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## **REGULATORY OVERSIGHT s03E14: EMERGING TRENDS IN CONSUMER PROTECTION: A CONVERSATION WITH NAAG'S KATE DONOVEN**

**Stephen Piepgrass:** Welcome to another episode of Regulatory Oversight, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piepgrass, one of the hosts of the podcast, and the leader of our firm's Regulatory, Investigations, Strategy and Enforcement Practice Group. This podcast features insights from members of our practice group, including its nationally-ranked state attorneys general practice. As well as guest commentary from business leaders, regulatory experts, and current and former government officials. We cover a wide range of topics affecting businesses operating in highly regulated areas.

Before we get started today, I want to remind all of our listeners to visit and subscribe to our blog at [regulatoryoversight.com](http://regulatoryoversight.com) so you can stay up to date on developments and changes in the regulatory landscape. Today, my colleague and co-leader of our state attorneys general team, Clay Friedman, is joined by Kate Donovan from the National Association of Attorneys General, or NAAG, to discuss her new role as Consumer Counsel. Talk about emerging trends in consumer protection. And provide some key insights into initiatives at NAAG.

Kate began her legal career as a law clerk for the Washington County Prosecutor's Office in Fayetteville, Arkansas where her dedication and willingness to tackle challenging legal questions led to a year-long position. After gaining substantial experience in both criminal and civil law, including a period working at the Attorney General's office and a successful stint at a consumer protection firm in California, Kate returned to Arkansas and served for over 10 years as a Senior Assistant Attorney General and head of the Consumer Protection Division in the Arkansas Attorney General's office. In that last role, Kate contributed to significant litigation efforts and collaborated with her counterparts across the nation to safeguard consumer interests.

Clay and Kate, we are very much looking forward to your conversation.

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**Clayton Friedman:** Thanks, Stephen. Thank you for the introduction and kind remarks about myself and, more important, about Kate. Kate it's always good. Of course, I can see you. And our listeners can't. But it's always good to see you. How are you doing? And are you enjoying the transition to the National Association of Attorneys General?

**Kate Donovan:** Hi, Clay. Thank you so much for that introduction as well. I am loving my new role as Consumer Protection Counsel for the National Association of Attorneys General. It's been a real privilege so far to work with such a wonderful bipartisan organization and look at things from a national perspective.

**Clayton Friedman:** I sort of had your job back in the 1990s when I also was Chief Counsel for NAAG. But a lot has changed since then. I mean, it was me and one other person. And that covered insurance, consumer protection, and antitrust. And I know it's a different setup now. But tell me, first, I want to discuss a little bit more about what you did in Arkansas as head of consumer protection and how it lends itself to bringing you the experience to do the job now at NAAG.

**Kate Donovan:** I think one of the benefits of working for a small state like Arkansas in consumer protection is that you don't specialize. You work on a little bit of everything. And so, as head of consumer protection, I work with antitrust, we work on privacy issues, we work on tobacco and opioids, and just everything that you can imagine from the small-time home contractor to lawsuits against social media companies. Just a broad range of issues. And I think that's been helpful in my role coming into NAAG. I said I don't precipice to be an expert on any particular area. I'm very much a generalist with touching on a lot of things.

**Clayton Friedman:** I also am curious about the other parts of your background because I find it interesting, particularly Japan. Because I think Japan is just a great place to be and visit. But between your earlier experiences in California, which is another thing we share –

**Kate Donovan:** Yes.

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**Clayton Friedman:** – and your time in Japan, have you been able to leverage those other experiences and the non-governmental enforcement experiences for the work you're doing at NAAG?

**Kate Donovan:** Yeah. I mean, I think that, certainly, my world, when I was working in California, I worked for a consumer class action firm. And so, we did the same type of laws and legal practice that I'm doing now. And so, I had come from working as a prosecutor for the state of Arkansas just before coming to California and transitioning into the private sector for consumer protection. And so, I really enjoyed my work there.

California, of course, is so huge. The bench is so deep with lawyers. I think it's like 200,000 licensed attorneys or something like that. Where Arkansas has much less than that. We maybe have 6,000 lawyers altogether across the state. And so, having the range is perspective. Knowing what it's worth working within a really big state can feel like and working in a small state. I think that that perspective is helpful that I bring to NAAG.

And then my time in Japan. The way we were there is I was married to – my late husband was in the Air Force at the time. We were stationed in Okinawa, Japan for three years. And so, I think that anyone who has the opportunity to live outside the country for a while should take it because it gives you a great perspective on what it's like to be an immigrant. To learn a new society where there's new expectations and being an outsider of things.

And I also adopted our daughter, Sarah, there. I got to work through the Japanese legal system. I had to hire myself a Japanese attorney and work through that process. I learned a little bit about the Japanese legal system there. And at the time, it was something like only 1% to 4% of people who took the bar in Japan became attorneys. Very, very slow pass rate. I think that they've changed it a little bit more. Now it's a little bit more modern. But it was a really great perspective. And just to see that the countries treat things differently. Right? This is not the – the way that the United States handles things in their laws is not the only way to do those things.

**Clayton Friedman:** Yeah. We could spend a whole hour or a day talking about Japan and your experiences there. I mean, I just know that from three short trips there. But it had to be a

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fascinating experience. In many ways, my path was the same as yours. I was with the Missouri Attorney General's office for 10 years. I was in charge of actually multi-state litigation and other related types of titles. Very hands-on in the cases. And then I went to NAAG and it was a little bit different. Have you found that what you're doing is – how has it changed? And how for the good has it changed?

**Kate Donovan:** Right. I mean, it's definitely a shift. Because I was sort of in the throes of the everyday ups and downs of litigation and the new – whatever crisis did you work. Right? Whatever thing is happening today in your office. This is a lot more breathing room and thinking strategically about what are the big goals of consumer protection. How to move the needle forward and work in a bipartisan way. It's a good transition. It's definitely a mindset shift to think about it from that perspective and get out of the trenches.

**Clayton Friedman:** Tell me about the emerging trends in consumer protection that are hitting your desk at NAAG. Both from like a NAAG standpoint but also what the states are seeing.

**Kate Donovan:** Of course, we work with all of the states. And so, what I see, the things that I see coming up in all of our conferences is about how AI is infiltrating all of the things that we do. And so, there is a continuing concern about whether or not consumers are aware of when material is AI generated. And then there's the positive aspects in a way that we might be able to – every AD's office might be able to integrate AI into some of their processes and make things easier, and faster, and more consumer-friendly for maybe with taking in consumer client and those sorts of things.

We see the social media issues are very important. We see solar financing continues to be an important area. And I think that the consumer scams that affect really our vulnerable populations are continuing to be something that's very high on the priority list on all of our AGs.

**Clayton Friedman:** I want to drill into a couple of those a little bit more, particularly on social media. Obviously, there's the larger issues about should TikTok be allowed in the country and things like that. But lot of people are using social media for marketing purposes and things like that. Tell me what the AGs are focused on in that realm. And what should companies be

concerned with when they're thinking about using influencers or just advertising in social media and stuff like that?

**Kate Donovan:** Well, the marketplace is ever-evolving. I think that the same concerns that when we [inaudible 00:08:55] from newsprint to radio, from radio to television, to email, all those things concerns translate [inaudible 00:09:02] with consumers about what your products can do. Do people understand that they're watching a commercial, right? That they're advertising a fraud? And that they're being truthful in those processes?

And then, also, I think on the social media, is it hitting the right audience? Are you being careful in the way that your social media messages are being distributed so that they're not landing advertisements for adult beverages to kindergarteners? Those sort of things. I think those are things that the private industry should be watching out for. And I think that those are things that are important to AGs. We know that the advertising and marketing is going to go on in those areas. But it's important that businesses continue to think about whether or not they're – those same deceptive trade practices apply in those areas.

**Clayton Friedman:** Of course, you mentioned also AI. That's kind of the Wild Wild West right now. When I sit back and I think of the different types of issues that are there from – just generally speaking, I use AI. Apparently, AI is used to determine what's going to appear on my movie options when I want to decide what to watch. But it's also used in many other different contexts. Some of which I can't begin to understand even in the consumer protection area. How do you train the offices to keep them abreast of what is coming down the pipeline? Because I'm guessing the level of knowledge of the AG offices is probably there's 56 different levels given that you have 56 attorneys general.

**Kate Donovan:** Yeah. I don't think anyone can keep up. And I think a very few people who are working in that space could say that they are keeping up on the things that are going on. We invite those private sectors to come to usually our Spring Consumer Protection Conference or our national conference and ask them to share with us sort of the good, the bad and the ugly of what they're seeing in the AI and ways in which it can make tremendous difference in relates to medical research or other sorts of areas. But, also, the concerns about whether or not –

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educating whether or not consumers understand that what they're seeing is an AI-generated face. Or events that didn't actually happen. And make sure that consumers understand and they're labeled accordingly. I think it's important piece of also having to educate consumers to be smarter about what they're doing and to be cautious.

**Clayton Friedman:** You mentioned solar. A lot of our listeners touch on energy in one way or another. Tell me what the concerns are about solar energy, and solar panels, and things like that.

**Kate Donovan:** I think that this ties back to the door-to-door salespeople for solar companies and the financing companies. So that can be associated with them as often. It seems that in some of those instances that maybe the national company has a good program. But when it comes right down to the folks who are doing the door-to-door marketing, consumers are not being offered threefold statements about what their options are. About how the financing is going to work. They're not getting copies of their contracts. They're being just deceived and lied to folks to get in the door.

And sometimes offering people who can barely afford to pay their mortgage. Financing to put solar panels on their roof and to get a sale. And so, that's not helpful. Or we have fly-by-night companies that come through and start all these contracts and start to build on people's houses. And those financial contracts are in place but then never finish the project. And consumers can't figure out how to get out of the financing. And it's a real mess. The families that you know I've talked to who are trying to help out their mother or father who is now stuck in the situation and unravel things, it's heartbreaking.

**Clayton Friedman:** I ran into a personal experience where a family member got involved with selling solar. And then when he finally called me with the issues he was dealing with – he was just outside of college. And, apparently, in California, there's this hidden network of these boot camps where they hire kids right out of school. They put them like in a frat house. And they feed them. But then they drill them on how to go beat pavement, to go sell it without regards for telemarketing laws, without regard for door-to-door solicitation laws. And just pressure them to turn sales at all cost. And so, I've witnessed some of that first-hand.

**Kate Donovan:** Right.

**Clayton Friedman:** In discussing all these different types of problems or – kind of emerging trends, are there new initiatives that NAAG has taken over the years to help the states combat these different types of issues? What is NAAG doing to educate the states, train the states and things like that?

**Kate Donovan:** I think in particular, our outgoing attorney NAAG president Rosenbloom, her issue focus was on America's youth. And so, she was focused on social media issues. Financial literacy for young adults and vaping. And those sorts of things that pose a risk to our youth. And so, we will have a new president in January. And so, New Hampshire Attorney General Formella will be joining us. And he will pick a new initiative. And so, we don't know what sure that will be. It always just sort of shifts the focus. And so, we will align our training with those things.

But we offer training to individual states. And every twice a year, we offer consumer protection. We offer consumer protection 101. And then we have an anatomy, which is a more advanced class training for newer consumer protection attorneys. And then offer all sorts of things that any AG office could want. Whether it's an electronic document review platform such as Everlaw. And if their attorneys want more experience with that. Or some training sessions. Or they like to source an expert. We do all that we can to get all of the AG offices the things that they need.

**Clayton Friedman:** What about with your new crop of attorneys general that will get elected November? Does that present new opportunities and new challenges?

**Kate Donovan:** Absolutely. New opportunities. New challenges. There will be sort of a welcome to the new AGs as they come in and offering them all of the resources from NAAG. Sort of the new attorney general orientation. And then a lot of those office will also transition other leadership roles. Whether it's a chief deputy or any of the department heads. And so, we can offer leadership training to those folks. And so, it is an opportunity to connect them with all of the AGs. Any of the resources that we have. And, also, to a lot of like-minded folks. We are

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completely non-partisan organization. And so, we just listen to what every new AG's interests are and help facilitate communication so that they're connected to other people who are pushing in the same direction.

**Clayton Friedman:** I want to transition to a new area.

**Kate Donovan:** Okay.

**Clayton Friedman:** When I was a kid, one of my favorite things to watch were the ABC cartoons on different topics, including how a bill becomes a law. And then I came to NAAG and I got to get involved in a couple legislative initiatives and saw them become laws. Including actually the TCPA, which was a fascinating experience. Well, that was back in the 90s. Tell me about what your role or what the role of the association is mostly on the federal level, but state level too. I don't know if NAAG plays a role in helping states on state legislation. But I think our listeners would like to learn what role NAAG plays in that space.

**Kyla Scanlon:** At the national level, what we often see is the AGs – either all of the AGs or a coalition of AGs offer support through a letter to a federal agency or to congress in support or opposition to certain pieces of legislation. And so, I think when they offer – when the AGs come forward with a unified voice on something, like a recent letter about a surgeon general type warning on social media for youth, that speaks very loudly about the concerns that attorneys general can have when they're working together.

And so, I have not yet had an opportunity to work on any national legislation. But what I do see is versions of bills that are being sometimes proposed in different houses or different states. And sometimes those will circulate. And we will see sometimes folks asking have you seen a similar bill? Or is the same industry proposing a similar bill in your state? Sometimes trying to figure out what's going on behind the lines and figure out who the players are. Because sometimes – as we know, sometimes legislation is not always what it appears to be. When you start to dig into it, it's not even close. And so, hopefully, we share that information.



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It's amazing how fast when you see important things happening quickly when information is shared and people can share their expertise. How quickly a letter can come together or an appointment can be made at a federal agency and share concerns from voices about things that need to change. And so, it's really a great opportunity at the national level to work on those consumer protection issues.

**Clayton Friedman:** Relatedly on the federal level, I know NAAG has different types of relationships with different federal agencies. Specifically, in the consumer protection area, who are you interacting with? And how do you interact with them?

**Kyla Scanlon:** Yeah. Of course, we largely work with the FTC and the Consumer Financial Protection Bureau. Those are I think our main players. And it's always looking at what are they doing in those spaces. And it works both ways. Sometimes they want to know if other states are looking at the same targets that they're interested in. Also, I guess the Department of Justice is absolutely in there too.

Sometimes they'll reach out to us and want us to know what's going on there. And sometimes the states are reaching out to us and saying, "Hey, do you know if the feds are looking at this particular issue?" In that way, we facilitate communication in those areas and just trying to get the right people on the call to share information and get things moving.

**Clayton Friedman:** There's good cooperation at the staff level between the staff. For example, the FTC and the consumer protection staffs across the country. How about the AGs? Are the AGs interacting with either the commissioners at the FTC? And how does that whole process work?

**Kyla Scanlon:** And that is generally a little above my paygrade. Brian Kane would usually be trying to end those meetings where those things are going to happen. But we are in the role of getting the players together. If something needs to move up the ladder on both sides of things, right? From your line attorney who goes, "Yeah, that's a really interesting idea. But stuff needs to move up to the AG level to get those – we need to get those conversations had." Or the other side. Right?

And we all have to take a deep breath and watch things move things up through a federal agency and see how long it gets up to the director level and see when we can get things moving. But it's always in the role of getting those things together. It's great when we can have those leaders at our conferences. The AGs and the directors of the FTC or the CFPB and those areas can be in the same route. It's a lot harder to be mad at somebody when you're doing a fireside chat or others. And a lot of great conversations can happen there. Whether it's a facilitated one through a panel or the very informal conversations that happen between sessions. I think that's where a lot of real work gets done.

I'm not sure I'm allowed to say this or not. But I would give a big plug to NAAG. To our listeners to go to the meeting in November where you invite all the DC agencies to participate. Because I think that's a great opportunity to hear about their initiatives, and cooperative enforcement, and things like that. I have found those meetings to be invaluable. Same thing with, obviously, your consumer protection seminar. Our private sector can go to those for a little bit. And I would encourage all of our listeners to partake of those opportunities, which comes to an interesting question. Does NAAG partner with the private sector at all? Are there opportunities to get involved with what NAAG's doing?

**Kate Donovan:** Yeah. We're very particular about making sure that we are not seen as aligned with any private sector. It's very particular. But what we can do is if there's a particular sector that's got something going on, say, let's figure out how a way to get them in contact with the AGs that they need to talk to. Maybe we need to set up a webinar or a call so that they can reach out to the folks who – in each individual state or the AGs. There's something important going on that they think – whether it's a whole industry or maybe a particular business that has something going on that they would like to touch base with the AGs on. We certainly can facilitate that.

And then there's the private sector in the sense of non-NGOs. For the AERP or other consumer interest groups. We are always happy to work with those organizations. Our interest in educating consumers. Right? What more can we do? Or if they're seeing something that we haven't quite seen yet. If they see something that's concerning to them. How they can bring that

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to us and say this is something that we're seeing. Are you seeing the same thing? What can we do?

**Clayton Friedman:** I definitely understand that. You also I guess use them though for subject matter experts. You mentioned that like with AI and things like that.

**Kate Donovan:** Yes.

**Clayton Friedman:** You also will partner with private industry to educate the a AGs. As you mentioned, AI and other emerging technologies. I assume that's pretty common.

**Kate Donovan:** Yeah. AI, social media, all of those issues. The other one that comes up is sort of the novel banking apps. And helping AGs understand how those operate and how they are similar or different to what traditional banking looks like. Yeah, we are always trying to catch-up in that way. What's going on in the private sector? And we absolutely rely on a private industry come in and help educate us on those things.

And it's great to bring your panel together in which maybe you have some private sector folks and some folks who have long-standing expertise in consumer protection, particular consumer protection area. And then maybe someone who has more of an academic perspective outside. And when we get together with panels like that, it's a really great opportunity to hear a number of perspectives.

**Kate Donovan:** I got to venture off just a little bit to a different space. Tell me about NAAG and how they support the attorneys general when they have to go before the Supreme Court.

**Kate Donovan:** Oh, wow. NAAG does have a whole Supreme Court practice area there. We have some wonderful folks who've been doing this very long time. And they offer all sorts of resources, opportunities for them to be able and try out their arguments and practice them there at DC. Receive feedback from our Supreme Court experts. And just do everything that we can to get them prepared to be able to go before the US Supreme Court and make those arguments.

**Clayton Friedman:** You mentioned in the beginning of our discussion how, when you were with Arkansas, you touched on a bunch of different areas. Not just consumer protection. Privacy, antitrust, environmental, etc. I guess though, since NAAG has all those similar projects, do you interact with your colleagues at NAAG? And what are the different projects besides consumer protection and Supreme Court that NAAG has?

**Kate Donovan:** Yeah. Absolutely. With our transition as Emily Myers, who worked with antitrust for years and years, has been now moved on. And so, we are now taking antitrust under their consumer protection umbrella here within the NAAG office. And so, we always work closely with them. So they will be within consumer protection. We also work with our bankruptcy council, right? Because those issues show up quite a bit in consumer areas. And then we also work with tobacco. Because that also used to be from my area. Used be also related to consumer protection.

And then there are the education and training pieces. We have folks who go out and do training. Whether it's on legal research and writing, or evidence and exhibits, the trial training. All of those things are offered within NAAG. And if there isn't something – we don't have something, then we'll figure out a way to create some training that the AGs need. Because that's our role really is taking the AGs – is meeting their needs. And I think it's ever-evolving right.

I think every state is facing the same issue, which is trying to do more with less in their office. And so, that means that you have to pull for many resources. And I think that NAAG is ideally situated to assist offices in that way.

**Clayton Friedman:** I just have two more questions. One is kind of like a softball. Is there anything that you also want to tell our listeners about regarding your job or the priorities of NAAG, etc., before we get to the most important question?

**Kate Donovan:** I think the thing that I would most want people to know about the National Association of Attorney General first of all is the nonpartisan issue. And then I think one of the things that we had talked about a little bit was maybe or thought about before is how do these

investigations and working group things work? Because this idea that somehow a lawsuit is just born. That's when the public hears about something. And these things have been germinating for often a long time.

The states can work together, share resources. I can offer resources in a document review platform or experts to them. And they can start working in an industry. And maybe the answer is additional regulation. Maybe it's reaching out to the legitimate business players and see if there's something that needs to change. Maybe there's some bad actors that we need to focus on. Because it's not everyone – we don't want to paint everyone with the same brush. Right?

And then there's the area of when it's born into litigation. And I think that AGs all differ in how quickly they want to move from one thing to another. And I think that the AGs do really amazing work that would be incredibly difficult for any one office to do together alone. They leverage years of experience and folks from all across the country. Some people with a small office maybe giving one lawyer who dedicates four hours a week to something. Whereas a big state like California can throw four lawyers or a dozen at something. And without all those resources, we wouldn't be able to do things like take on social media companies and those sorts of things.

**Clayton Friedman:** Here it is, my last question. You and I have had amazing similarities, which I've known about them, but we just kind of all put them together today. We both have California roots. Were you actually born in California too?

**Kate Donovan:** Yeah. I was born in California. I lived there until my early 20s. Yeah.

**Clayton Friedman:** I was born also in California. I lived there until my 11th year. But then came back about 23 years ago. We both worked for AG offices and took active roles in leading consumer protection efforts. We both worked at the National Association of Attorneys General. But are we both fans of the same national football team? The Buffalo Bills?

**Kate Donovan:** Yeah. No. I'm going to be a diehard 49er fan. I think that you got to stay loyal through thick and thin. And we've had good years and bad years. But I've always got to be a

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49er fan. But I've lived in Arkansas long enough that I certainly have to say that I'm also a Razorback fan as well.

**Clayton Friedman:** We have a common friend I think from Arkansas who made me pledge for the Razorbacks. But he also was a Miami Dolphin fan. And he paid me 250 bucks last week when the Bills – that was a good thing. Well, this is my first one of these. Troutman does them all the time. Stephen's been a great host. And I'm glad he asked us to participate in this. I wanted to thank you. I've really enjoyed it. And now I know I'm kicking it back to Stephen to offer some conclusionary comments. Thanks a lot, Kate.

**Kate Donovan:** Yeah. Thanks, Clay.

**Stephen Piepgrass:** Thank you, Clay and Kate, for that great conversation. I'm sure our listeners were also intrigued by your engaging discussion and insightful perspectives. And thank you to our audience for tuning in. Remember to subscribe to this podcast through Apple Podcasts, Google Play, Stitcher, or whatever platform you use. We look forward to having you join us next time.

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