

Regulatory Oversight Newsletter — August 2023

WRITTEN BY

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Make sure to visit Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

Regulatory Oversight will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

NEW TEAM MEMBER

TROUTMAN PEPPER BOLSTERS REGULATORY INVESTIGATIONS, STRATEGY + ENFORCEMENT PRACTICE GROUP WITH ACCOMPLISHED PARTNER FOCUSING ON CANNABIS LAW

Jean Gonnell, a regulatory attorney with a significant focus cannabis and tobacco law, has joined Troutman Pepper's Regulatory Investigations, Strategy and Enforcement (RISE) practice group. Resident in the firm's Charlotte office, Gonnell joins from her private practice, Gonnell Law.

Gonnell began her legal career in Colorado, where she was at the forefront of cannabis legislation before the larger movement to legalize the drug. Over the course of her career, she has represented more than 100 clients in the cannabis industry, including approximately 15 percent of all licensed cannabis businesses in Colorado. With a deep commitment to her clients and dedication to the flourishing cannabis field, she continues to expand her practice and make a positive impact in the evolving landscape of cannabis law.

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REGULATORY OVERSIGHT PODCAST

A CONVERSATION WITH NAAG EXECUTIVE DIRECTOR BRIAN KANE

By [Ashley L. Taylor, Jr.](#)

In the latest episode of Regulatory Oversight, the National Association of Attorneys General (NAAG) Executive Director Brian Kane joins co-host Ashley Taylor to discuss the role that NAAG plays among attorneys general.

NAAG provides a community for attorneys general and their staff to collaboratively address issues important to their work, as well as training and resources to support attorneys general. From Supreme Court training to a multistate settlement database, NAAG offers a variety of resources to the attorneys general offices.

Brian also discusses how his background as chief deputy in the Idaho attorney general's office helped prepare him for his role, as well as what he sees in the future for NAAG.

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TOBACCO UPDATES

FDA TOUTS “SIGNIFICANT STRIDES” IN ADDRESSING REAGAN-UDALL REPORT BUT ACKNOWLEDGES MORE WORK REMAINS

By [Michael Jordan](#), [Agustin Rodriguez](#), and [Bryan Haynes](#)

On June 29, Dr. Brian King, director of the Center for Tobacco Products (CTP) at the FDA, issued an [update](#) on CTP's efforts to address the 15 recommendations outlined in a [report](#) by an independent expert panel facilitated by the Reagan-Udall Foundation. Although he acknowledged that “implementation is no small task,” Dr. King said CTP has “already made significant strides” in implementing its plans to respond to the Reagan-Udall report.

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GAMING UPDATES

MASSACHUSETTS GAMING COMMISSION TARGETS YOUTH ADVERTISING AND DATA PRIVACY IN PROPOSED NEW SPORTS WAGERING RULES

By [Michael Lafleur](#) and Ketan Bhirud

The [Massachusetts Gaming Commission](#) is in the process of shaping [new regulatory standards for sports wagering in Massachusetts](#), following the state's adoption last summer of the [Massachusetts Sports Wagering Act](#), Mass. Gen. Laws ch. 23N, which legalized sports betting in the Commonwealth.

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MASSACHUSETTS GAMING COMMISSION FINES SPORTS BETTING OPERATORS FOR VIOLATING GAMING COMMISSION REGULATIONS

By Ketan Bhirud, [Callan Stein](#), [Michael Lafleur](#), and [Whitney Shephard](#)

The Massachusetts Gaming Commission [recently issued decisions](#) resulting in fines for three of the state's sports betting operators — [MGM Springfield](#), [Plainridge Park Casino](#), and [Encore Boston Harbor](#). These operators were found to have violated Gaming Commission regulations prohibiting wagers on regular season games of collegiate teams from Massachusetts unless part of a tournament.

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UNDERSTANDING THE NCAA'S NEW GAMBLING GUIDELINES: PERMANENT BANS AND REINSTATEMENT POLICIES

By [Callan Stein](#), [Ketan Bhirud](#), and [Whitney Shephard](#)

The world of sports gambling has undergone a transformative shift in recent years, with the widespread legalization of betting in numerous states. The Supreme Court's 2018 ruling striking down the Professional and Amateur Sports Protection Act (PASPA) paved the way for the rapid expansion of legalized gambling, sportsbooks, and mobile gaming. As the realm of sports wagering continues to evolve, it becomes crucial for governing bodies to adapt and establish comprehensive guidelines to preserve the integrity of collegiate athletics.

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NORTH DAKOTA SETTLES WITH THREE GAMING COMPANIES ACCUSED OF EXPLOITING NONPROFIT

By [Troutman Pepper State Attorneys General Team](#)

On July 6, North Dakota Attorney General Drew Wrigley announced a settlement of an administrative complaint, accusing Western Distributing Company and affiliate companies Plains Gaming Distributing Inc. and Midwest Gaming Distributing Inc. of violating the state's gambling laws and regulations by facilitating excessive rent payments and attempting to influence bars' charitable gambling activities through the Wall of Honor veterans nonprofit.

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CANNABIS AND HEMP UPDATES

EMPLOYER DRUG-TESTING POLICIES MUST EVOLVE WITH STATE LAW

By [Agustin Rodriguez](#), [Christina Sava](#), and [Tracey Diamond](#)

While many individuals are excited about the proliferation of state laws providing for medical and recreational use of marijuana across the country, inconsistencies in these state laws have made it difficult for employers to put in place consistent policies and practices on testing for marijuana as a condition of employment, upon reasonable suspicion, and post-accident. Employers are being forced to revisit their drug-testing policies not just because of changes to their state's laws regarding medical and recreational use of marijuana, but also because it is becoming increasingly difficult to find employees who have not used, or do not use, marijuana. If employers want to continue testing for marijuana in states where use is legal, policies must be drafted carefully to account for the continued evolution of the law in this area.

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VIRGINIA'S NEW HEMP REGULATIONS – HOW IT AFFECTS BUSINESSES

By [Christina Sava](#), [Agustin Rodriguez](#), and [Kevin Andres Rodriguez*](#)

Virginia's new hemp-derived products statutes ([Va. Code § 3.2-5145.1](#) et seq.) went into effect as of July 1, standing to drastically alter the availability of hemp-derived products in Virginia.

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FTC UPDATES

ADDRESSING COMPETITION CONCERNS IN THE DEVELOPING GENERATIVE AI INDUSTRY: KEY INSIGHTS FROM FTC ANALYSIS

By Ketan Bhirud and [Michael Yaghi](#)

The rapid advancement of generative artificial intelligence (AI) raises important competition concerns, prompting the Federal Trade Commission (FTC) to analyze potential risks and propose solutions. In its recent June 29 blog post, the FTC highlighted the need for proactive measures to address competition issues in the evolving generative AI industry. This article analyzes the FTC's blog post, summarizing its key points and offering insights into the potential implications for stakeholders.

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ADMINISTRATIVE LAW JUDGES FACE DIMINISHED AUTHORITY UNDER NEW FTC RULE

By [Daniel Waltz](#), Ketan Bhirud, and Nick Gouverneur*

On June 2, the Federal Trade Commission (FTC) [announced](#) modifications to its in-house adjudicative proceedings of agency challenges to mergers and acquisitions by reducing the decision-making power held by administrative law judges (ALJs). This change will affect how the agency's antitrust challenges are decided. Even though the previous process had been in place for decades, the FTC was not required to receive public comment because the change affects only internal procedures.

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AG UPDATES

COALITION OF 22 STATE AGS OPPOSE 3M'S \$12.5 BILLION PFAS SETTLEMENT

By [Troutman Pepper State Attorneys General Team](#)

A [bipartisan coalition](#) of attorneys general (AGs) from 22 states is urging the federal district court in South Carolina to reject a proposed \$12.5 billion settlement between 3M and a group of public water utilities, who are suing the company over alleged per- and polyfluoroalkyl substance (PFAS) contamination.

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TENNESSEE AG SUES MORE THAN 20 PFAS MANUFACTURERS

By [Troutman Pepper State Attorneys General Team](#)

Tennessee AG Jonathan Skrmetti is suing more than 20 per- and polyfluoroalkyl substance (PFAS) manufacturers, including 3M and DuPont, seeking injunctive and monetary relief under the state's public nuisance and uniform fraudulent transfer laws.

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BIPARTISAN COALITION TARGETS BILLION-DOLLAR ILLEGAL TELEMARKETING INDUSTRY

By [Troutman Pepper State Attorneys General Team](#)

A bipartisan coalition of attorneys general (AGs) representing each state and Washington D.C. joined forces with the Federal Trade Commission (FTC) and the Department of Justice (DOJ). They have [announced](#) their unified commitment to an initiative known as 'Operation Stop Scam Calls,' which has already made a significant impact. Illinois AG Kwame Raoul — a fervent advocate for consumer rights — underscored this commitment, saying, “[c]ompanies responsible for these illegal, annoying calls must be held accountable.”

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ILLINOIS AG SETTLES INVESTIGATION INTO COMPANY'S PAYMENT PRACTICES FOR \$950K

By [Troutman Pepper State Attorneys General Team](#)

On July 6, Illinois Attorney General Kwame Raoul [announced a \\$950,000 settlement](#) concerning the Illinois Wage Payments and Collection Act, marking the conclusion of an investigation into GrapeTree Medical Staffing (GrapeTree), a medical staffing company that operates in 12 states.

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MISSISSIPPI AG SUES TWO COMPANIES FOR PLACING NEARLY 1,000 ILLEGAL ROBOCALLS TO MISSISSIPPI RESIDENTS

By [Troutman Pepper State Attorneys General Team](#)

As a result of legislation passed this month, Mississippi Attorney General Lynn Fitch filed lawsuits against two companies, The Depository Trust and Clearing Corporation and NaturaLawn of America, for allegedly violating the Mississippi Telephone Solicitation Act. The lawsuits allege that these companies made nearly 1,000 unauthorized calls to Mississippians on the state's Do Not Call Registry.

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MDL PANEL APPLIES PROCEDURAL RULE TO TEXAS-LED MULTISTATE ACTION AGAINST GOOGLE

By [Troutman Pepper State Attorneys General Team](#)

On June 5, the Judicial Panel on Multidistrict Litigation (JPML) in *Texas v. Google, LLC* ruled that the State Antitrust Enforcement Act of 2021 applies to pending state antitrust enforcement actions, including to actions the JPML previously centralized. Specifically, the JPML ordered that a 16-state multistate attorneys' general antitrust litigation against Google should be remanded to federal court in Texas.

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TEN STATE AGS SUE COINBASE, ALLEGING SECURITIES LAW VIOLATIONS

By [Troutman Pepper State Attorneys General Team](#) and Justin Karlin*

On June 6, Alabama, California, Illinois, Kentucky, Maryland, New Jersey, South Carolina, Vermont, Washington, and Wisconsin each [filed](#) enforcement actions against leading cryptocurrency exchange Coinbase and its parent, [alleging](#) that Coinbase's staking rewards program constituted unregistered securities sales in violation their states' securities laws. These actions followed an investigation by a multistate task force with assistance from the Securities and Exchange Commission (SEC).

[Read more](#)

Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, also contributed to this newsletter.

*Nick Gouverneur, Ryan Graham, Justin Karlin, and Kevin Andres Rodriguez are 2023 summer associates with Troutman Pepper and not admitted to practice law in any jurisdiction.

Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.

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