



January 27, 2022



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Government Relations

North Carolina General Assembly Updates

January 19, 2022 - October 8, 2021

By [Ches McDowell](#), [Fritz Vaughan](#), [Nelson Freeman](#), [Hampton Billips](#), [John Easterling](#), [Lauren Briggs Henderson](#), & [Amanda Honaker](#)

KTS Strategies LLC brings years of experience providing clients in a diverse range of industries with comprehensive policy and advocacy advice before federal, state, and local agencies. In North Carolina, we advise local municipalities, corporate transportation entities, nonprofit organizations, statewide associations, government vendors, and Fortune 500 companies before the North Carolina General Assembly and executive branch. In Washington, D.C. and Atlanta, we bring a wealth of collective knowledge and experience in business and government affairs. Provided are weekly updates covering a variety of topics....[read more](#)

\$1.2 Trillion Infrastructure Act – Three Transformative Energy Programs

November 9, 2021

By [Stephen Anstey](#) & [John Loving](#)

Last Friday the \$1.2 trillion bipartisan Infrastructure Investment and Jobs Act ("Infrastructure Act"), which passed the Senate on August 10, 2021, was passed in the House. President Biden is expected to sign the Infrastructure Act into law in the coming days....[read more](#)

Key Programs From Landmark \$1.2 Trillion Infrastructure Act

November 8, 2021

By [Stephen Anstey](#) & [John Loving](#)

Last Friday the \$1.2 trillion bipartisan Infrastructure Investment and Jobs Act (“Infrastructure Act”), which passed the Senate on August 10, 2021, was passed in the House. The \$1.2 trillion Infrastructure Act includes \$550 billion in new funding for private and public sector initiatives related to energy, transportation, water, manufacturing, technology, and environmental infrastructure....[read more](#)

Environmental, Social and Governance (ESG)

The SEC Loves ESG

October 27, 2021

By [Ali Fenno](#) & Lauren Jackson

ESG-related issues are a tip-top priority for the Commission under Chairman Gary Gensler’s leadership. Specifically, the Commission’s Examination and Enforcement divisions continue to look for greenwashing and other types of inaccurate or unverifiable statements and disclosures relating to environmental (e.g., climate change), social (e.g., diversity and inclusion, human capital supply chain) and governance (e.g., cybersecurity) related issues....[read more](#)

6 Key Takeaways | ESG Hot Topics

October 18, 2021

By [Scott Marrah](#) & [Adria Perez](#)

Kilpatrick Townsend attorneys, consultants, and corporate representatives recently provided insight on ESG topics and takeaways ranging from climate change, broker/dealer and corporate board considerations, potential legal exposure and ways for companies to successfully start and maintain their ESG journey....[read more](#)

DOL Proposes Rules Regarding ESG Factors and Proxy Voting

October 15, 2021

By [Sterling Perkinson](#)

One of President Biden’s first acts upon taking office was to issue an executive order requiring federal agencies to conduct a review of policies or regulations issued by the prior administration that were inconsistent with its climate change, health and labor policies. Following this review, the Department of Labor published proposed rules on October 14, 2021 that would make major changes to regulations it issued at the end of 2020 that it found could have a “chilling effect” on fiduciaries from making investment decisions or exercising shareholder rights that furthered these policies....[read more](#)

Securities

Recent Boeing Decision Highlights Focus on Board Oversight

October 11, 2021

By [Justin Heineman](#)

In a significant recent decision, the Delaware Court of Chancery denied a motion to dismiss a derivative action against the directors of The Boeing Company stemming from the 2018 and 2019 crashes of two Boeing 737 MAX airplanes —thus underscoring the importance of, and focus on, risk oversight at the corporate board level....[read more](#)

Cybersecurity, Privacy & Data Governance

4 Creative Strategies for Negotiating Data Protection Agreements

ACC Docket | Association of Corporate Counsel | [January 25, 2022](#)

By [Farah Cook](#), [John Brigagliano](#) & [Stacie Greskowiak McNulty](#)

Data protection remains a rapidly changing area of the law, with material seemingly updated monthly. The divergent approach taken by various jurisdictions only further complicates an organization's compliance.... [read more](#)

Projections and the Potential Societal Impact of the Future of Neurotechnologies

Frontiers in Neuroscience | [November 15, 2021](#)

By [Kate Gaudry](#) et al. with contributions from [Nena Bains](#), [John Brigagliano](#), [Mark Mathison](#), [Jon Neiditz](#), & [Joe Snyder](#)

Traditionally, recording from and stimulating the brain with high spatial and temporal resolution required invasive means. However, recently, the technical capabilities of less invasive and non-invasive neuro-interfacing technology have been dramatically improving, and laboratories and funders aim to further improve these capabilities. Here, we draw upon existing research to project which particular neuroethics issues may arise in this potential future and what preparatory steps may be taken to address these issues.... [read more](#)

Enough with the Sticks: Why It's Time for Policymakers to Embrace Carrots in the Fight Against Ransomware

[November 8, 2021](#)

By [Anthony Glosson](#)

In the world of ransomware response, one resource is becoming increasingly indispensable: the federal government. The FBI, in particular, is often able to provide deep expertise in specific ransomware variants and the threat actors behind them, leveraging insights gleaned from investigations of attacks across the country that in many cases far exceeds anything available to a single consultant or security team.... [read more](#)

Why You Will Pay the Ransom (Hint: It's Not the Ransomware) and How to Avoid Paying

[November 5, 2021](#)

By [Jon Neiditz](#)

Everybody is talking at you about ransomware, but you do not need to hear most of what they are saying, because they are talking about something they have not seen hundreds of times, so they have not been following the rapid evolution of the painful decisions you must anticipate. The biggest issue almost all of them miss is that for the vast majority of companies, payment of the ransom is no longer about getting the decryption key for the ransomware at all.... [read more](#)

5 Key Takeaways | Building a Strategic Privacy Program

[October 6, 2021](#)

By [Amanda Witt](#), [Ami Rodrigues](#) (Chipotle Mexican Grill, Inc.), [Christina McCoy](#) (Acoustic), & [Evan Glover](#) (NCR)

The responsibilities of privacy professionals continue to grow while resources are increasingly difficult to procure. At the Privacy + Security Forum, the deeply experienced panel of privacy professionals consisting of Ami Rodrigues of Chipotle Mexican Grill, Inc., Christina McCoy of Acoustic, Evan Glover of NCR and Amanda Witt of Kilpatrick Townsend & Stockton LLP, shared suggestions on how to build and maintain a strategic privacy program with limited resources while still ensuring that such program is designed to comply with the ever-growing web of complex privacy legal obligations.... [read more](#)

Monthly Minute | Cybersecurity Events

[September 29, 2021](#)

By [Doug Gilfillan](#)

Cybersecurity events—including data exfiltration, ransomware, and internal threats—are on the rise.... [watch now](#)

Technology Transactions

5 Key Takeaways | Negotiating Cloud Contracts for SaaS, IaaS, and PaaS

October 4, 2021

By [Sonia Baldia](#), [Jeff Connell](#) & [Ed Szeto](#) (Cvent)

Kilpatrick Townsend's Sonia Baldia and Jeff Connell recently joined the Vice President & Deputy General Counsel for Cvent, Ed Szeto, at the Association of Corporate Counsel NCR Conference — "In-House Primer: Exploring Key Topics Central to the Role of the General Counsel." Throughout the day speakers addressed key issues a new general counsel or small law department lawyer will face in their role. Sonia, Jeff, and Ed discussed "In-House Counsel's Playbook for Negotiating Cloud Contracts for SaaS, IaaS and PaaS" ...[read more](#)

What To Do When Your Contractual Counterparty Gets Mired in a Public Scandal

Association of Corporate Counsel (ACC) Georgia | September 15, 2021

By [Barry Benjamin](#), [Amanda Witt](#), [Vita Zeltser](#), [Jeff Connell](#), & [Alex Borovsky](#)

A hypothetical: you are in-house counsel, and one morning you click on your daily news only to see one of your company's key contractual counterparties is trending, and...has endorsed actions, embraced opinions, or made decisions that have brought them into public disrepute....Ultimately, your executive team makes the decision—you need to figure out a way to terminate the contract with them. The problem? There is no breach. Your counterparty has been performing, and performing well. All obligations are otherwise being upheld. So, how do you get your company out of this tricky situation?...[read more](#)

Investment Management & Broker-Dealer

DOL Extends Non-Enforcement Period for PTE for Investment Advice Fiduciaries

October 27, 2021

By [Sterling Perkinson](#) & [Robert Daily](#)

On October 25, 2021, the Department of Labor ("DOL") released Field Assistance Bulletin 2021-02 (FAB 2021-02), which extends its non-enforcement policies regarding certain rules applicable to fiduciaries who provide investment advice and rely on Prohibited Transaction Exemption 2020-02 (PTE 2020-02). The DOL recognized that an extension was necessary for investment advisers and other financial institutions to bring themselves into full compliance with the exemption, and in particular with the disclosure requirements and annual retrospective review requirements....[read more](#)

Franchising

A Franchising Conundrum: The Disconnect Between Recognizing, Claiming, and Enforcing Trade Dress Rights

The Franchise Lawyer | January 11, 2022

By [Chris Bussert](#)

"It has been more than 25 years since the Supreme Court decided *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992). Therein, the Court found trade dress consisting of the following to be protectable and infringed...[read more](#)

The Sleeping Giant Awakens: Three 2020 Trademark Decisions from the United States Supreme Court, and How They May Affect Franchising

Franchise Law Journal | December 28, 2021

By [Chris Bussert](#) & [Bill Bryner](#)

This article summarizes the three U.S. Supreme Court decisions — *Romag Fasteners, Inc. v. Fossil, Inc.*, *United States Patent & Trademark Office v. Booking.com B.V.*, and *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group*,

Inc.—explains the potential implications of those decisions generally, and identifies ways in which these decisions may affect the franchising community....[read more](#)

Privacy and Franchising: Are You Keeping Up To Protect Your Consumers and Your Franchise?

New York Law Journal | **September 28, 2021**

By [Marc Lieberstein](#), [Amanda Witt](#) & [Tony Glosson](#)

There is no simple way to guarantee compliance with so many privacy laws, but in their Franchising column, Marc Lieberstein, Amanda Witt, and Tony Glosson offer some general guidance for franchisors and franchisees.... [read more](#)

Energy

Using Carbon-Negative Biogas to Decarbonize Renewable Transportation Fuels

November 15, 2021

By [Mark Riedy](#)

Mark Riedy featured panelist during the 2021 AFCC In-Person Global Biobased Economy Conference...[read more](#)

Employee Benefits

Health Plans Must Cover Over-the-Counter COVID-19 Tests for All Participants

January 12, 2021

By [Peter Daines](#) & [Mark Stember](#)

Federal regulators recently released [FAQs](#) providing that health plans are now required to cover over-the-counter (OTC) COVID-19 tests for all participants through the remaining duration of the pandemic, without requiring an order from a health care provider....[read more](#)

IRS Proposes to Permanently Extend Form 1095-B and -C Deadline for Individuals

November 30, 2021

By [Peter Daines](#) & [Mark Stember](#)

On November 22, 2021, the IRS released a [draft version of proposed regulations](#) that have been submitted for publication to the Federal Register (but not yet formally published), which would permanently extend the annual deadline for furnishing Forms 1095-B and C to individuals by 30 days (i.e., generally to March 2 of the year after the year in which health coverage is provided)....[read more](#)

Build Back Better Act Threatens Backdoor Roth Conversions

November 19, 2021

By [Sterling Perkinson](#) & [Peter Daines](#)

The Build Back Better Act, the “social infrastructure” bill that was approved by the House of Representatives on November 19, 2021, includes new restrictions on so-called “backdoor Roth” conversions. Accordingly, if the Senate approves the Build Back Better Act, it will likely end this strategy for generating additional tax-advantaged savings for after-tax contributions....[read more](#)

2022 Health and Fringe Benefit Plan Limits

JD Supra | **November 10, 2021**

By [Mark Stember](#)

A comparative chart of Health and Fringe Benefit Plan limits for 2021 and 2022...[read more](#)

Participation of Long-Term, Part-Time Employees in 401(k) Plans

November 8, 2021

By [Sterling Perkinson](#) & [Carlisle Toppin](#)

One of the goals of the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act"), which was passed in late 2019, was to increase participation in 401(k) plans. In this regard, Section 112 of the SECURE Act requires certain long-term, part-time employees to be given the opportunity to make salary deferrals to a 401(k) plan....[read more](#)

IRS Clarifies COBRA Deadlines in Latest Tolling Notice

JD Supra | October 11, 2021

By [Peter Daines](#) & [Mark Stember](#)

On Wednesday, the Internal Revenue Service and Department of Treasury released guidance clarifying certain deadlines relating to COBRA continuation coverage in connection with the ongoing pandemic, and the Departments of Labor and Health and Human Services concur with this new guidance....[read more](#)

Firm News

[Kilpatrick Townsend and United Way of Greater Atlanta Award Grants Totaling \\$25,000](#)

[Kilpatrick Townsend ranks as the fourth largest Atlanta law firm by number of attorneys in Atlanta](#)

[Kilpatrick Townsend rebrands government affairs practice as KTS Strategies](#)

[Eric Charity recognized as one of the 2022 Leaders in Corporate Citizenship's Rising Star honorees](#)

[Jeff Reed quoted in "Pa. Court Says Del. State Taxes Paid Can't Offset Philly Levy"](#)

[Kilpatrick Townsend noted as counsel to Gouverneur Bancorp, Inc. in its pending acquisition of Citizens Bank of Cape Vincent](#)

[Kilpatrick Townsend Elects New Partners and Elevates New Counsel for 2022](#)

[Henry Walker quoted in "Record 2022 Partner Classes Show Am Law 200 Firms Are Quicker to 'Pull the Trigger'"](#)

[Kilpatrick Townsend Adds Holly Kull in Atlanta](#)

[Jennifer O'Connor Recognized in Connect CRE's 2021 Lawyers in Real Estate Awards](#)

[Michael Grace Recognized in the National Black Lawyers Top 100](#)

[Ches McDowell and Nelson Freeman featured in the 2021 list of the Top Lobbyists in North Carolina](#)

[Gary Bronstein quoted in "Deal Delays Dampen US Banks' M&A Appetite"](#)

[Kilpatrick Townsend Plays Key Role in Closing Complex Debt Restructuring Transaction for Newly Combined Tops and Price Chopper Supermarket Retailers](#)

[Ches McDowell quoted in "Idled North Carolina sports wagering legislation reemerges"](#)

Kilpatrick Townsend Recognized in *U.S. News – Best Lawyers*® 2022 “Best Law Firms” Rankings

Kilpatrick Townsend noted as counsel for Smoothie King Franchises in its franchise lawsuit against Best Smoothie

Sterling Perkinson quoted in SHRM publication, "DOL Proposes Rule to Support ESG Funds in Retirement Plans"

Sterling Perkinson quoted in Forbes publication, "Is Mandatory Fossil-Fuel Divestment Coming For Your 401(k) and IRA? And How Much Will It Cost You?"

Partnership for Inclusive Innovation Hits One-Year Milestone; Kilpatrick Townsend noted as a key partner

Farah Cook noted as chair for Fernbank's Timeless Affair Gala

Kilpatrick Townsend and Levi Strauss & Co. named finalist in "Best Client-Law Firm Team" category

Kilpatrick Townsend's partnership with Barack and Michelle Obama Academy featured in "The Phoenix Rises: Corporate Atlanta's Resiliency in 2020". Katie Beacham, Chief Corporate Citizenship Officer, is quoted

Mark Reidy referenced in Biofuels Digest, "DG Fuels: The Unusual Suspects are building big in Louisiana, as SAftember continues"

Recent Transactions

AT&T to Sell Xandr to Microsoft

Q1 2022

Representing AT&T Inc. in the pending sale of its global programmatic advertising marketplace, Xandr Inc., to Microsoft. The deal is expected to close in Q1 2022.

Hudson Capital Sells 15 Properties for Over \$1B

November - December 2021

Represented Hudson Capital Properties in an over \$1 billion, time-sensitive disposition of 15 multi-family properties in seven states in more than 15 separate transactions with different purchasers.

Geenex Solar Obtains \$95M Financing for Project Expansion

Fall 2021

Represented Geenex Solar LLC, an early stage developer, in obtaining \$95 million in private equity financing for expansion of business and development of new projects and existing projects to later development stages than previously achieved by the company.

New Corporate Attorneys



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To view our latest Quarterly IP Digest, please click [here](#).

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