

# Attorneys General Revisit the State of Multistates

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Last week, multiple state Attorneys General (AGs) and staff from offices nationwide gathered in Washington, DC for the National Association of Attorneys General (NAAG) 2022 Consumer Protection Fall Conference. The conference addressed pressing and relevant consumer protection issues facing attorney general offices. The public portion of the conference included a panel of current and former AGs, who focused their remarks on multistate investigations.

All of participating current and former AGs agreed that multistates would continue to be an important part of their work. AG Brian Frosh (MD) described them as a “force multiplier” for AG offices with limited resources, and AG Doug Peterson (NE) reiterated that they are going to continue to be an important focus nationwide. AG Kwame Raoul (IL) pointed out that multistates have the benefit of multiple perspectives, and may be able to address priorities that may not be on a particular AG’s radar. AG Jonathan Skrmetti (TN) also described multistates as a way to overcome resource asymmetry between states and sees them as capable of making a massive impact on society.

However, Former AG Jim Tierney (ME) warned that this broader perspective can also cut off AG offices from grassroots consumer protection problems and cause them to focus too heavily on priorities set by others. During his tenure he pulled Maine out of multistates that he didn’t agree with or that he believed didn’t protect the most vulnerable populations. He is not alone, as other AGs have pulled out of multistate investigations to pursue their own settlement or litigate separately. Sometimes, States may even decide to litigate while maintaining their status as part of the multistate group.

As sovereigns, each state participating in a multistate ultimately can decide whether to enter or leave a multistate investigation at any time. AG Peterson described the process by which staff gain approval to begin an investigation and how he focuses on how the alleged conduct impacts Nebraskans, for instance. This fact is important to recognize as it often impacts strategy for negotiations during such investigations.

Former AG Luther Strange (AL) described the current environment among AGs as less collegial, and warned that a drift towards multidistrict litigation is not a long run recipe for success. Former AG Tierney also questioned the partisan nature of recent AG actions. As several of these panelists are former or, soon-to-be former, AGs, they provided more candid views that were particularly helpful to getting a window into that “current environment.” We have described in past posts that the NAAG organization itself has been recently [called into question by some State AGs](#), with several ultimately deciding to exit.

Just this week, some of those criticisms of NAAG, and the multistate process generally, were

highlighted in a panel at the Federalist Society's National Lawyers Convention in DC. AG Skrmetti participated in this panel as well, and highlighted the importance of bipartisan multistates in handling some of the largest consumer protection issues in the country. AG Skrmetti personally worked on the \$26 billion opioid distributor settlement. He emphasized on the panel that without the coalition of states leading the way, the result would have been a series of trials that bankrupted the companies responsible for the majority of pharmaceutical distribution in the country. He noted that ultimately such bankruptcies would have led to real human costs, including deaths.

What are the takeaways? Consumer Protection multistates seem to be getting a closer look these days - whether it's because States want to prioritize differing or more localized issues or because they are dissatisfied with NAAG and the multistate process generally. But despite the scrutiny, we continue to see strong evidence that multistates are here to stay, including a recent [40-state data breach settlement](#) and a series of other [enforcement priorities in areas such as big tech and public health](#). So, companies should be prepared to navigate these sometimes complex initiatives led by a large group of sovereign enforcers.