

## Regulatory Oversight Newsletter – July 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.

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### **REGULATORY OVERSIGHT PODCAST**

#### **A CONVERSATION WITH JUDGE LAWRENCE VANDYKE OF THE US COURT OF APPEALS FOR THE NINTH CIRCUIT**

By Ketan Bhurud, Michael Yaghi, and Stephen Piepgrass

In this episode of the Regulatory Oversight Podcast, Judge VanDyke joins Troutman Pepper RISE attorneys Ketan Bhurud, Mike Yaghi, and Stephen Piepgrass for an informative discussion on his background and path to becoming a judge, including his time working in several state attorneys general offices.

Additionally, Judge VanDyke shares insightful information about the Ninth Circuit, some expected and unexpected experiences on the bench, and advice for people who want to become a judge.

[Read more](#)

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## TOBACCO UPDATES

### WHAT RJ REYNOLDS' CALIF. SUIT MEANS FOR TOBACCO REGULATION

By Agustin Rodriguez, Chris Carlson, and Michael Jordan

*Published in [Law360](#) on June 27, 2023. © Copyright 2023, Portfolio Media, Inc., publisher of Law360. Reprinted here with permission.*

On May 11, R.J. Reynolds Tobacco Co. Inc. went on the offensive to keep its new line of nonmenthol cigarettes marketed with language like “crisp,” “smooth” and “mellow” on store shelves in California.

[Read more](#)

### CONGRESS URGES FDA TO COMPLETE ITS REVIEW OF E-CIGARETTE APPLICATIONS

By Bryan Haynes and Nick Ramos

On June 8, more than 50 members of Congress signed a [letter](#) addressed to Food and Drug Administration (FDA) Commissioner Dr. Robert Califf, expressing concerns over FDA's delays in reviewing pending Premarket Tobacco Product Applications (PMTAs) and its failure to remove unauthorized products from the market. The letter strongly urges “FDA to (1) expeditiously complete review of remaining e-cigarette PMTAs; (2) follow the science on the risks flavored [e-cigarettes] pose to youth and deny PMTAs for all non-tobacco flavored e-cigarettes, including menthol flavored products; and (3) increase enforcement actions against companies that make, distribute, and sell flavored products without a marketing order, especially products with a significant market share, or products that are most popular with youth.” The letter also requests that FDA respond to several questions by June 23, as summarized below (as of the date of this blog post, we are not aware of any FDA response).

[Read more](#)

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## FDA GUIDANCE

### FDA ISSUES DRAFT GUIDANCE FOR CLINICAL INVESTIGATIONS OF PSYCHEDELIC DRUGS

By Agustin Rodriguez and Christina Sava

The Food and Drug Administration (FDA) recently issued first-of-its kind [draft guidance](#) for investigational new drug (IND) applications involving psychedelic drugs. Citing the rise in interest in exploring the potential therapeutic benefits of psychedelic drugs, FDA indicated its receptiveness to allowing researchers to investigate exactly how useful psychedelics are at treating psychological disorders, such as depression, post-traumatic stress disorder (PTSD), substance abuse, anxiety, and other conditions. While the guidance is not geared toward trials intended to support marketing applications, the agency's attention to this topic may herald a new wave of associated investigations.

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## NEW FCC REQUIREMENTS

### NEW FCC REQUIREMENTS FOR PRERECORDED VOICE CALLS EFFECTIVE JULY 20: IS YOUR COMPANY PREPARED TO COMPLY?

By Clay Friedman, Stefanie Jackman, Brooke Conkle, and Namrata King

The Federal Communications Commission (FCC) recently amended requirements concerning artificial or prerecorded voice calls, effective July 20. See Proposed 47 C.F.R. § 64.1200. Notably, the FCC amended requirements concerning prerecorded noncommercial and nontelemarketing commercial calls by (1) placing a cap on the number of calls to up to three calls within a consecutive 30-day period, unless the caller has obtained prior express consent, and (2) requiring callers to provide specific opt-out mechanisms.

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## AG UPDATES

### STATE ATTORNEY GENERAL ACTIONS: HOW OUTSIDE COUNSEL FOR AGS CHANGES THE GAME

By Ashley L. Taylor, Jr., Ryan J. Strasser, and Amy Pritchard Williams

*Ashley Taylor, Ryan Strasser and Amy Pritchard Williams of Troutman Pepper Hamilton Sanders LLP discuss the involvement of outside counsel in representing state Attorney Generals and how that involvement can affect the dynamics of the litigation.*

As explained in the first three parts of this series, state attorney general (AG) actions pose existential threats to defendant companies because they can cause such companies to confront the risk of a substantial civil penalties award, the entry of draconian injunctive relief, and the suffering of major reputational harm. “How approaches in state attorney general actions differ from typical litigation,” Reuters Legal News, Feb. 8, 2023 (<https://bit.ly/3CRsJQs>); “State attorney general actions: Strategies for venue and settlement differ from typical litigation, Reuters Legal News, Feb. 16, 2023 (<https://bit.ly/41SINM4>); “Five ways to effectively navigate litigation with state attorneys general,” Reuters Legal News, April 12, 2023 (<https://bit.ly/3Nu29St>).

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### THIRTEEN DEMOCRATIC AGS ENCOURAGE EPA TO ADOPT STRICTER STANDARDS FOR ETHYLENE OXIDE

By Troutman Pepper State Attorneys General Team

On June 27, Illinois AG Kwame Raoul led a coalition of 13 Democratic attorneys general nationwide in submitting a [letter](#) to the Environmental Protection Agency (EPA), supporting more [stringent regulation](#) of ethylene oxide (EtO) emissions. In their letter, the coalition urged the EPA to adopt proposed amendments to EtO standards under the National Emission Standards for Hazardous Air Pollutants program (NESHAP), and also offered several

recommendations for more regulatory requirements “based on several states’ experiences regulating commercial sterilizers.”

[Read more](#)

## **BIPARTISAN STATE AGS SUPPORT FTC’S AMENDMENTS TO NEGATIVE OPTION RULE**

By Troutman Pepper State Attorneys General Team

The New York and Pennsylvania state attorneys general recently led a bipartisan coalition of 26 state AGs in a [letter](#), supporting the Federal Trade Commission (FTC)’s [proposed rule](#) amending the [Negative Option Rule](#).

[Read more](#)

## **SENATORS URGE STATE AGS TO PROTECT CONSUMERS FROM CASH HOMEBUYING COMPANIES**

By Troutman Pepper State Attorneys General Team

On June 13, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra [provided](#) the CFPB’s semiannual report to Congress, which included [concerns](#) about predatory house-flipping practices by companies like HomeVestors. Afterwards, Senate Subcommittee on Housing, Transportation, and Community Development Chair Tina Smith (D-MN) and Senate Ranking Member Lummis (R-WY) sent a [letter](#) to the National Association of Attorneys General (NAAG), requesting a coordinated effort to prevent cash homebuyers from entrapping sellers into unfair contracts.

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## **ARE FOIA LAWS IN NEED OF UPDATING?**

By Abbey M. Thornhill and Ketan Bhirud

The federal government, the District of Columbia, and each of the 50 states have Freedom of Information Act (FOIA) laws that allow individuals to file requests for specific public documents with government agencies and quickly receive them unless the documents are subject to statutory exemptions. As most federal and state FOIA statutes were originally passed in the late 1960s, they impose some duties upon government agencies that many believe no longer make sense in the digital era.

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## **TWENTY-THREE STATE AGS URGE NTIA TO PRIORITIZE AI REGULATION**

By Troutman Pepper State Attorneys General Team

On June 12, a bipartisan group of 23 attorneys general [wrote a letter](#) to the chief counsel for the National Telecommunications and Information Administration (NTIA), recommending a risk-based approach to a regulatory framework for using and deploying AI technology. Driven by their “extensive experience enforcing data privacy

and consumer protection laws,” the AGs noted that states, such as Colorado, California, Connecticut, Tennessee, and Virginia, already regulated AI through their respective state data protection and privacy laws.

[Read more](#)

## **STATE AGS CHOOSE PRODUCTS LIABILITY CASE AS BATTLEGROUND FOR STATE SOVEREIGNTY**

By Troutman Pepper State Attorneys General Team, Barry Boise, and Sean Fahey

A bipartisan coalition of 23 state attorney generals led by Virginia AG Jason Miyares recently went up in arms about a products liability ruling they believe will threaten state consumer protection laws. On May 30, the coalition filed an amicus brief in support of the plaintiffs’ claims in *In Re: Fosamax (Alendronate Sodium) Products Liability Litigation*, a consolidated case where hundreds of plaintiffs claimed to suffer femur fractures as a result of taking Merck drug Fosamax.

[Read more](#)

## **TWENTY-EIGHT AGS CALL FOR STRICTER FCC SPAM CALL AND TEXT RULES**

By Troutman Pepper State Attorneys General Team

On June 8, a bipartisan coalition of 28 attorneys general issued a [letter](#), supporting the Federal Communications Commission’s (FCC) proposal to close a “loophole” that currently allows lead generators to collect and sell personal consumer information to third parties using a “single consumer consent,” typically leading to multiple consumer solicitations (telemarketing calls and/or texts) beyond the scope of the original consent. At present, lead generators commonly will offer quotes for goods or services stipulated on receiving consent to share the consumers’ personal information with their “marketing partners” — aka third-party solicitors.

[Read more](#)

## **STATE ATTORNEYS GENERAL FLEXING MUSCLES, POSING GROWING RISK TO LEGAL DEPARTMENTS**

By Judy Jagdmann and Chris Carlson

Judy Jagdmann and Chris Carlson, a partner and an associate in Troutman Pepper's Regulatory Investigations, Strategy + Enforcement Practice Group, were quoted in the June 8, 2023 *Corporate Counsel* article, [“State Attorneys General Flexing Muscles, Posing Growing Risk to Legal Departments.”](#)

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## **FTC COMMENT REQUEST SIGNALS JOINT ENFORCEMENT WITH STATE AGS WILL CONTINUE INCREASING**

By David N. Anthony, Stephen C. Piepgrass, Ronald I. Raether, Jr., Ashley L. Taylor, Jr., Chris Willis, Chris Carlson, and Trey Smith

On June 7, the Federal Trade Commission (FTC) [announced](#) a [request for information](#) (RFI) to gain additional insight into how it can optimize joint enforcement with state attorneys general (state AGs) to protect consumers from fraud. The announcement signals a growing trend of cooperation between the FTC and state AGs, which we have also seen between the Consumer Financial Protection Bureau (CFPB) and the state regulators.

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

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