

Troutman Pepper State Attorneys General Monitor – November 2021

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Troutman Pepper's State Attorneys General team combines legal acumen and government experience to develop comprehensive, thoughtful strategies for clients. Our lawyers handle individual and multistate AG investigations, proactive counseling and litigation, and manage ancillary regulatory issues. Our successful approach has been recognized by *Chambers USA*, which ranked our practice as a leader in the industry.

REGULATORY OVERSIGHT BLOG

Make sure you [subscribe](#) to Troutman Pepper's [Regulatory Oversight](#) blog to receive the most up to date information on regulatory actions.

Regulatory Oversight provides 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 include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

STATE ATTORNEYS GENERAL ELECTION UPDATE

DOWN-TO-THE-WIRE VIRGINIA ATTORNEY GENERAL RACE PRESAGES OTHER CLOSE RACES IN 2022

By [Bonnie Gill](#), [Chris Carlson](#), and Ketan Bhirud

The attorney general race between Democratic incumbent Mark Herring and Republican challenger Jason Miyares could easily have slipped off the radar. Of the 43 states that elect attorneys general, Virginia is the only one holding an election in 2021 — and the simultaneous race for governor has taken top billing. But that's not the case here. Because the issues in that race are similar to those faced by voters in many states just one year from now, the race is being followed closely nationwide. Accordingly, many see it as an early indicator for how attorney general races might play out next year.

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CALIFORNIA LAW UPDATES

CALIFORNIA PASSES CBD LAW THAT CONFLICTS WITH FDA GUIDANCE

By [Stephen Piepgrass](#), [Agustin Rodriguez](#), Christina Sava, and [Nicholas Ramos](#)

Governor Gavin Newsome recently signed [California Assembly Bill 45](#) (AB 45) into law, which, among other things, allows hemp-derived cannabidiol (CBD) to be included in any food, beverages, and dietary supplements sold in California. This is not only a break from California's prior position prohibiting CBD from being included in such products even as the State began to tax and regulate its cannabis industry, but it is also in stark contrast with the U.S. Food and Drug Administration's (FDA's) current position on the issue. Unless and until FDA changes its [guidance prohibiting CBD-infused food, beverages, and dietary supplements sold in interstate commerce](#), laws like California's will continue to add to a confusing and contradictory regulatory landscape. Thus, food and beverage companies should ensure they carefully monitor state developments on this issue, which may be inconsistent with federal law and guidance.

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CALIFORNIA PASSES BILL, ADDING NEW MONEY TRANSMITTER REQUIREMENTS

By [Keith Barnett](#), Timothy Butler, [Carlin McCrory](#), and Matthew White

On October 4, California passed a bill requiring a money transmitter to display a toll-free telephone number on its website through which a customer may contact the licensee for customer service issues and receive live customer assistance.

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DATA SECURITY UPDATES

OREGON ATTORNEY GENERAL REPORTS RISE IN DATA BREACHES

By [Ashley Taylor](#), Ketan Bhirud, and Namrata Kang

Data breaches and ransomware attacks are on the rise. On October 7, Oregon Attorney General Rosenblum [announced an increase in data breaches](#) reported to his office. The first nine months of 2021 involved 131 reported breaches, exceeding the 2020 total of 110. Financial Crimes Enforcement Network (FinCEN) also [announced an increase in ransomware-related](#) activities in the U.S. earlier this year. The first half of 2021 saw \$590 million reported ransomware activities, exceeding the 2020 total of \$416 million.

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AG ASSOCIATION MEETING REPORT – NAAG

2021 NAAG EASTERN REGION MEETING ON THE SURVEILLANCE ECONOMY

By Ketan Bhirud

The speakers at this conference discussed how regulators and law enforcement could help protect privacy and safety — while preventing discrimination — in an ever-increasing digital world. This article summarizes the conference.

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SUPREME COURT HEARINGS

SUPREME COURT HEARS ARGUMENT ON A STATE ATTORNEY GENERAL'S AUTHORITY TO DEFEND STATE'S LAWS

By Abbey Thornhill and Siran Faulders

On October 12, the U.S. Supreme Court heard oral argument in the case *Cameron v. EMW Women's Surgical Center, P.S.C.*, an appeal from the Sixth Circuit. Plaintiff abortion providers (collectively, "EMW") initiated this case, seeking to challenge the constitutionality of a controversial Kentucky law, H.B. 454. The law prohibits the "dilation and evacuation" abortion method commonly used in a woman's second trimester. However, the argument did not center on abortion. Instead, this case presented the question of whether the state attorneys general vested with the power the defend their states' law have the authority to intervene after a federal court of appeals invalidates a state statute when no other state actor will defend the law. The justices' questions for the litigants suggested that the Court is likely to say they do.

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TTB UPDATES

TTB TALKS HARD SELTZER AT CRAFT BREWERS CONFERENCE

By [John West](#) and [Nicholas Ramos](#)

The alcoholic beverage industry is known for its ability to create new, innovative beverages that do not always fit neatly into the traditional categories of beer, wine, and spirits. Hard seltzer is one example of a new, innovative beverage that has gained significant popularity in recent years. From a regulatory compliance perspective, it is challenging to determine what requirements apply to new, innovative beverages, such as hard seltzer, because they are not always clearly defined in federal or state laws. Thus, staying abreast of the views shared by regulators through both formal and informal guidance is important. At a recent Craft Brewers conference, representatives of the Alcohol and Tobacco Tax and Trade Bureau (TTB) made a [presentation](#) about how it regulates hard seltzers, which should be of interest to anyone currently selling, or interested in selling, hard seltzers.

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CFPB UPDATES

CFPB REPORT INDICATES CONSUMER CREDIT CARD USE TRENDS RETURNING TO PRE-PANDEMIC LEVELS

By Timothy Butler, [Keith Barnett](#), and Dominyka Plukaite**

On September 29, the Consumer Financial Protection Bureau (CFPB) released its [biennial report](#) to Congress regarding the consumer credit card climate. The report shows that the market's growth during the last few years reversed course in 2020. It also provides the latest research findings on consumer credit use, its cost, and consumers' access to credit, and highlights a few additional important findings.

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FIFTH CIRCUIT EXTENDS STAY ON CFPB PAYDAY LOANS

By [Keith Barnett](#) and [Carlin McCrory](#)

On October 14, the Fifth Circuit issued a one paragraph order to extend a stay on Consumer Financial Protection Bureau (CFPB) payday lending regulations currently challenged by the Community Financial Services Association of America Ltd. and the Consumer Service Alliance of Texas. The stay will allow small dollar lenders to postpone the June 2022 compliance date.

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ANTITRUST CHALLENGES

AMERICAN AIRLINES AND THE GOVERNMENT ACCUSE EACH OTHER OF PROHIBITING COMPETITION

By Ketan Bhirud, [Stephen Piepgrass](#), and [Barbara Sicalides](#)

The Antitrust Division of the U.S. Department of Justice (DOJ) and several state attorneys general are challenging the American Airlines Group, Inc. (American) collaboration with competitor JetBlue Airways Corp. (JetBlue). Both sides to the dispute accuse the other of harming competition among airlines. On September 21, the DOJ and its state attorney general partners filed suit in Massachusetts federal court to block a series of agreements between the airlines called the "Northeast Alliance" (Alliance). The plaintiffs argue this Alliance will reduce competition between American and Jet Blue to the detriment of consumers. On the other hand, American and JetBlue say that the Alliance allows them to better compete with other major airlines.

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FTC UPDATES

FTC REPORTS TO CONGRESS ON DATA SECURITY AND PRIVACY PRIORITIES

By Timothy Butler, [Elizabeth Waldbeser](#), [Carlin McCrory](#), and Matthew White

On September 13, the Federal Trade Commission (FTC) released a [report](#) to Congress that highlights the agency's recent efforts to protect Americans' privacy, announces the agency's priorities for future data security and privacy protection efforts, and urges Congress to allocate more resources to the agency so it can expand its data security and privacy protection efforts.

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FTC PUTS EVERYONE ON NOTICE OVER DECEPTIVE ENDORSEMENTS

By Ketan Bhirud and Matthew Fay

On October 13, the Federal Trade Commission (FTC) issued over 700 “Notice of Penalty Offenses” to a broad swath of businesses, warning them that using endorsements that deceive customers could result in significant civil penalties.

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SEC OVERSIGHT

THE SPAC AGE: SEC MOVES TO INCREASE OVERSIGHT AMID METEORIC RISE IN USE OF “BLANK-CHECK” COMPANIES

By Ketan Bhirud and Whitney Shephard

In early September, a U.S. Securities and Exchange Commission (SEC) advisory committee endorsed rule changes to increase disclosure regulations for special purpose acquisition companies (SPACs). For almost a year now, the SEC has signaled that there may be a need to beef up rules around SPAC mergers, and this recent move all but confirms its plans to do so. SEC Chairman Gary Gensler, who pushed for stricter investor protection, asked staff to “look closely at each stage of the SPAC process to ensure that all investors are being protected.” And while any action on SPAC regulation changes likely remain months away, the agency listed the matter as a “rulemaking priority.” If the previously issued guidance, public warnings from SEC officials, and [a July 2021 enforcement action](#) are any indication, the SEC will most likely look closely at stock dilution, SPAC founder incentives, conflicts, and a safe harbor for mergers allowing the use of financial projections.

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BANKING REGULATIONS

CONSUMER GROUPS AND STATE AGS PUSH REGULATORS TO TIGHTEN GUIDANCE ON BANK PARTNERSHIPS

By [James Stevens](#), [Christopher Capurso](#), and [Carlin McCrory](#)

On October 18, consumer advocate groups and 19 state attorneys general wrote comment letters, urging banking regulators to denounce “rent-a-bank” arrangements between financial institutions and fintechs or other third-party providers.

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CRYPTO UPDATES

DOJ CREATES CRYPTOCURRENCY ENFORCEMENT TEAM

By Timothy Butler, [Keith Barnett](#), [Carlin McCrory](#), and Dominyka Plukaite**

On October 6, Deputy Attorney General Lisa O. Monaco [announced](#) the creation of a National Cryptocurrency Enforcement Team (NCET) to handle criminal misuses of cryptocurrency. According to the [press release](#), NCET will focus specifically on crimes committed in virtual currency exchanges, mixing and tumbling services, and money launderers. The team's additional duties will include assisting in tracing and recovering assets lost to fraud or extortion, including cryptocurrency payments lost to ransomware groups.

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***Dominyka Plukaite is not licensed to practice law in any jurisdiction; bar application pending in Georgia.*

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

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