

## West Virginia, Texas, California: State Attorneys General April 24 Update



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### Litigation

Attorneys general from 14 states, led by West Virginia AG Patrick Morrisey and Wisconsin AG Brad Schimel, have filed an [amicus brief](#) in support of President Trump's Executive Order establishing the "1-in 2-out" rule, which is being challenged in the D.C. Circuit Court of Appeals by Public Citizen, Inc. and other groups. That Executive Order, the [Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs](#), provides in part: "Unless prohibited by law, whenever an executive department or agency . . . publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed" (the "1-in 2-out" rule). In their brief, the states say that "agencies have implemented far more regulatory burdens than Congress ever envisioned," and that the "unlawfully-imposed burden has been largely borne by the States and their citizens." The Executive Order "will reduce the sprawl of unnecessary, costly regulations, consistent with Congressional intent and

important public policy considerations,” according to the states. Further, the states argue, “past Presidents have also issued executive orders instructing federal agencies to consider, in the exercise of their sound discretion and as permitted by law, factors such as the cumulative costs of regulations, the national economy as a whole, and . . . the effect of rules on state and local governments,” and the Executive Order at issue “is a reasonable exercise of that inherent authority.”

Attorneys general from 11 states, led by Texas AG Ken Paxton (the “amici states”), have filed an [amicus brief](#) in a New York federal district court in support of Exxon Mobil Corporation’s challenge to a Civil Investigative Demand (CID) issued by Massachusetts AG Maura Healey and a subpoena issued by New York AG Eric Schneiderman seeking Exxon Mobil documents relating to global warming and climate change as part of an investigation into “supposed violations of consumer protection laws through marketing and selling of fossil fuel-derived products and securities,” according to the amicus brief. The amici states argue that while state attorneys general do have the power to issue CIDs and subpoenas to “identify and remedy unlawful conduct,” the power “does not include the right to engage in unrestrained, pretextual investigative excursions to promote one side of an international public policy debate, or chill the expression of viewpoints in those debates.” The amici states say that the Massachusetts and New York AGs’ “tactics are part of an ‘aggressive’ approach to silence dissenting viewpoints by policing the ‘truth’ about climate change in the marketplace of ideas,” and that the “First Amendment condemns government action that restricts or chills speech because of the message conveyed.” The amici states also claim that the “Fourth Amendment limits the scope of administrative subpoenas” and that “Massachusetts and New York are abusing the power reserved to them under the U.S. Constitution.”

California AG Xavier Becerra has announced a \$9.8 million settlement with drugstore chain Walgreens, which “involved allegations that Walgreens failed to adhere fully to requirements imposed by California law for the dispensing of certain prescription drugs under Medi-Cal,” a California Medicaid program, according to a [press release](#). The settlement related to “lawsuits filed by whistleblowers” that alleged that “for more than five years, Walgreens falsely certified that it had complied with diagnosis-related requirements for the lawful dispensing of prescriptions to Medi-Cal patients,” according to the press release, which also notes that the claims “are allegations only, and there has been no determination of liability.” AG Becerra issued a statement that: “Californians expect that pharmacies dispensing prescription drugs will do so in a safe and lawful manner. It is a violation of the public trust when pharmacies seek payment from the Medi-Cal program while knowingly violating state law.”

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