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What We're Watching: State Attorneys General Offices in 2025

As the Oval Office and Congress flip to Republican control, we expect more state AG-led efforts to impact public policy.

Shortly after the New Year, we gathered together attorneys from our State Attorneys General team to find out what trends and developments they are following as we prepare for a second Donald Trump administration. State AG offices were beehives of activity during the Biden administration, and we expect that activity to continue; however, its focus—and locus—will likely change, according to the team.

Here are some of the highlights of that discussion where we sought to answer the burning question: what direction will state AG policy and enforcement take in 2025?

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Antitrust regulation and enforcement received a lot attention from the outgoing administration. I am going to be most interested to see if the Trump administration represents the sea change in antitrust policy that many foresee and how its policies will influence state AG efforts.

Focusing solely on merger review (my colleague Abe Souza will address additional antitrust concerns below), the last four years saw state AG offices collaborating with federal agencies and each other on investigations and

litigation, generally taking on a more active and expanding role in vetting corporate transactions. This approach led to high-profile lawsuits attempting to block mergers, including, of course, the Kroger-Albertsons tie-up, where eight states plus the District of Columbia joined a Federal Trade Commission (FTC) lawsuit, in addition to separate lawsuits filed by the AGs of Colorado and Washington. The deal was later called off by Albertsons, who then sued Kroger, highlighting the transactional risks of the government's heightened antitrust vigilance.

Many Democrat state AG offices are openly signaling that they intend to fill the anticipated void in scrutiny of corporate merger transactions by a more permissive Trump administration. We'll be paying close attention to federal and state AG activity early in the second Trump term to determine whether this interplay comes to fruition and to help clients understand what actions they might take to avoid antitrust scrutiny in the merger context, and to prevent investigations from escalating into litigation.

Rebecca Furdek | Partner
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I'm closely following the way last year's *Loper Bright* decision filters down to state AG offices, particularly in their expected challenges to Trump administrative agency actions. In *Loper Bright*, the U.S. Supreme Court overruled the *Chevron* doctrine, which for nearly 40 years required federal courts to defer to reasonable administrative agency interpretations of ambiguous statutes. Specifically, the Court ruled that *Chevron* deference is incompatible with the Administrative Procedure Act (APA), which mandates that courts reviewing agency actions "decide all relevant questions of law." Post-*Loper Bright*, courts should exercise their independent judgment in resolving statutory ambiguities, rather than reflexively granting deference to agency interpretations when a statute is ambiguous.

Loper Bright was praised by many as a means for courts to provide a "check" on federal administrative agencies interpreting statutes through rulemaking. Indeed, after the case was decided, many Republicans saw an immediate opportunity to challenge Biden administrative agency regulations. As control of the federal government has been seized by Republicans, it is likely that we will see *Loper Bright* "weaponized" from the opposite end of the political spectrum, including in state AG actions.

Several state AGs have said as much since the November 2024 election, particularly regarding potential Trump administration actions focused on ESG and DEI. A recent Bloomberg Law article highlighted how several Democrat state AGs view *Loper Bright* as a tool to advance a broader policy agenda, much as Republicans did last year while contending with the Biden administration.

In their prior analysis of *Loper Bright*, my colleagues reminded us all that it isn't just pro-agency interpretations that are subject to this new heightened judicial scrutiny, but "business-friendly agency rules and decisions will also now receive the same neutral adjudication on questions of law," something Democrat state AGs now recognize as a new opportunity. *Loper Bright* has massively changed the risk and compliance landscape; issues that may have been more or less settled under a *Chevron* standard may be very much in play under *Loper Bright*. Some of this exposure to risk will now be revealed by State AG enforcement priorities in 2025 and beyond.

Kyle Gilster | Partner
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A popular assumption since the November election is that, since both the White House and Congress will be led by Republicans, we will see more legislative initiatives in 2025. That might be the case; however, I believe much of the incoming administration's agenda will be pursued via executive orders, agency rulemakings, and other forms of administrative action. I expect this to be the case in instances where the Trump administration seeks to undo the previous administration's policies and when it seeks to expand upon existing policy.

This means it will be vital for corporate leaders to have a high degree of visibility into the rulemaking process. Policies that many considered to be "settled" could become unsettled very quickly, or conversely, areas that have been in flux for some time could find a resolution in short order. In either event, businesses across a range of industries will want to ensure that their perspectives are heard as early as possible in those areas where major policy shifts are being contemplated, such as international trade, labor and employment (especially immigration), antitrust, healthcare, and energy.

The first Trump administration was unconventional in many senses, and Trump 2.0 is likely to be the same in several important ways that bear upon public policy and government affairs. Like all presidential administrations, the Trump administration will have high-ranking members of

officialdom with specific policy portfolios who can be sounding boards for the business community; however, there are also influential persons in unofficial or newly created roles that could have significant parts to play in developing policy objectives and priorities.

Knowing the players—official and unofficial—who impact policy has never been more important, and some of these key influencers are not easily identifiable through traditional political party affiliation. They're also not just creatures of Washington, DC. Effective management of government affairs during Trump 2.0 will require a scope and understanding that expands beyond the Beltway, and state attorney general offices around the country occupy a large—and growing—area of influence that needs to feature in the business community's approach to public policy.

Julia Banegas | Associate
Washington, DC

It is well-attested that the 1997 Master Settlement Agreement with the tobacco industry served as catalyst for the type of multistate litigation led by state AGs that have become more or less commonplace. The increase of these lawsuits—both against the federal government and against private businesses—has held steady across administrations, regardless of party, and I expect the same will be true for the second Trump administration. The piece of this that I am following closely is whether this next era of state AG litigation follows the predictable red-blue political map or whether new and different coalitions emerge in response to specific issues or concerns.

To be sure, a lot of the prospective state AG activity will track partisan political concerns, but there are a few issues that have the potential to create broader coalitions that cross party lines. There is a subset of issues in the areas of public health and safety, cybersecurity, consumer finance, and technology with wide appeal. We saw something of this in the recent litigation concerning the opioid public health crisis.

We will continue to see coalition-style litigation in which resource-sharing and coordination increases the efficiency of state AG offices. Simply put, AG offices are more apt to get involved in lawsuits or take up causes with broad political appeal, even if the issue does not rate among the office's highest priorities.

Business leaders should continue to consider their own particular litigation and enforcement risk profile, because it might not necessarily align with a party platform or support or directly contradict what comes out of the Congress and Trump administration. Each state AG office is different, operating under its own set of priorities and subject to unique political influences. For businesses that have multistate operations, it is worthwhile to keep the pulse of state AG offices across the entire footprint of the company and to develop a sophisticated understanding of how each office approaches enforcement in those areas that are important to the company.

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Like several members of our team, I am following closely how antitrust policy shapes up under a second Trump administration. My colleague Matt Diehr has adeptly covered the merger angle above, and we will be watching to see how the FTC, DOJ, and state AG offices approach market conduct in the coming weeks and months. Complementary to antitrust merger enforcement activity, the Biden administration was very active in policing a variety of areas under the antitrust flag over the past several years, including price-fixing, market allocation, monopoly behavior, and unfair competition. If state AGs—particularly in states led by Democrats—perceive a lack of vigilance from the incoming administration on these market conduct issues, I can see the likelihood of an increase in state AG activity on this front.

Specifically, it is likely in this instance that state AGs would ramp up regulation, investigations, enforcement actions, and even potentially criminal charges to curb perceived anticompetitive conduct, including “no-poach” and non-compete agreements, wage fixing, monopolization, and other exclusionary conduct. Earlier this month, the New Jersey and New York AGs announced settlements concerning the use of “no-poach” agreements, which restrict workers’ rights to move from one job to another. Similarly, the senior assistant attorney general for antitrust in California has promised a more significant role from states in antitrust enforcement, noting that states are not beholden to federal priorities and that they “go where they want to—they beat their own drum.” California has not pursued criminal antitrust charges in decades, but it has hinted that it may do so under Trump 2.0, raising the once-unlikely possibility of other states resurrecting their long-dormant criminal antitrust enforcement regimes.

Another area to watch is non-compete agreements. State AGs may pursue non-compete agreements perceived to violate state law, even if the newly constituted FTC rescinds its own controversial non-compete-ban rule, which has already been put on hold. By way of example, the D.C. Attorney General has announced settlements resolving investigations into employers suspected of violating D.C.'s ban on non-compete agreements.

Even in Republican-controlled states, antitrust enforcement may continue to expand and evolve, particularly in areas that intersect Republican policy priorities, like curbing "Big Tech." For example, Republican AGs signed on to DOJ's 2020 lawsuit alleging that Google had unlawfully maintained a monopoly in online search.

There is a lot to watch for in the area of antitrust and market conduct, and so much of the substance of federal regulation and enforcement is still to be determined. But regardless of what comes out of the Trump administration, it is clear that state AGs will not be idly sitting by and waiting for Washington.