State Attorneys General
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STATE ATTORNEYS GENERAL:

Agents of Partisan Polarization

Abstract: Under the United States federalist system of government, each of the fifty states (plus the District of Columbia) has its own state attorney general (AG). As the chief legal officer of the state, the state AG is not only the top law enforcement official in the state but is also in control of all litigation entered into by the state government. The vast majority of the state AGs are independently elected state officials who can bring lawsuits in the "public interest," free of the requirement that most litigants must have suffered some type of direct or indirect harm before they can sue (the legal term is "standing"). Through their partisan-motivated lawsuits against the federal government, state attorneys general are attempting to increase their role in federal constitutional interpretation and federal policymaking more generally, using both law and politics to do so. The danger is that these partisan-motivated lawsuits brought by the state AGs, and often won by them, are increasing the perception that American judges are merely partisan actors in black robes who are working in collusion with other partisan governmental agents to further a partisan agenda. These lawsuits are contributing to the decreasing trust that the American public has in its federal courts, and especially in the US Supreme Court.

Keywords: courts, litigation, state attorneys general, standing to sue, public interest

Under the United States federalist system of government, each of the fifty states (plus the District of Columbia) has its own state attorney general (AG). Most of the state AGs are directly elected, and thus fully independent, state officials. As the chief legal officer of the state, the state AG is not only the top law enforcement official in the state but is also in control of all litigation entered into by the state government. Therefore, state attorneys general are important statewide actors in the state governmental systems. As one scholar notes, "[b]esides a governorship, state attorneys general are arguably the most prominent statewide office one can hold in state politics" (Robinson 691). Agreeing, Smith states that the office of state attorney general has become "one of the most influential in the country" (517). Finally, Nolette concludes that "[s]tate attorneys general (AGs) . . . have used their position to take on a more prominent role in national politics, especially through increasing collaborations among themselves and other actors in national politics" (18).

In general, most state AGs have a common set of responsibilities and duties spelled out in state statutes and state constitutions. These functions can vary from state to state and from incumbent to incumbent, but in general they include: 1) representing the state's legal interests in court, either as a direct party or by presenting *amicus curiae* ("friend of the court") briefs to appellate courts like the US Supreme Court; 2) rendering advisory opinions to state officials regarding questions of law; 3) drafting and presenting state legislative proposals; 4) administering state funds in contracting, state bonding, and other areas; and 5) disseminating information regarding legal issues concerning the state (see Derthick 107 and Clayton 528). Lately state AGs have moved well beyond their traditionally purely legal roles and duties. The office of state attorney general now attracts ambitious politicians who clearly take political considerations into account in their legal decision-making. Because they are most often independent, elected state officials with their own political agendas, state AGs today are often leading actors in furthering a national partisan agenda, using the federal courts to do so.

Increasingly, state AGs are suing the federal government in federal courts, with Republican state AGs suing Democratic presidential administrations and vice versa. As Mark L. Earley, the former Attorney General of Virginia, has noted, "[t]he most powerful elected position in the United States today, with respect to checking any perceived overreach of presidential or federal power, is not the Congress, the House of Representatives or the Senate, but is among the fifty state attorneys general" (562). The danger is that these partisan-motivated lawsuits brought by the state AGs, and often won by them, are increasing the perception that American judges are merely partisan actors in black robes who are working in collusion with other partisan governmental agents to further a partisan agenda. These lawsuits are contributing to the decreasing trust that the American public has in its federal courts, and especially in the US Supreme Court.

I first examined politically motivated state AG lawsuits against the federal government in a law review article aimed at legal studies specialists in the United States (Miller, "State Attorneys General"). That work was technical in nature, and among other things examined the evolution of state AG offices from purely legal entities into both legal and highly political enterprises. It also examined the increasing power of state AGs in part because of multistate collective lawsuits brought by them, including lawsuits against the tobacco industry (see e.g., Derthick). As I concluded in my previous article, "[s]tate attorneys general are both legal actors and political actors who are not afraid to join the fight in our polarized political climate. Politically ambitious state

attorneys general are using the powers and resources of their offices to help them achieve greater visibility and perhaps higher office" (Miller, "State Attorneys General" 30).

On the other hand, this current article is aimed at American studies specialists mostly outside the US. This article highlights the fact that the involvement of American courts in political and policy issues is one of the important aspects that makes the US constitutional democracy unique. This article also provides some insights into American federalism, through the lens of examining the activism of state attorneys general. In addition to updating the prior research, this article also takes a much broader approach, looking at the question of how partisan lawsuits filed by state AGs may have affected the trust that average Americans have in their courts. Public trust is essential for the American judiciary. As one recent study argued, "[t]he judiciary must compel the president and Congress to enforce its decisions without a public mandate. The judiciary must then rely on the people's 'reservoir of favorable attitudes or good will' to protect its authority and independence" (Patterson et al. 23). Therefore, the research question for this article is whether the increasing numbers of partisan lawsuits filed by state AGs against the federal government promote public perceptions of the courts as being merely partisan actors in the US system of government. The merger of politics and law in the United States is a long-standing American tradition. As French philosopher Alexis de Tocqueville observed in the early 1800s, almost every legal issue in the US eventually becomes a political issue, and almost every political one eventually becomes a legal one (Tocqueville 99-102). Judicial scholars, and especially political scientists, have long argued that American courts are political institutions because their decisions can have profound public policy ramifications. And by its very nature, constitutional interpretation done by American courts means making crucial political and public policy choices in addition to legal ones. Along these same lines, both state and federal judges are selected through political mechanisms in the US (see e.g., Miller, *Judicial Politics* 55-85), and American judges and their decisions are often described in ideological terms (see e.g., Segal and Spaeth; and Baum, *Ideology*). Peretti has argued that having political courts is highly beneficial in the American system of pluralist democracy because, among other things, political courts enhance both system stability and the quality of policymaking among all the governmental institutions (*In Defense*). American-style federalism further complicates the interactions of the courts with other pollical actors in the US political system.

The Governance as Dialogue Movement

This article will examine the activism of state attorneys general through the lens of the governance as dialogue movement. Governance as dialogue scholars argue that the meaning of the US Constitution is not solely the responsibility of the US Supreme Court and other federal courts, but instead is a continuing institutional conversation among the courts, the president, the Congress, the federal bureaucracy, and the states (see e.g., Fisher, *Constitutional* and Fisher, *Reconsidering*). Alexander Bickel was one of the first to advocate for judicial scholars to consider the interactions between the courts and other political institutions in the United States. Bickel said that the courts must engage in a "continuing colloquy" with the more political branches of the government (240). Louis Fisher often refers to this phenomenon as "coordinate construction," and as he uses the term it means "[t]he opportunity for all three branches to interpret and shape the Constitution" (Fisher and Adle 22). Keith Whittington, reflecting Edwin Corwin's (1938) language, uses the term "departmentalism" to refer to this governance as dialogue phenomenon

(29). Barry Friedman generally agrees with this approach, although he adds that the courts play an enhanced role because they "facilitate and mold the national dialogue concerning the meaning of the Constitution" (581).

At this point, some examples of the concepts of governance as dialogue in practice may be helpful. In the 1930s, Congress started to enact federal statutes that allowed one house of Congress to overturn various federal agency decisions. The so-called "one-house legislative veto" came in a variety of forms and configurations. The US Supreme Court declared that this practice was unconstitutional in *INS v. Chadha* (1983). The Supreme Court stated that the legislative veto violated the Presentment Clause of the US Constitution, which requires legislative bills to be passed by both houses of Congress and then sent to the president for his signature or veto. Congress has basically ignored this Supreme Court decision, and it has continued enacting one-house legislative veto provisions in a variety of federal statutes (Fisher, *Reconsidering* 203-22). As another example of the governance as dialogue concept, let's consider the issue of burning the American flag as a form of political protest. A protestor burned the American flag outside the Republican National Convention in Dallas in 1988, and then was convicted of violating a Texas state statute that criminalized flag burning. In *Texas v. Johnson* (1989), the US Supreme Court ruled 5 to 4 that flag burning as a form of political protest was expressive conduct protected under the First Amendment and declared the state statute to be unconstitutional. Congress responded by enacting a federal law criminalizing the burning of the American flag. The Supreme Court then struck down this federal statute by a vote of 5 to 4 in *United States v. Eichman* (1990). At the urging of President H. W. Bush, Congress then attempted to pass a constitutional amendment to overturn these Supreme Court decisions, but the proposed amendment failed to get the necessary two-thirds vote in the US House of Representatives. Thus, the State Legislature, Congress, the president, and the Supreme Court all participated in the inter-institutional conversation about the meaning of the US Constitution on this issue.

Although governance as dialogue scholars anticipate that the states will participate in inter-institutional constitutional dialogues, it is not always clear which state official should speak for the state in this conversation. This is especially true when the governor and the state attorney general represent different political parties (see Johnstone). Certainly, the state AGs see clear personal and partisan advantages in claiming that they are the true representatives of the state in the inter-institutional constitutional conversation. Not only are state AGs often ambitious politicians, but they also often disregard the needs of other political actors in the state. As one study noted, "[e]lected attorneys general seek political advantage. They invariably curry favor with their political base (party, interest groups, voters) as they seek re-election or a new office. Correspondingly, elected attorneys general pay more attention to the needs of their political base than to the institutional or political interests of other parts of the executive branch, including the governor" (Devins and Prakash 2143).

Backgrounds of the State Attorneys General

Some additional background information about the state AGs may be helpful at this point. Forty-three of the state attorneys general (plus the AG for the District of Columbia) are independently elected officials running as either Democrats or Republicans, while in Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming the attorneys general are appointed by the Governor ("Attorney General"). However, only in Alaska and Wyoming does the attorney general serve at the will of the governor (giving the governor almost total

control over the attorney general because of this removal power) (see "Appointing" 982), while in the other governor appointment states the attorney general can only be removed from office for cause (meaning that the attorney general has some independence from the governor) (see Marshall 2448). States have various citizenship, residency, legal experience, and age requirements for their attorneys general ("Attorney General"). Through their partisan lawsuits, the state AGs are therefore attempting to increase their voices in the inter-institutional conversation about the meaning of the US Constitution as envisioned by governance as dialogue scholars.

Since the founding of the United States, lawyers have been over-represented among American politicians (see e.g., Brown; Schlesinger; Eulau and Sprague). For example, of the fifty-two signers of the Declaration of Independence, twenty-five were lawyers, and thirty-one of the fifty-five members of the Continental Congress were lawyers. Lawyers also dominated the constitutional conventions called to write the new state constitutions after the American Revolution (Miller, *The High Priests* 31). Today more than half of all American presidents and vice presidents have been lawyers (see e.g., Gross), and a very high percentage of the president's cabinet have also been lawyers (see e.g., Robinson 669). Lawyer-legislators have also long been the largest occupational group in Congress and in many state legislatures (see Miller, *The High Priests*). Lawyers, including state AGs, have various advantages in US electoral politics (see Miller, *The High Priests* 64-75). One of the most important is the fact that three elected offices are exclusively open only to lawyers: those of elected state judges, elected local district attorneys, *and state attorneys general*. These positions are often seen as steppingstones to higher political office (see e.g., Provost, "When is AG Short"; Sabato). As Bonica and Sen conclude, "[i]t is difficult to overstate the influence that lawyers—and by extension the bar—have exercised over the development of American political institutions and norms" (33). Therefore, many ambitious lawyer-politicians eventually seek the state AG position. An old joke is that state AG really means "aspiring governor" (see Provost, "When is AG Short" 597). Without doubt, some state attorneys general do have ambitions for higher political office. Many state AGs go on to be elected governors of their states or US Senators. Some have even become US Supreme Court justices (e.g., David Souter), while others have become president of the United States (e.g., Bill Clinton) or vice president (e.g., Kamala Harris). One aspect of being an ambitious politician is that these individuals often benefit from taking extremely partisan positions in the highly polarized current context of US politics. These ambitious politicians demonstrate that the office of state AG is both a legal position and a political one, especially for those who are seeking higher political office.

Over time, state AGs have clearly evolved into highly partisan officials. Before the November 2024 elections, the fifty-one state AGs (including the District of Columbia plus the fifty states) included twenty-seven Republicans and twenty-four Democrats. Immediately following the elections, there were twenty-eight Republicans and twenty-three Democrats. State attorneys general are therefore often ambitious politicians who have carefully planned their educational and political careers. It is therefore not surprising that both parties have created partisan organizations to promote and raise money for the election campaigns of state attorney general candidates from their respective parties. In 1999, the Republican Attorneys General Association was formed (Nolette 191-92), and over the years it has raised millions of dollars to support GOP candidates for state attorney general (Smith 539). According to its website, "[n]o organization has been more effective than the Republican Attorneys General Association. As free-

dom's cutting edge, Republican attorneys general were instrumental in challenging Obama-era overreach. Today, Republican attorneys general preserve the rule of law to ensure limited government perseveres" ("About RAGA"). The Democratic Attorneys General Association, founded in 2002 (Nolette 191-92), has also raised millions of dollars. According to its website before the 2024 elections, "[a]fter years of the [first] Trump administration undermining good government, a Congress that continues to face gridlock, and statehouses that are increasingly capitulating to far-right extremism, the role that Democratic AGs play in protecting democracy and the rule of law is more important than ever" ("About DAGA"). Clearly these two partisan organizations do all they can to elect more state attorneys general from their respective parties, and they are proud of their partisan victories in the federal courts.

Lawsuits Initiated by the State Attorneys General

Sometimes a state AG will sue on their own, but often these lawsuits are brought by coalitions of state AGs from the same political party. Almost unlimited access to the federal courts, because the US Supreme Court has allowed the states to sue in the "public interest," has allowed ambitious state AGs to push the courts to rule in favor of their partisan interests. As Nolette has observed, "[r]eflecting broader trends of political polarization and conflicts over policy, state AGs have used their position to ally with like-minded advocacy groups and partisan interests to pursue ideological policy goals. This in turn has led to greater conflict between AGs and other state institutions as well as among the AGs themselves" (Nolette 2-3). These lawsuits can clearly help attract attention for a politically ambitious lawyer-politician. As Clayton explains, "[c]ertainly the more active policymaking role assumed by state attorneys general may help to foster political careers, and in many instances protecting the 'public interest' may indeed overlap with what is good politics" (258).

State AGs have a clear advantage over other state officials in that they have almost automatic access to the federal courts. The state AGs can litigate in the federal courts without prior approval from the governor or the state legislature (see Spill et al. 606), and as mentioned previously the US Supreme Court has allowed state AGs to file almost any lawsuit in the federal courts to protect the "public interest" as the AGs themselves define that concept (see Miller, "State Attorneys General" 25-26). In other words, state AGs have almost unlimited "standing" to sue in federal courts, as will be discussed in more detail later in this article. State AGs also have other advantages. As Dishman explains, "[s]tate litigants have unique characteristics and advantages that allow them to frequently sue the federal government and obtain nationwide injunctions as remedies. These advantages include enhanced ability to establish standing, expanded venue choices, greater resources, and the ability to represent the public interest" (383).

All of these activities have greatly increased the collective voice of the state AGs in federal constitutional development and interpretation. In additional to their collaborative partisan multistate litigation, state AGs are also becoming a stronger voice at the US Supreme Court through the filing of partisan amicus briefs (see e.g., Provost, "When to Befriend"; Solimine). These "friend of the court" briefs present the Supreme Court with views of interest groups and others who are not parties to the dispute, but who nevertheless are interested in the outcome of court's ruling in the case. State AGs have been quite active in submitting collective partisan

amicus curiae briefs to the Supreme Court. Often the Republican AGs will submit one set of amicus briefs on a case, while the Democratic AGs will submit collective amicus briefs on the other side. Blocher argues that by signing onto amicus briefs submitted to the US Supreme Court, the state AGs are claiming to represent the voice of the citizens in the inter-institutional federal constitutional dialogue (110).

Progressive ambition does require both resources and public attention. State attorney general offices have greatly expanded in both size and institutional capacity since the 1970s (see Nolette 33-35). Clayton notes that "[a]ttorneys general's offices that were formerly small, intimate environments have grown into large, hierarchical legal bureaucracies" (537-38). These increasing state resources came along at the same time as the willingness of federal political actors to give more power to the state AGs. Beginning in the 1970s, Congress enacted a variety of federal statutes that encouraged litigation by state AGs by giving the states the power to enforce a wide array of federal laws (Nolette 39-40), and federal agencies provided funding for these activities as well as information sharing to streamline the enforcement efforts (Nolette 36-37). The expanded role of the National Association of Attorneys General in the early 1980s, with assistance from the US Justice Department, has enabled state AG offices to coordinate their amicus curiae efforts and professionalize their appearances before the US Supreme Court (see McQuire 111; Nolette 34). As one group of scholars has concluded, "[a]s the offices of the state attorneys general have professionalized, the public profile of the office has grown, and it has become a more attractive office for ambitious politicians" (Spill et al. 607-8).

The number of partisan lawsuits brought by state attorneys general against the federal government in the United States has skyrocketed recently. There were 50 lawsuits filed by Republican state attorneys general against the Obama administration, 139 lawsuits brought by Democratic state attorneys general against the first Trump administration, and 121 lawsuits from Republican state attorneys general against the Biden administration. As of March 23, 2025, Democratic state AGs had already filed 17 suits against the newly inaugurated second Trump administration (State Litigation and AG Activity Database). For example, during his first day in office, President Trump issued an executive order that attempted to restrict the so-called birthright citizenship requirements found in the Fourteenth Amendment of the US Constitution. The next day, 23 Democratic state AGs (including the one from the District of Columbia) filed lawsuits to have the courts declare the executive order unconstitutional (Nakamura and Foster-Frau). A variety of lower federal judges did so (Marimow and Nakamura). Other lawsuits have involved whether federal employees were properly fired from their jobs and whether deported immigrants should have received due process before they were deported. More Democratic lawsuits against the second Trump administration are expected (see e.g., Mueller; Schick and Turner).

Republican lawsuits against the Obama administration were ultimately successful 64.2 percent of the time, Democratic lawsuits against the first Trump administration were eventually successful 83 percent of the time, and Republican lawsuits against the Biden administration were successful 74.1 percent of the time (State Litigation and AG Activity Database). As one scholar has concluded, "Republicans were trigger-happy when it came to multistate litigation under Obama, but that urge to fight the federal government evaporated the moment a Republican became president. The same can be said for Democratic attorneys general once a Democratic president assumed office" (Smith 536). Thus almost all of these AG-initiated lawsuits were

brought in order to further partisan agendas, using the courts to seek desired partisan changes in federal public policy or to limit the power of the president and other executive branch officials when the opposing party was in power. When the federal courts rule in favor of the state AGs' positions, these lawsuits can have the effect of increasing the perception that American judges are merely partisan actors, thus lowering public trust in the judiciary.

Lawsuits against the federal government initiated by state attorneys general have involved some of the most important and most contentious public policy disputes of the day. For example, some of the most prominent attacks against the constitutionality of the massive landmark Affordable Care Act (ACA), also known as Obamacare, were initiated by Republican AGs only minutes after Congress passed the ACA legislation and President Obama signed it into law (Nolette 168). Democratic AGs filed collective amicus briefs with the Supreme Court in favor of the constitutionality of the act. The US Supreme Court upheld most of the extremely complex new law in *National Federation of Independent Business v. Sebelius* (2012). The Court did, however, strike down various federal mandates for state Medicaid spending, as the Republican AGs had urged. Republican AGs also sued to stop many of the Obama administration's regulations designed to address climate change. In *Utility Air Regulatory Group v. EPA* (2014), the Supreme Court struck down some of the Environmental Protection Agency's regulations but upheld others. The complex 5 to 4 opinion generally saw the Republican justices in the majority and the Democratic justices in dissent. It was a partial victory for the Republican AGs and their partisan allies.

When Republican President Trump assumed office for his first administration, it was the Democratic AGs' turn to sue the president and federal agencies. For example, President Trump issued a travel ban on travelers from various Muslim countries. In *Trump v. Hawaii* (2018), the Supreme Court split along partisan lines with the five conservative Republicans ruling that the president had the right to issue the travel ban. The four liberal Democrats dissented, finding that the travel ban violated federal immigration laws and the Establishment Clause of the US Constitution. Critics of the decision argued that it was clearly a partisan ruling. In another immigration law case, Democratic AGs sued the first Trump administration after President Trump moved to terminate the Deferred Action for Childhood Arrivals program (DACA), which suspends deportation for some illegal immigrants who were brought to the United States as children. In *Department of Homeland Security v. Regents of the University of California* (2020), the Supreme Court ruled 5 to 4 that the Trump administration's termination of DACA was done in an arbitrary and capricious manner, in violation of the federal Administrative Procedure Act (APA). Chief Justice Roberts joined the four liberal Democrats in this decision.

When President Biden assumed office in 2021, lawsuits initiated by Republican AGs against the federal government resumed in full force. For example, in *Biden v. Nebraska* (2023), the Supreme Court ruled 6 to 3 that President Biden exceeded his authority when he proposed cancelling over 400 billion dollars in federal student loan debt. The six conservative Republican justices were in the majority, and the three liberal Democratic justices were in dissent. Justice Kagan's dissent argued that the majority opinion was opportunistic, unprincipled, and infected by politics. Justice Kagan wrote, "[f]rom the first page to the last, today's opinion departs from the demands of judicial restraint. At the behest of a party that has suffered no injury, the majority decides a contested public policy issue properly belonging to the politically accountable branches and the people they represent" (600 U.S. at 548).

In one of the most contentious policy debates in modern American history, *Dobbs v. Jackson Women's Health Organization* (2022), the US Supreme Court declared that there was no federal constitutional right to an abortion. The 6 to 3 decision, with all the conservative Republican justices in the majority and all the liberal Democratic justices in dissent, overturned both *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), returning to individual states the power to regulate any aspect of abortion not protected by federal statutes. Republican state AGs filed collective amicus briefs supporting the overturning of *Roe v. Wade*, while Democratic state AGs filed collective amicus briefs opposing abandoning *Roe*. Immediately this decision became an important partisan issue in the 2022 midterm congressional elections and the 2024 presidential elections. Additionally, multiple public opinion polls taken after the *Dobbs* ruling showed public approval of the US Supreme Court at a record low (see e.g., Biskupic 380; Patterson et al. 23-24).

The pattern has become clear that state attorneys general of the opposing party will use lawsuits against the federal government as a political and partisan weapon. For example, Texas Republican Governor Greg Abbott, a former attorney general in that state, was quoted as saying in 2013 when he was AG, "I go into the office in the morning. I sue [Democrat] Barack Obama, and then I go home" (Nolette 168). Both through partisan multistate litigation and through filing collective partisan amicus briefs, the state AGs have increased their voice in the inter-institutional constitutional conversation about the direction of public policy choices in the United States. As two journalists have recently concluded, "[w]e are long past the time when State AG offices were seen as boring backwaters. They now play an increasingly important role in setting the national agenda and have become quite effective at using all of the tools at their disposal to do so" (Schick and Turner, n. pag.). Critical of the partisan nature of these lawsuits, one scholar has concluded, "[s]tate attorneys general have leaned into our nation's divisive partisanship—often as an integral part of a quest for higher office—and used their traditional roles and powers to grandstand and showcase their party loyalty on a national stage. While this partisanship may garner national attention and party approval for state attorneys general, it comes at the expense of their state and constituents, particularly those constituents that fall outside their voter block" (Smith 518).

Courts as Political Actors

The increase in state AG-initiated lawsuits against the federal government has coincided with a change in the makeup of the US Supreme Court. From about the end of World War II to the early twenty-first century, a justice's ideology did not necessarily correlate with the political party of his or her appointing president. In other words, Republican appointees to the US Supreme Court were often conservatives, but not always so. In fact, since the early 1950s the most liberal members of the Supreme Court were usually Republicans. One of the most liberal members of the Supreme Court was Chief Justice Earl Warren, who was appointed by President Eisenhower and served from 1953 to 1969. Another Republican, William J. Brennan, Jr., was also an extremely liberal associate justice. He was also appointed by President Eisenhower and served on the court from 1956 to 1990. Justice Harry A. Blackmun, appointed by President Nixon in 1970, started out as a conservative associate justice but moved well to the left the longer he remained on the court until his retirement in 1994. Justice John Paul Stevens was appointed by President Ford and served on the court from 1975 to 2010. Over time he also became a reliably liberal vote on the Supreme Court. Justice David H. Souter was an appointee

of the first President Bush, served from 1990 to 2009, and joined the liberal bloc on the court almost immediately after his confirmation. Justice Sandra Day O'Connor (1981 to 2006) and Justice Anthony M. Kennedy (1988 to 2018) were both Reagan appointees who were broadly considered moderates on the court. Thus, throughout this long period the most liberal members of the US Supreme Court were always Republicans.

Justice O'Connor was a key figure on the Supreme Court because she was almost always the deciding vote between the liberal bloc and the conservative bloc on the court, especially in 5 to 4 rulings. According to an analysis written after her death, over her time on the court she was in the majority roughly 87 percent of the time. (Feldman and Truscott). Justice O'Connor was so influential on the Supreme Court that Nancy Maveety titled her study of the Rehnquist Court *Queen's Court: Judicial Power in the Rehnquist Era.* When Justice O'Connor was replaced with the much more conservative Justice Samuel Alito in 2006, this signaled that an era of exclusively conservative Republicans serving on the US Supreme Court was beginning. Justice Kennedy's replacement, Justice Brett Kavanaugh, in 2018 moved the Republicans justices further to the right. When Democratic appointee Justice Ruth Bader Ginsburg was replaced by Republican appointee Justice Amy Coney Barrett upon Ginsburg's death in 2020, the alignment of all conservative Republicans against all liberal Democrats on the US Supreme Court was complete. Writing in 2023, journalist and long-time Supreme Court watcher Joan Biskupic complained that then on the court, "the bench was almost unrecognizable, particularly if one were comparing the current collection of justices to any grouping since the post-New Deal era. . . . The Court had no middle, no center to hold" (Biskupic 299, 326). It was feared that the US Supreme Court had become a partisan body, with the conservative-Republican majority bloc opposing the smaller liberal-Democratic group of justices.

While political scientists and other judicial scholars see it as quite normal to describe American courts as political or ideological institutions (see e.g., Baum, *Ideology*), they are far less comfortable in seeing judges, especially federal judges with lifetime appointments, as partisan actors. This political-versus-partisan distinction is extremely important. Levinson and Balkin individually and collectively have referred to this distinction as ideological or political "high politics" and partisan "low politics" (see Levinson; Balkin and Levinson; Balkin). As Levinson explains this distinction, "[t]hough judges are 'political', the politics are 'high' rather than 'low'; that is, decisions are based on ideology rather than a simple desire to help out one's political friends in the short run" (8). Judges from the same political party may make similar rulings, but that is often due more to the fact that judges in the same party share an ideological approach rather than that they use their judicial positions to bolster their own partisan groups or backers. For example, in their examination of federal appellate court decision-making, Sunstein et al. found that on many issues Democratic federal courts of appeals judges made different decisions than Republican-appointed judges. However, there were many circumstances when partisan affiliations had no impact on these judges' rulings. These scholars attribute these differences in judicial rulings to ideological disagreements rather than to partisan influences (Sunstein et al. 147-50). Nonetheless, there is concern that Americans perceive their courts as becoming more partisan in their decision-making.

Many scholars point to the US Supreme Court's decision in *Bush v. Gore* (2000) as one of the most partisan decisions in history (see e.g., Peretti, *Partisan* 17). In that extremely complicated ruling, the justices split 5 to 4 along ideological lines

(but not totally along partisan lines) on the key issue in the case and decided that Republican George W. Bush had won the extremely close presidential election in Florida, thus giving him the nationwide electoral victory in 2000. In this highly unusual opinion, the US Supreme Court had actually determined which candidate had won a presidential election. Some commentators believed that on the key issue in the case, "every justice voted in favor of the candidate whom that justice presumably favored in the election" (Baum, *Ideology* 2). The *Bush v. Gore* ruling was not well received among most judicial scholars. Peretti has concluded that "[i]n so transparently and insincerely manipulating legal doctrine to put George W. Bush in the White House, the justices 'showed their partisan stripes'" (Peretti, *Partisan* 5). Levinson has said that the court was using partisan "low politics" in the case instead of the conventional ideological "high politics" approach (8). In his careful analysis of this decision, Gillman argues that the US Supreme Court "acted in ways that were uniquely partisan and outside what should be considered the acceptable boundaries of judicial power" (3). Noting the differences between so-called ideological "high politics" and partisan "low politics," Gillman concludes, "ideological influences on judicial decisions are properly considered an inevitable and legitimate aspect of 'good faith' judging while mere partisan favoritism is treated as illegitimate and worthy of broad condemnation (or worse)" (7). Peretti agrees, stating that "[t]here are multiple lessons from *Bush v. Gore*, but the most obvious is that judges may be unable to resist the temptation of partisan judging when the stakes are great" (Peretti, *Partisan* 5). Kritzer notes that general public support for the US Supreme Court dropped among Democrats following the *Bush v. Gore* decision, but that it increased among Republicans, keeping overall support for the US Supreme Court at about the same level (32-38). Thus, *Bush v. Gore* indicated that public support for the Supreme Court was beginning to mirror the partisan polarization present in broader American politics.

Partisan decision-making by judges is even more problematic when it involves perceived collusion between judges and other governmental actors like state AGs. Peretti, generally a supporter of political courts, studied a variety of election law judicial rulings where she found a clear partisan approach to case decisions. She concludes that "interbranch partisan cooperation in constitutional decision-making violates core normative beliefs about the law, including the expectation that judges should serve as neutral arbiters rather than biased partisans" (Peretti, *Partisan* 3). The American public also clearly mistrusts partisan-based decisions made by American courts. As one recent study argues,

> [t]he federal judiciary has long held a deep public trust far exceeding that of the legislative or the executive. Americans have historically believed that judges rule based on legal reasoning in the context of the Constitution, free from the bargaining and compromise of the other branches. . . . When perceptions of the courts as trustworthy, impartial, and apolitical erode, politicians and the public may become more willing to endorse constraints on the courts' independence and authority. (Patterson et al. 23)

Clearly, if partisan state AGs are leading judges to make partisan rulings, then this collusion can have dangerous ramifications for the legitimacy of the courts and for broader questions of how constitutional democracy should function in the United States.

State Standing in the Courts

Litigation in the public interest by state AGs has exploded because of the way the US Supreme Court has treated questions of standing for the states. Recall that the state AGs have almost unlimited access to the federal courts because they can initiate lawsuits in the "public interest," and that the courts have allowed the AGs to define this concept. In the traditional conception of standing, the plaintiff must prove some actual or imminent harm was caused to them by the defendant. If a party does not have standing, the lawsuit does not go forward (see e.g., Miller, *Judicial* 52-53). State AGs have a great number of advantages over their private sector colleagues when it comes to matters of standing. As Hessick and Marshall explain, "States can establish standing by demonstrating an injury to the same sort of interests held by private individuals such as the interest in holding property. But because they are sovereigns, states also have sovereign and quasi-sovereign interests, and the violation of those interests can also support standing" (90).

Massachusetts v. EPA (2007) is the landmark US Supreme Court decision that has allowed state AGs to gain standing quite easily in federal courts. Massachusetts and eleven other states sued the federal Environmental Protection Agency (EPA), hoping to force the agency to issue regulations limiting carbon dioxide and other greenhouse gases in an attempt to combat climate change. Much of the Supreme Court's opinion centered around the issue of state standing. In the 5 to 4 decision, Justice Stevens, writing for the court's majority, stated that states have "special solicitude" to bring suits that private litigants may lack. After noting the court's position that it does not allow "citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws," the majority concluded that the states have "sovereign prerogatives" that are not available to private litigants. Thus, the states can have standing even when other parties do not. As one scholar has concluded, "[t]he practical effect of the 'special solicitude' precedent established in *Massachusetts v. EPA* is that State AGs now have near-automatic standing in lawsuits against the federal government" (Green 258).

The advantages in standing held by the state AGs as compared to other governmental actors, and to private parties, are substantial. As Meyer explains, "AGs are able to bring lawsuits with sweeping regulatory implications that private litigants are would be unable to bring for lack of standing or other legal reasons" (885). Thus these partisan suits bring many advantages to the AGs: "Not only do they have myriad ways to establish standing to sue the President or an executive branch agency, and exclusive doctrines by which to frame those suits in a favorable manner, but their participation is also controlled ultimately by the public interest, not private or corporate interests" (Shaub 674).

Thus standing for state AGs is far easier to achieve than standing for taxpayers and other governmental litigants. Taxpayer standing, or citizen standing, was eliminated in *Frothingham v. Melon* (1923), then allowed in very limited circumstances in *Flast v. Cohen* (1968), and then again made extremely difficult to obtain in *Arizona Christian School Tuition Organization v. Winn* (2011). Standing for federal legislators was severely restricted in *Raines v. Byrd* (1997). With the increase in multistate partisan lawsuits against the federal government, state AGs were operating under the assumption that there were no limits to state standing. As a law professor argued, "[s]tate politicians are using state standing as a way of waging what are political or policy battles against the current administration in court as opposed to through the political process. There is good reason to think that this special solicitude stuff has kind of gotten out of

hand, and it needs to be curtailed. . . . But it's often hard to get a majority of the court to rule against standing when a majority of the court believes the underlying merits claims are strong" (qtd. in Liptak).

Three recent US Supreme Court rulings, however, have limited somewhat what appeared to be an almost unlimited right of states to sue the federal government. After President Biden won the 2020 presidential election, a group of Republican AGs plus various other Republican officials sued, claiming that there were significant and unconstitutional irregularities in the way that the states of Pennsylvania, Georgia, Michigan, and Wisconsin (all states that Joe Biden won in the election) had carried out their elections. In an unsigned *per curiam* opinion, *Texas v. Pennsylvania* (2020), the justices ruled that Texas lacked standing, because one state did not have a legal interest in how other states carried out their elections. The decision restricted the previously almost unlimited concept of state standing, but it did not provide guidance on what the limits of state standing are beyond this unique context. In *United States v. Texas* (2023), Republican AGs sued to overturn Biden administration guidelines that would have reduced the number and type of illegal immigrants who would be arrested and then deported. The Republican states wanted the federal government to increase immigration arrests and prosecutions, not reduce them. The Supreme Court ruled that the states have no standing to sue the federal government over issues of federal prosecutorial discretion. The 8 to 1 decision clearly restricts state AGs' standing, but again it does not spell out the exact limits of state standing outside of this very narrow context. In *Murthy v Missouri* (2024), the US Supreme Court denied standing to state AGs of Missouri and Louisiana in their challenge to the federal government's attempts to persuade social media platforms to restrict disinformation about the pandemic and the 2020 election. The 6 to 3 ruling also did not provide much guidance about future limits on state standing.

Several federal district court judges, however, have applied the principles of *United States v. Texas* and these other rulings to deny state standing in lawsuits challenging new Biden administration gun control regulations requiring gun dealers to run background checks on buyers at gun shows, among other places. In May 2024, a federal district court judge in Arkansas denied standing for that state's attorney general, quoting the statement in *United States v. Texas* that "in our system of dual federal and state sovereignty, federal policies frequently generate indirect effects on state revenues or state spending. And when a State asserts, for example, that a federal law has produced only those kinds of indirect effects, the State's claim for standing can become more attenuated" (see e.g., Hardy). In a related lawsuit, a federal district judge in Texas in May 2024 granted standing to the state of Texas and blocked enforcement of the new regulations, but denied standing to the states of Louisiana, Mississippi and Utah without citing *United States v. Texas* directly (see e.g., Shoaib).

Not everyone is pleased with the way the Supreme Court has expanded standing for the states. Some argue that relaxed state standing rules allow the courts to interfere in federal policymaking in ways that they should not. As Davis argues, "Article III standing doctrine reflects the idea that courts should not be brought into political battles about the public interest. They must stay above the fray to the extent possible, deferring to the political branches and preserving their own legitimacy by exercising restraint" (1277). Also critical of unlimited state standing, another law professor concluded that

> [s]tates should not get special power to sue the federal executive branch in court.

> They should be subject to the same requirements as private parties, which would kick out most of these lawsuits. That would be a way of reducing these lawsuits, reducing the pressure on courts, and keeping the courts out of every single political controversy that arises with respect to the federal executive. (qtd. In Liptak)

Scholars have noted various additional critiques concerning this new trend in AG-initiated lawsuits, including whether the new partisan lawsuits are furthering American political polarization and whether it is proper for the state AGs to bypass the normal legislative and bureaucratic decision-making processes. As Lemos and Young argue, "[l]ongstanding concerns about state litigation as a form of national policymaking that circumvents ordinary lawmaking processes have been joined by new concerns that state litigation reflects and aggravates partisan polarization" (44). According to another scholar, "[t]he current partisan approach to multistate litigation detracts from the state attorney general's role. Filing multistate lawsuits (or failing to do so) for solely political reasons takes the state attorneys general's discretion too far. In such circumstances state attorneys general are no longer representing the interests of their state and constituents. They are representing personal and party interests" (Smith 536).

One possible effect of partisan lawsuits brought by state AGs is an erosion of overall public trust in the judiciary. Public trust and confidence in the courts in the US has traditionally been much higher than public trust in the legislative or executive branches of government (see e.g., Baum, *The Supreme* 137-38). However, looking carefully at over twenty years of polling data, one recent study from the Annenberg Public Policy Center at the University of Pennsylvania found that public trust in the federal courts has greatly declined recently (Patterson et al.). In 2005, roughly seventy-five percent of Americans surveyed had trust in the US Supreme Court (measured as those who answered that they had a great deal or a fair amount of trust in the court), while general trust in the federal judiciary as a whole was even higher. By 2022, however, only forty-six percent of the American public had trust in the US Supreme Court. In that survey only eight percent expressed "a great deal" of trust in the court. In addition, this study found that today, "a majority of Americans believe the courts favor the wealthy and that judges fail to set aside their personal political beliefs when making their rulings" (Patterson et al. 24). The distrust in the US Supreme Court continues. A Pew survey from July 2024 found that forty-seven percent of those surveyed had a favorable view of the US Supreme Court, while fifty-one percent had an unfavorable view. This study concluded that "[t]he court's favorable rating is 23 percentage points lower than it was in August 2020" (Copeland). Other studies have found similar declines in public trust and confidence in the US Supreme Court (see e.g., Biskupic 380).

Another finding of the Annenberg study was that the same political polarization currently rampant in American society has clearly affected public trust in the judiciary. In the past, there were few differences among the supporters of the two main political parties or independents in their views of the judiciary. Today, however, Republicans express much higher levels of trust in the courts than do Democrats or independents. In this survey, seventy-one percent of Republicans, forty-one percent of independents, and only twenty-four percent of Democrats expressed having trust in the Supreme Court to act in their best interest (Patterson et al. 25). This study concludes that "[t]he same polarization that has eroded support for the judiciary has also reduced belief in democratic norms" (Patterson et al. 31). The Pew study found similar polarization among supporters of the two political parties in their attitudes toward the US Supreme Court. This study concluded that while overall

support for the US Supreme Court was at forty-seven percent in 2024, "just 24 percent of Democrats and Democratic-leaning independents view the Supreme Court favorably. That is unchanged since last year and ties the court's lowest favorable rating from either party in more than 30 years" (Copeland). In addition, Democrats are nearly three times as likely as Republicans (sixty-two percent versus twenty-two percent) to say the Supreme Court has too much power (Copeland).

The fact that state AGs are furthering their personal political and partisan agendas through their partisan lawsuits against the federal government makes the state AGs one of a variety of agents of increasing partisan polarization in American society. While there is a clear correlation between the increasing number of partisan lawsuits brought by the state AGs and the decreasing trust in the judiciary among the American public, certainly these lawsuits are not the only cause of the lack of public confidence in the American judiciary. Nevertheless, because the state AGs are pursuing their partisan agendas through these lawsuits and thus increasing their voice in the inter-institutional constitutional dialogue as described by governance as dialogue scholars, there is good reason to be concerned about the broader effects of these actions. The danger is that these partisan-motivated lawsuits brought by the state AGs, and often won by them, are increasing the perception that American judges are merely partisan actors who do not deserve the trust of the American people.

One of the best ways to confront the lack of trust in the US Supreme Court and the other federal courts lies in the hands of the Supreme Court justices themselves. The Supreme Court should rein in its doctrine of state standing, thereby reducing the number of partisan lawsuits filed by state attorneys general. This would reduce the risk that the courts are perceived as merely partisan actors in the United States governmental system. Without changes in the doctrine of state standing, the partisan lawsuits brought by the state AGs will continue. As their lawsuits are growing more and more successful in carrying out their personal and partisan agendas, the state attorneys general are clearly perceived as agents of political polarization in American society.

Table of Cases

Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125 (2011).

Biden v. Nebraska, 600 U.S. 477 (2023).

Bush v. Gore, 531 U.S. 98 (2000).

Department of Homeland Security v. Regents of the University of California, 140 S. Ct. 1891 (2020).

Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022).

United States v. Eichman, 496 U.S. 310 (1990).

Flast v. Cohen, 392 U.S. 83 (1968).

Frothingham v. Melon, 262 U.S. 447 (1923).

INS v. Chadha, 462 U.S. 919 (1983).

Massachusetts v. EPA, 49 U.S. 497 (2007).

Murthy v Missouri, 603 U.S. 43 (2024).

National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012).

Planned Parenthood v. Casey, 505 U.S. 833 (1992).

Raines v. Byrd, 521 U.S. 811 (1997).

Roe v. Wade, 410 U.S. 113 (1973).

Texas v. Johnson, 491 U.S. 397 (1989).

Texas v. Pennsylvania, 141 S.Ct. 1230 (2020).

Trump v. Hawaii, 585 U.S. 667 (2018).

United States v. Texas, 599 U.S. 670 (2023).

Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014).

Works Cited

"About DAGA." *Democratic Attorneys General Association*, https://dems.ag/about-daga/.

"About RAGA." *Republican Attorneys General Association*, https://republicanags.com/about/.

"Appointing State Attorneys General: Evaluating the Unbundled State Executive." Note. *Harvard Law Review*, vol. 127, no. 3, 2014, pp. 973-94.

"Attorney General Office Characteristics." *National Association of Attorneys General*, https://www.naag.org/news-resources/research-data/attorney-general-office-characteristics/.

Balkin, Jack M. "*Bush v. Gore* and the Boundary between Law and Politics." *Yale Law Journal*, vol. 110, no. 8, 2001, pp. 1407-58. https://doi.org/10.2307/797581.

Balkin, Jack M., and Sanford Levinson. "Understanding the Constitutional Revolution." *Virginia Law Review*, vol. 87, no. 6, 2001, pp. 1045-1109. https://doi.org/10.2307/1073949.

Baum, Lawrence A. *Ideology in the Supreme Court*. Princeton University Press, 2017. https://doi.org/10.1515/9781400885367.

---. *The Supreme Court*. 12th ed., CQ Press, 2015.

Bickel, Alexander M. *The Least Dangerous Branch of Government: The Supreme Court at the Bar of Politics*. Yale University Press, 1962.

Biskupic, Joan. *Nine Black Robes: Inside the Supreme Court's Drive to the Right and Its Historic Consequences*. HarperCollins, 2023.

Blocher, Joseph. "Popular Constitutionalism and the State Attorneys General." *Harvard Law Review Forum*, vol. 122, 2011, pp. 108-15.

Bonica, Adam, and Maya Sen. *The Judicial Tug of War: How Lawyers, Politicians, and Ideological Incentives Shape the American Judiciary*. Cambridge University Press, 2021. https://doi.org/10.1017/9781108894005.

Brown, Esther Lucile. *Lawyers, Law Schools, and the Public Service*. Russell Sage Foundation, 1948.

Clayton, Cornell W. "Law, Politics and New Federalism: State Attorneys General as National Policymakers." *The Review of Politics*, vol. 56, no. 3, pp. 525-53. https://doi.org/10.1017/S0034670500018945.

Copeland, Joseph. "Favorable Views of Supreme Court Remain Near Historic Low." *Pew Research Center Reports*, Aug. 8, 2024, https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low/.

Corbin, Edwin. *Court Over Constitution: A Study of Judicial Review as an Instrument of Popular Government*. Peter Smith, 1938.

Davis, Seth. "The New Public Standing." *Stanford Law Review*, vol. 71, no. 5, 2019, pp. 1229-1304.

Derthick, Martha A. *Up in Smoke: From Legislation to Litigation in Tobacco Politics*. 3rd ed., CQ Press, 2011. https://doi.org/10.4135/9781483387673.

Devins, Neal, and Saikrishna Bangalore Prakash. "Fifty States, Fifty Attorneys General, and Fifty Approaches to the Duty to Defend." *Yale Law Journal*, vol. 124, no. 6, 2015, pp. 2100-2187.

Dishman, Elysa M. "Generals of the Resistance: Multistate Actions and Nationwide Injunctions." *Arizona State Law Journal*, vol. 54, no. 2, 2022, pp. 359-418.

Earley, Mark L. "'Special Solicitude': The Growing Power of State Attorneys General." *University of Richmond Law Review*, vol. 52, no. 3, 2018, pp. 561-67.

Eulau, Heinz, and John D. Sprague. *Lawyers in Politics: A Study in Professional Convergence*. Bobbs Merrill, 1964.

Feldman, Adam, and Jake Truscott. "O'Connor & The Court: Breaking the Supreme Court's Glass Ceiling." *Empirical SCOTUS*. Dec. 4, 2023, https://empiricalscotus.com/2023/12/04/oconnor-and-the-court/.

Fisher, Louis. *Constitutional Dialogues: Interpretation as Political Process*. Princeton University Press, 1988. https://doi.org/10.1515/9781400859573.

---. *Reconsidering Judicial Finality: Why the Supreme Court is Not the Last Word on the Constitution*. University Press of Kansas, 2019.

Fisher, Louis, and David Gray Adler. *American Constitutional Law*. 7th ed., Carolina Academic Press, 2007.

Friedman, Barry. "Dialogue and Judicial Review." *Michigan Law Review*, vol. 91, no. 4, 1993, pp. 577-682. https://doi.org/10.2307/1289700.

Goodman, J. David. "Appeals Court Keeps Block on Texas Migrant Arrest Law." *The New York Times*, March 27, 2024, https://www.nytimes.com/2024/03/27/us/texas-migrant-law-appeals-court.html.

Green, Philip. "Keeping Them Honest: How State Attorneys General Use Multistate Litigation to Exact Meaningful Oversight Over Administrative Agencies in the Trump Era." *Administrative Law Review*, vol. 71, no. 1, 2019, pp. 251-75.

Gross, Norman, ed. *America's Lawyer Presidents: From Law Office to Oval Office*. Northwestern University Press, 2004.

Hardy, Benjamin. "Judge Dismisses Arkansas from Tim Griffin's Gun Show Loophole Lawsuit, Transfers Case to Kansas." *Arkansas Times*, May 24, 2024, https://arktimes.com/arkansas-blog/2024/05/24/judge-dismisses-arkansas-from-tim-griffins-gun-show-loophole-lawsuit-transfers-case-to-kansas.

Hessick, Andrew, and William P. Marshall. "State Standing to Constrain the President." *Chapman Law Review*, vol. 21, no. 1, 2018, pp. 83-110.

Johnstone, Anthony. "A State Is a 'They,' Not an 'It': Intrastate Conflicts in Multistate Challenges to the Affordable Care Act." *Brigham Young University Law Review*, vol. 2019, no. 6, 2019, pp. 1471-1510.

Kritzer, Herbert M. "The Impact of *Bush v. Gore* on Public Perceptions and Knowledge of the Supreme Court." *Judicature*, vol. 85, no. 1, 2001, pp. 32-38.

Lemos, Margaret H., and Ernest A. Young. "State Public-Law Litigation in an Age of Polarization." *Texas Law Review*, vol. 97, no. 1, pp. 43-123.

Levinson, Sanford. "Return of Legal Realism." *The Nation*, Dec. 22, 2000.

Lindquist, Stephanie A., and Pamela C. Corley. "National Policy Preferences and Judicial Review of State Statutes at the United States Supreme Court." *Publius: The Journal of Federalism*, vol. 43, no. 2, 2013, pp. 151-78. https://doi.org/10.1093/publius/pjs044.

Liptak, Adam. "Student Load Case Before Supreme Court Poses Pressing Question: Who Can Sue?" *The New York Times*, Feb. 26, 2023, https://www.nytimes.com/2023/02/26/us/politics/biden-student-loans-supreme-court.html.

Marimow, Ann E., and David Nakamura. "Trump Asks Supreme Court to Allow Birthright Citizenship Ban in Some States." *The Washington Post*, March 13, 2025, https://www.washingtonpost.com/politics/2025/03/13/supreme-court-birthright-citizenship-trump/.

Marshall, William P. "Break Up the Presidency? Governors, State Attorneys General, and Lessons from the Divided Executive." *Yale Law Journal*, vol. 115, no. 9, 2006, pp. 2446-79. https://doi.org/10.2307/20455702.

Mather, Lynn. "The Politics of Litigation by State Attorneys General: Introduction to Mini-Symposium." *Law and Policy*, vol. 25, no. 4, 2003, pp. 425-28.

https://doi.org/10.1111/j.0265-8240.2003.00157.x.

---. "Theorizing about Trial Courts: Lawyers, Policymaking, and Tobacco Litigation." *Law & Social Inquiry*, vol. 23, no. 4, 1998, pp. 897-940. https://doi.org/10.1086/492664.

Maveety, Nancy. *Queen's Court: Judicial Power in the Rehnquist Era*. University Press of Kansas, 2008. https://doi.org/10.1353/book.134686.

McQuire, Kevin T. *The Supreme Court Bar: Legal Elites in the Washington Community*. University of Virginia Press, 1993.

Meyer, Timothy. "Federalism and Accountability: State Attorneys General, Regulatory Litigation, and the New Federalism." *California Law Review*, vol. 95, no. 3, 2007, pp. 885-914.

Miller, Mark C. *The High Priests of American Politics: The Role of Lawyers in American Political Institutions*. University of Tennessee Press, 2002.

---. *Judicial Politics in the United States*. Routledge, 2014.

---. "State Attorneys General, Political Lawsuits, and their Collective Voice in the Inter-Institutional Constitutional Dialogue." *Journal of Legislation*, vol. 48, no. 1, 2021, pp. 1-30.

Mueller, Julia. "Democratic AGs Rush to Form Line of Defense Against Trump." *The Hill*, Nov. 17, 2024, https://thehill.com/homenews/state-watch/4993685-democratic-attorneys-general-ready-trump/.

Nakamura, David, and Silvia Foster-Frau. "States, Civil Rights Groups Sue to Stop Trump's Birthright Citizenship Order." *The Washington Post*, Jan. 21, 2025, https://www.washingtonpost.com/immigration/2025/01/20/trump-birthright-citizenship-immigrants/.

Nolette, Paul. *Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America*. University Press of Kansas, 2015. https://doi.org/10.1353/book39127.

Patterson, Shawn, Matt Levendusky, Ken Winneg, and Kathleen Hall Jamieson. "The Withering of Public Confidence in the Courts." *Judicature*, vol. 108, no. 1, 2024, pp. 23-33.

Peretti, Terri Jennings. *In Defense of a Political Court*. Princeton University Press, 1999. https://doi.org/10.1515/9781400823352.

---. *Partisan Supremacy: How the GOP Enlisted Courts to Rig America's Election Rules*. University Press of Kansas, 2020.

Provost, Colin. "When is AG Short for Aspiring Governor? Ambition and Policy Making Dynamics in the Office of State Attorney General." *Publius: The Journal of Federalism*, vol. 40, no. 4, 2010, pp. 597-616. https://doi.org/10.1093/publius/pjp034.

---. "When to Befriend the court? Examining State Amici Curiae Participation Before the U.S. Supreme Court." *State Politics Quarterly*, vol. 11, no. 1, 2011, pp. 4-27. https://doi.org/10.1177/1532440010387276

Robinson, Nick. "The Decline of the Lawyer-Politician." *Buffalo Law Review*, vol. 65, no. 4, 2017, pp. 657-737.

Sabato, Larry J. "The AG: Attorney General as Aspiring Governor." *Rasmussen Reports*, Apr.

23, 2010, https://www.rasmussenreports.com/public_content/political_commentary/commentary_by_larry_j_sabato/the_ag_attorney_general_as_aspiring_governor.

Schick, Avi, and Josh Turner. "Trump Administration Will Impact Agenda of State Attorneys General." *Reuters*, Dec. 3, 2024. https://www.reuters.com/legal/legalindustry/trump-administration-will-impact-agenda-state-attorneys-general-2024-12-03/.

Schlesinger, Joseph A. "Lawyers and American Politics: A Clarified View." *Midwest Journal of Political Science*, vol. 1, no. 1, 1957, pp. 26-39. https://doi.org/10.2307/2109010.

Segal, Jeffrey A., and Harold J. Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press, 2002. https://doi.org/10.1017/CBO9780511615696.

Shaub, Jonathan David. "Delegation Enforcement by State Attorneys General." *University of Richmond Law Review*, vol. 52, no. 1, 2018, pp. 653-89.

Shoaib, Alia. "Joe Biden Handed Gun Control Loss by Texas Judge." *Newsweek*, May 20, 2024, https://www.newsweek.com/biden-gun-control-loss-texas-show-loophole-1902357.

Smith, Marissa A. "Politicization of State Attorneys General: How Partisanship is Changing the Role for the Worse." *Cornell Law Review*, vol. 108, no. 2, 2023, pp. 517-41.

Solimine, Michael E. "State Amici, Collective Action, and the Development of Federalism Doctrine." *Georgia Law Review*, vol. 46, no. 2, 2012, pp. 355-406.

Spill, Rorie L., Michael J. Licari, and Leonard Ray. "Taking on Tobacco: Policy Entrepreneurship and the Tobacco Litigation." *Political Research Quarterly*, vol. 54, no. 3, 2001, pp. 605-22. https://doi.org/10.1177/106591290105400306.

State Litigation and AG Activity Database, https://attorneysgeneral.org/multistate-lawsuits-vs-the-federal-government/list-of-lawsuits-1980-present/.

Sunstein, Cass R., David Schkade, Lisa M. Ellman, and Andres Sawicki. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Brookings Institution Press, 2006.

Tocqueville, Alexis de. *Democracy in America*. 1835. Translated by G. Lawrence and J. P. Mayer, Harper and Row, 1966.

Ulloa, Jazmine. "GOP-Led States, Claiming 'Invasion,' Push to Expand Power to Curb Immigration." *The New York Times*, June 15, 2024, https://www.nytimes.com/2024/06/15/us/politics/republican-states-immigration-laws.html.

Whittington, Keith E. *Political Foundations of Judicial Supremacy: The Presidency, The Supreme Court, and Constitutional Leadership in U.S. History*. Princeton University Press, 2007. https://doi.org/10.1515/9781400827756.