

The Circus is Coming to Town

It's probably a bad idea to write a column on politics, in February, to be published in April, during an election year. But despite my better judgment, that won't stop me. What this column won't do, however, is attempt to prognosticate on who will best tap the racist underpinnings of the Republican Party to secure the GOP nomination. Nor will it tout the praises of a democratic socialist from Vermont because chances are he won't even be on the ticket by the time California's primary rolls around.

Instead, what this column will discuss is that the political circus of the 2016 election cycle has come to town and we all need to buy our tickets to get under the tent. Unlike ninety-nine percent of the population who has the luxury of not caring about politics - with the exception of thirty days every four years - *no one* who reads this column has that luxury. Whether you like it or not, your practices are symbiotically attached to the political winds blowing locally, in Sacramento and in the Beltway. Not recognizing this reality poses potentially serious problems for you and your practice.

The recent passing of Supreme Court Justice Antonin Scalia has put the cross roads of politics and the judiciary in bright lights for everyone to see. Before Justice Scalia's body had even made it to the morgue, Senate majority leader Mitch McConnell was holding a press conference claiming that no nominee from the Obama administration would even be considered. While it's unprecedented in the modern era for a Supreme Court seat to remain vacant for nearly a year - even in an election cycle - the reality is that McConnell had to take this position before his Tea Party Caucus took it for him. And while we currently see unity in the Republican-controlled Congress that no Obama nominee will be considered, there are several blue state Republican senators facing tough re-election campaigns against formidable Democratic challengers.

While politicizing the Supreme Court may play well with certain elements of the Republic base, the reality is that this Congress's approval rating is maintaining the lowest levels recorded in modern history (ranging between 9%-12%; which for perspective is generally lower than the approval ratings of cockroaches, traffic jams and colonoscopies according to the Public Policy Polling Institute). For those blue state republican senators facing tough re-election fights they're going to be hard-pressed to toe the party line when later this summer one or all of them face losing their respective races. Its one thing to pledge your allegiance to McConnell's obstructionism in February but something wholly different to continue to do so in August, especially when down in the polls. The "hat trick" for Democrats this fall would be to keep control of the White House, get their center-left nominee on the High Court and pick up two or three blue state Senate seats retaking the Senate majority. A tall order indeed, but one that may very well change the complexion of national politics for years to come.

Closer to home, and thanks to the rise of the moderate Democrat (or "mod caucus") in Sacramento we're routinely seeing attacks on the rights of our clients and consumers. Most notably, in class action practices we're seeing legislation targeted directly at pending litigation. Catch a bad guy engaging in illegal conduct, file a class action complaint and have them cornered? Don't be surprised if the bad guy runs to Sacramento for a "get out of jail free" card and have the law changed. Just six months ago we saw this very thing happen

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when several class action cases our firm is currently litigating were directly targeted by legislation. The bad guys, large retailers engaging in the illegal corporate practice of medicine, decided they'd be better off changing the law than trying to defend their conduct in court. Thankfully, our friends at CAOC were at the ready, we got a seat at the table in Sacramento, and were able to hammer out a compromise that protected consumers and protected our ability to hold the bad guys accountable for the sins of their past.

Of more recent vintage, is the attack on Private Attorney General Act (PAGA) claims. PAGA was passed in 2003 to enable private citizens to prosecute claims and recover penalties for Labor Code violations that could previously only be pursued by the Labor Commissioner. Now, the Chamber of Commerce and its cronies are seeking to gut PAGA claims under the guise of "reform", including provisions for the Department of Industrial Relations to approve settlements and to provide businesses

"amnesty" when an industry-wide illegal practice has been invalidated. The Governor's office is behind some of this PAGA "reform" and certain provisions of it may find their way to his desk. However, for anyone practicing in this area there needs to vigorous scrubbing of the proposed sweeping changes to PAGA and the voice of the aggrieved worker must be heard.

As many of you know, Assemblywoman Lorena Gonzales received this year's CASD Legislature of the Year award. She has been a champion on many of our issues and is currently carrying legislation that corrects an injustice introduced by the California appellate ruling in *Rodriguez v. Kline* by ensuring an injured person's immigration status cannot be considered in personal injury or wrongful death suits. While Gonzales is carrying this important piece of legislation there were some within our membership who took issue with her receiving an award this year from the organization. The concern was that she did not endorse our efforts to overturn MICRA in the last

election cycle. While I won't get into the merits of these criticisms of the Assemblywoman what I will say was that I was happy to see it. Not because I necessarily agreed but rather because it showed a level of political engagement and discourse that is often lacking within this organization.

Yes, CASD is an organization of trial lawyers seeking to foster a fair and effective legal system. But too often times our membership appears tone deaf to the political realities of local, state and national politics. Like all things political, I have and will continue to push our leadership and our members to be more politically involved. There are a number of very important races in the local judiciary, San Diego City Council, and various Assembly and Senate seats that will directly impact our collective ability to practice over the coming years. I encourage everyone to get informed about these races, meet with these candidates, and speak with your checkbooks. After all, the circus is coming to town. It's time to get a ringside seat. **TBN**

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