Introduction

This report describes the status of ongoing lawsuits the Office of the Attorney General has brought or joined with other states under the Maryland Defense Act (MDA), a statute enacted in 2017 that authorizes the Attorney General to protect the State and its residents against harmful actions by the federal government.[1] These lawsuits span a full spectrum of environmental, health, economic, public safety, civil rights and other policy arenas in which the Trump Administration has attempted to discriminate against and inflict harm on Marylanders in violation of a myriad of constitutional and statutory protections.

In some cases, the efforts of Maryland and other states have already met with success. For example, the challenge to President Trump's attempt to add a citizenship question to the 2020 census, which would have deprived Maryland of critical federal funding by resulting in an undercount of its residents, was recently upheld on appeal. The challenge by states and other groups to the Administration's separation of children from their parents ultimately resulted in rescission of that unconscionable policy. Other challenges to harmful governmental action, while still ongoing, have offered temporary reprieves by delaying implementation of the policies at issue. The Administration's attempt to strip health insurance from millions of Americans, for example, has been stymied to date by court challenges to attempts to dismantle the Affordable Care Act.

As the lawsuits in this report demonstrate, the current Administration's harmful reach into the lives of Marylanders through a wide range of unconstitutional and illegal conduct is broad and deep. The Office of the Attorney General will continue to push back against actions of the federal government that threaten or jeopardize the health, safety, and well-being of the State and all Marylanders.

PUBLIC CORRUPTION

Enforcing the Emoluments Clauses

In 2017, the OAG, along with the District of Columbia, filed suit against the Trump administration to enforce the nation's original anti-corruption laws, the foreign and domestic Emoluments Clauses of the U.S. Constitution. As explained in the complaint,

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[1] Specifically, the MDA authorizes the Attorney General to file suit when the federal government threatens affordable health care, public safety and security, civil liberties, financial and economic security, fraudulent and predatory practices, the health of the environment, illegal immigration and travel restrictions, and Marylanders' general health and well-being.

"President Trump's myriad international and domestic business entanglements make him vulnerable to corrupt influence and deprive the American people of trust in their chief executive's undivided loyalty." *District of Columbia v. Trump*, 2017 WL 2559732 (D. Md. filed June 12, 2017) (No. 17-cv-01596-PJM).

The administration filed a motion to dismiss the complaint. The court issued two opinions denying the Justice Department's motion, concluding that the plaintiffs have standing to pursue their claims and that they have stated a claim under the Emoluments Clauses. In the meantime, the original complaint was amended, at the invitation of the district court, to include President Trump in his personal capacity. The Trump administration made a motion to the court to certify an interlocutory appeal and to stay all proceedings, including discovery, during the pendency of that appeal. The court denied the motion and, after the parties held an initial discovery conference and filed a joint report with the court, the court issued a scheduling order allowing discovery to proceed.

In December 2018, the Justice Department filed a mandamus petition and the President's personal lawyers filed an interlocutory appeal. A panel of the Fourth Circuit stayed proceedings in the district court (including discovery). In March 2019, a panel of the Fourth Circuit heard arguments in the two parallel appeals brought by the President. In July, the panel issued decisions in both cases holding that Maryland and the District lack standing to bring suit. Maryland and the District filed a petition for rehearing en banc, which was granted, vacating the panel decision. Argument before the en banc Fourth Circuit is scheduled for December 12, 2019.

President Trump's violations of the foreign and domestic Emoluments Clauses harm the interests of Maryland and its citizens. The clauses ensure that the President will act in the interests of the people and will not be swayed by the corrupting influence of money or other benefits received from foreign governments, the federal government, or state governments.

Marylanders have the right to honest government. We are entitled to know that decisions impacting Maryland are being made on the basis of merit and not on the basis of the President's personal financial gain.

IMMIGRATION AND CIVIL RIGHTS

Fighting President Trump's Family Separation Policy

In 2018, the Office of Attorney General (OAG) joined the State of Washington's suit challenging the constitutionality of President Trump's policy of separating immigrant children from their parents when they are detained upon entry into the country. *Washington v. United States* (S.D. Cal., Case No. 3:18-cv-01979-DMS). The case was initially filed in the Western District of Washington, but was moved to the Southern District of California, which was considering a related case brought by advocacy groups. It is currently pending before that court.

Under the challenged policy, when a family enters the United States along the Southwestern border, the children are separated from their parents, regardless of the family's circumstances or needs. The parents are sent to detention facilities awaiting asylum or deportation proceedings, while the children are sent to a variety of different residential facilities across the country, often without warning or an opportunity to say goodbye and without providing information about where the children are being taken or when they will next see each other. The states' interviews of detainees in their respective jurisdictions confirm the gratuitous harm that this policy inflicts on the thousands of parents and children separated under the policy, many of whom must go weeks and months without seeing or speaking with their parents.

As legal challenges to the policy mounted, President Trump signed an Executive Order purporting to suspend the Policy, but the Order said nothing about reuniting families already separated from one another. At the same time, the Administration filed an application for relief from the *Flores* Settlement, which has governed the detention, release, and treatment of all immigrant children for more than 20 years. That request seeks federal court permission to detain families together pending immigration proceedings—a plan that raises the specter of internment camps or, worse, prison-like settings. The court denied the request in July of 2018.

The issues in the family separation policy case are important to Marylanders because there are children who have been separated under the policy who have been relocated to Maryland, either in residential care facilities operated by nonprofit groups or in the private homes of sponsors. Once in Maryland, the children draw upon governmental services, including enrollment in public school and access to vaccines and other State-subsidized medical care. In addition, the State is responsible for inspecting residential care facilities to ensure that they are providing a safe and supportive environment for their residents, including the separated children. These governmental services are supported by Maryland tax dollars, which give every Marylander a financial stake in the case over and above the moral stake in ending this cruel and unlawful policy.

The OAG intervened in *Washington v. United States* because Maryland has a fundamental interest in ensuring that the federal government does not discriminate based on race, ethnicity, or religion, particularly in the cruel way that the family separation policy does. The suit remains pending before the federal court in California.

Protecting Deferred Action for Childhood Arrivals

Joining several other states, the OAG filed suit in California to challenge the Trump administration over its decision to end Deferred Action for Childhood Arrivals (DACA). As part of their DACA applications, recipients were required to provide sensitive personal information to the federal government, and it promised that the information would remain confidential and not be used against them in later immigration enforcement proceedings. Having relied on those assurances of continuity and fair treatment, these young people now find themselves in greater peril and at higher risk of deportation than if they had not

participated in the program. President Trump's elimination of the program violated both the Constitution's fundamental guarantees of equal protection and due process, and constraints on arbitrary and capricious federal agency action.

In January 2018, the U.S. District Court for the Northern District of California denied defendants' motion to dismiss and granted a preliminary injunction preventing DACA's rescission, basing its decision on the conclusion that the rescission violated the Administrative Procedure Act. In November 2018, the Ninth Circuit issued a decision affirming the district court's grant of a preliminary injunction.

Litigation over DACA was also brought in several other courts. U.S. district courts in both New York and the District of Columbia preliminarily enjoined the Trump Administration from terminating the program. In November 2018, the Justice Department filed a petition for certiorari before judgment in all of these cases in the U.S. Supreme Court. Although the nationwide injunction requiring the government to continue processing DACA renewal applications remains in place, the Supreme Court granted certiorari at the end of June 2019**.** Oral argument took place in the Supreme Court on November 12, 2019.

DACA has opened up employment and educational opportunities for thousands of Marylanders who have grown up here and are either working, going to school, or serving in the military. Hundreds are attending our public colleges and universities and benefitting from Maryland's passage of the DREAM Act. The DREAM Act extended in-State tuition rates to qualified young people raised in our State who are seeking a college education.

Immigration and Deportation FOIA Action

On June 27, 2017, a coalition of 9 states, including Maryland, issued a FOIA request to the U.S. Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) asking for records related to DACA, the arrest/detention of individuals at sensitive locations (such as hospitals, courthouses, and school grounds), and ICE/CBP detainer requests.

After the agencies missed their deadlines to respond to the FOIA request, a complaint for declaratory and injunctive relief was filed in the District of Massachusetts on October 17, 2017. After the complaint was filed, the agencies began producing documents.

Production of documents is complete, and plaintiffs filed a stipulation of dismissal on October 1, 2019.

Census Citizenship Question

Maryland joined a coalition of dozens of states and municipalities challenging a proposal by the Census Bureau to add a question about respondents' citizenship to the 2020 census questionnaire. The Census Bureau has long recognized that a citizenship question could deter census participation among non-citizens, which would result in Maryland's population

being undercounted, leading to a decrease in population-based federal aid, and potentially shrinking Maryland's representation in Congress and the Electoral College.

The lawsuit, pending in the Southern District of New York, went to trial over seven days in November, 2018. In January 2019, the district court issued an order barring the government from including the citizenship question on the 2020 census questionnaire. The Supreme Court granted prejudgment certiorari to hear the government's appeal from that order, and, on June 27, 2019, affirmed the district court's order. On July 16, 2019, the district court entered a permanent injunction against the government.

Maryland has also been active as an amicus curiae in a substantially identical census lawsuit filed in the District of Maryland. This case is assigned to Judge Hazel, who conducted a 7-day bench trial ending February 21, 2019. On April 5, Judge Hazel also barred the government from including a citizenship question. While that ruling was on appeal, the Fourth Circuit granted a motion to remand so that the district court could consider revising its judgment in light of the emergence of additional evidence supporting the plaintiffs' claims. Following the Supreme Court's ruling in the New York case, Judge Hazel, too, permanently enjoined the government from including a citizenship question on the 2020 census questionnaire.

Fighting President Trump's Declaration of National Emergency at the Southern Border

On February 15, 2019, after failing to obtain funding from Congress, President Trump announced that he would invoke his emergency powers and redirect funds appropriated for other purposes to construct a wall along the southern border. In response, the OAG joined 15 other states in filing a lawsuit in the Northern District of California challenging those actions as unconstitutional and unlawful.

The sources of funding identified for diversion to border wall construction potentially include tens of millions of dollars appropriated for military construction projects at Ft. Meade and Joint Base Andrews.

The district court entered a preliminary injunction preventing the diversion of military funds in the related case filed by the Sierra Club, finding that the Department of Defense likely lacked the statutory authority to divert money for the purpose of building a border wall, and later entered a permanent injunction based on the same rationale. The Ninth Circuit denied the defendants' emergency motion to stay the permanent injunction, concluding that the public interest is "best served by respecting the Constitution's assignment of the power of the purse to Congress, and by deferring to Congress's understanding of the public interest as reflected in its repeated denial of more funding for border barrier construction." However, on July 26, 2019, the Supreme Court granted a stay of the injunction pending appeal, allowing the Trump Administration to move forward with

the Department of Defense-funded border wall construction. Plaintiffs have moved for an expedited briefing schedule in the Ninth Circuit, targeting an October 2019 argument date.

In early September, the federal government announced that it would divert $3.6 billion from military construction projects—including tens of millions of dollars appropriated for Ft. Meade and Joint Base Andrews—for border construction. We filed a motion for summary judgment to prevent the diversion of those funds on October 11, 2019; the motion was argued on November 20.

Public Charge

This lawsuit challenges the legality of a Department of Homeland Security rule that would drastically expand the definition of "public charge" for the purpose of admission into the country and adjustment of immigration status. See *Washington et al. v. DHS*, No. 19-cv-5210 (E.D. Wa., filed Aug. 14, 2019).

From colonial times to present day, "public charge" meant someone who would be permanently and primarily reliant on the government for subsistence. Under the new rule, that original meaning would be redefined as a noncitizen who receives common forms of federal and state public assistance, even in small amounts and for short periods of time—including Medicaid, SNAP benefits, and housing subsidies. The rule will cause lawfully present noncitizens whom Congress specifically made eligible to participate in federal benefit programs to disenroll or forbear enrollment, harming the public health and the economic vitality of Maryland's immigrant community.

The plaintiff states filed a motion for preliminary injunction, which was argued on October 3. On October 11, the district court entered a nationwide injunction preserving the status quo and issued a stay under APA section 705. Defendants have appealed the injunction order and asked the Ninth Circuit for an emergency stay pending appeal; a motion to stay the injunction pending appeal is also before the district court.

Indefinite Detention of Children

Together with 19 other states, Maryland filed suit to challenge a new Department of Homeland Security and Department of Health and Human Services rule that purports to implement a longstanding settlement agreement that sets out nationwide policy for the detention, release, and treatment of minors in immigration custody. See *California et al. v. McAleenan*, No. 19-cv-7390 (C.D. Cal., filed Aug. 26, 2019). The rule as promulgated violates critical protections for immigrant children's safety and well-being, and would permit the prolonged and indefinite detention of immigrant children in detention facilities.

The plaintiff states filed a preliminary injunction motion seeking a nationwide injunction on August 30, 2019. The court issued an order permanently enjoining the rule on September 27, 2019.

PUBLIC SAFETY

3-D Printed Guns

Maryland is part of a multistate coalition that sued the U.S. Department of State in the Western District of Washington after the Department of State entered into a settlement agreement with Defense Distributed, Inc. that would allow that company to distribute 3-D printed gun plans on the internet.

The court granted the plaintiff's request for a temporary restraining order on July 31, 2018, and granted plaintiff's motion for a preliminary injunction on August 27, 2018, barring the publication of those plans.

After denying the private defendants' motion to dismiss and the Department of State's motion to stay proceedings, the court granted the plaintiffs' motion to supplement the administrative record. On November 12, the district court granted our motion for summary judgment in part, vacating the Department of State's unlawful agency action.

Protecting the Chemical Accident Prevention Rule

Together with 10 other states, Maryland filed suit to challenge a rule that delayed implementation of amendments to the Chemical Accident Prevention Rule. See *New York et al. v. Pruitt,* No. 17-1181 (D.C. Cir. filed July 24, 2017). The Chemical Accident Prevention Rule seeks to prevent explosions, fires, releases of poisonous gases, and other "accidental releases" at facilities that use or store certain extremely dangerous chemical substances. Among other things, the rule requires such facilities to enhance local emergency preparedness and response planning by coordinating with local officials. The rule was meant to protect the lives of firefighters, emergency medical responders, police, law enforcement, and those living in surrounding communities.

Further, the rule requires a facility that experiences an incident that results in, or could reasonably have resulted in, a "catastrophic release" to investigate the incident's root cause with the goal of preventing similar incidents. It also requires third-party compliance audits when incidents occur at a facility.

The case was consolidated with a related case filed by various non-governmental organizations (NGOs). The D.C. Circuit ruled in favor of the plaintiffs on August 17, 2018; specifically, it ruled that EPA's order delaying the effectiveness of the amendments at issue is unlawful. In light of the potential consequences for public health and public safety, the multistate coalition and NGOs jointly moved for the court to expedite its issuance of the mandate. The court granted that motion and issued its mandate on September 21, 2018.

In a separate effort to weaken the amendments to the Chemical Accident Prevention Rule, EPA has proposed to substantively roll back aspects of the rule. In August 2018, the OAG joined multistate comments opposing that proposal and urging implementation of the amendments as promulgated. On October 28, 2019, the OAG joined the same group of

states in filing supplemental comments highlighting the U.S. Chemical Safety Board's preliminary investigation results regarding an explosion and fire at the Philadelphia Energy Solutions Refinery which occurred in June 2019. In November 2019, EPA issued a pre-publication version of its final rule.

Maryland has 157 facilities, some within close proximity to schools, that have the potential to endanger the lives of citizens and businesses if there is a release of hazardous chemicals. Delays in the implementation of this rule unnecessarily endanger our communities and emergency responders.

Safeguarding Maryland Workers

In 2016, the Occupational Safety and Health Administration (OSHA) directed all large employers – those with 250 or more employees -- to submit to OSHA information from three different workplace injury and illness tracking forms that employers already have to maintain. Just three years later, OSHA pulled an "about face" and issued a new rule disowning that commitment to transparency and public reporting. On March 6, 2019, Maryland joined five other states in a lawsuit filed in the U.S. District Court for the District of Columbia challenging the legality of OSHA's new reporting rule.

In 2016, when it adopted the rules requiring large companies to electronically report the workplace safety information, OSHA touted the reporting requirements as vital because they would help OSHA and states target workplace safety enforcement programs, encourage employers to abate hazards before they resulted in injury or illness, empower workers to identify risks and demand improvements, and provide information to researchers who work on occupational safety and health. Reversing those requirements will make Maryland workers less safe.

The plaintiff states await a ruling on our motion for summary judgment, which has been fully briefed since September 2019.

HEALTH CARE

Defending the Affordable Care Act

Cost Sharing Reductions

Acting to protect healthcare coverage for 20 million Americans, the OAG has filed or intervened in several cases relating to the Patient Protection and Affordable Care Act (ACA).

The OAG intervened in a case in which members of the U.S. House of Representatives challenged the authorization of federal funding for cost-sharing reduction payments. See *United States House of Representatives v. Thomas E. Price, M.D., et al.* (Docket 16-5202) (U.S. Court of Appeals for the District of Columbia Circuit). Cost-sharing reductions, an

important part of the ACA's financial assistance provisions, reduce out-of-pocket costs by lowering deductibles, co-payments, and similar expenses for eligible consumers purchasing plans on state health exchanges. Several states intervened in the case because they could not rely on the Trump administration to defend the lawsuit.

The OAG and several other states filed a second suit opposing the Trump administration's abrupt decision to stop making these cost-sharing reduction payments, a decision that prompted the Maryland Insurance Commissioner to permit carriers to submit a second rate filing seeking increases in proposed 2018 rates to cover the loss of the payments.

The suit was brought to address the concern that loss of federal funding for cost-sharing reduction payments would result in higher premiums to cover the loss, which would harm the State, Maryland consumers, and the entire healthcare marketplace. More Marylanders would lose or forego coverage, and uncompensated care would increase, driving up hospital rates and Medicaid expenditures, and jeopardizing the State's federal Medicare waiver. These payments are critical to protecting millions of working families from unaffordable healthcare costs.

During the pendency of both actions, the Maryland Insurance Commissioner, along with most other intervenor states' insurance regulators, devised a work-around that protected most impacted consumers. In order to avoid disturbing the status quo given the general success of the practice commonly referred to as "silver-loading," which mostly curbed the harm caused by the federal government's unjustified cessation of cost-sharing reduction (CSR) subsidies, the states filed in their own case a Motion to Stay the Proceedings, or in the alternative, Dismissing the Action without prejudice. The action was dismissed without prejudice, and the original case brought by members of the House of Representatives was settled.

Constitutionality

The OAG filed suit in U.S. District Court for the District of Maryland on September 13, 2018, against the Trump administration for a declaratory judgment that the ACA is constitutional and the federal government must stop taking actions to dismantle it.

The lawsuit followed the Trump administration's refusal to defend the ACA in a Texas case that seeks to dismantle the law. Filed in February 2018, the Texas lawsuit alleges that the ACA is no longer constitutional due to the passage of a tax bill that eliminated the shared responsibility payment required under the ACA's individual coverage mandate. In a December 14, 2018 opinion, the Texas district court found the ACA unconstitutional in its entirety; that ruling is currently pending in the Fifth Circuit. The Texas court issued a stay while the ruling is on appeal. The government has also represented that it will continue to enforce the law, until the case is resolved.

Should the Texas ruling stand, it would throw millions of Americans off their health insurance plans by reversing Medicaid expansion, end tax credits that help people afford

coverage in the health insurance marketplaces created under the law, allow insurance companies to deny coverage of pre-existing conditions, take away seniors' prescription drug discounts, and strip funding from the nation's public health system, including its work combatting the opioid epidemic.

On February 1, 2019, the OAG suit was dismissed without prejudice on ripeness grounds, which will permit the OAG to revive the litigation should the Trump administration take further steps to undermine enforcement of the ACA.

Ensuring Access to Contraception

The OAG intervened in a lawsuit challenging the Trump administration's decision to allow employers to deny coverage for contraception by citing religious or moral objections. See *California v. Wright*, Case 3:17-cv-05783, (N.D. Cal., filed Oct. 6, 2017). The rollback of the ACA's guarantee of no-cost contraceptive coverage will jeopardize access to reproductive health services and counseling for thousands of Maryland women and their families. In addition to violating the Administrative Procedure Act and the Establishment Clause, the Trump administration's action violates women's constitutional rights of equal protection and freedom from discrimination, and imposes additional fiscal burdens on the State as women seek birth control through state-funded programs. Sixty-two million women have benefited from this coverage nationwide since the inception of the ACA, and the administration's interim final rules put those benefits in jeopardy.

On December 21, 2017, the Court issued a nationwide preliminary injunction that defendants are (1) preliminarily enjoined from enforcing the 2017 Interim Final Rules and, (2) required to continue under the regime in place before October 6, 2017, pending a determination on the merits. On February 16, 2018, the United States appealed to the U.S. Court of Appeals for the Ninth Circuit. Briefs have been filed and oral argument was held on October 19, 2018.

On November 15, 2018, the administration published substantively identical Final Rules, which would have gone into effect on January 14, 2019.

On December 13, 2018, the Ninth Circuit largely upheld the Court's decision, finding that the states had standing to sue and that the states were likely to succeed on the APA notice-and-comment claim. But, the Ninth Circuit limited the scope of the preliminary injunction to only the five plaintiff states (California, Delaware, Maryland, New York, and Virginia). The case was remanded back to the District Court for further proceedings. Intervenor-Defendant Little Sisters of the Poor have a pending cert petition seeking review of the Ninth Circuit's December 2018 decision.

On December 18, 2018, the original states, joined by several other states (Connecticut, DC, Hawaii, Illinois, Minnesota, North Carolina, Rhode Island, Vermont, and Washington)(other states have moved to intervene), filed a Second Amended Complaint and

Motion for a Preliminary, Nationwide Injunction to enjoin enforcement of the final rules. See *California v. HHS*, Case 4:17-cv-05783, (N.D. Cal., filed Dec. 18, 2018).

On January 13, 2019, the Court issued a preliminary injunction enjoining the defendants from enforcing the rules in the plaintiff states only. The case is pending in the district court. The September 5, 2019 merits hearing on the request for injunctive relief and motion to dismiss was vacated on August 30, 2019; in vacating the hearing, the court noted that there is a nationwide injunction currently in place, issued by the Eastern District of Pennsylvania and affirmed by the Third Circuit. There is a competing nationwide permanent injunction issued by Judge Reed O'Connor of the Northern District of Texas.

On October 22, 2019, the Ninth Circuit affirmed the Northern District of California's preliminary injunction barring enforcement of the final rules in the plaintiff states. The panel held that the states had standing and that despite the nationwide injunction by another federal court in Pennsylvania, the appeal was not moot. The panel further held that that the district court did not abuse its discretion in concluding that the plaintiff states were likely to succeed on the merits of their claim under the APA and were likely to suffer irreparable harm absent an injunction. Finally, the panel held that there was no basis to conclude that the district court erred by finding that the balance of equities tipped sharply in favor of the plaintiff states and the public interest tipped in favor of granting the preliminary injunction.

Maryland law does extend contraceptive coverage to State-regulated health plans, but more than 50-percent of Marylanders are in employer self-insured health plans. All women and their families deserve contraceptive coverage, and family planning should be in hands of workers, not employers.

Protecting Maryland's Insurance Markets – Association Health Plans

On July 26, 2018, the OAG joined a coalition of 12 attorneys general in filing a lawsuit challenging the Department of Labor's Association Health Plan (AHP) Final Rule. AHPs have a long history of fraud, mismanagement, and abuse, with millions in unpaid claims for policyholders and providers that often lead to consumer bankruptcies. The rule dramatically expands the footprint of AHPs, allowing them the unprecedented ability to form in order to evade consumer protections and sabotage the ACA.

The lawsuit alleges that the Department of Labor violated the Administrative Procedure Act when it promulgated the AHP rule. The lawsuit also argues that the rule violates both the ACA and the Employment Retirement Income Security Act (ERISA), and that it unlawfully reverses decades of agency and judicial interpretation of ERISA's key terms, with the primary purpose of undermining the ACA and without accounting for increased risk of fraud and harm to consumers based on a longstanding history of such conduct by similar plans.

The case is pending in the District Court for the District of Columbia. On March 28, 2019, Judge John D. Bates of the District of Columbia found the bona fide association and working owner provisions of the final rule "unreasonable interpretations of ERISA," and "clearly an end-run around the [Affordable Care Act]." The court set aside these parts of the regulation and remanded the rule to the DOL to determine how the rule's severability provision affects the remaining provisions.

The DOL appealed the decision and the D.C. Circuit heard oral arguments on November 14, 2019.

Ensuring Access to Family Planning Services (Title X)

Title X is a federal grant program enacted in the 1970s that funds family planning services for low-income individuals. On March 4, 2019, the Department of Health and Human Services published a final rule that would impair the Title X program in several ways. In response, the OAG and 30 other states filed a lawsuit in the District of Oregon challenging the legality of the rule.

The final rule interferes with the health care provider-patient relationship. Under the rule, providers in any clinic that receives Title X funding would be barred from referring a patient for an abortion (even if she requests that information), and in many circumstances even discussing an abortion with a patient. The new rule also mandates a referral for prenatal care for every pregnant patient, regardless of the needs or the wishes of the patient.

The district court issued a nationwide preliminary injunction on April 29, 2019, barring the rule from going into effect. Defendants appealed the ruling and sought to stay the injunction pending appeal. That stay was granted by a three-judge panel of the Ninth Circuit Court of Appeals and allowed to go into effect by the en banc court on July 11, 2019. Oral argument on the defendant's appeal of the preliminary injunction took place before the en banc Ninth Circuit on September 23, 2019 and we await a ruling.

With the rule in effect, the Maryland Department of Health is not allowed by law to accept federal Title X funding and must instead expend state funds. *See* 2019 Md. Laws Ch. 733 (HB 1272).

Fighting Discrimination in Health Care

The Department of Health and Human Services issued a rule dramatically expanding the ability of businesses and individuals to refuse to provide necessary health care based on "religious beliefs or moral convictions." The rule reinterpreted nearly thirty statutory provisions in a way that would allow almost any peripherally involved person to stand in the way of the delivery of a broad swath of health care, including contraception, sterilization, pregnancy counseling, abortion, and end of life care.

On May 21, 2019, Maryland joined a lawsuit filed in the Southern District of New York and moved for a preliminary injunction to prevent the rule from going into effect as scheduled on July 22, 2019. After negotiation, HHS agreed to delay the effective date and implementation of the rule until November 22, 2019. After briefing and argument on our motion for summary judgment, the district court entered an order on November 6, 2019 vacating the rule in its entirety without geographical limitation.

PROTECTING CONSUMERS

Defending the Gainful Employment Rule

This lawsuit, led by Maryland and joined by 17 other states, was filed against the U.S. Department of Education (ED) in October 2017 alleging it violated the Administrative Procedure Act when it delayed and rolled back various parts of a regulation created in 2014 called the Gainful Employment Rule. This rule sought to protect students and taxpayers by prohibiting institutions from participating in the federal student loan program if the institutions' educational programs consistently fail to prepare students for gainful employment, thereby burdening students with high debt loads that they are unable to repay. The ED extended several deadlines in the regulations, which it lacked legal authority to do without any public, deliberative process, rendering the regulations ineffective.

Federal law requires that all programs that receive federal grants or loans at for-profit institutions and non-degree programs at private and public institutions prepare students to be gainfully employed. The ED adopted regulations that define "gainful employment" as a job that pays a sufficient income for students to repay their student loan debts, which was intended to address concerns that some institutions were leaving students with unaffordable levels of student loan debt in relation to their earnings, eventually resulting in many students defaulting on their loans. The regulations also require institutions to provide certain disclosures, including the average earnings and debt load of their graduates.

In early 2018, the states and the ED filed motions for summary judgement and in March 2018, a combined amicus brief was filed by 17 organizations in support of the states' arguments. A hearing on the summary judgment motions was held on May 1, 2018. The judge considered both the threshold question of standing and the merits of the case. One day before the hearing, the ED took an initial step in the process of calculating the debt-to-earnings rates, which is required by the Gainful Employment Rule but had previously been delayed by the ED. This step was one of the demands made in the states' complaint, and it is doubtful that the ED would have taken this step if not for the states' lawsuit.

After the motions hearing, the states filed an amended complaint to address further delays by the ED that had occurred since the filing of the initial complaint. The court accepted the

amended complaint and permitted the states and the ED to file amendments to their motions for summary judgment to address the issues raised in the amended complaint. The court requested supplemental briefing by the parties. The supplemental briefs were filed in May and June of 2019.

On July 1, 2019, the ED issued a final rule that rescinded the 2014 Gainful Employment Rule. The new rule takes effect on July 1, 2020, but Secretary DeVos exercised her authority under the Higher Education Act to permit early implementation on July 1, 2019. That early implementation designation means that schools may implement the new rule at this time, rather than comply with the 2014 Gainful Employment Rule. However, early implementation does not apply to the ED, meaning that any part of the 2014 Gainful Employment Rule that imposed obligations on the ED will remain in effect until July 1, 2020.

On July 10, 2019, the ED filed a document with the Court entitled "Notice of Administrative Action and Suggestion of Mootness" in which it claims that the issuance of the final rule renders our case moot. The Court construed that document as a motion for leave to file a supplemental motion to dismiss on mootness, and issued a briefing schedule for motions on that issue. The Court further asked the parties to meet and confer about whether further litigation was necessary in light of the claim of mootness. Because we believe that our claims are not moot, we declined to voluntarily dismiss our case. The ED filed its brief, related to its claim of mootness, on August 9, 2019, we filed our opposition on August 30, 2019, and the ED filed a reply. An oral argument is scheduled for January 9, 2020 in Washington D.C.

The ED's action will: (1) make it more likely that Marylanders are saddled with significant amounts of student loan debt that they are unable to repay; and (2) lead to Maryland students unknowingly attending institutions that fail to provide an education that leads to gainful employment.

Protecting the Borrower Defense Rule

The OAG joined litigation related to U.S. Department of Education's (ED) Borrower Defense Rule, which was created in 2016 and scheduled to go into effect on July 1, 2017. The Borrower Defense Rule was designed to hold abusive higher education institutions accountable for cheating students and taxpayers out of billions of dollars in federal loans.

The rule created efficient and improved procedures for borrowers to obtain loan forgiveness when a predatory school engages in deceptive conduct or when it suddenly closes in the midst of a student's matriculation. While providing students with relief from loans obtained as a result of deceptive conduct, the rule also protected taxpayers by strengthening the requirements for schools to prove financial responsibility, including, under certain circumstances, by posting letters of credit. The rule also limits the ability of schools to require students to sign mandatory arbitration agreements and class action

waivers, commonly used by for-profit schools, to prevent public disclosure and to thwart legal actions by students who have been harmed by schools' abusive conduct. Despite the protections that the rule would provide to students, the ED, on three separate occasions, delayed the implementation of the rule.

Because each of the ED's actions to delay the implementation of the rule violated the Administrative Procedure Act, the OAG and 18 other states joined a lawsuit led by Massachusetts to challenge the Department's illegal delays. The states' suit was consolidated with a similar suit filed by a group of private citizens.

The states and private litigants filed motions for summary judgment on March 16, 2018, to which the Department filed a cross-motion for summary judgment. Five amicus briefs were filed in support of the states' arguments. On September 12, 2018, the states' and private plaintiffs' motion for summary judgment was granted, and the Department's was denied, with the Court holding that each of the Department's three delays of the Borrower Defense Rule did not comply with the Administrative Procedure Act and must be vacated. The Court stayed its ruling for 30 days, during which time it denied a motion for a preliminary injunction to stop the implementation of the rule that was filed by a trade group of for-profit schools.

Because of the denial of the preliminary injunction and the ruling in the states' case, the rule became fully effective on October 16, 2018. Barring any further rulings in the case brought by the private trade group, the rule will remain in effect.

Maryland has thousands of students who have been victimized by for-profit schools, and those students will benefit by the implementation of the Borrower Defense Rule. The Court's ruling will obligate the ED to implement policies to protect those students.

Preserving the Open Internet

Net neutrality rules prohibit Internet Service Providers (ISPs) from blocking internet content or favoring some internet content over other internet content. In December 2017, the Federal Communications Commission (FCC), by a 3-2 vote, repealed the U.S. government's 2015 net neutrality rules. On May 11, 2018, the federal Office of Management and Budget completed its review of the net neutrality rollback, which became effective in June 2018.

On January 16, 2018, while waiting for the FCC's decision to roll back the net neutrality rules to be published in the Federal Register, a 21-state coalition, including Maryland, filed a protective petition for review in the U.S. Court of Appeals for the D.C. Circuit to preserve the states' claim to proceed in that venue. The states stipulated to a voluntary dismissal of that petition on February 16, 2018. In February 22, 2018, the date that the rules were published in the Federal Register, the states re-filed a petition in the D.C. Circuit.

Including the states', 14 petitions were filed—12 in the D.C. Circuit, and 2 in the Ninth Circuit. On March 8, 2018, a judicial lottery was held and the consolidated cases were assigned to the Ninth Circuit. On March 16, 2018, Maryland joined with 11 other petitioners in moving to transfer the case back to the D.C. Circuit. That motion was granted on March 28, 2018.

The D.C. Circuit issued its decision on October 1, 2019, upholding the FCC's repeal of the Net Neutrality rule, but also holding that the FCC lacked the authority to preempt states from enacting their own rules regarding Net Neutrality.

Without the Net Neutrality Rule, ISPs could prevent Marylanders from accessing content of their choosing, could favor some internet content over other internet content by speeding up access to some sites or slowing down access to other sites, or could impose additional fees for consumers to obtain internet content of their choosing. Additionally, this repeal threatens content providers that are not affiliated with ISPs, particularly small businesses, because the content they provide may be blocked or slowed by the ISPs.

State and Local Tax Deductions (SALT)

The OAG filed suit with New York, New Jersey, and Connecticut in the Southern District of New York challenging a cap on the state and local taxes deduction under the Tax Cuts and Jobs Act of 2017. The lawsuit alleges that the cap is impermissible under the 10th Amendment because it 1) targets states who choose to fund public services through higher property tax rates, 2) exceeds Congress' powers under the 16th Amendment because the federal income tax has historically reserved the state's ability to tax property by allowing for (with limited exceptions) state property tax to be deducted from income tax, and 3) exceeds Congress' powers under Article I, Section 8 because it is a coercive measure.

Oral argument on the United States' motion to dismiss and the State plaintiffs' motion for summary judgment took place June 18, 2019. On September 30, 2019, the court issued a decision granting the motion to dismiss. While the court held that the State plaintiffs had standing to bring their claims, he also determined that the alleged magnitude of the injury to the states' tax collections was insufficient to state a claim on the merits for the states' coercion and targeting claim. The court further held that the Constitution does not impose a structural limit on Congress's taxing power that would prevent Congress from enacting a limit on the SALT deduction. The states filed a notice of appeal in November.

ENVIRONMENT

Defending Greenhouse Gas Emissions Standards

In 2017, the OAG intervened in a lawsuit to defend Environmental Protection Agency (EPA) greenhouse gas (GHG) emissions standards for model year 2022-2025 light-duty

vehicles. The suit, *Alliance of Automobile Manufacturers v. US Environmental Protection Agency et al.*, (D.C. Cir., Case No. 17-1086), challenged the EPA's finding that the emissions standards are feasible at reasonable cost, will achieve significant CO_2 emissions reductions, and will provide significant benefits to consumers and to the public. Shortly after it was filed, its petitioners voluntarily dismissed the suit after the EPA announced that it would revisit the Obama-era GHG emissions standards.

The EPA announced in April 2018 that it no longer believes the standards are appropriate and that they should be revised. In response, the OAG joined other jurisdictions in filing a petition for review on May 1, 2018, of the EPA's decision to revise the standards. See *State of California et al. v. US Environmental Protection Agency et al.*, (D.C. Cir., Case No. 18-1114). On November 14, 2019, the D.C. Circuit issued an opinion dismissing the case for lack of jurisdiction on the ground that the agency's decision was non-final.

This case is important to Marylanders because of Maryland's interest in reducing air pollution. GHG emissions pose a significant threat to public health and climate stability, and Maryland has unique vehicle pollution challenges because of the high volume of out-of-state vehicles that drive through the State on I-95 and other highways.

Fighting for Energy Efficiency and Conservation Standards

In 2017, the OAG filed suit seeking to compel the U.S. Department of Energy (DOE) to publish and make effective several final energy efficiency and conservation standards for household and industrial appliances. DOE's energy efficiency standards significantly reduce the nation's energy consumption, resulting in substantial and crucial utility cost-savings for U.S. consumers. During the Obama administration, DOE had estimated that over a 30-year period these standards would result in 99 million metric tons of reduced CO_2 emissions and save consumers and businesses $8.4 billion.

The lawsuit alleges that DOE's failure to move forward with the regulations violates the Energy Policy and Conservation Act and the Administrative Procedure Act. See *Natural Resources Defense Council, et al. v. Perry, et al.* (N.D. Ca., Case No. 3:17-cv-03404). A federal district court in California granted the plaintiffs' motion for summary judgment on February 18, 2018, concluding that DOE violated the Energy Policy and Conservation Act and ordering the agency to publish the standards. The Trump administration appealed to the Ninth Circuit, which stayed the district court's decision pending appeal. On October 10, 2019, the Ninth Circuit affirmed the District Court's holding that DOE was required to publish the final energy efficiency standards.

As a critical component of broader efforts to reduce air pollution, these standards should be promulgated. GHG emissions pose a significant threat to public health and climate stability. Maryland has a significant interest in increased energy efficiency and reduced energy use, in protecting its population and environment, and in enforcing the provisions of its laws designed to foster energy efficiency and reduce global warming–related impacts.

These efforts are harmed by the DOE's illegal decision not to publish the energy efficiency standards.

Preserving Energy Efficiency Standards for Lightbulbs

On January 17, 2017 the Department of Energy (DOE) published two final rules expanding the definition of general service lamp (i.e. lightbulbs) under the Energy Policy and Conservation Act (EPCA). Those rules brought several categories of bulb into EPCA's energy efficiency regime and triggered the application of a 45 lumen/watt efficiency backstop effective January 1, 2020.

However, on February 11, 2019 DOE issued a notice of proposed rulemaking to repeal the previously finalized definitions. By comment letter dated May 3, 2019 the OAG joined a multistate coalition in opposing the proposed repeal. Those comments argued that DOE's proposal would violate EPCA's anti-backsliding provision, the Administrative Procedure Act, the National Environmental Policy Act, and cause an otherwise avoidable increase in pollution.

On September 5, 2019, DOE published a final rule revoking the definitional rules that had previously expanded the scope of EPCA's general service lamp provisions. On November 3, 2019, the OAG joined 14 other state Attorneys General, the District of Columbia, and the City of New York in petitioning for review of the repeal rule in the U.S. Court of Appeals for the Second Circuit.

Fighting to Ban Chlorpyrifos

Together with other states, the OAG intervened in a lawsuit challenging the EPA's decision to allow continued use of chlorpyrifos on food crops, despite the fact that the EPA's own scientists were unable to identify a safe level for the pesticide in food. See *LULAC et al. v. Pruitt et al.*, No. 17-71636 (9th Cir. filed June 6, 2017).

A three-judge panel of the Ninth Circuit ordered EPA to revoke all tolerances and registrations for chlorpyrifos within 60 days from the date of the court's mandate. The Ninth Circuit granted EPA's petition for rehearing en banc, however, and vacated the panel decision. After hearing oral argument, in April 2019 the en banc court ordered EPA to rule on the states' administrative objections, which had long gone unanswered, within 90 days. EPA denied those objections, effectively leaving the tolerances and registrations for chlorpyrifos in place for now. Maryland has joined other states, however, in petitioning for review of that denial.

EPA's own record shows that chlorpyrifos is a toxic pesticide that has adverse neurodevelopmental effects, particularly in infants and children. EPA scientists were unable to identify a safe level for the pesticide in food. Chlorpyrifos is widely used, including in the production of fruits and vegetables consumed by millions of Americans.

Limiting Methane Emissions from the Oil and Gas Sector

In April 2018, the OAG joined a suit seeking to compel the EPA to promulgate regulations, known as Emissions Guidelines, to limit methane emissions from existing sources in the oil and gas sector. As required by the Clean Air Act, the EPA should have addressed methane emissions from existing sources once it established standards for new and modified facilities, which was completed in June 2016. However, the EPA has to date failed to issue these standards for existing sources.

Methane is a very potent GHG; when feedback effects are included, it warms the climate about 34 times more than carbon dioxide over a 100-year period. On a 20-year timeframe, it has about 86 times the global warming potential of carbon dioxide. Oil and gas systems are the largest source of methane emissions in the United States and the second largest industrial source of U.S. GHG emissions.

Climate disruption from rising GHG concentrations is increasingly taking a toll on Maryland families and businesses. More frequent, severe, or long-lasting extreme events, such as droughts, heat waves, wildfires, and flooding from sea level rise, will occur over the coming decades due to climate change.

The suit is pending in the U.S. District Court of the District of Columbia, where EPA has sought to stay proceedings pending an ongoing rulemaking with the potential to repeal the methane emissions guidelines at issue. See *New York et al. v. E. Scott Pruitt et al.* (D.C. Cir., Case No. 1:18-cv-00773).

Fighting for Enforcement of Stricter Fuel Efficiency Standards

The OAG filed suit challenging a rule promulgated by the National Highway Traffic Safety Administration (NHTSA). See *State of New York, et al. v. National Highway Traffic Safety Administration, et al.*, No. 17-2780 (2d Cir. filed Sept. 8, 2017). The rule would have delayed the effective date of the Civil Penalty Rule, which increases the civil penalty that can be assessed against a manufacturer for violation of the Corporate Average Fuel Economy (CAFE) standards.

The Civil Penalty Rule imposes a nearly three-fold increase in the penalty rate assessed on automakers for failure to meet fleet-wide fuel efficiency standards. If permitted, NHTSA's delay of the penalty increase would have allowed the outdated penalty rate to remain in effect, and more auto manufacturers would have likely elected to pay the penalty rather than build fleets that meet the stricter standards.

Filed in the Second Circuit, the OAG's suit was consolidated with a similar suit filed by various NGOs. The court expedited its consideration of the case, and then on April 23, 2018, just days after oral argument and in advance of issuing a written decision explaining its ruling, voided NHTSA's action to indefinitely delay the Civil Penalty Rule. In July 2019, however, NHTSA substantively rolled back the increased penalties, including reverting

back to a pre-2016 penalty amount. The OAG has joined a multistate challenge to NHTSA's decision, filed in the U.S. Court of Appeals for the Second Circuit.

Defending the Clean Power Plan

The Clean Power Plan was adopted by the Environmental Protection Agency (EPA) in 2015 in response to a provision of the Clean Air Act requiring the EPA to take steps to reduce air pollution that harms the public's health. By regulating GHG emissions from power plants, the Clean Power Plan represents an historic step in curbing and reversing climate change. It is critical to mitigating climate change's increasing harm to states' public health, environments, and economies.

Various states sued the EPA to challenge the Clean Power Plan. See *Oklahoma v. EPA,* No. 15-1364 (D.C. Cir.); *West Virginia v. U.S. EPA*, No.15-1363 (D.C. Cir.). A number of states, including Maryland, intervened in the case to defend the Clean Power Plan and to oppose the Trump administration's efforts to delay the court proceedings. This litigation over the Clean Power Plan was dismissed on September 17, 2019, after EPA's finalization of the Affordable Clean Energy (ACE) rule and repeal of the Clean Power Plan (discussed below).

Challenging the Affordable Clean Energy Rule

On August 13.2019, the OAG, joined by 21 other states and seven cities, sued to challenge the Environmental Protection Agency's repeal of the Obama administration's Clean Power Plan and finalization of the Affordable Clean Energy (ACE) Rule. The petition was filed in the U.S. Court of Appeals for the D.C. Circuit (where it has been consolidated with other challenges to the same agency action) and calls for the rule to be vacated. The petitioners argue that the EPA's ACE rule, which it finalized in June, will not curb rising carbon emissions from power plants and will prolong the operation of dirtier coal plants. *American Lung Association, et al v. EPA, et al*, Case No. 19-1140. On November 22, the D.C. Circuit denied a motion by EPA to expedite consideration of the case. In parallel to the litigation, the OAG has joined other states in petitioning EPA for reconsideration of its action.

Forcing Upwind States to Implement Air Pollution Controls

Maryland and eight other states submitted a Clean Air Act Section 176A Petition to the EPA on December 9, 2013, requesting that the EPA add certain states to the Ozone Transport Region under the federal Clean Air Act. This action was deemed necessary to address the interstate transport of air pollution, which the EPA itself has acknowledged is a significant contributor to Maryland's ozone attainment problems. The EPA failed to act on the petition for several years, and then denied the petition on November 3, 2017.

A petition for judicial review of the EPA's decision was filed in the D.C. Circuit on December 22, 2017. The Utility Air Regulatory Group, a non-profit group representing electricity generation interests including power plants, and the states of Ohio, Indiana,

Kentucky, Michigan, North Carolina, and West Virginia intervened in support of the EPA. Oral argument took place before the D.C. Circuit on November 28, 2018. On April 23, 2019, the D.C. Circuit upheld EPA's denial of the petition.

The OAG also submitted comments opposing EPA's proposal to deny Maryland's petition under Section 126 of the Clean Air Act to impose additional emissions control requirements on certain upwind facilities interfering with Maryland's attainment and maintenance of the 2008 ozone NAAQS. EPA has finalized that denial, which the OAG has challenged by filing a petition for review in the D.C. Circuit. Delaware (which had filed four Section 126 petitions of its own) and a group of NGOs have also petitioned for review of EPA's decision. New York, New Jersey, and New York City have intervened on the petitioners' side, while the Utility Air Regulatory Group and Duke Energy have intervened on EPA's side. Briefing before the D.C. Circuit has been completed. Oral arguments have not yet been scheduled.

Separately, the OAG filed comments opposing EPA's proposal to determine that the Cross-State Air Pollution Rule Update was a full remedy for upwind contributions to problems attaining and maintaining the 2008 ozone NAAQS, and that no further regulation of these contributions was appropriate. After EPA finalized that proposal—the so-called Close-Out Rule—the OAG joined other states in petitioning for review in the D.C. Circuit. On April 1, 2019, the Court granted the states' motion to expedite briefing and consideration of the case. On October 1, 2019, the D.C. Circuit vacated the Close-Out Rule because of the rule's failure to take proper account of upcoming attainment deadlines for the NAAQS.

The EPA actions described above harm Maryland residents by continuing to allow negative health effects associated with pollution that is generated outside the State's borders. They also inequitably require Maryland to impose more stringent regulations on its businesses in order to address transported pollution, putting the State at a potential economic disadvantage.

Protecting the Waters of the United States Rule

The Waters of the United States (WOTUS) Rule was promulgated in 2015 in response to widespread and longstanding concerns about the lack of clarity and consistency in the definition of "waters of the United States" under the Clean Water Act and the scope of federal jurisdiction over the nation's wetlands and waterways. Beginning in 2017, the EPA and the Army Corps of Engineers (COE) have undertaken three rulemakings—one of which has prompted litigation by the OAG—to roll back the WOTUS Rule.

First, a proposed rulemaking called for rescission of the WOTUS Rule and reinstatement of prior regulations pending a later, substantive rulemaking regarding a new definition. The OAG joined comments with the EPA and the COE opposing this proposal, which would make it more difficult for Maryland to implement its water quality protection programs and would put the State at an economic disadvantage in competition with other states. On

October 22, 2019, the EPA published a final rule rescinding the WOTUS Rule and reinstating prior regulations.

Second, the EPA and the COE have since proposed a new definition of "waters of the United States," which would significantly limit the Clean Water Act's coverage. The OAG has joined comments opposing that proposal, which remains pending.

Third, in the meantime, the EPA and the COE issued a rule purporting to delay the effectiveness of the WOTUS Rule for two years, and thus to reinstate the prior regulations during that period. The OAG joined a group of states suing in the Southern District of New York to block EPA's decision to delay the effectiveness of the WOTUS Rule. Ultimately, district courts in South Carolina and Washington enjoined the EPA and COE's rule purporting to delay the WOTUS Rule's effectiveness, and the agencies abandoned their appeals. As a result, in March 2019, the multistate lawsuit in the Southern District of New York was dismissed as moot.

Limiting Methane Emissions from Landfills

Maryland is part of a multistate coalition suing the EPA for failing to implement its rules governing methane emissions from landfills—specifically, by reviewing and approving state implementation plans and by putting federal implementation plans in place where appropriate. The deadlines for EPA to act passed many months ago.

EPA moved to dismiss on jurisdictional grounds, and the court denied that motion. The court also denied a motion by EPA to stay the lawsuit in view of the agency's proposal to retroactively extend the applicable deadlines ("the Delay Rule"). On May 6, 2019, the court granted summary judgment to the multistate group and ordered EPA to take action on state implementation plans, and promulgate a federal plan, by specified deadlines. EPA subsequently moved to alter or amend the judgment in view of its finalization of the Delay Rule. In November, the court denied that motion but stayed its judgment for 60 days to allow either party to file a notice of appeal. EPA has subsequently moved to extend the stay to encompass the pendency of any appeal. In parallel, the OAG has joined a multistate lawsuit directly challenging the Delay Rule in the U.S. Court of Appeals for the D.C. Circuit.

Protecting Workers Against Harm from Pesticides

Maryland joined a multistate coalition suing the EPA for delaying the effectiveness of certain improvements to the Worker Protection Standard, which provides various protections for workers who come in contact with pesticides. Specifically, the coalition challenged the delayed effectiveness of enhanced training requirements to protect both workers and their families.

Prompted by the states' lawsuit, EPA took action to trigger the effectiveness of these requirements, and the plaintiffs subsequently consented to the case's dismissal as moot.

Protecting the Vitality of the Migratory Bird Treaty Act

On September 5, 2018, the OAG joined seven other states in filing a lawsuit challenging a U.S. Department of Interior (DOI) decision significantly narrowing the effective scope of the Migratory Bird Treaty Act, which generally prohibits "killing" or "taking" migratory birds. The DOI has long treated this prohibition as covering not only intentional killing or taking, but also killing or taking that unintentionally (but foreseeably) results from a person's activities, such as when birds become trapped in an uncovered waste pit. A recent DOI opinion, however, which purports to be binding on all agency staff, narrowly construes the prohibition as applying only to intentionally killing or taking migratory birds. The case is pending in the Southern District of New York and has been assigned to the judge hearing two similar suits by NGOs. DOI moved to dismiss on grounds of standing, absence of final agency action, and ripeness, and the states have opposed that motion. On July 31, 2019, Judge Valerie Caproni denied the federal government's motion to dismiss the states' claims. The parties recently agreed upon the scope of the administrative record and briefing is set to commence in early 2020.

Defending the Endangered Species Act

On July 25, 2018 the U.S. Fish and Wildlife Service and National Marine Fisheries Service (together "Services") published three proposed rules to amend the Endangered Species Act's implementing regulations. The OAG joined eight other states and the District of Columbia in commenting on those proposals. The Services finalized their proposals on August 27, 2019.

On September 25, 2019 the OAG joined sixteen other state Attorneys General, the District of Columbia, and the City of New York in challenging the Services' final rules in the U.S. District Court for the Northern District of California (N.D. Cal. 4:19-cv-06013).[1]

Among other things the complaint challenges regulatory changes that make it more difficult to designate critical habitat, allow for the introduction of economic data into the administrative record informing listing determinations, limit the consideration of climate science in determining a species likely status in the foreseeable future, eliminate recovery as a basis for delisting, allow for the piecemeal destruction of critical habitat, narrow the definition of "effects of an action" during consultation, and revoke the default protection from take for threatened species.

Preserving Restrictions on Super-Polluting Trucks

On Scott Pruitt's last day as Administrator, the EPA announced that it would not enforce an Obama-era regulatory restriction on the manufacture and sale of "gliders," super-polluting trucks consisting of an older engine repurposed for use in a newer chassis.

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[2] Two other states, Minnesota and Wisconsin, later joined our coalition.

Maryland joined 16 other states and the District of Columbia in challenging this "no-action assurance" letter in the D.C. Circuit and seeking emergency relief against the EPA. Shortly after the lawsuit was filed, the EPA's new acting administrator rescinded the no-action assurance letter, giving the outcome the plaintiffs sought in court. The Court subsequently dismissed the case as moot.

Separately, the EPA is proposing to repeal the Obama-era glider restriction as a substantive matter. Together with other states, the OAG has filed comments opposing that repeal.

Blocking Seismic Testing in the Atlantic Ocean

In connection with its plans to open the Atlantic Ocean to oil and gas drilling, the Trump Administration has proposed to allow five companies to explore the ocean floor for oil and gas by firing arrays of airguns underwater. This "seismic testing" activity is dangerous to the marine mammals that frequent our coastal waters; has the potential to disrupt tourism and recreational uses of the ocean; and is widely viewed as a precursor to offshore drilling.

On November 30, 2018, the National Marine Fisheries Service (NMFS) authorized the five companies to harass tens of thousands of marine mammals—including endangered species—as an incident of their seismic testing activity. A group of non-governmental organizations sued to block these "incidental harassment authorizations" (IHAs) in the District of South Carolina. The OAG led a coalition of nine Atlantic Coast states in intervening on the side of the plaintiffs, and in supporting the plaintiffs' request for a preliminary injunction against the IHAs. The preliminary injunction motion was denied, with leave to re-file, on the ground that seismic testing no longer appears imminent. In order to be allowed to conduct seismic testing, the five companies must obtain a separate set of permits from the Bureau of Ocean Energy Management (BOEM). Even though the Trump administration's plans to open the Atlantic Ocean to oil and gas drilling apparently are on hold, BOEM has stated that it is continuing to process the applications for these permits.

Strengthening Asbestos Reporting Requirements

In January 2019, the OAG joined 13 other states and the District of Columbia in petitioning EPA to initiate a rulemaking to close certain loopholes in the reporting requirements for the importation and manufacture of asbestos and asbestos-containing products. Under the current rules, EPA does not require companies to report the importation of raw asbestos, finished articles containing asbestos, or products that contain asbestos impurities. EPA has long recognized that "asbestos is one of the most hazardous substances to which humans are exposed in both occupational and non-occupational settings," but nonetheless denied our petition to gain a more complete picture of the routes by which Maryland residents are exposed to this harmful chemical in their everyday lives.

On June 28, 2019, the OAG joined nine other states and the District of Columbia in challenging the denial of the rulemaking petition in the Northern District of California. *California v. EPA*, (Case No. 3:19-cv-03807). Without the reporting requirements that the petition seeks to put in place, EPA will have incomplete information when it finalizes an ongoing risk assessment for asbestos under section 6 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605, and the states will not fully know how asbestos continues to affect their residents.

Defending States' Rights to Set Vehicle Emissions Limits

On September 20, 2019, the OAG joined California, 21 other states, and three cities to sue the National Highway Traffic Safety Administration (NHTSA) in the U.S. District Court for the District of Columbia over its elimination of California's ability to create its own greenhouse gas (GHG) emission standards for cars and other vehicles, as well as other states' ability to adopt those standards.

The lawsuit was filed one day after the EPA and NHTSA jointly issued their "One National Program" rule, targeting state regulation of vehicle emissions. The lawsuit challenges one aspect of that rule—namely, NHTSA's determination that the Energy Policy and Conservation Act preempts state efforts to adopt or implement their own GHG vehicle emission standards or zero-emission vehicle (ZEV) mandates. NHTSA has moved to dismiss on the ground that the challenge should have been brought in the court of appeals in the first instance. The states have opposed that motion.

In addition to that NHTSA determination, the "One National Program" rule rescinds a Clean Air Act waiver, granted by EPA, that allows California to set its own GHG tailpipe emission standards and implement a ZEV program. The rule also makes a determination that, even if California's waiver is valid, other states (such as Maryland) cannot take advantage of it by adopting California's standards themselves. On November 15, the OAG joined California, 21 other states, and three cities in petitioning the D.C. Circuit for review of EPA's waiver determinations. The same petition also includes a protective challenge to NHTSA's determination discussed above, in the event that jurisdiction is found lacking in the district court.