

Regulatory Oversight Newsletter — March 2024

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REGULATORY OVERSIGHT BLOG

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.

Podcast

DECODING CYBER THREATS: PROTECTING CRITICAL INFRASTRUCTURE IN A DIGITAL WORLD

By [Stephen C. Piepgrass](#), Judy Jagdmann, & [Gene Fishel](#)

In the latest episode of *Regulatory Oversight*, Troutman Pepper Partner Judy Jagdmann and Counsel Gene Fishel are joined by Sam Kaplan, assistant general counsel for public policy for Palo Alto Networks. They engage in an insightful conversation revolving around the government response to cyber incidents and the potential role of AI in combating cybersecurity threats.

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FROM THE COURTROOM TO THE CAPITOL: OREGON AG ELLEN ROSENBLUM TALKS LEADERSHIP, ADVOCACY, AND THE JOURNEY TO PUBLIC SERVICE

By [Stephen C. Piepgrass](#) & Judy Jagdmann

In the latest episode of *Regulatory Oversight*, Troutman Pepper Partner Judy Jagdmann is joined by Oregon Attorney General (AG) Ellen Rosenblum to discuss her journey from being a federal prosecutor and state trial and appellate judge, to becoming Oregon’s AG.

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STATE AGS FILE NIL ANTITRUST LAWSUITS

By [Callan Stein](#), Tim Bado, & [Connor DeFilippis](#)

The *Highway to NIL Podcast* analyzes the legal landscape concerning college athletics and the regulation of name, image, and likeness (NIL) rights of student athletes. The podcast provides key insights into the current state of affairs, focusing on the NIL guidance and policies coming directly from the NCAA; the various passed and amended state NIL laws; and NIL enforcement, including how the NCAA, state attorneys general, and other regulators may investigate and punish schools for NIL violations.

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Incidents + Investigations Updates

TROUTMAN PEPPER LAUNCHES TEAM TO ADDRESS CYBERATTACKS

By [Sadia Mirza](#), [Stephen C. Piepgrass](#), & [Ronald Raether](#)

Troutman Pepper Partners Sadia Mirza, Stephen Piepgrass, and Ron Raether were quoted in the *Law360 Pulse* article, "[Troutman Pepper Launches Team to Address Cyberattacks](#)."

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CALIFORNIA AG ANNOUNCES SECOND CCPA SETTLEMENT, ASSERTING DOORDASH FAILED TO DELIVERY PRIVACY

By [James Koenig](#), [Ronald Raether](#), [Sadia Mirza](#), [Kim Phan](#), [Laura Hamady](#), [Stephen Piepgrass](#), [Gene Fishel](#), & Robyn Lin

In a [recent alert](#), we reported that California Attorney General (AG) Rob Bonta announced a settlement with DoorDash over allegations that the company violated the California Consumer Privacy Act (CCPA) and the California Online Privacy Protection Act (CalOPPA) by selling consumers' personal information without providing notice or an opportunity to opt out.

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THAT'S A WRAP...OR NOT? REGULATORY DATA INCIDENT INVESTIGATION RESOLUTIONS AND THE PATH FORWARD

By [Stephen C. Piepgrass](#), [Gene Fishel](#) & [Sadia Mirza](#)

This article was originally published on February 14, 2024 in [Reuters](#) and [Westlaw Today](#). It is republished here with permission.

As we discussed in part three of this series, “[Navigating the Complexities of Regulatory Data Incident Investigations](#),” when an organization is the subject of regulatory data incident investigations, it must navigate a tangled regulatory web. Extricating itself from that web is the ultimate goal. But what form does that take?

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Antitrust Updates

FTC AND A COALITION OF NINE AGS SUE TO BLOCK KROGER’S PROPOSED \$24.6B ACQUISITION OF ALBERTSONS

By Drew Mann, Tim Bado, & [McKayla Riter](#)

The Federal Trade Commission (FTC) and a coalition of nine state attorneys general (AG) filed a lawsuit on February 26, in the U.S. District Court for the District of Oregon seeking a preliminary injunction to stall Kroger Company’s (Kroger) proposed \$24.6 billion acquisition of Albertsons Companies (Albertsons), citing concerns that the proposed deal would eliminate competition among the supermarket giants, leading to higher grocery prices for millions of Americans. FTC commissioners voted unanimously to authorize the lawsuit, which was joined by AGs from Arizona, California, the District of Columbia, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming. Simultaneously, the FTC filed an administrative [complaint](#) against Kroger and Albertsons to block the proposed transaction.

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FEDERAL COURT HALTS NCAA’S RESTRICTIONS ON NIL RECRUITING: A GAME CHANGER?

By [Michael Lowe](#), [Callan Stein](#), [Christopher Brolley](#), & [Brett Broczkowski](#)

On February 23, U.S. District Judge Clifton L. Corker of the Eastern District of Tennessee granted a preliminary injunction requested by the Tennessee and Virginia attorneys generals (AG) against the NCAA’s “NIL-recruiting ban.” This ban prohibits boosters and collectives from discussing name, image, and likeness (NIL) opportunities with student-athletes before they commit to a school. The court found that the AGs had established both a likelihood of success on the merits and irreparable harm that would occur without the injunction. This decision could have significant implications for the landscape of college sports.

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TENNESSEE AND VIRGINIA AGS FILE ANTITRUST SUIT AGAINST NCAA OVER NEW NIL POLICIES

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

On January 31, Tennessee Attorney General (AG) Jonathan Skrmetti, joined by Virginia AG Jason Miyares, filed [suit against the NCAA](#) in the U.S. District Court for the Eastern District of Tennessee for alleged violations of the Sherman Antitrust Act over the association’s restrictions on the ability of current and future student-athletes to benefit from their name, image, and likeness (NIL). The lawsuit was filed just one day after the [announcement](#) that the National Collegiate Athletics Association (NCAA) is investigating the University of Tennessee for NIL

violations.

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Veterans Affairs Updates

VA TO REVISE EDUCATIONAL INSTITUTION REQUIREMENTS UNDER THE 2018 VETERANS BENEFITS AND TRANSITION ACT

By [Timothy McHugh](#), [John West](#), & [Nick Ramos](#)

According to the Department of Veterans Affairs' (VA) [most recent regulatory agenda](#), it plans to finalize a [proposed rule](#) that would make significant changes to requirements applicable to educational institutions that enroll students utilizing VA benefits, such as under the extremely popular Chapter 33 Post-9/11 GI Bill and Chapter 31 Veteran Readiness and Employment (VR&E) programs, both of which pay tuition and fees directly to schools. The new regulations, which are expected to become final in April and go into effect shortly thereafter, will implement the Veterans Benefits and Transition Act of 2018. As the Congressional Research Service [explained](#), that bill made "a number of changes to educational benefits."

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Consumer Protection Updates

US AG ANNOUNCES INCREASED PENALTIES FOR AI CRIMES

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

In a recent [speech](#) at Oxford University, U.S. Deputy Attorney General (AG) Lisa Monaco announced that the U.S. Department of Justice (DOJ) will now seek stiffer penalties for crimes involving, and aided by, artificial intelligence (AI).

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CALIFORNIA BILL AIMS TO INCREASE OVERSIGHT OVER HEALTH CARE ACQUISITIONS

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

California Attorney General (AG) Rob Bonta and Assembly Speaker Pro Tempore Jim Wood have introduced [new legislation](#) addressing private equity health care deals. The bill, A.B. 3129, would grant the AG oversight over private equity and hedge fund acquisitions of health care facilities.

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NEVADA AG FORD EMPHASIZES CONSUMER EDUCATION AS AGA CHAIR

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

Announced as the 2024 Chairman of the Attorney General Alliance (AGA), Nevada Attorney General Aaron D. Ford has announced an initiative to help consumers navigate today's consumer landscape. Titled "Empowering Consumers through Education," this strategy seeks to address consumer challenges through a multipronged approach.

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BIPARTISAN GROUP OF AGS ISSUE WARNING LETTER OVER ALLEGED ELECTION ROBOCALLING

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

On February 6, a bipartisan group of 51 attorney general (AG) sent a [warning letter](#) to Life Corporation (Life Corp.) for allegedly engaging in an illegal robocall campaign that they claim was intended to deter New Hampshire voters from participating in the primary on January 23. The calls purportedly used artificial intelligence (AI) to impersonate the voice of President Biden, telling recipients to refrain from voting in the presidential primary.

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STATE AGS SUPPORT FTC'S PROPOSED RULE PROHIBITING "JUNK" FEES

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

On February 7, a coalition of 19 state attorneys general (AG) filed a [comment letter](#) supporting the Federal Trade Commission's (FTC) proposed [Trade Regulation Rule on Unfair or Deceptive Fees](#) (Rule). The state AGs echoed the sentiment that the proposed rule would provide much-needed safeguards for consumers against unfair or deceptive fees that are a "prevalent problem in many different types of industries."

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NY AG SECURES \$77M JUDGEMENT WITH MERCHANT CASH ADVANCE COMPANIES

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

On February 8, New York attorney general (AG) Letisha James [announced](#) a \$77 million [judgment](#) with three merchant cash advance (MCA) companies, Richmond Capital Group, Ram Capital Funding, and Viceroy Capital Funding, and their principals. AG James sued the companies in 2020, alleging they engaged in exploitive lending practices with small businesses, such as charging high interest rates, undisclosed fees, debiting excess amounts, and fraudulently securing judgments against them.

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PENNSYLVANIA AG SETTLES WITH DEBT SERVICES LAW FIRM

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

Pennsylvania Attorney General (AG) Michelle Henry reached a [settlement](#) with attorney Erik Helbing and his business, Helbing Law Group, LLC, resolving allegations of deceptive advertising practices and failure to effectively deliver on promised debt settlement services. The law firm advertised that it could facilitate significant reduction in client debts through negotiation or litigation processes using licensed attorneys. According to Henry, these advertisements were false or misleading.

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MASSACHUSETTS AG SUES OVER ALLEGEDLY MISHANDLED ASBESTOS DEBRIS FROM DECOMMISSIONED POWER STATION

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

On February 14, Massachusetts Attorney General (AG) Andrea Joy Campbell filed a civil lawsuit against Holtec Decommissioning International LLC and its affiliate Holtec Pilgrim LLC (Holtec), alleging the improper handling of asbestos-containing demolition debris in violation of the Commonwealth's Public Health Law. The Commonwealth is seeking civil penalties of \$25,000 for each day of violation, as well as a permanent injunction that would require Holtec to comply with the state's Air Act and the air regulations that are promulgated under the state's Public Health Law. Shortly after the filing, the parties announced that they are working toward a settlement that could require Holtec to pay somewhere between \$200,000 to \$500,000.

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Alcohol and Tobacco Updates

MASSACHUSETTS COURT REJECTS STATE AG'S EFFORT TO VACATE ORDER IN SETTLED LIQUOR LAW DISPUTE

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

On January 26, a Massachusetts Superior Court [rejected](#) an effort by the Massachusetts Attorney General (AG) to vacate an order that cast doubt on the constitutionality of a new Massachusetts liquor law.

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US SUPREME COURT DECLINES TO HEAR CHALLENGE TO CALIFORNIA'S FLAVOR BAN

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

Over the past decade, at least five states and hundreds of localities have passed, or attempted to pass, laws banning flavored tobacco products. To date, litigants have brought many challenges to these laws, often arguing that such bans are preempted under the federal Family Smoking Prevention and Tobacco Control Act (TCA). This argument, however, has largely proven unsuccessful — a trend that continued in January when the U.S. Supreme Court [declined](#) to hear R.J. Reynolds Tobacco Company's challenge to California's ban on the sale of flavored tobacco products.

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TTB SEEKING PUBLIC INPUT ON POTENTIAL ALCOHOLIC BEVERAGE LABELING CHANGES

By [John West](#) & [Nick Ramos](#)

As we previously [reported](#), the Treasury Department released a 2022 report on [Competition in the Markets for Beer, Wine, and Spirits](#) (the Competition Report) recommending, in part, that the Alcohol and Tobacco Tax and Trade Bureau (TTB) revive or initiate rulemaking to consider labeling requirements that include alcohol and nutritional information per-serving, major food allergens, and/or ingredients. TTB has [announced](#) that it will hold two virtual listening sessions on this topic on February 28, from 10 a.m. to 2 p.m., EST; and February 29, from 1 p.m. to 5 p.m., EST. The deadline to register to virtually attend either session is February 27, 12 p.m., EST. Interested parties may register for either session [here](#). These listening sessions present a unique opportunity to provide input to TTB at the early stages of a rulemaking that could potentially affect labels across the industry.

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MORE STATES CONSIDER ESTABLISHING VAPOR PRODUCT DIRECTORIES

By [Bryan Haynes](#), [Agustin Rodriguez](#), & [Zie Alere](#)

We recently [reported](#) that several state legislatures are considering bills to establish vapor product directories this year — namely [Florida](#), [Indiana](#), [Missouri](#), and [Virginia](#). Throughout January and early February, similar bills have been introduced in [Arizona](#), [Hawaii](#), [Iowa](#), [Nebraska](#), [New York](#), [South Carolina](#), [South Dakota](#), [Vermont](#), [Washington](#), and [West Virginia](#). Additionally, a bill in [Oklahoma](#) would update the state's existing directory framework to be consistent with the proposals of these recent bills. The directories would allow states to prohibit the sale of vapor products that are not authorized by the U.S. Food & Drug Administration (FDA) or subject to a pending premarket application. Like the proposals discussed in our previous coverage, these bills are intended to reduce the proliferation of illicit vapor products.

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Cannabis Updates

COLORADO CANNABIS COMPANY CHALLENGES RECENT REVISIONS TO THE STATE'S MARIJUANA TRACKING REGULATIONS

By [Jean Smith-Gonnell](#) & [Michael Lafleur](#)

A Colorado manufacturer of cannabis-infused edible products is suing the Marijuana Enforcement Division (MED) of the Colorado Department of Revenue (CDOR) to challenge the validity of recent revisions to its inventory tracking regulations.

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RECREATIONAL MARIJUANA REGIME PASSES VIRGINIA GENERAL ASSEMBLY

By [Agustin Rodriguez](#) & [Zie Alere](#)

On February 28, the Virginia General Assembly passed [House Bill No. 698](#), which would legalize sales of recreational marijuana at retail in the Commonwealth. It now heads to the desk of Governor Glenn Youngkin, where its future is uncertain. In this blog post, we highlight key provisions of the proposed framework related to licensing, taxes, testing, and labeling.

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FEDERAL COURTS AND CANNABIS DISPUTES: A NEW PERSPECTIVE FROM *BARTCH V. BARCH*

By [Jean Smith-Gonnell](#) & [Carmen Williams](#)

On February 1, Senior U.S. District Judge R. Brooke Jackson of the U.S. District Court for the District of Colorado denied Mackie A. Barch (Mackie) and Trellis Holdings Maryland, Inc. (Trellis and together with Mackie, defendants) motion to vacate the original judgment entered into on September 7, 2022, awarding \$6.4 million to David J. Bartch (plaintiff) as a result of defendants' breach of contract. In reaching his ruling, Judge Jackson was unpersuaded by defendants' argument that the court lacks subject matter jurisdiction over this matter because the plaintiff's injury is not redressable by a federal court because marijuana is illegal under federal law, and federal courts therefore cannot adjudicate marijuana cases. Judge Jackson further went on to specify that the conduct at the center of this dispute (defendants' agreement to return plaintiff's ownership interest upon the successful licensing of Doctor's Orders Maryland (DOMD)) would not have "affected the amount of cannabis that the company [DOMD] cultivated or distributed" in violation of the Controlled Substances Act (CSA). The decision to ultimately defend and extend Article III jurisdiction in cases arising out of cannabis business disputes is an interesting shift that highlights the sway of public opinion to the side of the legalization of marijuana on the federal level.

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LAWSUIT HIGHLIGHTS THE COMPLEXITY OF REGULATING THE INTRASTATE USE OF MARIJUANA

By [Jean Smith-Gonnell](#) & [Cole White](#)

One of the most interesting aspects of marijuana law and policy in the U.S. is its tendency to strike at our most foundational democratic principles. In 2005, the U.S. Supreme Court held, in *Gonzales v. Raich*,^[1] that Congress has the power to regulate the purely *intrastate* cultivation, manufacture, distribution, possession, and use of marijuana under the commerce clause, even if the marijuana never crosses state lines, because marijuana-related activity has a "substantial affect" on *interstate* commerce. Several challenges have been made to this conclusion since *Gonzales* was decided, none of which have been successful to date.

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FROM "HIGH POTENTIAL FOR ABUSE" TO "ACCEPTED MEDICAL USE": TRACKING DEVELOPMENTS AND POSSIBLE OUTCOMES OF FEDERAL CANNABIS RESCHEDULING IN THE U.S.

By [Jean Smith-Gonnell](#) & [Cole White](#)

Whether you believe that cannabis legalization has occurred too quickly or too slowly, one thing is certain: recent developments herald a potentially seismic shift in federal cannabis policy in the U.S. Reflecting on our article from September, which discussed the [U.S. Department of Health and Human Services' \(HHS\) recommendation to the Drug Enforcement Administration \(DEA\) to reschedule cannabis from Schedule I to Schedule III of the Controlled Substances Act \(CSA\)](#), it is clear that the landscape continues to evolve rapidly. Since that publication, numerous noteworthy developments have unfolded, along with a growing discourse on the potential unintended consequences of such a reclassification. This article aims to catch readers up on the latest developments in federal cannabis legalization.

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Stephanie Kozol, Senior Government Relations Manager – State Attorneys General, and [Mac McCullough](#), Senior Privacy & Security Advisor, also contributed to this newsletter.

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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