President to serve as the chief legal officer of the U.S. Department of Housing and Urban Development and counsel to its Secretary, Dr. Ben Carson," said Bradley Chairman of the Board and Managing Partner Beau Grenier. "We are tremendously proud of Paul, whose knowledge and experience in the areas of affordable housing, community development, and banking and financial services have earned him an outstanding reputation among his peers and clients."

The Office of General Counsel (OGC) of HUD provides legal opinions, advice and services with respect to all departmental programs and activities. The General Counsel also leads the department's efforts to enforce the Fair Housing Act and other civil rights and programmatic requirements. The OGC plays a vital role in helping HUD accomplish its mission of assuring decent and affordable housing, enabling all Americans to achieve homeownership, providing resources for communities to build strong neighborhoods, preventing homelessness, and enforcing fair housing laws.

In addition to his various Bradley practice leadership roles,

Compton is a member of the firm's Banking & Financial Services group and is Chair of the firm's Finance Committee. He has experience in innovative commercial financing transactions, particularly those involving tax credits (federal and state Low-Income Housing Tax Credit, historic, state industrial incentive, new markets, and work opportunity) and structured finance, and in the formation and sale of regulated financial institutions (banks, insurance companies and agencies, consumer finance companies, broker/dealers and community development entities).

Compton serves as counsel for the Alabama Bankers Association, Inc., counsel of record for the Alabama Consumer Finance Association, and as general counsel for the Alabama Affordable Housing Association. He earned his J.D. from the University of Virginia School of Law and his Bachelor of Science (summa cum laude) from the University of Alabama. He also attended the London School of Economics and Political Science. He is a Truman Scholar.

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[\*\*DOJ Threatens Immigration Rights Lawyers, Demands They Drop Their Clients\*\*](#)



A federal judge in Seattle has temporarily blocked a Justice Department order that called on a local immigrant-rights organization to stop some of its legal work. His ruling also applies to similar groups around the country, according to [The Seattle Times](#).

The nonprofit Northwest Immigrant Rights Project brought the lawsuit that resulted in the ruling by U.S. District Judge Richard Jones.

“In a letter last month, the Justice Department told the group it must ‘cease and desist’ providing certain legal assistance to immigrants unless it undertakes full representation of them in court,” writes reporter [Nina Shapiro](#).

The ruling also barred the Justice Department from sending similar orders to any other organizations around the nation.

[Read the Seattle Times article.](#)

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## [Congressman Targets Assistant General Counsel Over Political Activism](#)

The assistant general counsel of a New Jersey-based bank company says she found herself in a touchy situation after a

U.S. Congressman complained to her employer about her activism that targeted the lawmaker.

[WNYC describes](#) what happened:

The most powerful congressman in New Jersey, Rep. Rodney Frelinghuysen, wrote a fundraising letter in March to a board member of a local bank, warning him that a member of an activist group opposing the Republican worked at his bank.

The employee was questioned and criticized for her involvement in NJ 11th for Change, a group that formed after the election of Donald Trump and has been pressuring Frelinghuysen to meet with constituents in his district and oppose the Trump agenda.

“Needless to say, that did cause some issues at work that were difficult to overcome,” said Saily Avelenda of West Caldwell, New Jersey, who was a senior vice president and assistant general counsel at the bank before she resigned. She says the pressure she received over her political involvement was one of several reasons she decided to leave.

[Read the WNYC article.](#)

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**[Littler Survey Reveals](#)**

# Employers Caught in a Tangled Web of Federal, State and Local Laws



The [Littler](#) law firm has released the results of its sixth annual survey, completed by 1,229 in-house counsel, human resources professionals and C-suite executives. [The Littler Annual Employer Survey, 2017](#) reveals that the change occurring in Washington, D.C., and in local governments – combined with technological advances and shifts in how work is performed – is creating an unprecedented level of uncertainty in the workplace.

A release from the firm continues:

## **A Complex Patchwork of State and Local Laws, Deep Uncertainty at Federal Level**

The vast majority of employers expect the Trump administration to prioritize reforming healthcare and employee benefits law (89 percent) and immigration policies (85 percent) in 2017. However, for most regulatory issues, the percentage of respondents who anticipate an impact on their workplace over the next year remains relatively unchanged from last year's survey. That includes the Affordable Care Act (85 percent in 2016 to 83 percent in 2017) and enforcement by the Equal Employment Opportunity Commission (78 percent to 76 percent), National Labor Relations Board (56 percent to 55 percent) and Department of Labor (82 percent to 81 percent). Immigration reform was the exception as 63 percent said they expect an impact in 2017, up from 40 percent in 2016.

“With the profound changes in Washington, D.C., it may be initially surprising that respondents do not anticipate more

of a near-term impact on their businesses,” said Michael Lotito, co-chair of Littler’s Workplace Policy Institute. “However, given the general climate of uncertainty and delays in appointments to government agencies, employers likely expect it to take time before they start to see how the president’s agenda is carried out and personally feel an impact in their workplaces.”

The host of new or amended labor and employment requirements at the state and local levels is creating compliance challenges for the majority of respondents (79 percent). In an effort to keep up, employers are updating their policies, handbooks and HR procedures (85 percent); providing additional employee training (54 percent); and conducting internal audits (50 percent).

“As states and municipalities continue to propose and enact a dizzying array of rules and regulations, it is no wonder employers are struggling with the increasingly fragmented landscape,” said Lotito. “With the Trump administration working to reduce federal regulations, employers can expect a growing patchwork of employment regulations as states and municipalities look to fill a perceived void at the federal level.”

Of the array of changes at the state and local levels, respondents have been most impacted by paid leave mandates (59 percent), background check restrictions (48 percent) and minimum wage increases (47 percent).

### **Uncertainty Surrounding Healthcare Reform**

Even though survey responses were collected before Republicans withdrew the American Health Care Act in late March, more than a quarter (27 percent) were already uncertain about the impact of repealing the ACA’s employer mandate. And another 28 percent said they did not anticipate an impact at all.

“Employers face even more questions about the future of the

ACA, as well as the extent to which the administrative process can and will be used to change aspects of the law, than when they responded to our survey,” said Ilyse Schuman, co-chair of Littler’s Workplace Policy Institute. “In this environment, employers can continue to expect a certain level of uncertainty surrounding employer-sponsored health coverage in the months ahead.”

Only 4 percent of respondents anticipate dropping coverage for some full-time employees if they are relieved of the ACA’s employer mandate, but 18 percent said they would allow more employees to work more than 30 hours a week.

“The responses indicate that employers are committed to providing health insurance for their full-time employees,” said Steven Friedman, co-chair of Littler’s Employee Benefits Practice. “However, they also suggest that a repeal of the mandate would give employers more flexibility to set work schedules based on the needs of their businesses, without fear of triggering a requirement to provide health insurance.”

### **EEOC Expected to Prioritize Hiring Practices, LGBTQ Rights and Pay Equity**

Hiring practices – including the consideration of criminal or credit histories in the hiring process and pre-employment testing or screening practices – was the area where most respondents (51 percent) expected an increase in EEOC workplace discrimination claims over the next year, closely followed by LGBTQ rights (46 percent) and equal pay (46 percent).

“The transitions in Washington, D.C., appear to have curtailed employers’ expectations for EEOC enforcement activity around LGBTQ rights and equal pay, which rose sharply in the 2016 survey, when 74 percent and 61 percent of respondents, respectively, expected increased enforcement around those issues,” said Barry Hartstein, co-chair of Littler’s EEO &

Diversity Practice. “Nonetheless employers continue to expect substantial enforcement over the next year as pay equity and discrimination based on sexual orientation remain priorities not only for the EEOC, but for the courts, state and local governments, the plaintiffs’ bar and the general public.”

### **FMLA Leave Presents Headaches**

Among the employee requests that are most difficult to accommodate, leaves of absences under the Family and Medical Leave Act emerged as the presenting the greatest challenges. The majority of respondents indicated difficulty with managing intermittent FMLA leave (65 percent) and leaves that extend beyond FMLA requirements (55 percent), followed by remote or work-from-home arrangements (37 percent) and modified or reduced schedules (36 percent).

“Nothing is more disruptive to the operation of a business than unpredictability. When employees are repeatedly and unexpectedly off work, employers have to scramble to cover their responsibilities and manage potential resentment from employees who are inevitably asked to do more,” said Hartstein. “The increasingly common practice of requesting flexible work arrangements is also creating a whole new layer of legal and practical challenges for employers.”

### **Data Privacy and Breach Prevention Top of Mind**

As the volume of data breaches originating with employees continues to grow, 63 percent of respondents said their HR and IT departments are collaborating on information security policies. Just over half (51 percent) said they were providing additional training to employees, and a smaller percentage said they were utilizing cyber-incident response plans (29 percent) and updating employee contracts to cover confidentiality obligations (23 percent).

“It is encouraging to see HR collaborating with IT to reduce the risk of data breaches that originate with employees.



Information security policies prepared only by IT often focus on technical safeguards, whereas involving HR in the process helps to address the human elements of information security,” said Philip Gordon, co-chair of Littler’s Privacy and Background Checks Practice. “However, our results suggest that employers can take additional steps to guard against and prepare for employee-initiated data breaches, including ensuring all employees are trained on policies and know how to recognize and then report a security incident.”

Among respondents from large-cap organizations, the majority (56 percent) said global data privacy was a key area of concern in doing business outside of the U.S. “This concern likely stems from the significant restrictions on sharing personal data of employees in Europe and in the many countries that impose stricter rules than the U.S.,” noted Philip Berkowitz, U.S. co-chair of Littler’s International Employment Law Practice.

The survey results were released at Littler’s 34th annual Executive Employer Conference held May 10-12, 2017, in Phoenix, Arizona, and attended by many of the employers who completed the survey.

[Click here for The Littler® Annual Employer Survey 2017 Report](#)

[Click here to view the survey infographic](#)

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# Lawyer Says Texas Law Banning 'Sanctuary Cities' Has Serious Constitutional Problems

A new Texas "sanctuary cities" ban set to take effect Sept. 1 orders cities and counties not to stop law officers from asking about the immigration status of anyone they detain. It also would punish police chiefs, sheriffs and constables who fail to abide by the law or fail to comply with federal immigration detainer requests, according to a post on the website of [Androvett Legal Media & Marketing](#).

On Tuesday, the American Civil Liberties Union of Texas warned visitors that their constitutional rights could be violated when they're in the state. A federal lawsuit has already been filed in San Antonio. On the other side, Attorney General Ken Paxton has also filed suit, asking a federal judge preemptively to uphold the constitutionality of the law.

Dallas attorney [David Coale](#) of [Lynn Pinker Cox & Hurst](#), a trial and appellate lawyer, says the new law is vulnerable.

*"States and cities can't be made to enforce federal law because of the 10th Amendment and federal preemption of immigration law. Period. Farmers Branch and Irving, Texas, went through similar issues several years ago with their local laws about immigration. A state law that tries to make cities enforce federal law is just as problematic.*

*"Procedurally, I expect the plaintiffs in the San Antonio case to seek some kind of temporary restraining order or preliminary injunction to enjoin the law. On both sides, you have to separate the policy from the law. Both sides have points about the importance of immigration enforcement, on*

*the one hand, and local control over local law enforcement, on the other. The legal question, though, is about the structure of our government, which is defined by the Constitution.”*

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## **U.S. Accuses UnitedHealth of Medicare Advantage Fraud**

The U.S. Justice Department has accused UnitedHealth Group Inc. of obtaining inflated payments from the government based on inaccurate information about the health status of patients enrolled in its largest Medicare Advantage Plan, [Reuters is reporting](#).

The accusation against the company is the latest, following separate lawsuits in two separate whistleblower lawsuits against the country's largest health insurer.

“Medicare Advantage, an alternative to the standard fee-for-service Medicare in which private insurers manage health benefits, is the fastest growing form of government healthcare, with enrollment of 18 million people last year,” writes reporter [Nate Raymond](#).

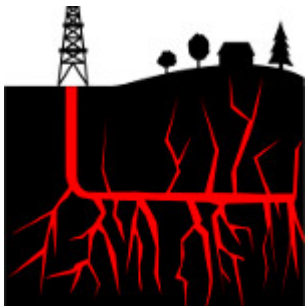
A UnitedHealth spokesman said the company rejects the claims and will contest them vigorously.

[Read the Reuters article.](#)

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# The Nation's First Legislative Fracking Ban Is on the Books



In an episode of Kane Russell Coleman Logan's [energy law podcast](#), director [Tom Ciarlone](#) discusses the nation's first legislative fracking ban.

That action came in Maryland when the legislature passed a bill that prohibits petroleum fracking across the state, Ciarlone says. The Maryland governor signed the bill that supplants a two-year moratorium that was set to expire later this year.

The podcast also discusses a lower bar for class certification in royalty underpayment actions, as well as multiple decisions out of the Texas Supreme Court that could spawn a wave of widespread mineral title disputes.

[Listen to the podcast.](#)

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# Trump's Losing Streak in Courts Is Traceable to Conservative Judges

The Trump administration's losing streak in courts around the nation has in large part been a product of precedents established by conservative judges in the Obama era, reports [\*The New York Times\*](#).

"Republican officials had great success under President Barack Obama in persuading judges to block or complicate his efforts to expand health care, shield immigrants from deportation and protect transgender students," writes reporter [Adam Liptak](#). "Now Democratic officials are using the principles established in those cases to frustrate President Trump's efforts to limit travel from predominantly Muslim countries and to punish so-called sanctuary cities."

Liptak quotes South Texas College of Law professor Josh Blackman with a warning for Democratic officials: "Whatever California can do to resist immigration law, Texas can do to resist environmental laws."

[Read the NYT article.](#)

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# [EPA Announces Methane Rule Reconsideration, Adding to List of Obama-Era Rules Under Review](#)

On April 18, 2017, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt announced that the EPA will convene a proceeding for reconsideration of certain elements of the 2016 rule establishing methane emissions standards for the oil and gas industry, reports Bracewell's [Energy Legal Blog](#).

Authors [Whit Swift](#) and [Brittany Pemberton](#) write that the Methane Rule applies to oil and gas facilities for which construction, modification, or reconstruction started after September 18, 2015.

"In particular, EPA will reconsider elements of the fugitive emissions monitoring and repair requirements of 40 C.F.R. § 60.5397a, including the inclusion of low-production wells, and the NSPS Subpart 0000a provisions relating to approvals for an alternative means of compliance," they explain.

[Read the article.](#)

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# [The SEC Doesn't Like Your Employment Agreements](#)



For the past two years, there's been a new player in the world of employee whistleblower enforcement, writes [Evan Gibbs](#) for [Above the Law](#).

In 2015, the Securities and Exchange Commission issued its first administrative order finding that a company violated SEC rules based on language in an employment agreement.

"In the first and only case of 2017, the SEC fined another company \$340,000 because its standard severance agreement previously contained a provision in which employees waived recovery of incentive payments from the SEC," Gibbs writes. "The company received the six-figure fine despite having removed the offending provision on its own in March 2016 as part of the company's regular review process *prior* to being contacted by the SEC. third parties unless compelled to do so by law and after notice to the company."

[Read the article.](#)

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# [Roy Moore's Suspension Upheld By Alabama Supreme Court; Decision Next Week on Senate Race](#)

The Alabama Supreme Court has upheld the decision that removed Roy Moore from his position as chief justice, [reports AL.com](#).

Moore was suspended over his administrative order against the issuance of marriage licenses to same-sex couples.

Reporter [Kent Faulk](#) writes that Moore can't appeal the ruling to the federal courts because there are no federal issues at stake.

"Moore also said he would reveal early next week for any plans he may have to run for the U.S. Senate seat now held by former Alabama Attorney General Luther Strange, who was appointed to replace Jeff Sessions who is now U.S. Attorney General," according to Faulk.

[Read the AL.com article.](#)

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# Trump's Trademark Continues Its March Across the Globe, Raising Eyebrows

A review of 10 trademark databases shows that President Trump's enterprise has 157 trademark applications pending in 36 countries, reports [\*The New York Times\*](#).

This business enterprise poses legal and moral perils to the president, even though that business now is run by his two sons. A team of constitutional lawyers and ethics lawyers brought litigation arguing that the Constitution prohibits the president from accepting any economic benefit, including trademark approvals, from foreign governments, write [Sharon LaFraniere](#) and [Danny Hakim](#).

"The legal question is whether new foreign trademark registrations and other transactions between Mr. Trump's businesses and foreign governments violate the emoluments clause of the Constitution," according to the *Times*. "The clause prohibits federal officials from accepting 'any present, emolument, office or title of any kind whatever from any king, prince or foreign state.'"

[Read the NYT article](#)

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