IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP

President Trump Orders Investigation into Impermissible Use of Federal Grant Funds for Lobbying

In late August, President Trump issued a ***Presidential Memorandum*** directing U.S. Attorney General Pam Bondi to investigate whether federal grant funds are being improperly used to support lobbying activities or political candidates and parties. The directive was prompted by "[f]ederal funding reviews by my Administration [that] have revealed that taxpayer funds are being spent on grants with highly political overtones" and related concerns about "the possible use of Federal grants as slush funds for political and legislative advocacy." Though the Presidential Memorandum does not cite specific examples of improper spending of federal grants, it emphasizes the need for oversight and directs the Attorney General "to investigate whether Federal grant funds are being used to illegally support lobbying activities (See, 31 U.S.C. 1352) and to take appropriate enforcement action." Attorney General Bondi was instructed to provide a progress report to the President by late February 2026.

The new Presidential Memorandum references **31 U.S.C. § 1352**, known as the Byrd Amendment, which prohibits recipients of federal contracts, grants, loans, and cooperative agreements from spending those funds to lobby on such matters, including "the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement." Notably, subcontractors and sub-grantees who receive appropriated federal funding are subject to this restriction as well. The Byrd Amendment requires recipients of federal funds to certify that any lobbyist registrant acting on its behalf "has not made lobbying contacts on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement," and that the person has not, and will not, make any payment for prohibited lobbying activities."

This Presidential Memorandum places recipients of federal funding on notice that they may be subject to heightened scrutiny of their use of those federal funds and serves as a reminder that all funding recipients must have systems in place to ensure compliance with Byrd Amendment restrictions.

Trump Administration Announces Plans to Investigate Nonprofit Groups and Funding Sources Allegedly Connected to Domestic Political Violence

In the wake of the politically motivated assassination of conservative activist and Turning Point USA leader Charlie Kirk, Vice President JD Vance **announced** that the Trump Administration would "work to dismantle the institutions that promote violence and terrorism in our own country . . . in the months to come." On September 25, President Trump took a significant step forward in formalizing this plan in a **memorandum** on "Countering Domestic Terrorism and Organized Political Violence." The memorandum explains that "[t]he United States requires a national strategy to investigate and disrupt networks, entities, and organizations that foment political violence so that law enforcement can intervene in criminal conspiracies before they result in violent political acts. Through this comprehensive strategy, law enforcement will disband and uproot networks, entities, and organizations that promote organized violence, violent intimidation, conspiracies against rights, and other efforts to disrupt the functioning of a democratic society."

The memorandum directs the National Joint Terrorism Task Force and its local offices ("JTTFs") to "coordinate and supervise a comprehensive national strategy to investigate, prosecute, and disrupt entities and individuals engaged in acts of political violence and intimidation designed to suppress lawful political activity or obstruct the rule of law." The JTTFs are instructed to investigate "institutional and individual funders, and officers and employees of organizations, that are responsible for, sponsor, or otherwise aid and abet the principal actors engaging in the criminal conduct." The JTTFs will also investigate "non-governmental organizations and American citizens residing abroad or with close ties to foreign governments, agents, citizens, foundations, or influence networks engaged in violations of the Foreign Agents Registration Act [FARA] or money laundering by funding, creating, or supporting entities that engage in activities that support or encourage domestic terrorism."

(Holtzman Vogel recently released a more detailed analysis of the FARA enforcement implications of the President's memorandum, available **here.**)

The memorandum also assigns specific tasks to federal officials. For example, the Secretary of the Treasury will work with the Attorney General "to identify and disrupt financial networks that fund domestic terrorism and political violence," while the Commissioner of the IRS is directed to "take action to ensure that no tax-exempt entities are directly or indirectly financing political violence or domestic terrorism.

According to President Trump and Vice President Vance, one of the most "likely candidate[s]" for investigation under this directive is George Soros and his grantmaking network, the Open Society Foundations. In fact, even before the presidential memorandum was signed, the *New York Times* **reported** that it had obtained a directive from a "senior Justice Department official" instructing several U.S. Attorney's Offices to investigate the Open Society Foundations for racketeering, arson, wire fraud, material support for terrorism, and other criminal activity. During the **memorandum-signing event**, President Trump named additional individuals and organizations as potential subjects of investigation, including Democrat mega-donor Reid Hoffman. Separately, Vice President Vance highlighted the Ford Foundation as an entity that abuses "generous tax treatment."

These efforts, in addition to **proposed congressional legislation** that would add rioting, as defined by the federal anti-riot statute, to the list of RICO predicate offenses, have led a variety of left-wing organizations to begin preparing for legal disputes with the Trump Administration.

U.S. House and Senate Announce Measures to Provide Additional Funding for Member Security

In the aftermath of Charlie Kirk's assassination on September 10, 2025, both the U.S. House of Representatives and Senate took swift action to provide Members with additional resources to bolster their personal security. Members' security concerns had already increased significantly over the summer after **two Minnesota state lawmakers were targeted** in politically motivated shootings. Those fears escalated further following Kirk's assassination, and many Members cancelled events or moved their events indoors.

The Chairman and Ranking Member of the Committee on House Administration recently **announced** that the House will double the amounts available for Members to pay for personal security. In July, the House launched a **pilot program** allowing Members to spend up to $5,000 per month in official funds to hire personal security professionals. Following the September 17 announcement, that amount has now increased to $10,000 per month.

The House pilot program also allows each Member to spend up to $20,000 to install security equipment at his or her personal residence. Additionally, the program authorizes the U.S. Capitol Police to enter into agreements with state and local law enforcement agencies to reimburse them for providing security services to Members of Congress when they are in their home districts.

The Senate also moved quickly to address Member security concerns. On September 18, the Senate **approved a rule change** to give Members greater flexibility in using official funds to pay security-related expenses. The Senate Resolution provides that "[e]ach Senator may use funds made available to the Senate from the Senators' Official Personnel and Office Expense Account to pay for the cost of necessary security enhancements and services." The Resolution authorizes the Committee on Rules and Administration to adopt regulations implementing the new rule.

Earlier, the Senate included in the legislative branch appropriations bill, which was approved by the chamber in July, **funding for a pilot program** to increase security for Members when in their home states. However, the Senate and the House have not yet reached an agreement on the bill.

A **continuing resolution passed by the House** on September 19 to fund the government through late November contained $30 million for enhancing Members' security when they are in their states or districts. Whether the House and Senate will agree to include the funds in any final spending package remains to be seen.

In addition to these new sources of official funding for personal security, Members of the U.S. House and Senate, as well as candidates for those offices, have the option of using campaign funds to pay many personal security expenses.

In 2024, the FEC **promulgated a new rule** clarifying that a federal officeholder or candidate may use campaign funds to pay for various security measures to address ongoing threats. The new regulation provides that campaign funds may be used to pay the reasonable costs of security measures for a federal candidate, officeholder, members of their family, and employees, so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder. The rule specifies that the use of campaign funds for covered security measures is not considered prohibited "personal use" of campaign funds.

Under the FEC rule, permissible security measures, which may also be provided to an officeholder or candidate's family members and employees, include:

- Non-structural security devices, such as locks, alarm systems, motion detectors, and security cameras;
- Structural security devices, such as wiring, lighting, doors, and fences, provided these are solely for security and not for property-improvement purposes;
- Professional security personnel; and
- Cybersecurity protections.

Together, these legislative and regulatory actions reflect a growing bipartisan consensus that enhanced personal security for federal lawmakers is no longer optional, but a necessary response to escalating threats and violence in the current political climate.

FEC Vice Chairman Trey Trainor Resigns Effective October 3; Agency Down to Two Commissioners

Federal Election Commission (FEC) Vice Chairman Trey Trainor announced his resignation from the agency on September 25, to be effective October 3. Trainor's departure will leave the FEC with only two Commissioners, both Democrat appointees. The agency has been without a four-member quorum since Allen Dickerson departed in late April.

Commissioner Trainor was first nominated for the FEC by President Trump in 2017, but the Senate did not act on the nomination. He was nominated twice more and finally confirmed by the Senate in mid-2020, to a term that expired in 2023. He has served since then as a "hold over" because no replacement has been nominated and confirmed. Trainor's announcement indicated he would return to his home state of Texas.

Jimmy Kimmel Prevails in Copyright Dispute with George Santos

On September 15, the Second Circuit Court of Appeals **issued a ruling** in favor of late-night host Jimmy Kimmel in a lawsuit brought by former Congressman George Santos, who accused Kimmel of copyright infringement, along with several state law causes of action. The case arose after Kimmel, using fictitious names, obtained personalized videos from Santos through the platform Cameo. (Cameo is a platform that allows users to purchase brief, personalized videos from a variety of celebrities and public figures.) Later, Kimmel featured these videos in mocking segments entitled "Will Santos Say It?" The Second Circuit affirmed the district court's decision that Santos's copyright claims were barred by the fair use doctrine.

The fair use doctrine provides a defense to copyright infringement claims in situations where a "rigid application of the Copyright Act … would stifle the very creativity the Act is meant to promote." Generally speaking, the fair use doctrine permits the use of copyrighted material in connection with commentary, criticism, research, reporting, and other "transformative" uses that do not simply reproduce another's copyrighted material in a manner that creates a market substitute.

The Second Circuit concluded that Kimmel's use of the Santos videos was "motivated by (sarcastic) criticism and commentary," namely, "to comment on the willingness of Santos . . . to say absurd things for money." In addition, the court concluded that Kimmel's presentation of the Santos videos did not "usurp[] the market for [Santos's videos] by offering a competing substitute." The appeals court affirmed the lower court's conclusion that the fair use doctrine barred Santos's copyright claims.

AROUND THE STATES

New York State Ethics Commission Undertakes Review of Ethics and Lobbying Laws, Seeks Written Comments from Public

New York State's Commission on Ethics and Lobbying in Government (COELIG) is **undertaking a comprehensive review** of the state's ethics laws, regulations, and advisory opinions. As part of this review, COELIG held a public hearing on September 25, 2025, and the Commission is accepting written comments via email through October 2, 2025. COELIG's review is required by the 2022 Ethics Commission Reform Act (ECRA), the legislation that created COELIG.

As part of this review, COELIG issued **questions and proposals** for consideration as it attempts to improve New York's ethics and lobbying disclosure policies. A copy of this document can be accessed **here**. Among the ideas being considered by COELIG are:

- A prohibition on campaign contributions by lobbyists and/or clients of lobbyists;
- A prohibition on lobbyists or clients of lobbyists from lobbying elected officials to whose campaigns they have contributed;
- A requirement that lobbyists and clients of lobbyists must report and disclose their campaign contributions to COELIG; and
- A requirement that lobbyists and clients of lobbyists disclose their positions on legislation they are advocating for or against.

Comments on COELIG's proposals may be emailed to the Commission at **PublicHearing@ethics.ny.gov**.

Florida Ban on Charitable Fundraising from 'Foreign Sources of Concern' Now in Effect

Earlier this year, the Florida Legislature enacted **SB 700**, which introduced a broad prohibition against charitable organizations receiving money or other support from hostile foreign powers. Under the new law, which took effect on July 1, a charitable organization registered in Florida may not solicit or accept contributions or anything else of value from a "foreign source of concern," which includes an individual, government, or group from China, Russia, Iran, North Korea, Cuba, Venezuela, and Syria.

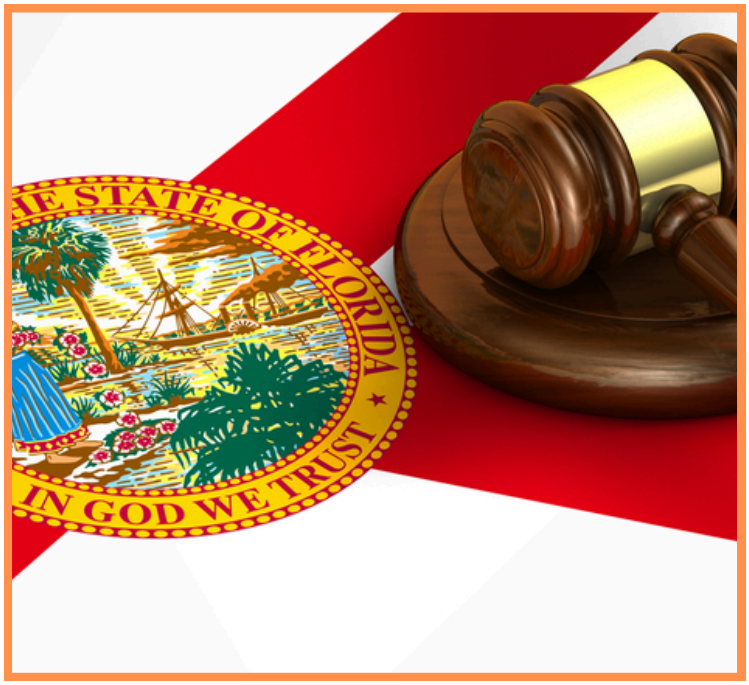
To comply with the law, charitable organizations must file an attestation statement with the Florida Department of Agriculture and Consumer Services (DACS) affirming that they do not solicit or accept money or support from any foreign source of concern, and that their public messaging is not produced or influenced by a foreign source of concern. These attestation statements will be accessible in a publicly searchable database, the Honest Services Registry, created by DACS.

DACS is also tasked with enforcing Florida's new foreign funding prohibition, and the Department may investigate a charitable organization for alleged violations on its own initiative or upon receiving a citizen complaint. Potential penalties for violating the law include a charitable organization's disqualification from receiving state tax exemptions, the cancellation or suspension of its charitable registration in Florida, and administrative fines of up to $10,000. Criminal penalties may also be assessed against any person who "willfully and knowingly" violates the law.

Florida is not alone in cracking down on foreign funding of charities within its state borders. Texas, Arkansas, and Utah have also recently passed laws requiring registration by persons lobbying on behalf of foreign powers.

11th Circuit Upholds Florida Law Barring Noncitizens and Nonresidents from Gathering Signatures for Constitutional Initiative Petitions

In May, Florida Governor Ron DeSantis signed into law **H.B. 1205**, a bill that significantly amended the state's process for citizen initiatives to amend the state constitution to be placed on the ballot. Among the many changes, the new law provides that a person must be a U.S. citizen and a resident of Florida to collect initiative petition signatures, as well as deliver and possess signed initiative petitions.



The new law was quickly challenged, and in July, a district court issued a preliminary injunction blocking enforcement of the citizenship and residency restrictions while the dispute unfolded.

On September 11, the Eleventh Circuit Court of Appeals issued a 2-1 decision that stayed the lower court's ruling and allowed the law to go into effect while the case proceeds. The Eleventh Circuit noted that "H.B. 1205 does not bar noncitizens or nonresidents from distributing petition forms to Florida voters" or discussing the underlying issues with voters. Rather, the "restrictions kick in only after a voter has been convinced to sign the petition form." The panel's majority concluded the citizenship and residency restrictions were not subject to strict scrutiny, and under a lesser standard, the state was likely to prevail. The Court concluded that the bill's "residency and citizenship requirements likely do not violate the First Amendment, since Florida's substantial interest in preventing and investigating instances of voter fraud 'would be achieved less effectively' without them."

Federal District Court Upholds Georgia Restrictions on Absentee Ballot Application Distribution

A federal district court **upheld two provisions of Georgia law** adopted in 2021 relating to the distribution of absentee ballot applications. The provisions at issue prohibit sending a voter an absentee ballot application that is prefilled with the voter's required information and requires that absentee ballot applications may only be sent to individuals who have not already requested, received, or voted an absentee ballot in the primary, general, or runoff election.

The challenge to the law was brought by VoteAmerica, which ran an absentee ballot program in 2020 that the new law makes illegal. Specifically, the organization "sent voters in Georgia mailers that included the following components: (1) an outer envelope with the voter's name and address; (2) a cover letter explaining the absentee-voting process; (3) an absentee-ballot application prefilled with a voter's name and address; and (4) a preaddressed postage-paid return envelope to the voter's county election office." VoteAmerica "sent approximately 9.6 million mailers to Georgia voters" during the 2020 election cycle. However, the Secretary of State also sent out absentee ballot applications during 2020 as part of its Covid-19 program. The court noted that "prefilled absentee-ballot applications sparked confusion and concern about voter fraud, especially when the prefilled information was incorrect." The 2021 law, SB 202, was adopted to address voter confusion and fraud concerns.

VoteAmerica argued that "prefilling and mailing absentee-ballot applications to voters is speech protected by the First Amendment." The court agreed that this activity was "pure speech protected by the First Amendment." The court also concluded that the absentee ballot applications were "content based" and subject to strict scrutiny review, which usually leads to a law's invalidation. However, the court held that Georgia satisfied its burdens by demonstrating that "reduc[ing] voter confusion, enhanc[ing] voter confidence and increas[ing] electoral efficiency" are compelling governmental interests and the statute was narrowly tailored to meet these interests. As a result, the court held the two provisions did not violate VoteAmerica's First Amendment rights.

South Carolina Supreme Court Rejects Partisan Gerrymandering Claims

On September 17, the Supreme Court of South Carolina issued an opinion in ***League of Women Voters of South Carolina v. Alexander*** upholding the State's congressional redistricting plan while finding partisan gerrymandering claims to be non-justiciable political questions under the South Carolina Constitution. The decision mirrors the U.S. Supreme Court's conclusion in ***Rucho v. Common Cause*** (2019) that partisan gerrymandering claims are political questions that federal courts cannot hear.

The South Carolina lawsuit was filed following an unsuccessful racial gerrymandering challenge brought by the NAACP in federal court shortly after the plan was enacted. In the NAACP litigation, a federal district court initially agreed with the plaintiffs and enjoined South Carolina's congressional map as a racial gerrymander. In May 2024, however, the U.S. Supreme Court reversed and remanded the case, ***S.C. State Conference of the NAACP v. Alexander***, on the grounds that the evidence clearly showed that politics, not race, was the State's predominant consideration when creating its congressional plan.

South Carolina's congressional map was challenged on partisan gerrymandering grounds in July 2024 as an original action with the South Carolina Supreme Court. Citing the evidence and decision from the NAACP litigation, the complaint argued the congressional plan was an "extreme" partisan gerrymander that violated the South Carolina Constitution's Free and Open Elections, Equal Protection, and Freedom of Speech and Assembly Clauses. The South Carolina Supreme Court concluded that it could not consider a partisan gerrymandering claim. The court explained: "There are no constitutional provisions or statutes that pertain to, prohibit, or limit partisan gerrymandering in the congressional redistricting process in South Carolina. There are no judicially discernible or manageable standards or satisfactory criteria to adjudicate partisan gerrymandering claims. Therefore, we hold partisan gerrymandering claims present a nonjusticiable political question in South Carolina, and we deny the League's claim for relief."

Andy Gould & Jon Riches - Disclosure Laws Put Targets on the Backs of Nonprofit Donors

In an age of doxxing, violent threats, and professional retribution for people's policy positions, exposing donors creates real risks. Andy Gould and Jon Riches **write** for the *National Review.*

Supreme Court to Hear Direct Challenge to Humphrey's Executor; Will Reconsider Congressional Authority to Restrict President's Ability to Remove Independent Agency Commissioners

The Supreme Court may be on the cusp of overturning a 90-year-old precedent that has long served as one of the cornerstones of the modern administrative state. On September 22, 2025, the Court issued an **order** staying the lower court's decision blocking President Trump's attempted removal of Rebecca Slaughter from the Federal Trade Commission (FTC), effectively allowing her removal from the agency pending the outcome of her case. In addition, the Court announced it would hear Ms. Slaughter's challenge to her removal and asked the parties to address two questions: (1) Whether the statutory removal protections for members of the FTC violate the separation of powers, and, if so, whether *Humphrey's Executor* should be overruled; and (2) Whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

Humphrey's Executor is a Supreme Court decision from 1935 that upheld a provision of the Federal Trade Act that specifies the President may remove an FTC commissioner only "for cause," specifically "inefficiency, neglect of duty, or malfeasance in office." The removal restrictions upheld in *Humphrey's Executor* are a crucial component of Congress's authority to create independent federal agencies, which it has done for decades. Today, large swaths of federal law are administered by the "independent agencies," which are run by commissioners appointed to defined terms and carry out their duties with a significant degree of insulation from the two elected branches.

During his second term, however, President Trump has mounted a calculated effort to challenge this *status quo* and force the Supreme Court to reconsider its legal underpinnings. In addition to seeking the removal of Commissioner Slaughter from the FTC, President Trump fired officials from the National Labor Relations Board, Merit Systems Protection Board, Consumer Product Safety Commission, and Federal Election Commission.

Ms. Slaughter served as a Democrat-appointed commissioner on the FTC from 2018 until March 18, 2025, when she was removed by President Trump (along with the agency's other Democrat Commissioner, Alvaro Bedoya). President Trump's removal of Ms. Slaughter from the FTC largely mirrors the facts in *Humphrey's Executor*. There, William Humphrey was nominated by President Coolidge to serve on the FTC in 1925 and then nominated for a second term by President Hoover in 1931. He was confirmed, again, to a term set to expire in 1938. In 1933, President Roosevelt asked Commissioner Humphrey to resign so that he could replace him "with personnel of my own selection." After Humphrey declined, President Roosevelt wrote to Humphrey to inform him that he was "hereby removed from the office of Commissioner of the Federal Trade Commission." Ms. Slaughter, like Mr. Humphrey (and later his estate), challenged the President's actions as unlawful.

The independent administrative agency rests on the Progressive Era concept that lawmakers should establish general principles and leave the details, and the administration of specific rules, to expert agencies. Critics of this concept note that Article II of the U.S. Constitution provides that "[t]he executive Power shall be vested in a President" and the President "shall take Care that the Laws be faithfully executed" and generally contend that the transfer of authority to independent agencies is a violation of the constitutional separation of powers.

Should the Supreme Court overturn *Humphrey's Executor*, or effectively narrow and distinguish it out of existence, it would send a shockwave through the federal government and upend long-established practices that have prevailed for roughly one hundred years. The implications are far reaching and raise fundamental questions about how the federal government operates.

HV Making the Rounds

- Kellen Dwyer and Joe Burns co-authored "FARA Enforcement Gets a Major Shake-Up Under New Presidential Directive."
- Jan Baran hosted his Early Returns Podcast - How Crypto Champion, Faryar Shirzad, and Coinbase Are Advocating for America's Digital Future.
- We were a proud sponsor of the Federalist Society's Businesses in the Courts Conference.
- Holtzman Vogel hired former House Judiciary Counsel Julian Yowell who will bolster the firm's congressional investigations practice.
- Jonathan Fahey was quoted in the *Washington Examiner* article, "Newsom's California police cannot arrest masked ICE officers: Former cops."
- Oliver Roberts appeared on WKRN to speak about the new AI data center project in Nashville and the benefits to the community.
- Jill Vogel was a panelist at the 2025 PLI Corporate Political Activities conference on the topic of "Hot Topics in Political and Election Law."
- Holtzman Vogel filed an amicus brief on behalf of 23 state attorneys general supporting President Trump in the DC crime lawsuit
- Elizabeth Price Foley and Mark Pinkert co-authored an op-ed, "The Judicial Insubordination Crisis," for *The Wall Street Journal.*
- Andy Gould appeared as a headliner for Arizona State University's Center for American Institution's program, "The Politicization of Our Courts."
- Jill Vogel appeared on the John Fredericks Radio program and participated in an analysis of the VA and NJ election climate.
- Brandon Smith appeared on WKRN to discuss the Tennessee AG DEI investigation of a big accounting firm.
- The firm sponsored River Swing, an annual event hosted by Harpeth Conservancy in its efforts to restore and protect clean water and healthy ecosystems for rivers in Tennessee.
- Jill Vogel spoke at the PAC Government Relations and Policy Conference on the topic, "Cuts & Consequences in the Changing State Budget Landscape."
- We hosted both Florida AG Uthmeier in Miami Beach and Virginia AG Miyares in DC this month.
- Brandon Smith spoke about the *US v Skrmetti* Supreme Court decision at an event hosted by the University of Texas School of Law's Federalist Society chapter.
- Bill Klimon presented at the PAC Government Relations and Policy Conference on trends for corporates and nonprofits engaged in the political space.
- Mark Pinkert, David Johnson and Brandon James attended the Republican AG Association fall conference.
- Oliver Roberts presented a CLE for the Nashville Bar Association on "Ethical Considerations for Lawyers Using AI."
- Jonathan Fahey regularly appeared on FOX to discuss all things ICE and Charlie Kirk, among other topics.

UPCOMING EVENTS

- October 1 - Our Phoenix Office will host "A Look Back and Ahead - What Will Influence Arizona Elections?"
- October 14 - Webinar: State AGs and the 2025 Supreme Court Term with David Johnson, Mark Pinkert, Mo Jazil and Brandon Smith

This update is for informational purposes only and should not be considered legal advice. Entities should confer with competent legal counsel concerning the specifics of their situation before taking any action.

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