

# State Attorneys General

As their state's chief legal officer, state attorneys general (AGs) wield broad authority to investigate and take action on virtually any subject and in any industry. With the increasing use of the office as a springboard for higher political ambitions, AGs across the country are continuing to grow in prominence, power, and influence. Any company that hires employees, makes or sells a product, offers a service, conducts marketing, or engages with consumers may be subject to scrutiny by an AG.

Cozen O'Connor was one of the first firms to establish a team dedicated to representing clients in AG investigations and litigation, and counselling clients on state AG matters. Our attorneys work at the cutting edge of issues of critical importance to AGs, including antitrust, cybersecurity, data privacy, consumer protection, the environment, and labor laws. We serve a wide range of clients, from nimble start-ups to Fortune 50 companies. With more than 40 years' experience, and backed by the resources of an Am Law Global 100 firm, we help companies analyze and interpret AGs' interests and understand how those interests inform their enforcement and policy priorities. We actively engage in dialogue with AG offices and regularly attend AG events and meetings to advocate on our clients' behalf. Our team is nationally recognized for our deep understanding of how every AG office operates and our relationships in the AG community. When AGs, either alone, in multi-state actions, or jointly with federal agencies, focus their attention on a company's activities or business practices and an investigation or lawsuit ensues, we have the experience and knowledge to mount a vigorous defense.

Members of the Cozen O'Connor State AG Group have served both in senior government and in-house positions, providing us with a unique perspective and ability to assist our clients. We have first-hand experience in the formulation of policy positions and long-standing professional relationships with key decision-makers. We also appreciate the imperatives of business, and are focused on achieving practical solutions that align with our clients' long term strategic business goals.

Our services include:

- Establishing and maintaining dialogue with AGs
- Anticipating and crafting creative solutions to address state AG and federal agency policy positions that impact clients
- Minimizing litigation exposure
- Defending vigorously against AG investigations and lawsuits

As the internet has revolutionized business, whole industries such as transportation, gaming, energy, financial services and hospitality have been turned on their heads by new entrants, new technologies, and new ways of doing business. We have particular experience working with clients to address the "square peg, round hole" issues brought by innovators in these "disrupted" industries, as well as in other industries such as banking, software and technology, pharmaceuticals, telecommunications, and nutritional and dietary supplements.

## AFFIRMATIVE OUTREACH EFFORTS AND CAMPAIGNS

State AGs can be powerful allies, or indeed adversaries, when it comes to causes and issues their constituents care about. Our team formulates and executes multi-pronged outreach and advocacy efforts to educate AGs and encourage action that supports our clients' business goals. Based on our in-depth knowledge of policy, state law, and individual AGs' priorities, we focus on those AGs where there is alignment with our clients' business objectives. We aim to control and shape our clients' narrative, before someone else does.



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## Related Practice Areas

- Antitrust & Competition
- Artificial Intelligence
- Class Actions
- Congressional Investigations
- Government and Regulatory Affairs
- Government Relations - Cozen O'Connor Public Strategies
- Health Care & Life Sciences
- Product Liability

State AGs can have a significant impact on the outcome of litigation as amici. Our team regularly works with clients to identify state AG champions who would have a stake in Supreme Court cases affecting their interests and have secured AG amicus support in the U.S. Supreme Court in many landmark cases, including *Concepcion*, *Twombly* and *linkLine*.

## INVESTIGATIONS AND LITIGATION

As the chief consumer protection advocates in their states, AGs regularly investigate and take enforcement action against businesses under their states' unfair, deceptive, and abusive practices laws (commonly referred to as UDAP laws). Our team has successfully resolved investigations and other enforcement actions involving all 50 states and the District of Columbia in connection with alleged violations of consumer protection laws involving sales, marketing, pricing, and labeling of products and services. On behalf of our clients, we also regularly work with consumer protection staff within state AG offices to address consumer complaints and resolve potential disputes before they escalate to lengthy and expensive litigation or investigations.

We also have extensive experience advising clients in antitrust matters involving state and federal competition enforcers, particularly as federal agencies have begun coordinating and undertaking joint actions with their AG counterparts. Our lawyers regularly handle investigations and high-stakes litigation involving state AGs and the Federal Trade Commission (FTC), Department of Justice (DOJ), and Consumer Financial Protection Bureau (CFPB). We regularly clear mergers with AG antitrust enforcers, and have represented clients with respect to the largest mergers in the telecommunications and pharmaceutical industries.

## COMPLEX DISPUTE RESOLUTION

With a deep bench of experience defending actions brought by AGs, our team defends companies facing civil investigative demands, subpoenas, and lawsuits. Given today's rapid escalation in active enforcement, AG action can result in critical business exposure. AGs may act alone, as part of a multi-state action, or in concert with other federal regulators such as the DOJ, FTC, CFPB, FCC, and SEC, as well as Congress. We have represented clients in large and complex "bet-the-company" suits that often present novel legal issues and involve coordinated action by numerous AGs. We work with our clients to facilitate favorable outcomes throughout the entirety of a matter from document collection, review and production, discovery, pre-trial motions, settlement negotiations, and, if necessary, trial.

## DATA PRIVACY AND INFORMATION SECURITY

Enforcement of data protection and privacy laws has become an area of intense focus for AGs in recent years. We advise companies in the retail, finance, healthcare, credit card, telecommunications, pharmaceutical, and other industries on cybersecurity, data privacy, and information security matters before AGs. We conduct data breach counseling, represent clients facing AG scrutiny for their data management practices, assist clients in navigating the complex data breach notification process, and help resolve AG inquiries into data loss. We also conduct internal investigations and counsel clients with respect to the legal, political, and public relations issues that result from data breach incidents.

## Experience

Won a motion to dismiss in a case brought under the Illinois False Claims Act in which plaintiffs alleged that the client violated the law by causing authorized retailers of certain phone devices to fail to collect and pay to the State Department of Revenue an Illinois-specific sales tax on a charge for setting up the devices at the time of purchase.

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Secured a favorable ruling for a trade association in its appeal before the National Advertising Review

Board.

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Represented a major telecommunications company in a consumer protection investigation by the Maryland AG's Office, related proceedings before the Maryland Office of Administrative Hearings, and subsequent appeals to the Circuit Court for Baltimore City and the Maryland Appellate Court.

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Represented Intuit in the successful negotiation of a multi-state agreement with 50 state attorneys general and the District of Columbia, resolving an investigation related to the company's advertising practices for free tax preparation services.

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Developed a comprehensive state attorney general (AG) strategy for DraftKings, a leading daily fantasy sports platform operator, in an environment of scrutiny that threatened the entire fantasy sports industry. Our team successfully responded to multiple state AG investigations and helped establish a regulatory framework for daily fantasy sports. Cozen O'Connor continues to provide advice and counsel to DraftKings with regard to advertising the marketing regulations and laws, including the Telephone Consumer Protection Act (TCPA), nationwide.

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Obtained an important judgment, on behalf of payments technology company CardX, LLC, that a long-standing Kansas law prohibiting credit card surcharges is unconstitutional as applied to the company's surcharging model. The court held that the statute violated CardX's First Amendment right to commercial speech by unjustifiably controlling how prices are communicated to consumers, and rejected the Kansas Attorney General's argument that the statute furthers a substantial state interest by encouraging businesses to charge lower prices to customers who pay with cash.

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Successfully represented a professional trade association in a Better Business Bureau National Advertising Division (NAD) challenge to certain marketing and advertising claims made by competitors seeking to disrupt the market.

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Represented Career Education Corporation ("CEC") in negotiations with 48 states and the District of Columbia in a 5-year investigation into the business practices of for-profit college operators, resulting in a settlement under which CEC was excluded from liability and any finding of wrong-doing. The investigation was part of an industry-wide effort by State AGs to police the for-profit educator sector and close schools found to be deploying unfair or fraudulent business practices.

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Advised medical cannabis start-up Dharma Pharmaceuticals in connection with the licensing and manufacturing phases of its business, helping the company navigate Virginia's complex legislative and regulatory processes.

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Advised an emerging financial services client in connection with its dealings with State AG offices, and represented the client in licensing and consumer protection matters.

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Represented a multi-level marketing company to help resolve multiple state Attorney General enforcement actions concerning its business practices.

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Represented a shared workspace company in connection with an investigation by two State Attorneys General (AGs) centering on the AGs' concern that the company's non-compete agreements, which were based on its operations before significant growth, constituted a restraint of trade. The company resolved the matter by developing a job-leveling framework and process for structuring non-competes for appropriate staff based on their job responsibilities. The representation included advising the company on reporting obligations following the settlement.

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Represented the operator of an online rewards website in negotiations with the Federal Trade Commission (FTC) following a data breach that allegedly allowed hackers to gain access to the

personal information of more than 6.5 million consumers. The representation included negotiating settlement terms with the FTC and advising on the implementation of a comprehensive information security program to ensure compliance with the settlement.

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Served as lead counsel for Wells Fargo Bank in negotiating a resolution between the bank and all 50 State Attorneys General and the District of Columbia, ending their investigations into various consumer claims regarding retail sales practices, auto collateral protection insurance and Guaranteed Asset/Auto Protection, and mortgage interest rate lock matters.

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Resolved multiple AG investigations under state escheat laws.

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Counseled an innovative provider of transportation services regarding state and federal antitrust and market access issues.

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Represented a leading dietary supplement company in an investigation by 34 state AGs and federal regulators regarding the labeling and marketing of its leading product.

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Secured AG amicus support in landmark U.S. Supreme Court cases for Fortune 100 companies and associations.

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Obtained AG antitrust clearances of multiple multibillion dollar mergers in a variety of industries.

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Represented a Fortune 100 company to reduce punitive damages award by \$100 million.

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Represented a major pharmaceutical manufacturer in private class action antitrust drug importation litigation in California and Minnesota.

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Represented a Fortune 100 pharmaceutical company to avoid AG antitrust investigations and lawsuits regarding foreign drug importations.

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Resolved a multistate investigation of allegedly deceptive and misleading advertising of a major calcium supplement.

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Resolved a multistate investigation of direct-to-consumer advertising of a major antibiotic.

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Represented a Fortune 100 company in threatened litigation by the California AG under Proposition 65 (requiring warnings on carcinogenic products).

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Resolved investigations by multiple AGs regarding a Fortune 100 company's marketing of ancillary mobile telephone products.

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Represented a Fortune 100 company in multiple pricing investigations and litigation by AGs.

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Represented one of the world's largest social media companies to develop and maintain a 50-state plan to respond to specific AG inquiries and engage in proactive AG outreach. The company and AGs now collaborate to provide education and outreach to students, parents, teachers and local law enforcement officials.

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Represented a Fortune 500 satellite telecommunications company regarding regulatory and legal compliance, legislative strategy, and resolving consumer and environmental protection issues with state and federal regulators, including negotiating a 46-state settlement to resolve consumer protection claims.

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Resolved multistate investigations of alleged consumer protection violations on behalf of Fortune 500 financial, media, marketing, retail, telecommunications and pharmaceutical companies.

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