FROM PARTIES TO PRESIDENTS:

DEALING WITH DECISION-MAKER COMMENTARY

University of Texas Continuing Legal Education Page Keeton Civil Litigation Conference
Austin, TX · 2017

Travel Ban – Executive Order 13769

- 01/27/17 – Executive Order 13769
  - Suspended entry of individuals from seven countries for 120 days
  - Suspended processing refugees from all countries for 120 days and capped entry at 50,000
    - Suspended entry of Syrian refugees indefinitely
    - Provisions for minority religion
- 01/28/17 – TRO entered in NY
- 01/29/17 – TRO entered in MA
- 02/02/17 – WH lifts restrictions as to LPRs
- 02/03/17 – TRO entered in WA
- 02/09/17 – 9th Cir. Denies emergency stay



www.sousamachadoarts.com/2017/2/5/i-got-this

Travel Ban – Comments

- 12/07/15 – "Shutdown of Muslims entering the US"
- 03/09/16 – "I think Islam hates us"
- 03/22/16 – "We're having problems with Muslims"
- 07/24/16 – "Oh, you can't use the word Muslim"
- 12/19/16 – "Islamic terrorists slaughter Christians"
- 12/21/16 – "You know my plans"
- 01/27/17 – "We all know what [EO's title] means"
- 01/28/17 – "Show me the way to do it legally"
- 02/22/17 – "[S]ame basic policy outcome"
- 06/05/17 – "The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C."



htheringer.com/donald-trump-twitter-afterlife-dc42b72901f2

Price Waterhouse v. Hopkins (1989)

- Some evaluation comments were legitimate:
  - Abrasive
  - Issues with staff
- Some were not:
  - Hopkins "overcompensated for being a woman"
  - Hopkins should take "a course at charm school"
  - Hopkins "has matured from a tough-talking somewhat masculine hard-nosed mgr to an authoritative, formidable, but much more appealing lady ptr candidate"
  - Hopkins should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" to improve her chances



www.deannalittellscharmschool.com/

Price Waterhouse v. Hopkins (1989) (plurality)

But-for causation is a hypothetical construct. In determining whether a particular factor was a but-for cause of a given event, we begin by assuming that that factor was present at the time of the event, and then ask whether, even if that factor had been absent, the event nevertheless would have transpired in the same way. ... The critical inquiry … is whether gender was a factor in the employment decision at the moment it was made. Moreover, since we know that the words "because of" do not mean "solely because of," we also know that Title VII meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations.


Supreme Court Ruling in Sex-Bias Case Hailed by Women's Rights Groups

Washington Post, 1989

BOULETTE GOLDEN & MARIN L.L.P.

Price Waterhouse v. Hopkins (1989) (plurality)

Remarks at work that are based on sex stereotypes do not inevitably prove that gender played a part in a particular employment decision. … [T]he stereotyping in this case did not simply consist of stray remarks. On the contrary, Hopkins proved that Price Waterhouse invited partners to submit comments; that some of the comments stemmed from sex stereotypes; that an important part of the Policy Board's decision on Hopkins was an assessment of the submitted comments; and that Price Waterhouse in no way disclaimed reliance on the sex-linked evaluations. This is not, as Price Waterhouse suggests, "discrimination in the air". …


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