

# Troutman Pepper State Attorneys General Monitor – September 2022

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## REGULATORY OVERSIGHT PODCAST

### THE “PATTERN” OF RACKETEERING ACTIVITY

This edition of *Regulatory Oversight* spotlights recent *RICO Report Podcast* episode “Pattern of Racketeering Activity,” featuring two firm Regulatory Practice Group attorneys Chris Carlson and Mary Grace Metcalfe. In this episode, podcast host and White Collar and Litigation Partner Cal Stein sits down with Chris and Mary Grace to discuss the RICO element requiring a pattern racketeering activity:

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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.

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## MULTISTATE INVESTIGATIONS

### REGULATORY INVESTIGATION RED FLAGS THAT SIGNAL SIGNIFICANT RISK FOR COMPANIES

By [Ashley L. Taylor, Jr.](#), [Stephen C. Piepgrass](#), [Ryan J. Strasser](#), [Ketan Bhirud](#), and [Daniel Waltz](#)

*This article was originally published on August 19, 2022 in [Reuters](#) and is republished here with permission.*

Companies today face increased risks from numerous regulatory bodies at the municipal, state, and federal levels. As we discussed in our previous article, “[Preparing Companies for a New Day in Multistate AG Investigations](#),”

sophisticated regulators — at all levels of government — have ramped up investigations and increased coordination, ensnaring more companies in significant regulatory actions.

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## CANNABIS UPDATES

### CANNABIS ADMINISTRATION AND OPPORTUNITY ACT INTRODUCED IN THE SENATE: WILL IT LIVE UP TO THE HYPE?

By [Agustin Rodriguez](#), Tanner Brantley, Christina Sava, and [Thomas C. Tilton](#)

On July 21, the Cannabis Administration and Opportunity Act (CAOA), a comprehensive bill to decriminalize, regulate, and tax cannabis, was introduced by Senate Majority Leader Chuck Schumer (D-NY), Senator Cory Booker (D-NJ), and Senate Finance Committee Chairman Ron Wyden (D-OR). According to the [senators' press release](#), the CAOA aims to “work towards reversing the many injustices the failed War on Drugs levied against Black, Brown, and low-income people,” promote safe use of cannabis products, and facilitate potentially \$45 billion or more in annual sales in the cannabis industry by 2025.

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### CANNABIS RESIDENCY RULES TOPPLING? FIRST CIRCUIT IS THE FIRST DOMINO TO FALL

By [Agustin Rodriguez](#), Christina Sava, and [Michael Jordan](#)

Certain states where cannabis (or marijuana) is legal have long been getting away with a practice that has been declared unconstitutional in almost all other contexts: giving their residents preferential treatment over nonresidents when issuing permits to operate a cannabis business. Earlier this year, [we wrote](#) about the widespread use of residency rules in the cannabis industry and their conflict with the U.S. Constitution's dormant commerce clause, which has been cited as protecting this country's commerce against “the evils of ‘economic isolation’ and ‘protectionism.’” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). At that time, one case challenging residency rules made it to a federal appeals court, and we eagerly awaited the result.

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## NEVADA FALSE CLAIMS ACT

### TRAVEL COMPANIES IN NEVADA FALSE CLAIMS ACT ACTION APPEAL TO THE NEVADA SUPREME COURT

By [Ryan J. Strasser](#) and Rachel Miklaszewski

In 2020, two Las Vegas communications consultants brought a lawsuit against a group of top online booking companies. The complaint alleges that the defendant travel companies avoided paying hundreds of millions of dollars in hotel room taxes by buying the rooms at discounted prices, selling them to consumers at higher rates, and then, paying taxes only on the discounted price — not the actual sale price. On July 13, Clark County District

Court Judge Mark Denton refused to reconsider his denial of the defendants' motion for summary judgment, and earlier in the year, he denied the defendant's motion to dismiss the *qui tam* plaintiffs' claim under the Nevada False Claims Act (Nevada FCA). However, as of August 3, those companies appealed the lower court's decision to the Nevada Supreme Court, arguing that a *qui tam* lawsuit cannot be maintained when the government subsequently files a lawsuit on the same conduct (but alleging different claims).

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## TOBACCO UPDATES

### IOWA ATTORNEY GENERAL BRINGS SUIT AGAINST PARTICIPATING MANUFACTURERS TO THE MASTER SETTLEMENT AGREEMENT

By [Agustin Rodriguez](#), Christina Sava, and [Chris Carlson](#)

On July 28, the Iowa attorney general's office filed [suit](#) against Philip Morris, USA, R.J. Reynolds Tobacco Co., and 16 other tobacco companies, accusing them of defrauding Iowa of over \$133 million by allegedly engaging in bad faith disputes over amounts due under the Master Settlement Agreement (MSA).

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### STATE TAXATION OF REMOTE SELLERS: US SUPREME COURT DECLINES REVIEW OF FIRST POST-WAYFAIR DECISION FROM A STATE SUPREME COURT

By [Bryan Haynes](#), [Agustin Rodriguez](#), Robert Claiborne, and [Nick Ramos](#)

In determining whether the commerce clause of the U.S. Constitution prohibits a state's taxation of a remote seller, the U.S. Supreme Court for decades has upheld a tax if (1) there is a substantial nexus between the taxing state and the taxpayer; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to the taxing state's provision of services to the taxpayer.

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### FDA CIGARETTE GRAPHIC WARNING RULE DELAYED...AGAIN

By [Bryan Haynes](#) and [Nick Ramos](#)

In a prior [update](#), we discussed the ongoing legal challenges to the U.S. Food and Drug Administration's (FDA) March 2020 rule on a graphic-warning requirement for cigarettes. Initially slated to take effect June 18, 2021, the rule would require 11 new textual, health warning statements accompanied by color, "photorealistic" images displayed on the top 50% of the front and rear panels of cigarette packs and top 20% of cigarette ads. Tobacco manufacturers have challenged the FDA's graphic-warning rule in federal courts in Texas and the District of Columbia. See *R.J. Reynolds Tobacco Co. v. U.S. Food & Drug Admin.*, No. 6:20cv176 (E.D. Tex. Apr. 3, 2020); *Philip Morris USA, Inc. v. U.S. Food & Drug Admin.*, No. 1:20cv1181 (D.D.C. May 6, 2020). And, in each case, the manufacturers have asked the court to postpone, or the court has postponed on its own, the effective date of the rule for various reasons. In keeping with this trend, Judge Barker of the Eastern District of Texas

recently issued an order, granting the plaintiffs' request for postponement and therefore delaying any obligation to comply with the Tobacco Control Act's warning requirements and the deadline tied to the effective date of the FDA rule for an additional 90 days, until October 6, 2023.

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## TENNESSEE AG UPDATE

### NEW AG ON THE BLOCK: TENNESSEE ATTORNEY GENERAL JONATHAN SKRMETTI

By Ketan Bhirud, [Namrata Kang](#), and Stephanie Kozol\*

On August 10, the Tennessee Supreme Court announced that Jonathan Skrmetti, Governor Bill Lee's top legal counsel, will become the state's new attorney general on September 1.

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*\*Stephanie Kozol is a Senior Government Relations Manager – State Attorneys General with Troutman Pepper and is 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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