

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.

Elyse D. Echtman ([00:30](#)):

Well, hello listeners. Welcome to On the AGenda, which is Steptoe's podcast focused on the State AG world. I'm Elyse Echtman. I am a partner in Steptoe's New York office and the practice group leader of Steptoe's government and regulatory litigation practice. I've been a commercial litigator for over 30 years, and I've had the opportunity to litigate some groundbreaking cases involving State AG enforcement efforts. I'm joined today by my colleague, Michelle Kallen. I'll give her an opportunity to introduce herself.

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

Hi, I'm Michelle Kallen. I am a partner in Steptoe's DC office. I represent clients in new and evolving areas of law. 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.

Elyse D. Echtman ([01:15](#)):

And our guest today is Jonathan Skrmetti, the Attorney General of Tennessee. General Skrmetti brings a distinguished background in public service, shaped by years as a federal prosecutor, where he handled civil rights cases, public corruption, and violent extremism. He went on to serve as Chief Deputy Attorney General and later Chief Counsel to Governor Bill Lee in Tennessee. Advising on major statewide legal and policy matters. He is a graduate of George Washington University, Oxford, and Harvard Law School. Welcome AG Skrmetti. Thank you for joining us today.

AG Jonathan Skrmetti ([01:49](#)):

Thank you for having me.

Michelle Kallen ([01:50](#)):

So General Skrmetti, we'd love to get started on something that's a little bit unique about Tennessee. So in Tennessee, the Attorney General is appointed by the Supreme Court rather than being elected. Can you walk us through the selection process and what led you to this role?

AG Jonathan Skrmetti ([02:07](#)):

Yeah, absolutely. And it is unique. It's an eight-year term too, so it's a very different system than most states have. So I was working for the governor and General Slatery, my predecessor, decided he did not want to try to re-up. And so I tried to talk other people into taking the job because I thought it would be terrible to be the governor's council and not have an AG who's steeped in the intricacies of state dynamics and who understood the institutional interests of the governor's office and recognized how litigation strategy and advice can ensure functional separation of powers. And I failed. I was not able to convince the person I was trying to get to apply to apply. A couple other people thought about it and

didn't put in. There were some really good people in the field, but a lot of them were coming from outside those dynamics.

[\(02:55\)](#):

And so with about, I think it was about four days to go, people started trying to talk me into putting in for it. And I was initially really resistant. I thought it was going to mess up my chances at a judgeship if I applied. So I was eventually persuaded. I was up till 3:00 AM finishing the application. And I always feel so bad when I get together with the other AGs because I know that they spent years laying the groundwork for their campaigns and fundraising and building networks. And I basically turned a paper in at the last minute, and I'm in until 2030 now. So it's a very different system, but it's worked really well for Tennessee. It tends to make us a little bit nerdier as an office, a little bit less partisan. Now, in these days, there's a political tinge to so much of the litigation, and we have a very aggressive conservative legislature in Tennessee.

[\(03:45\)](#):

So we've been involved in a lot more politically valanced stuff than the office traditionally has. I think that's just the way of the world, but we are the nerdy, really legally obsessed office, and it's a great place to be.

Elyse D. Echtman [\(03:58\)](#):

That's fantastic. And so your office in Tennessee has a very broad mandate. How has your varied legal experience before coming to this role, including your time in private practice as a partner at Butler Snow, informed the way you approach the job?

AG Jonathan Skrmetti [\(04:14\)](#):

So we have a lot of clients. We represent every state entity. Depending on the circumstances, we may be representing the judiciary. We represent the legislature, the governor, all of the executive agencies. So hundreds and hundreds and hundreds of significant clients and ultimately tens of thousands of clients. And so having a client focus is really important. We recognize that our role is to be the attorneys. We're not policymakers. And so we have a very service-oriented approach to things. We try to identify and advance the legal interests of our clients when we're on the proactive side. And we try to be responsive and not necessarily deferential, but we want to understand what our clients need, what's important to them when we're representing them on the defensive side or when we're giving advice. So I think the law firm time really gave me a sense of how important it is to work with clients and try to understand their needs, to put strategic thinking to work on their behalf.

[\(05:15\)](#):

And then of course, we have a lot of criminal related stuff. We don't have original prosecutorial authority here except in very narrow circumstances. We do all the criminal appeals and we do a lot of civil litigation related to criminal law enforcement. So the prosecutorial background helps for that. And then I was an adjunct professor of cyber law, and it turns out that's probably the single most significant substantive piece of background I have given the work we do these days.

Michelle Kallen [\(05:40\)](#):

That's a great transition to our first substantive topic that we wanted to talk about, which is AI and advanced technology and digital platforms. That's been one of the highest profile areas that your office has dealt with, technology. And in particular AI, you've yet led multi-state coalitions targeting the harms

of social media platforms and emerging technologies and specifically AI tools that affect children. How does your role in the state AG world of regulating fast-moving technologies, how do you approach that role given where society is when it comes to these sorts of technologies?

AG Jonathan Skrmetti (06:17):

So one of the things that I emphasized when I was teaching cyber law is law invariably lags technology. And there are often very clumsy attempts to keep up or to anticipate where technology is going that result in bad law that inhibits innovation. And we always want to be fostering innovation and ensuring the technology is moving forward in ways that are beneficial. So we have to provide guardrails without trying to fundamentally inhibit the development of technologies. With AI in particular, it's extraordinarily powerful. There's so much upside to it. And there's a national security overlay where there is a real competition out there that will have a significant impact on human society for centuries to come potentially. So it's really important we get it right and we not overregulate, but at the same time with social media, we have seen there are really significant harms to children that can come if companies aren't internalizing the right values and aren't ensuring that they're behaving in ways that keep their products safe for their users, especially kids and other really vulnerable populations.

(07:19):

So we need to be active enough to ensure that these companies are paying attention to the potential harm they're going to cause and working to stop it from happening in advance rather than waiting for us to come in on the backend. Regulators did a really poor job with social media and took a long time to start pushing back against some really significant harms that have had a big impact at the population level. I won't go into too much detail, but if you look at the mental health statistics for kids, they just fall off a cliff. Jonathan Haidt has been probably the leading voice on this. It's been a real problem. So we need to make sure that as AI develops, we are setting bright lines, letting the companies know in advance what they should not be doing, otherwise staying out of the way. We don't want to interfere with the development of the technology because it could have profound consequences if we're not able to leverage the upside.

(08:11):

And so there's a lot of nuance involved. And it's really tricky in the political environment because everybody is basically saying, "We need everything or we need nothing." And the clear answer is somewhere in the middle of that.

Michelle Kallen (08:23):

And it's amazing because this is a place with bipartisan coalitions and efforts. I mean, having recently seen discussions about this in NAAG or the letters coming out of AG's offices, there really seems to be bipartisan agreement on how to approach this, at least across state AGs.

AG Jonathan Skrmetti (08:39):

Yeah. The biggest fight we had probably was the moratorium, which would've taken us completely off the table for 10 years. And the idea was the federal government would inhibit state enforcement, but there was no federal regime to replace it. And given the track record of some of these companies, I do not trust them and don't think we can expect them to do the right thing for 10 years without any meaningful oversight. So we worked together with a number of senators. Senator Blackburn from Tennessee was at the heart of the effort. It was a bipartisan push and the AGs weighed in, I think, in a meaningful way, but we want to make sure that state interests are advanced, especially in the absence

of a federal regime. If there was a comprehensive federal regime, we probably still need enforcement authority under it, given resource constraints. But the ideal would be one uniform set of rules that make sense that everybody can agree to.

[\(09:30\)](#):

In the interim, the states are the only line of defense between these giant, extremely powerful companies and a lot of people who don't understand the potential harms they're looking at. And so we need to make sure that we are protecting our citizens and hopefully doing so in a way that advances America's national interests at the same time.

Elyse D. Echtman [\(09:50\)](#):

So companies often struggle to anticipate how AGs will evaluate risks related to tech. And even talking about how it's evolving and we're learning about it, I'll say, my children were probably guinea pigs for the era of social media. It was moving faster than I could keep up with it in knowing what these apps would do and how they might affect them. So as the world is changing, what kind of guidance can you offer to technology companies to try to build compliant systems in the first place?

AG Jonathan Skrmetti [\(10:22\)](#):

I mean, I think the number one thing is act like a parent. A lot of the people involved in these processes are parents and you can create products that significantly engage kids that attract all sorts of attention. That's what they're trying to do, but you can do it in a way that does not exploit them. You can argue about where the line should be in terms of chatbots demonstrating affection towards somebody and forging that kind of emotional relationship and being flirty, but you don't want to talk about eight year olds and sexualized anything. And so just saying like, use your common sense.

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

Think about this. It was your kids using this product. What do you want it to do? What do you want it to not do? Because there are lines that will drive us to engage very aggressively. And when you're talking about potential sexualized content directed at children who are so young, they really don't have any idea what they're doing, that's a big red line for us and the companies should know that. I mean, a lot of it is just common sense. There's going to be nuanced conversation at various points about gray areas. That is not a gray area. And so in the rush to get product out and the rush to drive engagement, there have to be internal voices that say, "Man, this is going to look really bad," or, "People are going to read our policy and think that we are either crazy or evil or both, and the companies need to have space to listen to those voices as they choose how they're going to develop these products."

Michelle Kallen [\(12:01\)](#):

What's interesting is when you talk about the idea of sending a letter to a company, because one of the places that we come in as counsel is a client gets a letter and they reach out to counsel and ask about what they should do. Do you have any advice to companies or law firms that are facing a letter like this coming from your office or another AG's office in terms of how to respond in a way that you find most helpful and that's most effective in terms of opening up a meaningful dialogue?

AG Jonathan Skrmetti [\(12:30\)](#):

Yeah, I think there are a few key steps. The first is identify who the leading states are. That's usually pretty evident from the letter. They're the ones that sign first and then everybody else is in alphabetical order and then reach out. You probably want to figure out, is litigation imminent? Is there a formal

investigation going on or is this just sort of a shot across the bow to try to direct things in a more compliant direction and figure out exactly what information they need. Usually if we have questions, we want specific documents to give us a really clear idea of what the internal decision making process has looked like. We don't necessarily want 40,000 documents. It might be something that could be really simply resolved. And I think figuring out what appropriate next steps might be, whether it's just us saying, "Keep in mind that you have customers that are very young and you need to not do things that hurt them, which can shape internal decisions, but not necessarily in a really tangible, specific way, versus us identifying a particular design feature or choice that can be clearly remedied and then the company needs to evaluate the trade-offs and try to figure out how significant the litigation risk is, how strong our legal position is and what they should do.

[\(13:48\)](#):

Ordinarily, I think we're on pretty firm ground when we send these letters. If we're directing something specific, we're usually very clear about that. If it's more of almost a guidance document from us, I think it should be taken seriously as an indication that we're willing to commit resources down the road if the problem's not remedied. But because our tools are so heavy-handed when we apply them, it's usually fairer to the companies for us to take a lighter touch in advance, say this is something important to us, watch yourself, and then let them decide how best to appropriately respond. We're not technologists, so counsel for the companies can figure out how high a priority it is for us, how granular the response that we hope for is, and how much further interaction is necessary. I mean, with the letter to the companies about kids, I anticipate there will be emphatic follow-up at some point if the giant AI companies continue to misbehave on that front.

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

For now, we've sent the letter, we've made our position clear. I hope it's being taken into consideration during internal decision making, but we don't need to have an ongoing conversation about that. We're just planting a marker so that if the companies choose not to take us seriously, they will not be able to say they were blindsided if we take further action in the future.

Elyse D. Echtman [\(15:05\)](#):

So if we have a client who is the subject of a letter, an investigation or a litigation, what's the posture of your office towards having a meeting and having some communication about your expectations and the company's positions?

AG Jonathan Skrmetti [\(15:22\)](#):

We're almost always willing to take a meeting, unless there's just overwhelming **indicia** of bad faith on behalf of the company. We'll hear people out. Usually we're very amenable to letting people come in, make presentations as to why they think they did not do anything wrong, what their defenses might be. We'll talk through the case at a high level. And if they say, "It's not a big deal. The harms aren't as bad as you think. We're changing our policies. This would be a really challenging case. Here's the resource commitment it would probably take." Things like that, we'll take it into consideration. There are times when we've been interested in something, we've had a conversation, it becomes evident that we're not in a strong position to move on it, and then we shift resources elsewhere. There are other times where we are ramping up for serious litigation, but it's helpful to identify the contours of what that might look like.

[\(16:11\)](#):

I mean, we're obviously perfectly happy to be adversarial, but it's in everybody's interest to keep things efficient and accurate, keep discovery as focused as it can be so that we can resolve it efficiently. So for a lot of cases, there's a fairly collaborative approach to gearing up litigation that I think benefits the companies involved even if they're on the receiving end of our litigation. There's a lot that we can do to keep it from being unnecessarily onerous or overbroad.

Michelle Kallen ([16:41](#)):

Are there any particular examples that come to mind where your office issued a letter, you were engaging with an entity and there was a particularly helpful engagement or a particularly unhelpful engagement?

AG Jonathan Skrmetti ([16:53](#)):

Because on some of the helpful ones, we're still investigating, but we had conversations that made us hold off on pulling the trigger on litigation. I probably shouldn't mention any of those companies given the ongoing nature of it. In terms of unhelpful, there have been a few where people came in with a lot of bombast and bluster and, "Oh, you don't have a case. We're going to whoop you in court." Just really trying to bully us, and that doesn't work. I represent seven and a half million Tennesseans in consumer protection. We deal with the biggest companies in the world all the time. I respect that they have immense resources, but we're not going to be scared into backing down when we're in the right. So the most unhelpful communications are the ones where it's chest thumping and attempts at intimidation. The other thing that really doesn't work, especially in Tennessee, because I'm not elected, are the people who come in and lean heavily on their relationships.

([17:51](#)):

Oh, the governor and I were talking and we're doing so much for Tennessee. We've got this great support for this nonprofit. You can't buy your way out of accountability, or at least you really shouldn't be able to. And my incentives are completely misaligned with that approach. So that's a pretty unhelpful way to come at it. I mean, we want to talk about the substance. Usually you get very capable counsel on the other side that has a lot of experience in this space, understands what we're thinking, and we can talk about the intersection of our interests. And even if it ends up turning into litigation or protracted settlement conversations, setting the tone right at the outset can save a lot of money. I mean, you can either resolve this quickly and efficiently, figure out how to assuage our concerns in a way that causes the least disruption for company operations and gets us the protections for our consumers that we need.

([18:43](#)):

Or if we're going to have a knife fight, we're happy to do that. We're really good at it. It's going to result in much more billing for representation for the clients, but it's generally a terrible idea from the client perspective to take that approach unless it's really something existential for their business model.

Elyse D. Echtman ([18:59](#)):

Yeah. That's interesting because as a litigator in private practice, I agree that the chest thumping and the bombast, it doesn't work. It never works. This is what we do for a living. We're not easily intimidated. So while we're on the topic of litigation, I just was wondering, under what circumstances will your office partner with private law firms? And when you do so, what kind of involvement do you maintain in the litigation itself?

AG Jonathan Skrmetti ([19:25](#)):

That's a really important question and it's something that's evolving. So we traditionally have partnered with private firms. We've done it a little bit lately for capacity reasons or for expertise reasons. So in PFAS, we did work with a private firm because we didn't have the expertise in that area and things were moving pretty fast. We felt like if we were going to get involved, we had to beat certain deadlines. And so we worked with a firm that has been engaged with other states in this space. And then there are a couple other instances where we're partnering with private counsel. One is we have a joint trial team where we just had to supplement our team because we're up against a huge corporation. They're devoting significant resources to it, and we wanted to be sure that we were able to match that. And if we did it strictly internally, it would tie up essentially all of our consumer protection resources.

([20:21](#)):

So we've got some outside help on that. We use outside help with discovery sometimes because they're more efficient and our resources are, again, relatively limited. And then there is an outside firm that we've brought in for the Roblox case, and that's an area where we just didn't have sufficient internal resources. The nature of the case was such that we thought it was particularly well suited for outside counsel. There's a little bit less nuance there than in some other cases. And so we were able to do a case that would've been pretty hard for us to bring absent that outside help that I think is a really important case for us to bring. So we do it a little bit. In the big multi-state settlements, the dynamics of outside counsel for states have caused a lot of problems over the years, especially when you have the giant plaintiff's firms that are representing some states, but also representing other interests on the plaintiff's side.

([21:13](#)):

It dilutes the state's ability to focus on remedies that benefit our citizens when you have counsel for some of the states whose incentive is really strictly monetary. And a lot of times we care more about the injunctive relief than about the money. It's a dynamic that continues to create a lot of difficulties, especially when you get a really complicated, really high stakes piece of litigation that everyone is involved in.

Michelle Kallen ([21:39](#)):

It's also interesting because from a consumer protection standpoint, or just generally, when you're in the state AG world, you might have individual clients, either if they're named in a case or they're an agency, but you also always have the overlay of the institutional interest of the state or the district or the commonwealth. But in those situations, that's kind of an additional interest to represent in way that often might be aligned with the interests of the named clients in the lawsuit, but sometimes that those interests might be different. And it seems like from your background, having come from the governor's office, you are aware of those dynamics too, but is that something that you find is at play when you're interacting both with outside counsel and just new folks to the AG's office who are learning how to represent those interests in the AG world?

AG Jonathan Skrmetti ([22:28](#)):

So we have plenary enforcement authority for consumer protection and antitrust in my office, and we take that really seriously. We work with other state entities to understand their interests, and sometimes there's a lot of alignment. With technology, the legislature, the governor, all care a lot about protecting kids. And so there's a lot of overlap with our enforcement efforts and some of the legislative and policymaking efforts, but that's the one area where I really have policymaking independence is

choosing how to use our offensive litigation. And so we take into account what the other state actors want, but there's a lot of independent assessment of risks and harms and threats. And I'd be really concerned about putting the interests of consumers below the political interests of various elected officials in the state, for instance. I think it's really important for consumers to have an independent voice looking out for their wellbeing, given the asymmetry in power between some of the companies that we deal with and an individual Tennessee consumer who may have no leverage to keep their behavior in line, except for what we bring to the table for them.

Michelle Kallen ([23:40](#)):

So General Skrmetti, on the consumer protection side of things, it definitely seems to be a priority for your office in sectors like online sweepstakes or casinos or the solar industry. Are there particular industries that you view are at high risk from a consumer protection standpoint right now?

AG Jonathan Skrmetti ([24:00](#)):

I do think gambling is an area where we've seen massive growth lately, and a lot of it's heavily regulated. I mean, there's legal sports gambling in Tennessee. I know other states have some pretty broad scope for legal gambling. They're heavily regulated industry for a reason, and there's a lot of risk for consumers out there. I've heard from people in the online sweepstakes context, for instance, who have gambling problems, put themselves on the block list for casinos and for the legitimate sports books, but when you're getting bombarded on social media with ads for these things that are totally unregulated, it's a huge problem for them and it has caused devastating loss because they're just not in a position to protect themselves. They know it. And in other contexts, we have systems in place to help them so that they are not taken advantage of because of that vulnerability.

([24:53](#)):

So I'm pretty committed to looking at unlawful gambling and making sure that people who know they have a problem are not being exploited in ways that the law is supposed to stop. Technology is just generally a huge interest for me. There are so many vulnerabilities we have that we're either not aware of or we're just not really capable of working around if somebody's pushing the right buttons, and these companies have so much data and so much access to expertise that they're really able to exploit the architecture of our brains in ways that we have a hard time coping with. And so it's situations like that where you do need some government guardrails to protect consumers. There are a few other areas of interest, but generally kids and technology are sort of the main areas of focus, the ones that are going to get my attention the quickest, the ones where we continually work to develop expertise.

([25:50](#)):

We have loads of even small time scammers with shady finance deals for elderly people where they'll go and sell them a water system that's supposed to keep them from dying, right? Like your water is going to kill you. You must buy this expensive thing and finance it with us. There's a broad spectrum. We want to protect every vulnerable consumer and depending on the nature of the misconduct, if somebody's just being a straight up bad actor, it doesn't matter what they're doing, we're going to try to go after them.

Elyse D. Echtman ([26:18](#)):

And do you have any particular consumer protection priorities in the FinTech or financial services areas? What's your office's take on financial services?

AG Jonathan Skrmetti ([26:30](#)):

So this is an interesting area because the federal government had basically taken over all of the enforcement on this and now there's a significant gap in enforcement, I think, given what's gone on with the CFPB. A lot of states are having to evaluate how big a priority this is for them. We're involved in some cases. Given the resource constraints that we have, it is frankly not generally our highest priority. There are other harms to consumers that I think require intervention more aggressively because there's so much regulation in the financial services space and there's a lot of consent on the front end, even if it's ultimately maybe a shady-ish operation. It doesn't scream for resource commitment the same way, say a tech company creating significant mental health risks for kids does. I know other states feel very differently. There's a big blue red divide in terms of enforcement priorities relating to financial services.

([27:29](#)):

I think you're going to see that play out more in the coming years as it becomes necessary to invest more resources to stay active in this space, and people are going to have to look at the trade-offs and realize there's an opportunity cost to that. So in Tennessee, we care about it. We are involved in some litigation, but it is very clearly not the highest priority.

Michelle Kallen ([27:51](#)):

Is that the sort of area where Tennessee might be involved in a multi-state where another state is taking the lead in investing resources and connection with the matter and Tennessee has the opportunity to join? Or is this something where it really just depends on the specific matter and how that aligns with where Tennessee is?

AG Jonathan Skrmetti ([28:12](#)):

It's really a specific matter issue. I mean, sometimes where there are multi-states, everybody signs on because there's some consumer interest that we all share and some people care a lot about it and are pouring the resources in and the rest of us are along for the ride. That's a very typical dynamic in AG world. But with some of these consumer financial things, there's always going to be discovery costs. There's always going to be some sort of commitment of resources, even if you're riding along on a multi-state. And in some of those cases, we're just not even willing to make that commitment, at least initially, because the harm does not appear significant enough because it's potentially going to be years long investigation and litigation, and we need the resources that would go into that to go into some of the higher priority cases. So we're not even along for the ride on some of these things.

([29:02](#)):

And I think you're going to see more, I guess, curation of AG involvement where because there is some cost, even as a marginal participant, people are getting more aware of that and recognizing that we have to be thoughtful even if we're just going to get along for the ride in some of these cases.

Elyse D. Echtman ([29:21](#)):

So shifting gears a bit, in terms of your priorities, where is antitrust on the list?

AG Jonathan Skrmetti ([29:27](#)):

Antitrust is a pretty high priority. I think America is founded on the idea that the concentration of power is inherently dangerous, and that applies in the public sector, obviously, but also in the private sector. And we're looking at some pretty significant consolidation and concentration in some really important

industries. And as the federal government's resources are maybe a little bit thinner than they traditionally have been, the states are necessarily going to have to step up. And antitrust is an area where we haven't been maybe as active in the last few decades. It's been kind of a quiet time for antitrust compared to the past. Now we do have to have a principled approach to it. I think the consumer welfare standard is an important objective guidepost to make sure that we're not just saying that's a big company. We don't like what they're doing. We're going to sue them.

[\(30:19\)](#):

But we do see a lot of really anti-competitive behavior, some of it driven by the structures or the opportunities provided by technology. And I anticipate we will continue to be very engaged in antitrust and you're going to see a shift in the federal state dynamics, I suspect going forward, where the states are going to have more antitrust resources relative to what traditionally we have compared to the federal government. And the states are going to be maybe driving a little bit more of the action there.

Michelle Kallen [\(30:47\)](#):

What about when it comes to consolidation and vertical integration? We've seen that quite a bit in the tech sectors, financial sectors. Is that something that you anticipate additional state involvement in as these industries continue to consolidate?

AG Jonathan Skrmetti [\(31:02\)](#):

Absolutely. We're looking at a number of different industries with serious vertical integration issues. There are real concerns about any industry that is constraining people's ability to live their lives, whether it's financial where companies with significant concentrated power can steer private behavior in significant ways. We saw a lot of that with ESG and the extreme concentration with asset managers. There are some adjacent entities that we're looking at really hard right now. In the tech sector and the financial sector, in the entertainment sector where there's some cause for concern. And then you're seeing technology leveraged to do what would traditionally seem to be a pretty significant antitrust problem. For instance, RealPage, where you had commercial real estate companies combining supply and pricing information through an algorithm. If they'd been in a hotel room with a whiteboard, the FBI would've kicked the door in and arrested everybody. We want to make sure that it's clear that you can't use a black box to do what you can't do in person.

[\(32:04\)](#):

In AgriStats, which is a similar case involving poultry and pork pricing, we're litigating for the same reason. We want to make sure that as technology develops, it's not used to do an end run around traditional protections for consumers from collusive behavior. And then the industry concentration, which is necessary to some extent. With AI, the resources required to stand up a frontier model are pretty significant. So there has to be some degree of concentration, but that just means we have to be more vigilant about the potential downstream harms and recognize that if this is a necessary condition for the market, it means regulators need to be more on top of their game to keep it from causing the harms that could ensue from that kind of concentration.

Elyse D. Echtman [\(32:47\)](#):

So for companies that operate across all 50 states, and there are areas where enforcement is more at the local level, at the state level, what advice do you have for those companies as to how they navigate the different regimes?

AG Jonathan Skrmetti ([33:03](#)):

Part of it is proactivity. If there's something they have to do to comply in certain states, if they want to come to us and say, "Here's what we're doing for compliance. We recognize you have different laws. We're trying to accommodate everybody and we just want to let you know what we're doing." Conversations like that can help. Usually it is the most aggressive or least reasonable states that drive company behavior. And the rest of us who have lower thresholds for what they're required to do are usually happy to go along with that. If there are real conflicts between what the states are demanding, sometimes the most clarifying thing you can do is litigation. I don't think there are a lot of situations where that holds, but there are certainly sometimes where what the red states want and what the blue states want are very different. Companies may be caught in the middle.

([33:53](#)):

Sometimes the best thing you can do is get a court to tell you what you need to do. So I think we try to avoid those circumstances, but if that's where things are at, so be it. But the AGs get together frequently, our staffs get together frequently, and there's a lot of industry representation at those meetings where people are just recognizing that we may ultimately enforce against them. They want to ensure that we understand what they're doing and why they're doing it so we can at least make a more informed decision and recognize that they have reasons for what they're doing. I think that's pretty useful. Frankly, it gets annoying sometimes being lobbied really hard. It's a little inconsistent with the legal role, but I recognize that if you're a company looking at the potential of a 56 sovereign entity swarm of litigation, you want to do what you can to either head that off or try to resolve it quickly, or at least understand where you stand in relation to the potential litigation.

([34:48](#)):

I think it's really worthwhile to proactively engage if you're going to be a frequent, either adversary or frequent subject of investigations. The relationships really help lubricate some of the initial questions that we have and let us more quickly understand, is this a nothing burger? Is this a real case? Is this something that the company will work with us to resolve so we don't have to escalate it? So I would very much encourage companies in that situation to be as proactive as possible.

Elyse D. Echtman ([37:23](#)):

So over the course of your tenure so far, have your priorities shifted in terms of your primary aims as AG, especially given the change in federal administrations?

AG Jonathan Skrmetti ([37:34](#)):

Yeah. The shift in administrations has been really significant. When I came in, one of my priorities was ensuring that Tennessee could be as self-governing as possible, pushing back against federal agency overreach. We were very active and very successful on that front, and frankly, it was one of my favorite parts of the job. I care a lot about the structure of government, and we had a lot of success in making sure that federal government stayed in its lane. With the shift in administrations, there's a lot of overlap in priorities between Tennessee's elected officials and the federal executive branch. And so there's not nearly as much friction, and we don't really need to sue the federal government that much. I mean, federal overreach is always going to be federal overreach, but the states that are affected are going to change. And so now the blue states are taking up the mantle.

([38:22](#)):

I wish they would adopt the doctrines that we were pushing a little more aggressively just from a constitutional point of view, because we know that we're going to be fighting those fights again someday. And the non-delegation doctrine could be reinvigorated. The major questions is significant in continuing to develop. And there are a lot of constraints on federal executive authority that regardless of which party is in the White House are important for the country. We're not really in those fights right now, and it's not really viable for us to jump in given Tennessee's position on a lot of these. But with respect to consumer protection and antitrust, big tech and protecting kids have been a priority from day one, and that hasn't changed. We've gotten maybe a little more engaged in antitrust than I expected we would. I think the two biggest surprises, and they are ongoing priorities for us are the ticketing industry where Ticketmaster Live Nation has been a significant area of concern and college sports, which I did not anticipate getting involved in.

(39:24):

We had a successful antitrust suit against the NCAA, and because there's so much uncertainty there, and because it's become so much more of a legal and litigation oriented environment than it should be, I think we're going to have a role to play in that until we reach whatever the new equilibrium is.

Michelle Kallen (39:41):

So we have one final question as we close out our time with you, General Skrmetti. If you had one message for companies doing business in Tennessee, what would that be?

AG Jonathan Skrmetti (39:50):

Follow the law. No, I mean, I think the number one thing any company doing business in Tennessee should keep in mind is we are extremely protective of our kiddos. And if you have any sort of kid facing activity, you need to be really careful to ensure that you are doing so with the best interest of kids in mind. You need to be providing value to your consumers, not extracting value from them at their expense. And if you do not do that, if you're doing things that are going to hurt kids, we will be coming after you and we're pretty good at it. There are other things that we care about, but that is the top priority, and we have been quite successful in kid facing enforcement work. So don't cross that line. We would love to have companies here. Tennessee's a very business-friendly state, but companies need to act in the best interest of kids when they're interacting with kids.

Michelle Kallen (40:44):

Well, General Skrmetti, thank you so much for joining us.

AG Jonathan Skrmetti (40:47):

Thank you for having me. It's been a great conversation.

Elyse D. Echtman (40:49):

Thank you so much for your time today. It's been terrific to have the opportunity to have this dialogue.

AG Jonathan Skrmetti (40:54):

Thank you.

Voiceover (40:55):

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