

How Ginsburg's Successor Could Remake Business; DealBook Newsletter

The New York Times

September 21, 2020 Monday 15:23 EST

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Section: BUSINESS; dealbook

Length: 2102 words

Highlight: Leading candidates to fill her seat on the Supreme Court are likely to rule in favor of conservative causes that could affect Corporate America.

Body

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A new Supreme Court conservative could change corporate law

As the nation mourned Justice Ruth Bader Ginsburg, who died on Friday at 87, the politics of replacing her have surged to the fore — and a lot is at stake, including for the business world.

President Trump wants to lock in a conservative majority for generations. Political oddsmakers have identified two women as leading candidates for the nomination:

The front-runner is Judge Amy Coney Barrett, long favored by anti-abortion activists who say she has the “perfect combination” of judicial wisdom and conservative bona fides. She has supported tightening restrictions for illegal immigrants, which may suggest how she would rule on the Obama-era immigration program known as DACA.

Another strong contender is Judge Barbara Lagoa, a former commercial litigator who has ruled in favor of business groups who opposed raising the minimum wage in Miami Beach. She also supported withdrawing a law that helped homeowners recover legal fees from banks that improperly attempted foreclosure.

Here are some of the areas of legislation where a Trump appointee could make a significant difference:

The Affordable Care Act, whose legality will again be reviewed in November. Judge Barrett criticized Chief Justice John Roberts’ defense of the law as going “beyond its plausible meaning to save the statute.” Judge Lagoa’s conservative-leaning views suggest she might feel similarly. (It’s unlikely either could be seated in time for oral arguments, but legal experts say the law’s chances of survival have already been dampened by Justice Ginsburg’s death, and future revisions could go before her successor.)

DACA, an Obama executive order that shields about 750,000 young undocumented immigrants known as Dreamers from deportation. Some corporate leaders, like Apple’s Tim Cook, have publicly urged preserving the program. But neither Judge Barrett nor Judge Lagoa is expected to block the Trump administration’s efforts to end it.

Copyright law, in the form of Google v. Oracle America. A battle over copyright protection for software interfaces, the case has drawn more than 50 friend-of-the-court briefs from companies, technologists, scholars, tech investors, intellectual property experts, the media and the government.

But Mr. Trump may not be able to get his choice onto the court. Two Republican senators, Susan Collins of Maine and Lisa Murkowski of Alaska, have publicly opposed a confirmation vote before the Nov. 3 election. If two more Republicans switch, a vote could fail, and several — including Mitt Romney of Utah, Corey Gardner of Colorado and Chuck Grassley of Iowa — have yet to reveal their positions.

Two other Republican senators, Martha McSally of Arizona and Kelly Loeffler of Georgia, face special elections, endangering the chances of the G.O.P. winning a vote in the lame-duck session.

Business leaders mourn Ginsburg

Here's what C.E.O.s and other corporate figures said about the justice's passing:

Mary Barra of G.M. said she was a “trailblazer” who showed “that all women belong in any industry.”

Adena Friedman of Nasdaq said Justice Ginsburg “opened new doors of opportunity for so many.”

Indra Nooyi, formerly of PepsiCo, said the justice showed that women “belong in the ring — fighting.”

Sundar Pichai of Alphabet said “women will always have a seat at the table” because of Justice Ginsburg.

Tim Cook of Apple said “we all can honor her legacy by working toward true equality, together.”

TikTok's deal still has a lot of unanswered questions ...

The Chinese-owned video app may have gotten President Trump's blessing for a transaction to assuage his national security concerns. But announcements over the weekend left yet more mysteries about exactly what the deal does — and what it represents.

What we know: As expected, Oracle and Walmart will take a 20 percent stake in TikTok, which will be spun out from its China-based parent, ByteDance. The app plans to go public on an American stock exchange in perhaps a year. Four of five board members will be Americans, and Oracle will oversee the app and verify the security of any updates. The new company will create an “educational initiative.” And Mr. Trump said that TikTok will “have nothing to do with China, it'll be totally secure.”

A pause for fact-checking

Mr. Trump, who has history on his mind, told a rally that the deal would support “a fund for education, so we can educate people as to the real history of our country.” Walmart and Oracle described it only as an effort to “develop and deliver an A.I.-driven online video curriculum” for various subjects.

Mr. Trump said TikTok had promised \$5 billion to support the education program. But Oracle and Walmart confirmed only that they planned to give more than \$5 billion in new tax dollars to the U.S. Treasury, without linking those funds to the program. ByteDance said the final amount was yet to be determined.

Oracle, Walmart and others asserted that American entities would own 53 percent of TikTok, if one includes ByteDance investors like Sequoia. But the Sequoia funds invested in ByteDance include its big China fund, and representatives for Sequoia and TikTok did not clarify how much of a stake the China fund owns and whether that is counted as “American.”

And the questions we still have

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Does the deal really solve any national security issues? The Times's David Sanger notes that with ByteDance retaining control over TikTok's algorithms, it may be impossible to safeguard against Chinese state interference with its code base.

Did Oracle win the deal on merit? The company's co-founder and chairman, Larry Ellison, cited technical advantages. But others pointed to Mr. Ellison's close ties to the president: "This appears as though what passes for process is what pleases one man: Donald J. Trump," said Tom Wheeler, the former Democratic chair of the F.C.C.

How much will TikTok be worth? ByteDance is seeking a \$60 billion valuation in the deal, Bloomberg reports, citing an unnamed source. The Western investors have yet to agree.

How much power would ByteDance retain, even after a TikTok I.P.O.?

Will Beijing approve this deal? The potential blindsiding of ByteDance over the "educational grant" and the Trump administration's threat to ban WeChat may not have helped.

WeChat gets a reprieve

The other big Chinese app in the Trump administration's sights caught a break over the weekend when a federal judge temporarily stayed an executive order banning it from operating in the U.S.

The stay on President Trump's ban is rooted in the First Amendment. In her decision, Judge Laurel Beeler of the U.S. District Court for the Northern District of California wrote: "In the U.S., those in the Chinese American, Chinese-speaking and other communities rely on WeChat as opposed to other platforms as their primary source of communication and commerce."

The administration may yet appeal. A Justice Department spokeswoman said it was reviewing Judge Beeler's order. But given the administration calls WeChat a national security threat, more legal fireworks may be in store.

And the tech cold war between Washington and Beijing isn't over. After the TikTok deal, the Trump administration's fight may be refocused on other, bigger Chinese tech giants, like WeChat's owner, Tencent. And China has threatened retaliation if a ban goes through, with the editor of the state-controlled Global Times tweeting yesterday that U.S. tech giants like Google and Facebook should have TikTok-style restructurings.

Here's what's happening

Nikola's founder and executive chairman is out. Trevor Milton has stepped down, the electric truck maker announced overnight, after a short-seller accused the company of fraud. Stephen Girsky, the former vice chairman of G.M. and a board member, will take over as chairman.

A leaked Tesla memo suggests a "record" quarter for car deliveries. In an email to employees, Elon Musk said the company has "a shot" at such a record. The report could push Tesla shares up a day before it is expected to announce new battery technology.

A huge leak suggests trillions in dirty money is flowing through U.S. banks. Thousands of so-called suspicious activity reports — which American lenders file to the Treasury Department — obtained by BuzzFeed News purport to show how banks are handling suspicious payments around the world, including on behalf of entities tied to international criminals, the Taliban and North Korea.

AstraZeneca published its Covid-19 vaccine testing blueprints. The drug maker followed similar moves by Moderna and Pfizer after pausing some tests over safety concerns.

HBO and "Schitt's Creek" dominated the Emmys. Netflix had the most nominations — 160 — but HBO shows like "Succession" and "Watchmen" were among last night's big winners. "Schitt's Creek," the Canadian sitcom, broke an Emmy record for comedy awards.

Art of Sport raises its first financing without Kobe Bryant

The grooming products brand, which the N.B.A. star helped launch in 2018, plans to announce a \$6 million fund-raising round today, its first since Mr. Bryant died in a helicopter crash. DealBook's Lauren Hirsch spoke with Matthias Metternich, one of the brand's founders, about growing the company in the wake of loss.

On the impact of Mr. Bryant's passing:

"Obviously, first and foremost, it was majorly tragic to lose a founding partner, not something I've ever experienced and certainly the hardest thing I've ever experienced in my life," Mr. Metternich said.

On whether Mr. Bryant's death hurt fund-raising efforts:

"It wasn't impacted at all," Mr. Metternich said. (The round was led by CircleUp Growth Partners, and included the billionaire Mark Cuban, Lightspeed Venture Partners and BAM Ventures.) "The resonance of the brand that we're seeing with consumers was the story that we told to the world. And that was the story that Mark heard, and the reason he got behind it."

On continuing Mr. Bryant's legacy of supporting female athletes:

Art of Sport, which says its products are unisex, recently added the U.S. women's national soccer player Abby Dahlkemper as a partner. Mr. Metternich said that Mr. Bryant was firm in ensuring the company promoted women: "He was very engaged in his daughter's lives and their sport careers, and he was a loud proponent of the company and the brand doing more for female athletes — and considering female athletes more in our product development."

BlackRock's new rules of work dating

Most companies have requirements for employees to disclose when they date co-workers. But the world's biggest asset manager isn't just demanding disclosure about colleagues, Charlie Gasparino reports for The New York Post.

From a new policy that BlackRock rolled out last week:

"Employees are required to disclose all Personal Relationships with other BlackRock employees or contingent workers; as well as Personal Relationships with employees of a service provider, vendor, or other third party (including a client), if the non-BlackRock employee is within a group that interacts with BlackRock."

A BlackRock executive conceded to Mr. Gasparino that it might be "broadest dating disclosure requirement in the financial business, if not corporate America." But in the #MeToo era, it's perhaps better — and cheaper — to be safe than sorry.

The speed read

Deals

Playboy Enterprises is reportedly considering going public via — you guessed it — a blank-check company. (Reuters)

Chamath Palihapitiya's Social Capital Hedosophia plans to raise at least \$2 billion for three new blank-check vehicles. (Bloomberg)

Politics and policy

U.S. Postal Service leaders reportedly worried that President Trump's threats against Amazon threatened their business. (WaPo)

JPMorgan Chase notified 200 London-based traders to prepare to move to European cities including Paris and Frankfurt, expecting negotiations over a trade deal between Britain and the E.U. to fail. (Bloomberg)

Tech

The E.U. wants more power to crack down on U.S. tech giants. (FT)

Chime raised new funds at a \$14.6 billion valuation, surpassing Robinhood as the most valuable U.S. consumer fintech company. (CNBC)

Best of the rest

Campari's former C.E.O. is accused of tipping off a friend about the acquisition of Grand Marnier Group over dinner. (Bloomberg)

What to do when your boss is a conspiracy theorist. (NYT)

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PHOTO: Commemorating Justice Ruth Bader Ginsburg at the Supreme Court on Saturday. (PHOTOGRAPH BY Jose Luis Magana/Agence France-Presse — Getty Images FOR THE NEW YORK TIMES)

Load-Date: November 30, 2020