

State AG Enforcement Is Poised For Another Pivot In 2025

By **Paul Connell, Swain Wood and Jessica Shelnett** (January 30, 2025)

President Donald Trump began his second term on Jan. 20, and state attorneys general are poised for an enforcement pivot. Backed by a Republican-controlled U.S. House of Representatives and Senate, the Trump administration intends to make substantial policy changes, and attorneys general are preparing their response playbooks.

Gearing Up for Trump's Second Term

Democrats

There is little question that Democratic attorneys general will aggressively oppose the Trump administration, and this remains one of the largest vulnerabilities to Trump implementing his policy agenda.

Between 2017 and 2021, Democratic attorneys general filed a dizzying array of lawsuits against the Trump administration, ranging from legal opposition to challenges to numerous executive orders[1] to proposed regulations affecting the auto industry[2] and others across nearly every conceivable policy area.

While there is nothing new about attorneys general suing the federal government, the number and pace of lawsuits brought against the government by Democratic attorneys general during Trump's first term was astonishing. To give some sense of the increased pace of litigation, attorneys general sued the Trump administration over 150 times, whereas President Barack Obama faced a mere 55 lawsuits during his second term.[3]

Democratic attorneys general will continue the trend they set during the first Trump administration, but this time buttressed with millions of funds allocated by their state legislatures and cheered on by their governors.[4]

For example, California Gov. Gavin Newsom has proposed to spend \$25 million for the California Department of Justice and other state agencies to defend the state.[5]

Maryland Attorney General Anthony Brown requested additional funding, outside of an already earmarked \$1 million, to adequately respond to federal government actions that "threaten Marylanders." [6]

In New York, Gov. Kathy Hochul and Attorney General Letitia James are partnering to "address potential federal legal threats" by passing protective legislation and dedicating staff to the effort.[7]

ESG and DEI

More broadly, we also can expect to see Democratic attorneys general fill the void in an era



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of decreased federal enforcement and oversight, but work to defend areas that are key to the Democratic Party agenda or those that are seen as part of the Biden administration's legacy.

For example, a key priority will remain protecting environmental, social and governance initiatives, and diversity, equity and inclusion policies, both inside and outside of the government.

Minnesota Attorney General Keith Ellison stated that he's "prepared to file cases to uphold shareholders' rights and uphold the rights of owners and companies to do what they need to do to make their own decisions, and in that same vein, if they want to assess risk regarding certain products."^[8]

Even before the 2024 election, Illinois Attorney General Kwame Raoul, joined by 18 additional Democratic attorneys general, penned a letter to Fortune 100 CEOs and "Other Organizations Unfairly Targeted for the Commitment to Diversity, Equity, and Inclusion."^[9] The letter was intended to reaffirm the commitment of the attorneys general to "ensuring that diversity, equity, and inclusion programs continue to effectively address discrimination throughout the private and philanthropic sector."

These attorneys general emphasized that they "stand ready to come to the defense of [these] principles."^[10]

There is some evidence that the pressure from Democratic attorneys general is succeeding in keeping companies from pivoting away from DEI initiatives. For example, Costco recently received a proposal to investigate its practices. The proposal asserted that "[i]t's clear that DEI holds litigation, reputational and financial risks to the Company, and therefore financial risks."^[11]

In a proxy statement, Costco's board of directors unanimously recommended a vote against this proposal, arguing that "our [DEI] efforts are legally appropriate," and that "these efforts enhance our capacity to attract and retain employees who help our business succeed," "bring originality and creativity to our merchandise," and not just improve "financial performance, but ... enhance our culture and the well-being of people whose lives we influence."^[12]

Moreover, Democratic attorneys general will attempt to directly backfill enforcement gaps via strict enforcement of state regulations. As one example, if U.S. Securities and Exchange Commission chair nominee Paul Atkins relaxes the SEC's current posture with respect to cryptocurrency, as is anticipated,^[13] Democratic state attorneys general will likely step in, using their consumer protection authority to maintain a set standard in their respective states, especially in the absence of an overall federal framework that governs cryptocurrency.

As Democratic federal leaders struggle to align on a unified crypto policy,^[14] attorneys general like James will continue to leverage state laws to protect consumers.^[15]

Regardless of the areas that individual Democratic attorneys general choose to pursue, they are likely to partner with fellow attorneys general through a coordinated multistate litigation strategy, thus allowing them to select friendly district court venues when seeking injunctive relief on an emergency basis. While this is now a well-worn tactic, multistate litigation offers the attorneys general the ability to take a coordinated approach and share resources, which will be important considering the Democrats face a unified Republican-controlled Congress

and White House, and a U.S. Supreme Court leery of the administrative state.[16]

Republicans

Republican attorneys general find themselves for the second time in the last decade in the position of both trying to implement their own priorities while also defending the Trump administration's agenda.

Whether cracking down on the tech industry for suppressing conservative viewpoints, aiming to curb ESG and DEI initiatives,[17] or supporting law and order policies, the red state attorneys general will follow in the federal government's footsteps, especially those policies set by the U.S. Department of Justice, U.S. Department of Health and Human Services, and the U.S. Department of Homeland Security, as well as independent agencies such as the Consumer Financial Protection Bureau and the Federal Trade Commission.

This support is most likely to come in so-called friendly sue-and-settle lawsuits, intervening in cases brought by Democratic attorneys general or their politically aligned interest groups, and by filing amicus briefs. We also expect to see a messaging strategy employed by Republican attorneys general and using avenues outside of the legal arena to support the Trump administration, such as coordinated media campaigns, press conferences and roundtables to voice support for these policies.

"Woke" Policies

Over the past four years, Republican attorneys general have been active and forcefully pushing back against the Biden administration and so-called woke policies by the private sector.

For example, in July 2023, Tennessee Attorney General Jonathan Skrmetti, along with 12 other Republican attorneys general, wrote a letter to Fortune 100 CEOs reminding them to "refrain from discriminating on the basis of race, whether under the label of 'diversity, equity, and inclusion' or otherwise." [18]

The letter states that "every employer and contractor [is] on notice of the illegality of racial quotas and race-based preferences in employment and contracting practices," and "as the chief law enforcement officers of our respective states we intend to enforce the law vigorously." [19]

Moreover, Republican attorneys general have been outspoken with respect to ESG, since they see it as an attack on the energy sector, thereby weakening the nation's security posture.

In May 2023, a group of Republican attorneys general, led by Montana Attorney General Austin Knudsen, former Louisiana Attorney General Jeff Landry and former Utah Attorney General Sean Reyes, wrote a letter to "some of the largest asset managers in the United States." [20]

The letter argues that:

[m]any asset managers ... have made commitments that cast doubt on their adherence to fiduciary requirements, representations to consumers about their services, and compliance with antitrust laws ... asset managers have committed to use client assets to change

portfolio company behavior so that it aligns with the [ESG] goal of achieving net zero by 2050.[21]

Republican attorney general efforts have continued on this front in alignment with Republicans in the House of Representatives. Given the Trump administration's stated intention to attack ESG across the board, there is little question that Republican attorneys general will continue to serve as a force multiplier.

Big Tech

Republican attorneys general have also been intent on eliminating perceived censorship in Big Tech, and this focus is expected to continue. Attorneys general have also attacked the tech industry for alleged antitrust violations. We can anticipate that more Republican attorneys general will investigate and scrutinize the leading tech firms across the board.

Energy

The energy sector will be among the most prominent areas where Republican attorneys general will dedicate resources in 2025 — to support the efforts of the Trump administration, to increase the nation's output of oil and natural gas, and to defend the likely revocation of waivers issued by the U.S. Environmental Protection Agency under the Biden administration.[22]

Additionally, Republican attorneys general will focus on eradicating many last-minute executive orders issued by the Biden administration, including those that removed land and offshore waters from further energy exploration.[23] Given the importance of the energy sector to Texas, Louisiana, Oklahoma, Montana, North Dakota, West Virginia, Wyoming, Alaska and South Dakota, there will be no shortage of litigation involving the attorneys general from these states.

In this vein, particular attention should be paid to West Virginia Attorney General J.B. McCuskey, who will undoubtedly continue the legacy of his predecessor, now-Gov. Patrick Morrisey, with respect to litigation in the U.S. Court of Appeals for the District of Columbia Circuit and Supreme Court involving the Clean Air Act and other federal regulations that could inhibit the economy of the state.[24]

Common Ground

While attorneys general have increasingly found themselves on opposite sides of many issues dating back to the passage of the Affordable Care Act under Obama, there are areas where Democratic and Republican attorneys general have common ground and can work together to address problems.

These include bipartisan efforts with respect to consumer protection, combating human trafficking and organized retail crime, as well as ongoing efforts to fight heroin and fentanyl trafficking.[25]

This year, both sides of the aisle will continue to scrutinize the tech industry, especially with respect to emerging privacy and data security issues around artificial intelligence. In the broader tech space, attorneys general will likely continue to focus their attention on protecting minors, demonstrated most recently by a bipartisan group of attorneys general teaming up to sue a leading social media platform for "misleading the public about the safety of its platform and harming young people's mental health." [26]

Conclusion

What does all this mean for 2025?

First, this will be an incredibly busy year for attorney general enforcement as the Trump administration rolls out its ambitious policy agenda, and as cabinet nominees are confirmed and begin to take over the reins of their agencies.

To that end, now is a good time for companies to be proactive and position themselves for potential enforcement led by attorneys general. Companies should assess risks and evaluate their internal compliance efforts. For companies with a substantial business presence in a state with a newly elected attorney general, opening a communication line with the attorney general can pay substantial dividends down the road.

Second, keep an eye on the six new attorneys general that will take office this month. Newly elected Democrats are North Carolina's Jeff Jackson, Oregon's Dan Rayfield and Washington's Nick Brown.

The three newly elected Republican attorneys general include West Virginia's J.B. McCuskey, Utah's Derek Brown and Pennsylvania's Dave Sunday, who was the only attorney general candidate to flip political control of a seat this cycle.

All of the new attorneys general bring impressive backgrounds to their offices, ranging from service in Congress to substantial experience as state or federal prosecutors. Importantly, new attorneys general typically come into office with their own priorities, which can vary substantially from those of their predecessors.

In addition, the appointment of new chief deputies, solicitors general and consumer protection chiefs in these six offices bear close scrutiny. These key personnel changes within the "front office" can dramatically alter the course of ongoing litigation in some circumstances, and will almost certainly lead to a shift in the type and scope of investigations brought by these offices.

Overall, Republicans now hold the attorney general seat in 28 states, and Democrats control 23, including the District of Columbia. And while the overall partisan makeup of attorneys general is not itself critically important, the specific political dynamics in Pennsylvania bear watching as Democratic Gov. Josh Shapiro must now contend with an attorney general of the other party.

Finally, because attorneys general now work closely with their political allies in Congress, keep an eye on congressional investigative committees — in particular, the House Judiciary Committee, which has jurisdiction over a wide range of areas relating to the "administration of justice," including antitrust, immigration and civil rights.[27]

Chaired by Rep. Jim Jordan, R-Ohio, this committee played a key role in raising the prominence of the concerns around ESG since 2021, led the national Republican effort against ESG, and has worked in a coordinated manner with Republican attorneys general with respect to messaging and investigations around this issue. There is little reason to believe that this committee won't continue to help set the tone for attorney general activity in 2025.

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