

FROM PARTIES TO PRESIDENTS: DEALING WITH COMPROMISED DECISION-MAKERS

University of Texas Continuing Legal Education – Employment Law Seminar
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

**BOULETTE GOLDEN
& MARIN LLP**

Travel Ban – Executive Order 13780

- 03/06/17 – Executive Order 13780
 - Suspends entry from six countries (exempts Iraq)
 - Exempts LPRs and dual nationals, among others
 - Suspended processing refugees from all countries for 120 days and capped entry at 50,000
 - Lifts ban on Syrian refugees
 - Eliminates provisions for minority religions
- 03/15/17 – Partial injunction entered in HI
- 03/16/17 – Partial injunction entered in MD
- 05/25/17 – 4th Cir. upholds injunction
- 06/02/17 – WH petitions for SCT review and stay
- 06/12/17 – 9th Cir. Upholds injunction



www.pbs.org/newshour/rundown/trumps-muslim-rhetoric-key-issue-travel-ban-rulings/

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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

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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



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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

COURT NEWS BY
The case began in 1982 when Ann B. Hopkins, a management consultant, was not among the 47 employees selected for partnership at Price Waterhouse, one of the nation's "big eight" accounting firms, even though she brought in more business than any of the other 47 candidates for partnership. One supervisor suggested that she should "walk more femininely, talk more femininely, dress more femininely, wear makeup, have her

there was no discrimination in the first place and that Hopkins could not show that the comments had played any role in the specific decision to partner. The reason she was rejected, the company argued, was because she was too abrasive and difficult to work with.

The company said that an employee must prove "sex stereotyping" by such partners was the central reason that Hopkins must show she would have been made a partner had not the discrimination.

But Brennan said that an employee must prove evidence only that

er's decision before an employer can be made to prevail.

Justice Anthony M. Kennedy, joined in dissent by Chief Justice William H. Rehnquist and Justice Antonin Scalia, said the decision was "vicious to the point of contempt" against the civilly already "complex" rules for employment discrimination.

"In these years, Kennedy said



ANN B. HOPKINS
... and Price Waterhouse

Washington Post, 1989

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