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Heath care isn't one word or one person

Craig B. Garner is an attorney and health care consultant in Santa Monica. He can be found at www.garnerhealth.com.



"The truth is rarely pure and never simple." - Oscar Wilde

With the passing of Justice Antonin Scalia, the Supreme Court has lost a brilliant legal scholar and formidable protector of the U.S. Constitution. Scalia both earned respect and instilled fear during his 30-year tenure

supervising America's political climate. While his legacy ought to take precedence during this time of mourning, widespread panic over the future of health care reform threatens to overshadow the passing of Scalia the individual in favor of highlighting the ways in which his unexpected death may advance partisan agendas.

History has shown that a single justice can have a dramatic effect on the formation and defense of policy. In 1896, Justice John Marshall Harlan disagreed with those Supreme Court justices who believed that the Constitution allowed "equal but separate" public transportation accommodations for black and white citizens. His solitary dissent in *Plessy v. Ferguson* argued otherwise, stating that the Constitution did not create a "superior, dominant, ruling class of citizens" in the United States, and that the Constitution was itself color-blind. Fifty-eight years later, a unified Supreme Court made history with *Brown v. Board of Education of Topeka* in holding that "separate but equal" had no place in public education.

In 1963, eight of the nine Supreme Court justices stopped a practice in public schools of reading from the Bible or reciting the Lord's Prayer. Justice Potter Stewart, however, believed otherwise in *School District of Abington Township v. Schempp* and argued that religion and government "necessarily interact in countless ways."

In 1988, while seven Supreme Court justices reversed a federal court order of contempt against Theodore Olson, Edward Schmults and Carol Dinkins in *Morrison v. Olson*, Scalia disagreed, and in his dissent summarized the precise nature of the lawsuit, a matter of power, in particular the "allocation of power among Congress, the President, and the courts" in such a way as to protect the foundation of the Constitution.

To be sure, Scalia was known to chastise Congress, declaring that the Supreme Court has no free-floating power to save the legislative branch "from its drafting errors." His passing begs the question as to whether one federal jurist has the power to decide the fate of the Patient Protection and Affordable Care Act. Plurality decisions and swing votes notwithstanding, it is the institution of the Supreme Court itself and not any one justice that has presided over issues of federal law and other matters of original jurisdiction since 1789. Supreme Court eras referenced by the chief justice at the time represent a reflection of the court's composition during such tenure, beginning with the Marshall court (1801-1835), and more recently with the Warren court (1953-1969), the Burger court (1969-1986) and the Roberts court (since 2005). It remains to be seen whether it shall be the 44th or 45th president of the U.S. to select a replacement for Scalia, as does the fortitude of the process by which Congress advances or stalls the confirmation of a new Supreme Court justice.

Regardless of the leanings of Scalia's replacement, what happens down the street from 1 First Street, Northeast will not uproot health care reform as it enters its seventh

Questions and Comments

NEWS

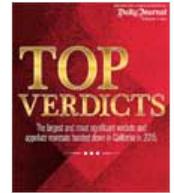
RULINGS

VERDICTS

Wednesday, February 24, 2016

SPECIAL REPORT

Top Verdicts



U.S. Court of Appeals for the 9th Circuit 9th Circuit ruling shows difficulty of overturning arbitrator decisions

While pointing out flaws in a now-deceased arbitrator's handling of a multi-million dollar employment dispute, a 9th U.S. Circuit Court of Appeals panel reversed a district judge and upheld his ruling despite claims of bias.

Bar Associations

State Bar spent \$413K investigating Dunn, leak of report

The spending to examine complaints against the former executive director and the leak of an outside firm's investigative report was revealed in response to a public-records request.

Law Practice

New Long Beach appellate firm is a family affair

Retired Justice Margaret Grignon and her daughter, Anne, have opened up their own appellate law firm in Long Beach, Grignon Law Firm.

Judges and Judiciary

Robert L. Roberson Jr. 1931-2016

A skilled trial lawyer who inspired many around him to become attorneys, Roberson is regarded as a transformative figure in California's legal community.

Corporate

Therapy solutions company taps its first general counsel

Intersect ENT Inc., a therapy solutions company focused on ear, nose and throat treatments, named David A. Lehman as its first general counsel late Monday.

Law Practice

Sheppard Mullin grabs complex litigation chair from Littler

Sheppard, Mullin, Richter & Hampton LLP is poaching the co-chair of Littler Mendelson PC's complex litigation and jury trials practice group, Nancy E. Pritikin.

year. The Affordable Care Act is neither fleeting nor finished, but has instead become the foundation for health care in the United States. No one person, president, senator or justice, can single handedly defeat the only health care system ever known to the 4 million students currently enrolled in the first grade of elementary school. Justice Antonin Scalia may be missed, but the institution of the U.S. Supreme Court shall continue to prevail as the preeminent moral compass for this country.

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No Others

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California Courts of Appeal Panel clarifies statute in 'Jungle Book' spat
The 2nd District Court of Appeal reversed a lower court's ruling in a spat between The Disney Co. and the heirs to the musical composer for "The Jungle Book," finding that the lower court failed to apply the doctrine of continuous accrual when considering the statute of limitations.

Litigation South Coast Air Quality sues city of Moreno Valley for second time
Local regulators have challenged a city council's attempt to circumvent CEQA through voter-sponsored initiative.

Los Angeles firm hit with disqualification motion in lawsuit
Hueston Hennigan LLP has come under fire in a Central District lawsuit for its name partners allegedly simultaneously representing the plaintiff and a defendant in the case.

Medical distributor wins \$41.8 million verdict
A San Diego jury on Monday awarded Nevada-based distributor Madsen Medical Inc. up to \$41.8 million in damages after both the company and device manufacturer NuVasive Inc. alleged the other side had broken contract terms.

Perspective Apple dispute shows bill is bogus
Apple's ongoing showdown with the Justice Department over an iPhone is raising much-

CONTROL COSTS WITH JAMS MANAGED ARBITRATION
Crocker

U.S. Supreme Court Supreme Court ruling could curb 'stock drop' lawsuits
The Supreme Court issued a rare summary deposition in *Amgen Inc. v. Harris*, reversing without full briefing or oral argument a 9th Circuit decision. By **Christopher Rillo**

Health care isn't one word or one person
While Scalia's legacy ought to take precedence during this time of mourning, widespread panic over the future of health care reform threatens to overshadow the passing of Scalia the individual in favor of highlighting the ways in which his unexpected death may advance partisan agendas. By **Craig B. Garner**

International China's new counter-terrorism law will affect US businesses
Chinese lawmakers recently enacted the Counter-Terrorism Law of the People's Republic of China, which took effect Jan. 1. By **Pooja Nair**

Labor/Employment Lawyers balk at Brown's PAGA reforms