
Regulatory Oversight Podcast: 12 Days of Regulatory Insights - Day 8: Inside the Texas AG's Office**Speakers: Chris Carlson and Lauren Fincher****Date Aired: December 16, 2024****Chris Carlson:**

Welcome back to the special holiday edition of our *Regulatory Oversight* podcast, "The 12 Days of Regulatory Insights." This 12-episode series is focused on highlights and trends from the past year in various areas, and designed to keep you, our listeners, informed and engaged during this holiday season.

I'm Chris Carlson, a member of Troutman Pepper's State Attorneys General team and Regulatory Investigations, Strategy, and Enforcement Practice. Before we get started, I want to remind all of our listeners to visit and subscribe to our blog, at [RegulatoryOversight.com](https://www.regulatoryoversight.com) so that you can stay up to date on developments and changes in the regulatory landscape.

Today I'm thrilled to be joined by Lauren Fincher, chair of Locke Lord's Administrative and Regulatory Practice Group and soon to be my colleague, to talk about major initiatives and actions that we saw from the Texas Attorney General's Office this year. Lauren has extensive experience handling state attorneys general investigations and I've known her and her work for a long time. She assists clients in navigating complex regulatory compliance matters and provides strategic counsel and enforcement actions across various industries.

Lauren, thank you for joining me today. Before we get to talking about Texas, what I really want to know is when you're joining an Atlanta-based firm, who you got in the SEC Championship game? You got Texas or you got the Bulldogs?

Lauren Fincher:

Chris, I got to say, hook 'em. As much as I am excited to meet all of our new colleagues when our firms come by, I have to stay true to being here at Austin and hook 'em. Go UT.

Chris Carlson:

Well, now that we have that on the record, what we really are excited to talk to you is about the Texas space. What are the major initiatives and actions taken by the Texas Attorney General's office in 2024?

Lauren Fincher:

Chris, the Texas Attorney General Administration is a very active one, as I think everybody knows who follows them. But 2024 was certainly a very busy year for multiple divisions of the AG's office. As I sort of think back and reflect on the year, there are certainly certain key areas that the AG have been active in. Some that come to mind are first, continuing in the opioid litigation space. Second, what I would call a political issue that have unfolded in this election year, including those around voting rights. And third, what I would say is sort of the AG delving into the artificial intelligence world that we all have heard so much about.

So, just briefly on the first topic, the Texas AG, like many states, has been involved in the opioid litigation for a number of years, and this year was no different. We saw a number of settlements that were publicized through the Texas Attorney General's Office in connection with the state's claims related to the opioid epidemic.

I think the startling number here is really the benchmark of the total amount that AG Paxton has obtained in settlement, which has risen to \$3 billion to date. I'd next like to flag what I called for the election year efforts. We saw a lot of activity in the Texas Attorney General space over various issues and the AG spent a substantial amount of time investigating and pursuing claims concerning multiple hot button political issues. I think I would name first, sort of the lawsuits either filed by or defended related to alleged illegal voting concerns. And then second, the U.S. Department of Health and Human Services litigation related to some recently enacted rules and regulations on abortion issues.

I think, interestingly, again, in this election year, the voting rights issues were multifaceted. You saw the Texas AG investigating some political fundraising platforms with concerns over what the AG labeled to be straw political donations and really conferred about the transparency related to certain donations. Then also, there was a lawsuit that was filed against the Department of Homeland Security Secretary and other members of the Biden-Harris administration in October. In that suit, the AG alleged that the defendants refused to comply with federal law, which required them to provide assistance to states in verifying citizenship status of potentially ineligible people registered to vote.

So again, those are just some high-level examples, but I always do think it's interesting to sort of track the AG activity in election years and really see kind of where the rubber meets the road in terms of what the priorities are of the administration.

In terms of the third area that I highlighted a moment ago is, I think, notable in part because of the AG's own characterization of the first-of-its-kind artificial intelligence settlement. There's been kind of a lot of paper and articles dedicated to the settlement, but it was noticeable in that this was really the first time that Texas AG had entered into a settlement under the Deceptive Trade Practices Act governing an artificial intelligence company, and essentially what were the company's representations around the various metrics that it used for its products.

Ultimately, that settlement took the form of assurance of voluntary compliance, which essentially means it was an agreed settlement where that company agreed to make changes about the clear and conspicuous nature of their disclosures surrounding that AI products. All that to say, we've all heard quite a bit about AI. It's not going anywhere. I think the unprecedented progress and really continued development of AI in 2024 and looking into 2025 will make that a hot topic going into the next year.

Chris Carlson:

Lauren, thank you. You're giving me a lot to unpack here. Let's start with your third takeaway and work backwards. For someone who sits in Richmond, it was a little surprising to see Texas have a first-of-its-kind AI settlement. Was it surprising for someone who sits in Austin to see a Republican attorney general really focusing on and really advocating for a first-of-its-kind and novel resolution?

Lauren Fincher:

I'm going to say no, Chris, sitting here in Austin. I worked on Texas AG Matters for a number of years now and it's not a surprise to me because the AG's office here in Texas has always viewed itself as being on the forefront of various cutting-edge issues. I think the latest stat that I heard reported is that I think there are over 200 companies on the S&P 500 that cited AI somewhere in their quarterly earnings calls. And I think with that kind of exposure, there's no way that the Texas AG is not going to be kind of on the forefront. So, I really wasn't surprised in that respect.

I'll also say that over the years I've really observed in comparison to other state attorney's general offices, the Texas AG always finds sort of new, notable, novel, creative ways to utilize the State Deceptive Trade Practices Act to really address new issues in the marketplace and also the priorities of the administration. Obviously, the AI case would be a great example of tackling that in the marketplace. Although, it's somewhat unrelated, it reminds me of the efforts that the AG's office in Texas has undertaken this year to creatively use the DTPA to address other priorities of the administration.

One thing that comes to mind is that there was a lawsuit filed this year against a doctor in Texas that was accused of essentially providing certain gender transition treatment to children. There was state law issues about the health code there. But I think for more interestingly and on point is kind of a creative use of the DTPA there, and the allegation was essentially that the doctor had represented that certain testosterone prescriptions were for something other than transitioning a child's biological sex, and that was sort of the debate there, and that was kind of the DTPA hook and tie-in.

So, I think this administration is very active and always going to be creative and thinking through how to best protect consumers and utilizing the DTPA as a really strong tool to do that.

Chris Carlson:

We always talk about in our state AG practice how state UDAP statutes can be so flexibly used and allows for – it allows for prosecution even of novel technologies. You mentioned the DTPA, the Deceptive Trade Practices Act in Texas, what prism do you think the Texas AG and their consumer protection unit is looking at practices? Certain states, you'll hear an AG say, "I'm viewing it from a prism of what's right." How is he evaluating the use of that prosecutorial tool?

Lauren Fincher:

That's very consistent in how Texas views it as well. I also think that it's going to generally be used as a tool to scout out potential misrepresentations to consumers in any circumstance in which there's a new technology or other issue that is really putting consumers at a significant disadvantage in terms of their purchasing power. They're not informed consumers.

I think, as I reflect back on some of the, what I would say, more traditional consumer protection-type efforts that have unfolded this year, they're in that realm. The AG has pursued issues where there have been pricing schemes that are bait and switch schemes. Then I think, anywhere from sort of an uninformed consumer because of misrepresentations or failure to provide adequate or accurate information, all the way down the line to actually fraudulent

schemes, which the AG's office in Texas pursues quite regularly in various departments from consumer protection, all the way to, for example, like the Medicaid fraud control unit, investigate and prosecute and settle issues related to healthcare fraud, which could be anything from a fraudulent prescription to fraudulent billings. So, that's sort of the other end of what I would say the DTPA issues we're seeing from the consumer protection prism.

Chris Carlson:

That's very helpful. Taking a flip side towards not just the consumer protection prism, but the antitrust prism of consumer protection laws. We've seen just a more aggressive stance and antitrust across the country in a number of areas. Are you seeing that from Texas as well?

Lauren Fincher:

Absolutely, 100%. I would say in a year's cast, you could sort of catalog the number of what I would call these more traditional deceptive schemes, deceptive consumer fraud schemes. There has been some of that this year in terms of the Texas AG work, but there have been a significant number of antitrust efforts. I think what the really interesting thing to do is to look at all of those antitrust efforts and say, "What do they all have in common?" It truly is that consumer protection angle.

There have been a number of efforts by the Texas AG this year to really address what I would call consumer monopoly concerns are also circumstances in which the AG has perceived that competition in a particular industry has been severely limited. That has gone from a diverse number of industries, including social media to live entertainment, advertising, you name it.

If you really look at all of the efforts, and I know we don't have a ton of time to really survey all of them today, but if you look at the various press releases and various efforts in the antitrust division, you'll see that they all have that in common. There is a consumer protection concern related to what these markets look like in the various industries. That's certainly been a very interesting development to watch and kind of see what the state and federal political and consumer protection issues are that are involved.

Chris Carlson:

You mentioned Texas' press releases, and I'd be remiss to say that I think their communications director grows my attention more than any press release in the country.

Lauren Fincher:

Absolutely. They need a raise. Whoever that is.

Chris Carlson:

The last topic you touched on when you were summarizing 2024 was data privacy. When data privacy really became a focus of the states, when the California Consumer Protection Act was passed a number of years ago. This really seemed to be a democratically led issue. You had Colorado passed legislation, you had Washington passed legislation, you had Vermont and Connecticut really emphasizing their data privacy teams. This year has seemed like data

privacy has been in the realm of Texas. Why has that changed and do you see that continuing to, Texas continuing to shape that landscape as the years move forward?

Lauren Fincher:

Yes, Chris. I don't know that I would characterize it as a change. I think I would characterize it more as a renewed focus and an intense effort. So, really, what I think 2024 has been, has been providing that structure, resources, manpower, and really a demonstrated priority to pursue those issues. For some of our listeners who may not be familiar, in 2024 this year, earlier this year, the Texas AG launched a major data privacy and security initiative, which is aimed at enforcement of privacy laws in the state, like the Data Privacy and Security Act, which coincidentally is being counted and discussed as a potential for a model National Law. The Identity Theft Enforcement and Protection Act, the Biometric Identifier Act, and federal laws such as the Children's Online Privacy Protection Act, and HIPAA.

As you can probably guess from the long list of those laws, we do expect Texas AG's efforts on data privacy to be substantial and wide-ranging. This particular team is located inside the Consumer Protection Division at the Texas Attorney General's Office. Based on my observations to date, I do think it's important to flag that this team is on track to become one of the largest and most active data privacy and security teams in the country, and I think no doubt, a leader among other state AGs as well.

Already this year, we have seen data privacy efforts in the realm of capturing use of personal biometric data in Texas. As a practitioner, I guess perhaps more interesting for me has been the observation of the Texas Attorney General's Office and this new data and privacy team using a tool that's called to see violation notice to explore enforcement in this area. So essentially, it's a notice of violation that alerts a company to the fact that the Texas AG's office believes that there is some issue in the data privacy and security realm, and then it provides them a notice and cure period for that.

The focus at the tail end of this year has seemed to be on location data in particular for consumers. This is not really a new area. I think those who follow some of the privacy issues are aware of enforcement efforts related to what I'll call sort of data brokers, right? Just buying and selling location data. But the Texas AG efforts at the tail end of this year has really focused on the apps as well and companies that provide the apps and actually collect that data.

So, I think that'll be really interesting to see how that tool evolves and how those notices are issued, what frequency at which the notices are issued as we head into 2025. I think for the companies out there listening, take heed and make haste when you get that notice of violation and make sure you're in communication with the AG's office to timely respond.

Chris Carlson:

That's fascinating, the notice of violation process, just thinking through how that aligns with Attorney General Paxton's priorities. As we move forward in the 2025, final thoughts on what we should expect from the Attorney General and his office?

Lauren Fincher:

Well, Chris, none of us have a crystal ball. I think we all wish we did. But I think if you look the Texas AG's inquiries in 2024 and actions, as well as trends among other state AGs and really seeing a shifting of priorities, issues that have really been of note in the past few years, like the opioid litigation that we mentioned earlier. I do expect that there are probably at least four areas of what I would say would be new or increased focus in 2025 for the Texas AG.

First, I think we can expect the Texas AG to continue pursuing matters related to hot-button political topics in 2025 and beyond. We know the incoming Trump administration will be looking at extensive programming concerning deportation and immigration. Given the Texas AG's history and of course, Texas' large border with Mexico, I think we can expect Texas AG to be involved and probably leading the way on some of those efforts, and I think there are other related political issues that I think of interest to the administration that will probably see an active AG in that realm.

Second, I think Texas will continue to follow some state AG national trends, investigating and looking into practices and policies of certain social media companies that it wouldn't be the first time that they've done it. They've certainly done it in the past, but I do think that there was going to be probably a renewed effort in that realm.

Third, we've already mentioned today, artificial intelligence, it's everywhere. I think that's going to continue. I think, in particular, we should be watching for the intersection between Generative AI and then alleged misrepresentations under the Texas DTPA. I do think that that's going to be sort of a ripe area for continued pursuit, the AG efforts.

Then fourth, would be the topic we just ended on, which again, is the data privacy and security. The AG team is growing. It's very capable, very active, and I expect that we are going to see much more from them in 2025.

Chris Carlson:

Well, I'm not going to hold you to it. I agree on all four of your hypotheses. I think data privacy and AI are really a focus across the country and it's not surprising to see Texas leading on these issues.

Lauren, I want to thank you again for joining me today. I can't tell you how pumped I am for January 1 to finally become colleagues. I know our listeners enjoyed your valuable insights and we're just pumped to have you on the team.

I want to thank our audience for tuning in to the special holiday series. Tune in next time as we continue our "12 Days of Regulatory Insights" series. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you use. We look forward to seeing you next time.

Copyright, Troutman Pepper Hamilton Sanders LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman Pepper does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper. If you have any questions, please contact us at troutman.com.