

Voiceover ([00:01](#)):

Welcome to On the AGenda, Steptoe's Guide to State Attorneys General and other enforcement regulation and compliance matters. From AI to smokestacks, consumer protection to financial services, data privacy to antitrust. Join Steptoe's seasoned litigators, counselors, and advisors as they deliver the critical insights and industry knowledge that government officials respect and that companies, nonprofits, and executives can use to navigate whatever legal challenges they face.

Michelle Kallen ([00:32](#)):

Hi, and welcome to On The AGenda. I'm Michelle Kallen, a partner at Steptoe's DC office and co-chair of the firm's appellate practice. I come to Steptoe by way of the state AG world where I served in the Virginia Office of the Attorney General as Solicitor General of Virginia. And I am joined today by my colleague, Crystal Robles. Hi, Crystal.

Crystal Robles ([00:52](#)):

Hi, Michelle. I'm so happy to be here. I'm Crystal Robles. I'm a partner in Steptoe's Houston office. I was a partner at a litigation boutique in Houston before we decided to join forces with Steptoe. I'm a trial lawyer who focuses on commercial disputes in state and federal court.

Michelle Kallen ([01:07](#)):

Our guest today is Kris Kobach, Attorney General of Kansas and chairman of the Republican Attorney's General Association. Welcome, AG Kobach.

AG Kris Kobach ([01:15](#)):

Great to be with you.

Michelle Kallen ([01:16](#)):

So to start us off, can you tell our listeners a bit about your trajectory to becoming Attorney General of Kansas?

AG Kris Kobach ([01:23](#)):

Yeah, sure. I suppose mine's probably not the most typical one, but after law school, I did a clerkship on the 10th Circuit, grew up in Kansas, which of course the 10th Circuit includes Kansas. Then went into teaching law. I was a law professor for 15 years total. And there was a period in there where I was a White House fellow and worked for US Attorney General John Ashcroft for two years. And that was pretty formative for me because I saw the US Attorney General role, obviously firsthand served as his counsel. He became a real mentor and kind of role model in my life. And so I began thinking about the role of attorney general as maybe something I might want to do when I grew up. So anyway, went back to teaching law at UMKC Law School where I taught constitutional law and legislation and immigration law and American legal history.

([02:14](#)):

And then left academia when I decided to run for Secretary of State of Kansas and won that office in 2010, served two terms there, and then was in private practice for four years after that, and then was elected to the position of Attorney General of Kansas in 2022. During that period, and in particular during those four years right before becoming attorney general, I did a lot of civil litigation as a solo practitioner, but in areas where I developed specialization over the years and some expertise, and of

course in some constitutional litigation as well. So for example, represented some members of the US Air Force who were seeking a faith-based exemption to the COVID vaccine mandate. So some high profile cases that had some interesting constitutional questions involved. That experience also got me focused more on the Office of Attorney General because one of the things that state attorney generals do and have done, really for the last 15 years let's say, I mean, I think it began during the Obama administration, became really prominent litigators and entities that would challenge an administration whenever the relevant attorneys general thought that there was a violation of the Constitution or of statute.

[\(03:31\)](#):

And that of course is a bipartisan thing. During Republican administrations, you see Democrat attorneys general from the various states taking on Republican administrations. And that's a role that I think is really valuable. And it's certainly one that appealed to me as a former professor of constitutional law and someone who enjoyed complex civil litigation, being in a position to have standing in the event that an administration crossed a legal line or might be pushing up against a constitutional right. I think state attorneys general have a really valuable role to play. So that was one of the things that attracted me to the office too, being able to do some of the things I'd done in private litigation and to protect the rights of Kansans and more broadly people across the country in various areas of constitutional freedom that I had taught about as a law professor for so many years.

[\(04:18\)](#):

So I think most people would agree the Office of State Attorney General has become a far more important and active office over the last quarter century than it was before that. It's a great job. The best job I've ever had, it's my favorite position to be in. And I'm very pleased that I was able to win the support of the people of Kansas and get this office in the 2022 election.

Michelle Kallen [\(04:38\)](#):

I think every AG I've met has said that it's the best job they've ever had in their career. So that's a pretty exciting thing to hear you say as well.

AG Kris Kobach [\(04:48\)](#):

Yeah, it really is.

Crystal Robles [\(04:49\)](#):

Attorney General Kobach, in every state, the role of the AG is different. Can you tell our listeners what the role of the AG is in Kansas?

AG Kris Kobach [\(04:58\)](#):

Sure. So I think there's some things that are common across all 50 states or almost all. One is, of course, consumer protection. Every state has a State Consumer Protection Act, and the attorneys general have become ... This wasn't always ... Say a hundred years ago, this wasn't as big a thing, but certainly in the last maybe 50 years, it's become very big. And the state attorneys general are the frontline when it comes to a corporation that may have a product that is being marketed in a misleading fashion, or typically it's misleading and deceptive practices in the marketplace, and so we have that, and our role is similar to other attorneys general across the country. In Kansas, the attorney general's the chief law enforcement officer of the state and is also the chief state official in saying what state law is through the form of attorney general opinions.

[\(05:48\)](#):

So I think those are pretty common things. Where the states differ is their criminal jurisdiction. So in Kansas, my office does the vast majority of criminal appellate litigation, so defending prosecutions. And certainly in the really complex cases like death penalty ones, we do virtually all of them, although a couple of our larger counties play a role there too in the appellate practice in that area. We have concurrent criminal jurisdiction, or rather not exactly concurrent, but we have criminal jurisdiction where we assist the counties when invited in with most crimes. But there are some areas where we do have concurrent jurisdiction like in election crimes. There, either the county or the attorney general can step in. We also have principal jurisdiction in organized retail crime cases. That's something that the Kansas legislature gave the Attorney General's office just a few years ago with the rise in organized retail crime across the country.

[\(06:40\)](#):

And if there's more than one county involved, that falls to the Kansas Attorney General to take the case. We also have principal jurisdiction in securities fraud cases. So there are some areas where the attorney general is placed at the forefront of prosecuting the cases. And in most crimes, the attorney general is invited in by the counties, and it happens quite a lot, especially as the cases become more complex. Another area where the Kansas Attorney General has an authority that is beyond what other states have is in the Kansas Bureau of Investigation, KBI. That agency serves directly under the Attorney General and at the direction of the Kansas Attorney General. And there's only a small handful of states that have the equivalent of that, the statewide investigative agency. So those are, trying to think if there's anything I've left out, those are the principle areas. Oh, and of course, defending state law and civil litigation.

[\(07:30\)](#):

So anytime a law is challenged either directly where the attorney general is sued or a state agency is sued or indirectly, the plaintiff has the obligation to notify the attorney general of the state. And we pretty much always step in to defend the state law. The only time we wouldn't would be where we were not a litigant and the defendant in that case was already capably defending state law. That would probably be in a fairly straightforward matter. But nine times out of 10, we are the principal defender of state law in any court in Kansas or in any federal court.

Michelle Kallen [\(08:03\)](#):

And Kansas is uniquely structured where it has a divided government. So Democratic governor and Republican majorities in the legislature with independently elected statewide officials like AG and the Secretary of State, how do you maintain independence while coordinating across agencies that might have different policy goals?

AG Kris Kobach [\(08:20\)](#):

It is very interesting. Kansas, and I believe Kentucky is another state that has a Republican attorney general, Democrat governor at this point in time, and I believe they also have Republican majorities in the legislature. It can create tension at times, but there are areas where we absolutely do cooperate and we have to cooperate. And so I think it's possible to do both. And I think that everybody kind of recognizes, at least when I'm thinking of the executive agencies under the governor's control, they need us to defend them and we need them for the effective administration of the laws of our state because in many cases, even though the attorney general's the chief law enforcement officer, the actual day-to-day administration of that law is done by one of the governor's secretaries and the relevant department. So it's cooperative, but every once in a while, there will be a conflict, a complete disagreement over something.

[\(09:09\)](#):

And there have been two of those in my first term as attorney general with the governor. One concerned the meaning and the enforcement of a law on the very highly political issue of the whole trans question. And this had to do with driver's license, gender marker changes. And so we had some litigation on that issue, and that is ongoing. And then there was another one recently with the advent of the Trump administration coming back in Trump's second term, and then the US Department of Agriculture requesting certain information about SNAP beneficiaries, supplemental nutrition, AKA food stamp beneficiaries and states providing that information, which our governor did not want to do without certain caveats and conditions. And we had some litigation on that. And there's another case that kind of follows in the wake of those two and also follows in the wake of my decision not to join a couple of multi-state lawsuits where the governor has said, well, since the Kansas Constitution, in her view, makes her the Supreme Executive official in Kansas, why can't she direct the Attorney General to litigate as she sees fit?

[\(10:16\)](#):

We'll be litigating that one, and I'm confident we'll prevail in that because having divided government and having an attorney general who is not controlled by the chief executive of the state, I think is a very valuable thing. It kind of keeps the governor, the chief executive from pushing the legal envelope. Whereas in a federal system where the attorney general works for the president, oftentimes if a president wants to push the envelope, the attorney general won't be saying, "Wait a minute, ma'am, or sir, I'm going to have to sue you if you do that." And so it creates a constraint on state government that's a beneficial one. So it keeps the executive, the governor, within the boundaries of the law and the constitution to have an attorney general who is independent. When you don't have that in the federal system, of course, you have state AGs stepping up, as we discussed already.

[\(11:05\)](#):

So I think it works very well. And the vast majority of states, I think it's like 43 or so, do elect the attorney general separately from the governor. But as you point out, in Kansas, we have the interesting situation where we have governor and attorney general of opposite parties.

Crystal Robles [\(11:19\)](#):

Are there other issues, whether national or local, that are particularly high priorities for your office?

AG Kris Kobach [\(11:25\)](#):

Yeah, there are a number of them. One is fentanyl, which of course is a huge problem nationally. Fentanyl trafficking into the United States. We have fentanyl trafficking throughout the United States. We have just so many thousands of deaths caused by fentanyl overdoses. It makes previous drug waves of particular types of drugs look minor by comparison because it is so lethal. And so fentanyl's a huge issue, a huge priority for me, and became one as soon as I took office. One of the first things we did is targeting fentanyl distribution and the whole fentanyl problem generally one of the KBI's top priorities. And to that end, we brought the first set of fentanyl sniffing dogs to the Midwest. And you might think, "Oh, well, that's interesting, but not very important." It's actually very interesting and very important because you can intercept ... We have successfully intercepted a huge number of fentanyl shipments using those dogs.

[\(12:22\)](#):

And Kansas now, if you look at the amount of fentanyl available in controlled purchases by our agents or by agents from other law enforcement and other states, it's hard to obtain large quantities of fentanyl in

Kansas because we have been so effective at stopping trafficking through and into our state in large quantities. So that one little innovation has had a huge impact, in addition to the fact that the agency, KBI is making it such a high priority to go after those trafficking large quantities of fentanyl in. Now, of course, that said, one of the biggest problems with fentanyl is that it's used to lace counterfeit pills that are being sold over the internet and through other avenues. And this is a huge problem because students studying late for an exam in some college or some high school somewhere will receive a pill from a friend and he'll say, "Well, that helped me stay up last night, crushed the exam last week or today." And they will take that pill and then in the morning they'll be dead because that pill had a lethal dose of fentanyl in it.

[\(13:26\)](#):

And as I'm sure your viewers already know, hopefully already know, fentanyl is being used to lace these counterfeit pills. So whether it's a counterfeit Xanax or a counterfeit Adderall or any number of counterfeit pills, and the doses of fentanyl are inconsistent in these counterfeit pills. And if a person takes one that has a higher or lethal dose, which happens all the time, that may be the last pill they ever take. And it's just tragic. So many young people have died who do not perceive themselves to be taking fentanyl. They think they're just taking something to help them study for the exam. And we've had over 2,000 people in Kansas die from fentanyl overdoses. Population-wise, we're a smaller state, but that's a high percentage. And I think percentages are similar in most other states. So while the KBI can stop major shipments of fentanyl coming in to drug traffickers who are marketing it as fentanyl, there is still that availability of fentanyl online, which poses a lethal threat to so many Kansans, so many Americans.

[\(14:28\)](#):

And so we have a whole public information campaign to get people to stop taking any pill that they didn't receive from a pharmacy or from a doctor.

Michelle Kallen [\(14:37\)](#):

And general, you've been talking about KBI, that's the Kansas Bureau of Investigation?

AG Kris Kobach [\(14:42\)](#):

Yeah, Kansas Bureau of Investigation.

Michelle Kallen [\(14:43\)](#):

General, on the fentanyl front, is that an area where you collaborate with other states and other state AGs?

AG Kris Kobach [\(14:50\)](#):

Yeah, we do. There's certainly collaboration in terms of the ... We're sharing information and state law enforcement entities will share information across state lines, but different state AGs have different powers. And I think everybody recognizes fentanyl as a huge problem because it is causing so many deaths. Each state attorney general has a slightly different approach to it, but it's a shared priority, I think. And in Kansas, I think it can be fairly said to be our number one law enforcement priority.

Crystal Robles [\(15:19\)](#):

Attorney General Kobach, are there any other priorities that you would like to highlight?

AG Kris Kobach [\(15:23\)](#):

Yeah, sure. Two more. One is law enforcement against criminal violations generally, not just fentanyl. I think there's Americans everywhere just want to feel safe. They want to feel like they live in a low crime area. They want to feel like they don't face any threat to their lives and their property as they go about their daily business. And I'm really pleased that we recently had some statistics indicating that Kansas last year had the lowest crime index in more than 20 years. A priority for me, it's been on a downward trend for the last two years. And my hope is that we can keep pushing it downward. It's down right now, or in 2024, it was down to 23 crimes per 1,000 people for the year, and I'm hoping we can push it even lower. One of the really interesting aspects of that, if you look at the different indexed crimes that measurement is based on, is burglary is the lowest it's been in over 60 years.

[\(16:13\)](#):

And I think many people when you ask, "Well, do you feel safe?" They would say, "Well, do I feel safe at night when we turn off the lights in our house and go to bed?" And in Kansas, people do. Burglaries are so low that you have to go back into the 1960s to see anything like numbers this low. So I'm really pleased that we've had this success so far and high priority for me is to see if we can push the crime index numbers even lower. I think that's just one of the best ways government can serve people. You think about all the things that government does. One of the most important things government does at any level is law enforcement and protection against crime. And I want to continue to push as far as we can to get those numbers down. And then another additional priority for me is protecting kids on the internet.

[\(17:01\)](#):

I'm the father of five daughters and this world on their smartphones is something that didn't exist for me growing up. And it's a whole new frontier and it's also a very dangerous place where kids can be exposed to things that they really shouldn't be exposed to at a young age. And so Kansas has been involved in a number of lawsuits, Kansas multi-state lawsuits. And then I have initiated a number of lawsuits where it's just Kansas going after a particular platform or social media corporation. But just to highlight a couple of them, we've sued TikTok and we've sued Snap, in the context of Snapchat, for marketing products to kids age 12 and older when the sexual content, the drug content, the violent content is something that really is not applicable to kids that young and should not be viewed by kids that young.

[\(17:58\)](#):

And really, if they were accurately rating the age of it, they would say 18 and over only. And so that kind of misrepresentation is something we're taking very serious and going after. And there are other platforms as well where we are saying, look, you're hurting kids. And this is something that we care about. This is something that attorneys general of both parties are very concerned about. This tendency in the pursuit of profit to neglect to protect young children, the problem we see on some of these platforms. So that's another big priority. And I think that area of risk, that area where kids are exposed to things that are dangerous and unhealthy for them is only going to grow. It's not going to recede, it's not going to shrink. And so it's incumbent upon attorneys general to use their consumer protection powers to protect our kids.

[\(18:46\)](#):

And I will continue to do that.

Michelle Kallen [\(18:48\)](#):

Do you have any advice for companies? Children sometimes are on the platforms. Do you have any advice to them as they move forward in building their businesses and facing attorneys general and how they can comply with state law and be partners in the effort to protect children and assure their safety?

AG Kris Kobach ([19:05](#)):

My main advice would be to make that one of the principles of their corporate model because these social media platforms offer huge financial opportunities for the companies to make profits when adults use the platform. They don't need to go after kids, and to go after that additional market and risk running into state law, risk running into attorneys general across the country who are saying, "Hey, you were doing fine until you started marketing at children." My advice to these companies would be, focus on the adult market, do everything you can to protect kids and to use the technological devices that other companies have developed to ensure that there are preventative measures to prevent minors from getting on the app. You would serve yourself well. And although you may lose access to that market of kids, you shouldn't even be thinking about going in that market in the first place.

([20:00](#)):

Limit yourself to adults and you won't find attorneys general knocking on your door or serving papers for a civil lawsuit.

Crystal Robles ([20:07](#)):

Does this emphasis on protecting children dovetail or inform your approach to data privacy?

AG Kris Kobach ([20:13](#)):

Yes, absolutely. Data privacy is another area where attorneys general will use our consumer protection powers to protect the consumers of our state. And oftentimes kids are unwittingly handing over data and they are going to be, in most cases, less tuned into the fact of the data risk and the privacy interests that they have and the fact that their data might be used for marketing purposes or for more nefarious purposes. So yeah, many of our lawsuits involving protecting kids who are on these platforms are also looking at the data protection as well.

Michelle Kallen ([20:49](#)):

I mean, it's fascinating to see the overlap in some of the conversation when people talk about data privacy and issues on the internet. So much of it can be focused at a federal level, but state AGs, even under existing law without law that's specifically designed for the internet, state AGs have these consumer protection powers that can yield both investigations and potentially litigation, even without some sort of national uniform law related to data privacy or related to platforms on the internet.

AG Kris Kobach ([21:20](#)):

And I think that's only going to continue in the future because state legislatures are far more nimble than Congress. I mean, let's face it, Congress has been gridlocked for really more than two decades in terms of moving legislation that is controversial at all. They can barely move the uncontroversial things. And this area is one where statutes often have to be modified and amended quickly to address the new potential threat in these platforms. And so I think the states and the state attorneys general will be the ones at the forefront of protecting consumers for the foreseeable future.

Michelle Kallen ([21:57](#)):

And you mentioned that this is an area where there's been both multi-state efforts and then Kansas-specific efforts. Can you share a little bit for our audience what goes into the thought process of bringing something from a multi-state perspective and what does the multi-state initiative involve? Do you meet regularly with other AGs and discuss priorities? I think our listeners, it would benefit them to get a sense as to how the multi-state dynamic works in these sort of circumstances.

AG Kris Kobach ([22:24](#)):

Sure. Yeah. In a multi-state case, typically you're going to have a couple of lead states or one lead state. Usually in some of these bigger cases, there's a committee of lead states who will take the lead in drafting the litigation and will actually be the ones arguing the case, or in some cases there's outside counsel assisting in the argument as well. And so it's a group effort. And it's oftentimes bipartisan. Sometimes it's one party that's more interested in pressing that issue. But yeah, it's a collaborative effort. And it's really amazing the amount of communication that exists between our offices on these multi-state cases, especially the ... It depends whether it's a consumer protection action, then it will be the consumer protection officers in our office, or if it's something that's a litigation ... Now this is outside of the consumer area, but litigation by a set of AGs from one party against the administration in Washington, DC, there'll be a lot of communication between the solicitors general or other relevant people in the AG offices.

([23:24](#)):

So there's quite a lot of collaboration. Now when a state, even in cases where a state goes it alone and says, "Okay, we're going to bring this lawsuit to protect consumers in Kansas against this corporation," even then the state's not acting completely alone because typically there will be another state that has already done it. It might be two states acting separately or four states acting separately. And so there will already be information from that other suit that may be available. There may be attorneys who will share information and will have some valuable perspective on how to bring the case, whether to bring the case, whether or not to bring the case. So yeah, there's collaboration even in the so-called solo lawsuits.

Crystal Robles ([24:05](#)):

And how do you decide when to join or lead a multi-state coalition on an issue like that?

AG Kris Kobach ([24:11](#)):

For me, it gets down to the merits of the case. If it is clear that whatever the defendant is doing is in violation of our state law, the factual predicates are all there, if the factual record is there, and the strength of the case really drives it for me. If the case is a strong one, and it's quite clear that again, in the corporate context that some corporation is violating our consumer protection laws, then more often than not, we'll move forward. But when we do hold back and say no, it's usually because we just aren't convinced that the facts are there or that the position on the law is there. So for us, is it a good case? Can it be proven? Is it clear or is it not?

Crystal Robles ([24:52](#)):

And can you tell us a little bit about your role as chairman of RAGA? I'm sorry, is it RAGA or is it RAGA?

AG Kris Kobach ([25:00](#)):

It's pronounced both ways. So yeah, the Republican Attorneys General Association. Yeah, I just stepped down as chairman of that organization. RAGA is an organization that sort of leads the collaboration between the Republican attorneys general on many of these multi-state issues. So when you do have AGs playing a role in pushing back against an executive branch action from the federal government that is in violation of federal law or is in violation of the United States Constitution, RAGA was deeply involved in collaborating and facilitating that sharing of information. Like the Democratic counterpart, DAGA is also involved in elections too, part of the organization's, their two purposes, helping to give candidates of the respective party assistance and support in the elections. But for me, the more interesting and more important role that was played during my tenure was in this litigation in the final stretch of the Biden administration.

[\(26:00\)](#):

I personally led and personally argued a number of cases, and I think it's an important role. I mean, saying this in a bipartisan fashion, having the attorneys general of the United States as a group of watchdogs who can keep, not necessarily completely stop at administration from crossing a legal line, but will absolutely present a point of resistance when administration in Washington breaks the law or comes close to breaking the law or is pushing the envelope of what they have the authority to do. Attorneys general play an important role in our constitutional system. And I think many people who don't like the litigiousness of American society might say, "Well, it's just more lawsuits." But lawsuits are really important in ensuring that our constitution is enforced. And AGs over the past, let's say since roughly the year 2000, have seen a broadening of the rules of standing for states to sue, and that has facilitated Attorneys General becoming these statutory and constitutional watchdogs over the executive branch in Washington.

[\(27:10\)](#):

And I think it benefits our system. It benefits all of us, regardless of what party we hail from, to know that anytime a president goes in the White House, there will be Attorneys General watching to ensure that the President and his or her administration stays within the law. And that's a good thing as far as I'm concerned because as a teacher of the Constitution and a fan of our wonderful constitution, it helps to have entities out there to ensure that all the constitutional rules are followed and the government remains limited and its ability to infringe upon the citizen's rights remains limited.

Michelle Kallen [\(27:46\)](#):

One area that seems to kind of overlap with a number of these different issues is the area of AI and the fact that states have recently banded together to, on a bipartisan basis, take positions in terms of the scope of AG power when it comes to artificial intelligence. And then also we had an executive order released last week where the executive branch at a federal level is seeking to preempt certain state AG or just certain state efforts when it comes to artificial intelligence. Can you speak a little bit to those dynamics and what your priorities are when it comes to AI in Kansas and the bipartisan dynamics there?

AG Kris Kobach [\(28:24\)](#):

Yeah, I can certainly see the position that the White House and more broadly the federal government is coming from wanting there to be a uniform standard, but the fact is that Congress acts very slowly or doesn't act at all. And when that is the case and when there's a threat to our citizens, our residents, our kids in the case of AI as well, then states can act more quickly and states have appropriately acted. I believe many of the state laws are entirely appropriate to protect kids. And I foresee that Kansas may soon join the number of states that are trying to prevent these AI chatbots from luring kids into doing things that are destructive. And some of the most heart-rending cases are ones where AI chatbots

encourage kids to commit suicide, and it's happened many times. And that's not just the only danger to kids, specifically from AI chatbots where they engage in a "relationship" with an AI chatbot, and then they start doing things and the chatbot encourages or facilitates them doing things that are very harmful.

[\(29:36\)](#):

And it's not just suicide, it's other things too that are short of that, that can really be harmful to kids. And so I think it's an entirely appropriate for states to step in and say, "No, you can't do this." And there's so much good that AI can do that, again, it should not have any impact on our kids if it's properly guided to where it can be productive, but it can be used in a destructive way, and we've already seen that happening with our kids exposed to these AI chat features. So I think that's a very appropriate role for states to step in, especially given the fact that Congress, there's no sign that they're going to get something passed quickly. Maybe they will, but never bet on Congress getting something done quickly. And so states have to step in. And as to the effort to preempt, our Constitution Article six is quite clear, yes, the Constitution and the laws passed thereunder can preempt a state law and can displace the states from the field, but Congress hasn't acted.

[\(30:36\)](#):

And of course an executive order cannot preempt the states under our constitution. So I think it is appropriate for states to act. And if Congress wants to pass a law establishing some national standards, that would be a good thing. And they can either leave room for states to protect kids and protect people against the negative effects of AI, or they can decide not to. But until that happens, the only entities out there protecting our children are the states. And we have to be on that field. We can't say, okay, federal government, we prefer you to do it, so we'll just put our heads in the sand and pretend that there's nothing to do here. There's a lot to do here.

Crystal Robles [\(31:15\)](#):

As we've already discussed today and have been discussing, federal state dynamics can be particularly complex. You've discussed the role of state AGs as a potential check on a federal administration that may be running afoul of the Constitution. What is your relationship like with the current administration and how do you approach coordination or conflict with federal agencies on issues like environmental regulation, land use and resource development?

AG Kris Kobach [\(31:43\)](#):

We have a good relationship with the current administration. Obviously, I'm a Republican administration and as former chairman of the Republican AG Association, we had a lot of contact. I think the best thing that AGs can do when their own party is in power in the White House is to provide that legal counsel. And presumably the president, whoever it is, is getting good advice from the Department of Justice. But oftentimes attorneys general can step in and say from an independent perspective, "Hey, we think you should be doing A rather than B." And we do that and we offer our honest legal opinion as to what the stronger path is for the administration to pursue in any given area and what the more defensible legal path is. So I think those lines of communication are really important because you have some extremely capable and experienced attorneys general around the country.

[\(32:36\)](#):

We can provide a lot of insight, I think, and perspective to not only the Justice Department, but also to the White House. So the relationship's very strong. I should also add that the current administration poached two of my most senior people, and they're now in the Justice Department. So there's that

personal relationship as well. But this is something that happens whenever a new administration takes office in Washington. When they're staffing up their justice department, they'll look for some of the best attorneys in the country, and they'll find a lot of them in the state AG offices. So it's a good thing and a bad thing. I now have someone I can ... I have several people I can call anytime I want to reach them in the current Department of Justice, but I've also lost some great personnel. That's not the silver lining, that's the cloud part.

[\(33:23\)](#):

But when you have an agency like an office of the Attorney General, you'll have some great attorneys and we have had some great attorneys work for us over the years, but oftentimes they'll get poached by the relevant Department of Justice, but that's okay.

Michelle Kallen [\(33:36\)](#):

That's one of the perils of having a really talented team and being a great place to practice law is that people might come and poach some of your talent, but that's an opportunity to build bridges across different scope of government. Although I bet it's probably ... It was challenging for me. I jumped from state government to federal government, and then to wrap your head from litigating in a federalism mindset to a federal government mindset can be a major change and an exciting one.

AG Kris Kobach [\(34:03\)](#):

It is a different perspective, but oftentimes it's a shared perspective. It kind of depends on the case, doesn't it?

Michelle Kallen [\(34:08\)](#):

Definitely. Did you find that the shift for you from private practice to practicing on behalf of a government entity? At this point, you've been in the role for a little while, but what was the transition like for you?

AG Kris Kobach [\(34:19\)](#):

The transition was a pretty easy one because I was going from being a solo practitioner, teaming up with other private attorneys to being at the head of effectively a government law firm that's in most cases, it's the biggest law firm in the state or one of the biggest and has incredible talent. And so the things that I had to do on my own in private practice, now we have multiple attorneys who can do it extremely well, whether it be writing some section of a brief or assembling some documents in an investigation. It's great to have such a talented team, and I'm really blessed to have the attorneys working for me that I do.

Crystal Robles [\(34:56\)](#):

Many of our listeners are in-house counsel or executives at companies that interact with AG offices. What should corporate leaders understand about how AGs set enforcement priorities?

AG Kris Kobach [\(35:07\)](#):

Well, I mean, it's hard to give a uniform answer that applies to everyone, but I think you can ... In-house counsel at a corporation, if there's a chance that they might bump up against the AG world, should know that first of all, communication is really important. And I think most attorneys general offices are willing to be very open and forthright with corporate counsel. So I think that the best thing that corporate

counsel can do is engage in communication. Find out where there might be a potential line that's going to be crossed at some point. Maybe depending on the context, the corporate counsel may think that a state is misinformed about how the company's product is affecting consumers or is being marketed. Don't hesitate to reach out and provide information to the relevant attorney's general office to make your case that, "Hey, people are saying this about our product, but that's not true, it's that."

[\(36:03\)](#):

Use those channels of communication at every stage because each AG's office has got different human beings in it who have different ways of viewing the world and viewing litigation. So the best way a company can engage is to actually talk and keep open those channels of communication.

Crystal Robles [\(36:18\)](#):

And is your office willing to work with potential targets to resolve issues before litigation?

AG Kris Kobach [\(36:24\)](#):

Yeah, depending on the context, quite possibly. And certainly during litigation too. I mean, oftentimes case may be brought and the company may say, "Okay, yeah, we agree we did this thing wrong and we're willing to settle or take these steps to remedy the problem, but looking forward, what's the best way to solve this problem in the future and stop potential litigation in the future?" Yeah, those are discussions that occur certainly after a case is filed. But if a company perceives that there might be litigation on the horizon, then I think being forthright and going to the attorney's general, the relevant ones and saying, "Hey, we'd like to talk about how our company can modify what we're doing," it doesn't hurt.

Michelle Kallen [\(37:05\)](#):

What's the best way to do that? Would it be to send a letter? Would it be to give a call as a practical matter? How would a company that's facing interest or outreach on a product that they have or something like that? What recommendation do you have for practical steps to engage with the office?

AG Kris Kobach [\(37:22\)](#):

It's hard to give a one size fits all answer to that question. I think it kind of depends on the product and it depends. Maybe the company is making a presentation at a NAAGA -National Association of Attorneys General. They might have an opportunity to make a presentation, present documents to a slew of attorneys general all at once, and that might be the best way. Or sometimes a letter is appropriate because a letter can be footnoted and have all kinds of citations and sources that would be valuable to the attorneys in an AG office looking at the issue. So it kind of depends on the situation, but either one can be appropriate.

Crystal Robles [\(38:01\)](#):

You challenged aspects of the EPA's 2024 power sector greenhouse gas rules with other states, citing grid reliability and cost impacts. What should companies know about your energy litigation priorities?

AG Kris Kobach [\(38:15\)](#):

I think for us in terms of priorities, one is always, as I mentioned earlier, we're not going to engage in any litigation unless the case is extremely strong. So that regardless of what policy priorities might be at work, there's always the fact that, look, we are a law enforcement agency and we are lawyers and

litigators, and we're not going to bring a case that doesn't have merit. So there's that. But more broadly speaking, a priority for me is making power affordable because affordability in the energy sector means affordability to the price of food at the supermarket and affordability of products that are in the store because transportation and power in the plants that built these products, it's all passed on to the consumer. So that's ultimately what drives me in the area of the energy sector, is energy demand is not going down. It's going up, especially with AI, as we've discussed, consuming so much more electricity.

[\(39:11\)](#):

And so unless we have available affordable energy and lots of it, paying the bills is going to be really hard for consumers if our energy supply is restricted. So for me, it's looking out for consumers and keeping energy affordable.

Michelle Kallen [\(39:24\)](#):

What are some of the ways that you've gone about doing that? I know that Kansas enterprises are investing in data centers and high compute workloads. How do you kind of balance these data center issues with the interest in assuring affordability and access to energy?

AG Kris Kobach [\(39:39\)](#):

I think the data centers are going to continue to be developed and there's a huge need for them. I don't think there's any getting around the fact that these data centers are going to exist. And as a result, our power grid and our power sources have to be capable of meeting that demand and meeting the more important demand of just consumers who want to cool their homes in the summer and heat their homes in the winter, which has always got to be at the highest priority for why we need power in this country. And then of course, transportation so that we can get from one place to another. We're just going to need sources of power to provide for all of these needs.

Michelle Kallen [\(40:16\)](#):

Well, General Kobach, I would be remiss to not mention the role of Solicitors General. And in each state, the role is very different. So I'd love to hear your thoughts about how you use the role of the SG in your work in Kansas.

AG Kris Kobach [\(40:31\)](#):

Well, the Solicitor General is one of the most important people in an Attorney General office. And I think one of the most interesting things about that office, Solicitor General, is that 20 years ago, not that many state AG offices had solicitors general. Now almost everyone does. And it has become a really, really important position. I remember when I was coming out of my 10th Circuit clerkship, I hadn't even heard of Solicitor General for a state. Now this was back in the dark ages in the '90s. That would've been something that would've been very attractive to me as someone coming out of law school and then a clerkship because these solicitors general are dealing with some of the most weighty and significant legal issues in the country. They are very heavily sought after positions. One doesn't just walk into an SG position, as you know, and the competition to have these positions is extremely high.

[\(41:27\)](#):

And so Solicitors General are a super talented pool of attorneys who had to work really hard to get to those positions. So in Kansas, our Solicitor General for our state is a former judge in the Kansas Court of Appeals. And before that, he was a district court judge in the state of Kansas. And so he has immense experience when he goes into court and argues in front of his former colleagues. Other solicitors general

in other states, there are several of them who are former US Supreme Court clerks, maybe familiar faces to members of the United States Supreme Court when they go to court. It's a really important role. And it's hard to overstate how important it has become because in tandem with the growth of state litigation against federal agencies, when a legal line is arguably crossed, the Solicitor General has grown with that responsibility. And it's usually the SGs who are the tip of the spear in those cases.

[\(42:23\)](#):

So it's a really important position. And I think anyone watching this podcast who thinks, wow, maybe I might want to try to be a Solicitor General someday should follow that fashion because it's a really, really pivotal role in our legal system in the United States. And it's become so much more important just in the last 20 years, but it's a great position. And I'm really blessed that we have such a great Solicitor General. And I know that many other states have some truly talented people in that position.

Michelle Kallen [\(42:52\)](#):

I can second that. And I can say that if there's any role that rivals how much fun it is to be a state attorney general, it might be having the role of a state solicitor general.

AG Kris Kobach [\(43:01\)](#):

Absolutely.

Crystal Robles [\(43:01\)](#):

As we wrap up and end our time together, what are your top goals for Kansas over the next year or two?

AG Kris Kobach [\(43:08\)](#):

Well, I think one I've mentioned already, and that is we continue to push our already low crime rates even lower. And I think we can absolutely get that done. And part of that is the battle against fentanyl and the actions we're taking, the KBI against fentanyl. The second goal is protecting Kansas consumers, because I think the threats to our consumers are only going to multiply. They're not going to diminish. And we've talked a lot about the threats to our kids in social media and with AI chatbots, but there's also, at the other end of the age spectrum, an incredible amount of fraud being perpetrated against the elderly in every state, and oftentimes the elderly are the principal targets of these fraudsters. And so doing everything we can to protect our kids and our most vulnerable elderly Kansans is a high priority too. And then of course, defending our laws.

[\(44:00\)](#):

At the end of the day, I think the state attorney general is the defender of the people of the state, and that comes in many ways, many forms in the criminal context, defending against crimes, and in the civil context, in the consumer marketplace context, defending against fraud, defending against dangerous products. It's an honor to have the trust of the people and to be engaged in protecting the people in those ways. So those will be my priorities. And frankly, I imagine they're probably the same priorities of many of my colleagues because it's a big job.

Michelle Kallen [\(44:29\)](#):

Well, AG Kobach, we thank you so much for joining us today. This has been a fabulous conversation. We are excited to hopefully see you at future NAAGA meetings or RAGA meetings, and we really, really appreciate you taking the time.

AG Kris Kobach ([44:42](#)):

Thank you. Thank you for having me.

Voiceover ([44:44](#)):

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