



Issue Analysis

The Nation's Worst State Attorneys General

By Hans Bader

July 2010

The Nation's Worst State Attorneys General

By Hans Bader

Executive Summary

State attorneys general (AGs) are among the most powerful office holders in the country, with few institutional checks on their powers. A state attorney general, such as Oklahoma's Drew Edmondson, can bring a politically motivated prosecution in violation of the First Amendment, yet his victims may well have no legal redress. With the possible exception of former New York Attorney General Eliot Spitzer, the enormous power wielded by state attorneys general has received little scrutiny. This discussion of the nation's half-dozen worst attorneys general, like its 2007 precursor, seeks to focus much needed attention on their most egregious abuses of power.

The historic function of a state attorney general is to act as the state's chief legal advisor, charged with defending the state in court and giving legal opinions to officials on pending bills and policies. In some instances, attorneys general have been entrusted by state legislatures with enforcing specified laws, assisting district attorneys in prosecuting serious crimes, and disseminating legal information.

Like other government offices, state attorney general offices were designed to have limited powers, set forth by their respective state constitutions and statutes. Under all state constitutions, the legislature, not the attorney general, is given the power to make laws. If the legislature has not specifically given the attorney general the right to enforce a particular law, then he may be exceeding his authority by bringing a lawsuit under it.

Federal law also limits an attorney general's power. When a state attorney general attempts to regulate conduct in another state, that may violate not only state law, but also the Constitution's Due Process and Commerce clauses, which forbid any state from imposing its laws on another state or regulating interstate commerce.

Unfortunately, many state attorneys general now ignore these constraints. In recent years, many state AGs have increasingly usurped the roles of state legislatures and Congress by using lawsuits to impose interstate and national regulations and extract money from out-of-state defendants who have little voice in a state's political processes.

Although abuses are widespread, some attorneys general are worse than others. The greatest harms inflicted by overreaching state AGs include encroachment on the powers of other branches of government, meddling in the affairs of other states or federal agencies, encouragement of judicial activism and frivolous lawsuits, favoritism towards campaign contributors, ethical breaches, and failure to defend state laws or state agencies being sued.

Introduction

State attorneys general (AGs) are among the most powerful office holders in the country, with few institutional checks on their powers. A state attorney general, such as Oklahoma's Drew Edmondson, can bring a politically motivated prosecution in violation of the First Amendment, yet his victims may well have no legal redress. With the possible exception of former New York Attorney General Eliot Spitzer, the enormous power wielded by state attorneys general has received little scrutiny. This discussion of the nation's half-dozen worst attorneys general, like its 2007 precursor,¹ seeks to focus much needed attention on their most egregious abuses of power.

The historic function of a state attorney general is to act as the state's chief legal advisor, charged with defending the state in court and giving legal opinions to officials on pending bills and policies.² In some instances, attorneys general have been entrusted by state legislatures with enforcing specified laws,³ assisting district attorneys in prosecuting serious crimes, and disseminating legal information.⁴

Like other government offices, state attorney general offices were designed to have limited powers, set forth by their respective state constitutions and statutes. Under all state constitutions, the legislature, not the attorney general, is given the power to make laws. If the legislature has not specifically given the attorney general the right to enforce a particular law, then he may be exceeding his authority by bringing a lawsuit under it.⁵

Federal law also limits an attorney general's power.⁶ When a state attorney general attempts to regulate conduct in another state, that may violate not only state law, but also the Constitution's Due Process and Commerce clauses, which forbid any state from imposing its laws on another state or regulating interstate commerce.⁷

Unfortunately, many state attorneys general now ignore these constraints. Over the past 15 years, many state AGs have increasingly usurped the roles of state legislatures and Congress by using lawsuits to impose interstate and national regulations and extract money from out-of-state defendants who have little voice in a state's political processes.⁸ A classic example is the 1998 tobacco Master Settlement Agreement (MSA). It settled lawsuits against the big tobacco companies by creating what is effectively a national tax on cigarettes, giving at least \$15 billion of the resulting revenue to politically connected trial lawyers hired

Under all state constitutions, the legislature, not the attorney general, is given the power to make laws.

The recent wave of lawsuits brought by state attorneys general has fostered corruption, circumvented legislative checks on regulation, taxes, and government spending, made government less transparent, and diverted attention away from their core responsibilities of defending state agencies in lawsuits and providing legal advice to public officials.

by some of the state attorneys general. The MSA’s costs are borne by smokers—the very people the state AGs claim were victimized and defrauded by the tobacco companies.⁹

The worst offenders flaunt their abuses of power. Eliot Spitzer once boasted that he had “redefined the role of Attorney General.”¹⁰ Similarly, California’s Jerry Brown boasts: “I’ve got 1,100 lawyers standing by and they’re looking for someone to sue.”¹¹

This sort of activism may serve a state attorney general’s political ambitions, but it imposes real costs on consumers, businesses, the economy, and our democratic system.¹² The recent wave of lawsuits brought by state attorneys general has fostered corruption, circumvented legislative checks on regulation, taxes, and government spending, made government less transparent, and diverted attention away from their core responsibilities of defending state agencies in lawsuits and providing legal advice to public officials.

Although these abuses are widespread, some attorneys general are worse than others. The greatest harms inflicted by overreaching state AGs include encroachment on the powers of other branches of government, meddling in the affairs of other states or federal agencies, encouragement of judicial activism and frivolous lawsuits, favoritism towards campaign contributors, ethical breaches, and failure to defend state laws or state agencies being sued. Taking these criteria into account, the following state attorneys general have earned their spot on this year’s list of the nation’s worst attorneys general:

1. Jerry Brown, California
2. Richard Blumenthal, Connecticut
3. Drew Edmondson, Oklahoma
4. Patrick Lynch, Rhode Island
5. Darrell McGraw, West Virginia
6. William Sorrell, Vermont

Criteria for AG Ratings

1. **Ethical Breaches and Selective Applications of the Law.** Using campaign contributors to bring lawsuits. Using the attorney general’s office to promote personal gain or enrich cronies or relatives. Favoritism towards campaign donors and other uneven or unpredictable application of the law (including refusal to defend state laws or state agencies being sued when plausible defenses exist).

As The Los Angeles Times noted, Brown's decision to switch course "at the last possible moment before the court's deadline, surprised many legal experts. The attorney general has a legal duty to uphold the state's laws as long as there are reasonable grounds to do so."

the federal Constitution,¹⁴ even though the Supreme Court and other courts have already rejected such challenges to state gay marriage bans.¹⁵ While the author of this paper publicly opposed Proposition 8,¹⁶ it plainly does not violate the state constitution.

In December 2008, Brown, after previously claiming he would defend the amendment against a state constitutional challenge, suddenly changed position shortly before the deadline for opposing the lawsuit, filing a brief supporting the lawsuit instead. As *The Los Angeles Times* noted, Brown's decision to switch course "at the last possible moment before the court's deadline, surprised many legal experts. The attorney general has a legal duty to uphold the state's laws as long as there are reasonable grounds to do so."¹⁷ And even critics of Proposition 8 admitted that it had plausible legal defenses.¹⁸ Indeed, courts have generally upheld bans on gay marriage against state constitutional challenges, even when such bans are merely statutory, and not written into the state constitution itself, the way California's is.¹⁹ As one civil libertarian put it, Brown "ripped up his job description" when he unilaterally decided not to defend Proposition 8 in court.²⁰

Even some liberal law professors criticized Brown's position. Santa Clara University law professor Gerald Uelmen said that Brown's argument "turns constitutional law on its head," and that he was unaware of any case law that supported it.²¹ Goodwin Liu, associate dean and professor of law at University of California, Berkeley's Boalt Hall School of Law, said it was "extraordinary for the chief law enforcement officer of the state to decline to enforce a law—even on the grounds that it is unconstitutional." He said, "The chief law enforcement officer of the state is charged with enforcing laws, even laws with which he disagrees."²² (After the state Supreme Court upheld Proposition 8, it was challenged yet again in federal court. Brown once again refused to defend it,²³ this time claiming it violated the federal Constitution—an argument the U.S. Supreme Court rejected in an earlier case,²⁴ and that has recently been rejected again by a federal appeals court.²⁵)

Brown also attacked another provision of the California Constitution, which had been upheld by the federal courts more than a decade earlier. Article 1, Section 31 of the California Constitution bars California's government from imposing racial or gender preferences, including race-based affirmative action. It was adopted by California voters in 1996 as Proposition 209, and upheld in 1997 by a federal appeals

court.²⁶ In 2009, Brown told the California Supreme Court to ignore this provision, because, he claimed, it was unconstitutional.²⁷

Brown has also been very aggressive in using lawsuits based on vague claims of environmental harm to block energy projects in California, and to regulate beyond the state's borders. The effect of any individual project or development on overall global warming, or greenhouse gas emissions, is microscopic, yet Brown brought so many lawsuits over global warming against businesses and local governments that the state legislature curbed his ability to sue local governments.²⁸

Brown has engaged in this kind of green activism without regard to the effects on the state's economy. In 2008, he threatened to sue to block a proposed water bottling plant in Northern California unless its effects on global warming were evaluated. Nestlé wanted to bottle water from three natural springs that supply McCloud, a depressed former lumber town about 280 miles north of San Francisco that badly needs jobs. The plant would produce enough water to fill 3.1 billion water bottles.²⁹ Shortly after Brown's threat, Nestlé cancelled the project and the 100 jobs the plant would have created evaporated along with it.³⁰

Modernization of America's refineries is critically needed to maintain a secure supply of fuel.³¹ The nation has a significant shortfall in refining capacity, which unnecessarily forces overreliance on uncertain foreign supplies.³² Despite this need, in 2008, Brown used the threat of litigation to delay modernization of a refinery by Chevron.³³ This represented a conflict of interest. Brown's personal fortune came from the "family oil business," which received a "fee for each barrel" of oil exported from Indonesia, in a concession granted by that country's former military dictatorship. Chevron's oil refineries in California are designed to process Alaskan crude, to compete against oil from Indonesia in California's power plant market.³⁴ Brown has also meddled beyond his own jurisdiction by pressuring other states to block new power plants within their own borders.³⁵

Brown's fundraising practices raise ethical concerns. He collected \$52,500 in campaign contributions from relatives and from a company his office had been investigating in a public pension fund corruption probe.³⁶ Using his leverage as state attorney general, Brown raised nearly \$10 million in contributions to favored charities from industries that he oversees as state attorney general, including utilities, casino operators, and health care organizations.³⁷ Brown also conducted an investigation

Brown brought so many lawsuits over global warming against businesses and local governments that the state legislature curbed his ability to sue local governments.

of the scandal-prone leftist activist group Association of Community Organizations for Reform Now, better known by its acronym, ACORN, that has been criticized as a whitewash. ACORN faced a public relations disaster in September 2009, when the conservative commentary website BigGovernment.com released a series of highly embarrassing hidden-camera videos. In the videos, ACORN employees at several of the group's offices around the country are seen providing advice to the filmmakers, a man and woman posing as a pimp and prostitute, on how to conduct several illegal activities, including running a prostitution ring.³⁸ In his report, Brown said that while ACORN did nothing "criminal," his office found likely violations of state law.³⁹ Brown closed his investigation without taking any action against ACORN, despite admitting that it had committed "highly inappropriate acts," such as failure to file tax returns, illegally dumping 20,000 pages of documents, and four instances of possible voter registration fraud. Worse, Brown criticized the filmmakers who exposed ACORN's wrongdoing, claiming their videotape "violated" ACORN's privacy—even though the videos were all made at the ACORN offices' public reception areas.⁴⁰

2. Richard Blumenthal, Connecticut

The second worst state attorney general in the nation is Richard Blumenthal. A left-wing ideologue who has used the power of his office to spread largesse to cronies, Blumenthal was rated the nation's worst attorney general in our January 2007 ratings. Blumenthal has not gotten any better since then, but the competition for worst AG seems to have gotten fiercer.

The Tobacco Racket

Blumenthal, more than anybody else, is responsible for the multi-state act of corruption and cartelism known as the Master Settlement Agreement, which he negotiated along with Oklahoma state AG Drew Edmondson.⁴¹ Wealthy trial lawyers across the nation received \$14 billion nationally in attorneys' fees⁴² under a \$246 billion-plus settlement paid for primarily by smokers—the alleged victims of the supposed fraud that begat the settlement.⁴³

The settlement was structured to allow the major tobacco companies to maintain their market share and raise prices in unison in order to pass settlement costs on to smokers. Working together, state attorneys general and major tobacco companies were also able to force smaller tobacco companies that had never been accused of any

fraud to join the settlement or pay penalties for not doing so. In a word, the settlement created a cartel, undermining free competition. As the federal appeals court with jurisdiction over Connecticut observed, had the tobacco company executives entered into a similar settlement without the collusion of the attorneys general, “they would long ago have had depressing conversations with their attorneys about the United States Sentencing Guidelines.”⁴⁴ By getting a state official such as Blumenthal to sign their settlement, the tobacco companies were able to claim that the cartel was exempt from antitrust laws under a loophole known as “state action” immunity, which exempts many state-recognized cartels under the generous assumption that state officials would not sign off on a cartel unless it promoted the public interest.⁴⁵

The tobacco settlement was joined by 46 states—dubbed “Settling States”—but many of its provisions apply nationally, thus imposing a major encroachment on state autonomy. The MSA requires tobacco companies that join the settlement to make payments to the Settling States based on their national cigarette sales, *including sales in states that did not join the tobacco settlement*. Worse, it requires companies that never joined the settlement agreement to make payments, even though, under America’s legal system, court settlements are not supposed to affect the rights of non-parties.⁴⁶ Moreover, such companies must make payments on any of their cigarettes that end up in the Settling States, even cigarettes resold *without their knowledge* by third parties in a Settling State.⁴⁷

Amid all the sordidness of the tobacco deal, Blumenthal personally steered \$65 million in fees to his own allies and the associates of former Connecticut Governor John Rowland (who was later convicted of corruption in an unrelated matter). Blumenthal had gone through the motions of soliciting letters from firms seeking to represent the state in the lawsuit against major tobacco companies. He selected four of 16 firms that expressed interest. The three Connecticut-based firms included:

- (1) Blumenthal’s own former law firm, Silver, Golub & Teitell in Stamford, where he worked for six years prior to becoming Attorney General. Partner David S. Golub is a long-time friend and law school classmate of Blumenthal’s;

As the federal appeals court with jurisdiction over Connecticut observed, had the tobacco company executives entered into a similar settlement without the collusion of the attorneys general, “they would long ago have had depressing conversations with their attorneys about the United States Sentencing Guidelines.”

(2) Emmet & Glander in Stamford, whose name partner, Kathryn Emmet, is married to partner David Golub of Silver, Golub & Teitell; and

(3) Carmody & Torrance of Waterbury, whose managing partner, James K. Robertson, served as personal counsel and counselor to the later convicted Governor John Rowland.⁴⁸

As attorney general, Blumenthal has supported meritless, politically motivated lawsuits.

Other firms that bid for the litigation publicly complained that they did not have a fair chance at the contract. For example, Robert Reardon of New London, a former president of the Connecticut Trial Lawyers Association, reportedly could not even get in the door for a meeting, despite repeated efforts.⁴⁹

The contingency fees these lawyers received probably violated the Connecticut state constitution and state law.⁵⁰ First, the contingency fee was not authorized by the legislature, which has the exclusive power to appropriate funds. Connecticut courts have consistently held that the power to spend or receive state funds rests solely with the legislature.⁵¹ Second, the fees at issue were paid with money that was the property of the State of Connecticut.⁵² Connecticut law treats all funds recovered in a legal case as the property of the client, not his lawyer.⁵³ Thus, the state Supreme Court held that the costs awarded in a lawsuit belong to the party in whose favor they are taxed, and not to his attorney.⁵⁴ Moreover, the contingency fee arrangement endorsed by Blumenthal was patently unethical because it gave lawyers for the state a mercenary motive for maximizing the state's monetary recovery, regardless of the public interest.⁵⁵

As attorney general, Blumenthal has also supported other meritless, politically motivated lawsuits. For example, he filed an amicus brief in favor of a lawsuit against gun makers—most from out of state—for crimes committed by third parties. The lawsuit, rejected by the state Supreme Court, would have circumvented limits on tort law by dramatically expanding nuisance law and undermining individual responsibility.⁵⁶ Moreover, the suit targeted out-of-state businesses that are not properly subject to Connecticut law. It should be noted that the gun sales were lawful.

Similarly, Blumenthal backed former New York Attorney General Spitzer's lawsuit against Western Union. Western Union was sued after foreign swindlers used it to send telegrams (*i.e.*, "Millions are Trapped in Nigeria; we'll give you some of the millions, but we need \$15,000 first").

The AGs forced Western Union to settle and pay more than \$8 million for “national peer-counseling programs” run by their political ally, AARP.⁵⁷ Victims of fraud received nothing,⁵⁸ and the settlement applies nationally even outside the states that joined it.⁵⁹ Under the logic of the lawsuit against Western Union, one could sue the phone company for fraud committed using the telephone.

Blumenthal has frequently supported racial quotas and unconstitutional restrictions on speech.⁶⁰ He has also attacked private property rights, including advocating that private homes be subject to government seizure for use by private developers.⁶¹

Blumenthal also used the power of his office to bully small businesses. An egregious example is his abusive treatment of computer store owner Gina Malapanis, which led to an \$18-million judgment against the State of Connecticut. In 2003, he sued Malapanis’s store, Computers Plus Center, for \$1.75 million for allegedly selling machines to the state government that had missing parts. In a press release, Blumenthal accused Malapanis of fraud. Malapanis was arrested in her home and charged with seven first-degree larceny charges. The charges against Malapanis were dismissed in 2008. She then countersued the state for abuse of power and for violating her constitutional rights. As Fergus Cullen of the Yankee Institute for Public Policy noted, the jury, “recoiling at the overly aggressive action that ruined her business, awarded her a whopping \$18 million in January. In a handwritten note on court documents, the jury foreman said the state had engaged in a ‘pattern of conduct’ that harmed Ms. Malapanis’s reputation, and cited the state’s press releases impugning her integrity, some of which came from Mr. Blumenthal.”⁶² Blumenthal appealed the decision.

3. Drew Edmondson, Oklahoma

The third worst attorney general is Oklahoma’s Drew Edmondson, whose tenure has been marked by a pattern of political bullying and hypocrisy. Edmondson appears to have had no problem with accepting money from out-of-state lawyers,⁶³ wealthy special interests,⁶⁴ and even felons.⁶⁵ He has violated state ethics rules and campaign laws.⁶⁶ And he has steered lucrative government contracts to lawyers who give him donations (such as generous contingency fees for lawyers that give them up to \$250 million simply for bringing copycat lawsuits that mimic pending lawsuits brought by other trial lawyers, and give the lawyers up to 50 percent of what the state recovers).⁶⁷

Blumenthal has attacked private property rights, including advocating that private homes be subject to government seizure for use by private developers.

Edmondson has abused the power of his office in order to intimidate political opponents.

Edmondson has also abused the power of his office in order to intimidate political opponents. In 2007, he repeatedly indicted taxpayer activists Paul Jacob, Susan Johnson, and Rick Carpenter for seeking to place on the ballot a Taxpayer Bill of Rights that would have limited the rate of growth of state government spending.⁶⁸ These activists, dubbed the “Oklahoma Three,”⁶⁹ were led out of the courtroom in handcuffs for their role in hiring petition circulators from across the country to help them gather the hundreds of thousands of signatures needed to put the initiative on the ballot.⁷⁰ If convicted, they faced up to 10 years in prison.⁷¹

Edmondson previously had stated that there was nothing wrong with using people coming from out-of-state to circulate petitions, as long as they resided in Oklahoma for the duration of their work.⁷² Oklahoma’s Secretary of State had given the same advice.⁷³ But Edmondson suddenly changed his position and indicted Jacob, Johnson, and Carpenter for violating a previously unenforced, patently unconstitutional Oklahoma statute banning non-resident petition circulators—a statute interpreted by the state Supreme Court to ban all but “permanent” state residents from gathering petition signatures.⁷⁴ While Edmondson’s prosecution may seem lawful by following the letter of the law, rulings on similar laws—and the resulting long odds against his prosecution succeeding—make clear that it was purely political. Essentially, Edmondson prosecuted the Oklahoma Three under a law that had already had several legs kicked out from under it. Several federal appeals courts had struck down such residency requirements, and less restrictive ones requiring only brief residency, as violating the First Amendment.⁷⁵ That includes the federal appeals court with jurisdiction over Oklahoma, which struck down restrictions on non-resident petition circulators contained in a municipal ordinance in 2002,⁷⁶ and struck down the very statute under which Edmondson charged the Oklahoma Three in 2008.⁷⁷ But Edmondson persisted in his politically motivated prosecution until 2009,⁷⁸ when he finally bowed to the inevitability that he would be found in violation of the First Amendment. Moreover, his hanging on to such a thin reed to persecute his political opponents does not speak well of his judgment.

Edmondson’s office and his supporters defended the prosecutions as a way of keeping people from outside the state from participating in Oklahoma state politics.⁷⁹ Such a purpose is flatly at odds with the First Amendment, which protects non-residents and residents alike,⁸⁰ and fully applies to petition circulators.⁸¹ As one citizen noted in *The Oklahoman*, “The prosecution of Paul Jacob and others for the alleged crime of using

out-of-state petition circulators, and the law on which that prosecution is based, are dangerous attacks on our constitutional right to petition for redress of grievances. The tradition of coming to the political assistance of others is well established in American history, law and practice. Should Virginians have stayed home during the Revolution and not assisted the other colonies? Should people not have gone to Alabama in the 1960s to fight injustice?"⁸² Out-of-state activists played critical roles in the fight to end segregation in states like Mississippi and Alabama.⁸³ Even today, they continue to play a critical role in movements for political change, such as the push for term limits, whose leading exponent is Paul Jacob, the most prominent of the Oklahoma Three.⁸⁴

It is worth nothing how ironic it is for Edmondson to complain about outsiders meddling in Oklahoma politics, when out-of-state opponents of the initiative routinely harassed the petition gatherers, without Edmondson or anyone else questioning their right to come into the state to do so.⁸⁵ It is also ironic in light of his willingness to ignore federalism safeguards when it has been convenient for him to do so.⁸⁶

The law banning non-resident petition circulators was challenged in federal court by supporters of voter initiatives, who often prefer hiring experienced professional petitioners from out of state to gather signatures, because they produce better results,⁸⁷ and, in the case of Oklahoma, because of a dearth of experienced petition circulators.⁸⁸ The challenge was obviously well-founded, since it was based on a 2002 decision by the same court that struck down a Colorado city's ban on petitioning by non-residents.⁸⁹

Edmondson hypocritically claimed that he had no choice but to prosecute the Oklahoma Three, saying, "[W]e're charged with enforcing the laws that are on the books."⁹⁰ But as *The Wall Street Journal* noted, [E]very prosecutor has to make judgment calls about how to deploy limited manpower. And in other areas, Mr. Edmondson has opted not to act while legal challenges are pending. Upon learning that the Supreme Court had agreed to review a challenge to the death penalty, for example, he recently requested that all executions be halted until the High Court speaks.⁹¹

4. Patrick Lynch, Rhode Island

The fourth worst state attorney general in America is Patrick Lynch, attorney general of Rhode Island since January 2003. Lynch continued a nuisance suit against paint companies (filed by his predecessor in 1999) that was later thrown out as meritless by the Rhode Island Supreme

*It is worth nothing
how ironic it is
for Edmondson to
complain about
outsiders meddling
in Oklahoma politics,
when out-of-state
opponents of the
initiative routinely
harassed the petition
gatherers, without
Edmondson or anyone
else questioning
their right to come
into the state to do so.*

Court.⁹² As that Court recently observed, Lynch sought to redefine the concept of a nuisance so broadly that “nuisance law would become a monster that would devour in one gulp the entire law or tort” and eviscerate rational boundaries on product liability.⁹³ Lynch’s lawsuit sought to circumvent legislation that placed the burden on property owners, not paint companies, to make their properties lead-safe.⁹⁴

By prosecuting the multibillion-dollar suit, Lynch empowered trial lawyers who donated to his campaign to seek hundreds of millions of dollars in contingency fees. The suit, launched by his predecessor, now-Senator Sheldon Whitehouse, sought to hold out-of-state paint companies liable based on their lawful sales of lead paint decades earlier. To maximize their potential legal fees, he allowed them to seek the most extravagant remedy possible, even though cheaper remedies would do more to protect public health. He then pocketed more campaign contributions from those lawyers, as well as from lawyers for paint companies seeking special settlement terms.

A 2006 jury verdict, subsequently reversed by the Rhode Island Supreme Court, held three lead paint companies liable for a public nuisance, ordering them to remove lead paint from more than 300,000 homes, and opening the door to them being “forced to pay out billions of dollars in damages.”⁹⁵ The judge allowed the companies to be sued for vast sums even though they had removed the lead from their paint long before the government banned it.⁹⁶ Moreover, the lead paint companies, which were from out of state, were held liable to Rhode Island without any proof that the lead paint they sold ended up on any buildings currently standing in Rhode Island.⁹⁷ As *The Providence Journal* noted in an editorial:

The resulting Rhode Island verdict makes a mockery of the basic principles of tort law. Typically, to win a lawsuit, there needs to be an injured party. Not here, where not a single injured party—or a single house constituting a “nuisance”—made it into the evidence. Typically, for liability, a plaintiff needs to show that the defendant caused its harm. Not here, where the judge instructed the jury that it could find the defendants guilty without even finding that any of the paint companies had manufactured any paint actually used in the state.⁹⁸

Ratifying a decision made by his predecessor, Sheldon Whitehouse, Lynch contracted out the state’s litigation work to the Motley law firm, whose members and their relatives gave Lynch thousands of dollars in

campaign contributions,⁹⁹ and had become the largest donor in Rhode Island politics.¹⁰⁰ Their donors included, among others, John J. “Jack” McConnell, the lead lawyer in the lead paint lawsuit, who gave at least \$3,000 to Lynch, and his wife, Sara Shea McConnell, who also gave \$3,000 to Lynch, on exactly the same dates as her husband.¹⁰¹ McConnell is also a major donor to the Rhode Island Democratic Party, which backs Lynch.¹⁰²

Lynch also received money for his own political benefit from those he sued. He accepted campaign contributions from a lawyer for DuPont while he was negotiating to drop the company from the state’s lead paint lawsuit, including \$2,500 from the attorney and a total of \$4,250 from others tied to DuPont.¹⁰³ After receiving their donations, Lynch entered into a deal with DuPont that allowed the company to escape liability in exchange for a donation to a charity that the company itself set up, even as he continued to seek billions of dollars from the other lead paint companies.¹⁰⁴ A non-partisan ethics watchdog observed that Lynch’s conduct “does not pass the smell test.”¹⁰⁵

The contingency fee arrangement between Lynch’s office and the Motley law firm handling the suit against the lead paint makers was criticized by legal commentators, who argued that it violated laws requiring that attorneys’ fees recovered by the attorney general be paid back into the state treasury, that the legislature authorize any payments to attorneys acting on behalf of the state through the appropriations process, and that attorneys working on behalf of the state not financially profit from a lawsuit.¹⁰⁶ (The Rhode Island Supreme Court later ruled that the attorney general is not prohibited by state law from entering into contingency-fee agreements, although it cautioned that such provisions must be carefully reviewed and approved by the courts before any payments are made to guard against excessiveness or ethical breaches.¹⁰⁷)

The contingency fee also created a serious conflict of interest. It was in the interest of the lawyers handling the case for Rhode Island to maximize any damage award paid by the defendant—the larger the award, the larger the fee they will receive. A damage award based on the cost of removing all lead paint would be vastly larger than an award based on the cost of ensuring that painted surfaces on older buildings are kept intact. As Rhode Island political commentator Carroll Andrew Morse notes, “The decision of the Motley law firm to seek the former remedy—despite the views of virtually all scientists that the latter remedy is far better from a public health standpoint—can only be explained by the attorneys’ financial interest in maximizing their own fees. In other words, since contingency

A non-partisan ethics watchdog observed that Lynch’s conduct “does not pass the smell test.”

fee lawyers are compensated based on damages awarded, they have an incentive to advocate (in the name of the state) for whatever is most expensive, not for what is most effective.”¹⁰⁸

Engaging in grandstanding, Lynch made intemperate remarks in the lead paint litigation, and was repeatedly sanctioned for contempt of court by the trial court, which imposed \$15,000 in sanctions.¹⁰⁹ (The Rhode Island Supreme Court later ruled that regardless of whether Lynch’s remarks were inappropriate or constitutionally protected, they did not violate the clear terms of any pre-existing court order, and thus could not be punished as contempt of court.¹¹⁰)

At the end of the day, Lynch’s lead paint lawsuit achieved nothing, other than waste thousands of hours of attorney time, and give Rhode Island a reputation for having a bad legal climate—a big disincentive for businesses to move there and create jobs.¹¹¹ Lynch has also been a major participant in multistate lawsuits that seek to regulate conduct occurring wholly outside Rhode Island.

5. Darrell McGraw, West Virginia

Darrell McGraw, attorney general of West Virginia since January 1993, has violated the most basic duty of his office, to defend the state in court. In 1996, he brought a lawsuit against state agencies that was settled at a cost to taxpayers of more than \$2 million, all of which was pocketed by the trial lawyer whom McGraw hired to bring the suit.

McGraw also has regularly diverted money recovered by the state from legal settlements to friends and allies,¹¹² endangering West Virginia’s Medicaid funding in the process.¹¹³ As *The West Virginia Record* notes, he regularly hires “lawyers who are also his faithful campaign contributors. These appointments, most often made without an open and public process, have helped earn outside legal firms huge sums of money in partnership with the powerful office of Attorney General.”¹¹⁴ This cronyism and his diversion of lawsuits settlements are key reasons why West Virginia has been rated as the nation’s worst “judicial hellhole” by the American Tort Reform Association.¹¹⁵

McGraw appointed trial lawyer Thomas Galloway as special assistant attorney general to bring a contingency fee lawsuit against West Virginia’s Bureau of Employment Programs, which ended when the state paid Galloway a \$2-million fee in exchange for dismissing the suit.¹¹⁶ The state attorney general is supposed to defend state agencies from suit, not sue them for the benefit of his trial lawyer allies. The West Virginia

Supreme Court noted that there has been “an order of this court directing the attorney general to explain why he has not represented West Virginia” in that very case, but that he filed a non-responsive, evasive answer.¹¹⁷ It is interesting to note that the plaintiff’s counsel in this case donated to McGraw’s 1996 and 2004 campaigns.¹¹⁸ The contingency fees McGraw authorized were themselves probably illegal under West Virginia law.¹¹⁹

In similar fashion, McGraw hired lawyers on a contingency fee to sue tobacco companies in 1995. In response, he was specifically told by the state judge handling the state’s tobacco lawsuit that paying contingency fees to lawyers hired to represent the state was illegal.¹²⁰ But he went ahead and did it anyway, paying the trial lawyers he hired \$33.5 million, including \$3.85 million to an attorney who barely did any work, and even though the Legislative Auditor’s office specifically questioned the payments, doubting McGraw’s “authority to enter into the settlement.”¹²¹ McGraw authorized these millions in payments without even telling the state legislature, even though state law specifically limits any compensation for lawyers hired by the state to “amounts appropriated by the Legislature.”¹²² Later, McGraw allowed lawyers who had contributed to his campaign to reap almost \$4 million in fees after they helped the state obtain a \$12-million settlement from two credit card companies.¹²³ And he hired a campaign contributor as a special assistant attorney general to bring a contingency fee lawsuit against two drug companies.¹²⁴

McGraw has used other court settlements as his own political slush fund, so often that *The Charleston Daily Mail* summed him up as “a lawyer who sues on behalf of a client, settles out of court, and keeps the money.”¹²⁵ For example, in 2004, he took a \$10-million settlement from Purdue Pharma, decided that he did not need to turn it over to the state treasury, and has been doling out the dollars himself ever since.¹²⁶ Federal Medicaid officials were unhappy that the money did not go back into West Virginia’s Medicaid program, and threatened to withhold federal funds from the state.¹²⁷ And his doling out money to his trial lawyer friends may also violate rules against paying contingency fees to lawyers hired by the state.

McGraw sued Purdue Pharma on behalf of state Medicaid and workers compensation programs, alleging that the company had failed to warn about the addictive qualities of Oxycontin. But the state agencies in whose name McGraw sued received virtually none of the settlement.¹²⁸ Indeed, in violation of state ethics rules, they were not even informed in advance of the settlement by their lawyer, the state attorney general.¹²⁹ Out of the settlement, \$3.3 million went to attorneys’ fees for McGraw’s

McGraw hired lawyers on a contingency fee to sue tobacco companies in 1995. In response, he was specifically told by the state judge handling the state’s tobacco lawsuit that paying contingency fees to lawyers hired to represent the state was illegal. But he went ahead and did it anyway.

trial lawyer friends,¹³⁰ even though that was contrary to a state court ruling which upheld a West Virginia law that bars contingency fees to lawyers hired by the state attorney general.¹³¹ The balance of the settlement went, according to *The Charleston Gazette*, “mostly to help build a pharmacy school and to fund community corrections programs.”¹³² One hundred eighty thousand dollars went to a nursing program run by the wife of the State Senate president,¹³³ while \$500,000 went to a private, unaccredited pharmacy school.¹³⁴ Moreover, McGraw has apparently paid no heed to provisions in the settlement requiring that he consult with Purdue Pharma before disbursing funds from the settlement.¹³⁵

Lawmakers have criticized McGraw’s failure to return the settlement money to the state treasury as a violation of the state constitution and an improper use of taxpayer money.¹³⁶ McGraw’s critics include fellow Democrat and House Finance Committee Chairman Harold Michael, Delegate Eustace Frederick (D-Mercer), and Senator Andy McKenzie (R-Ohio), as well as legal commentators.¹³⁷ Had the settlement been paid back into the state treasury rather than doled out to McGraw’s friends, it might have resulted in the state receiving as much as \$30 million in federal matching funds.¹³⁸

Critics also have raised questions about whether McGraw’s diversion of the settlement money away from Medicaid violates federal laws against Medicaid fraud.¹³⁹ That resulted in a federal probe of McGraw’s handling of the Purdue Pharma settlement,¹⁴⁰ a ruling by a Department of Health and Human Services appeal board that the federal government is entitled to recover money from the State of West Virginia,¹⁴¹ demands for money by federal officials from several McGraw settlements,¹⁴² and threats by the federal government to withhold future payments to West Virginia’s Medicaid program.¹⁴³

McGraw took West Virginia into the multi-state Master Settlement Agreement, which resulted in wealthy trial lawyers receiving \$14 billion in attorneys’ fees¹⁴⁴ under a \$246 billion-plus settlement paid for primarily by smokers, who were the alleged victims of the very fraud that supposedly led to the settlement.¹⁴⁵

McGraw has helped his trial lawyer allies in other ways, such as by persuading the West Virginia Supreme Court to circumvent the exclusivity provisions of state workers’ compensation laws so as to allow duplicative recoveries by employees. He filed an amicus brief in a case filed by a campaign donor in which a divided West Virginia Supreme Court ruled that an employee could recover under both Workers’ Compensation Law and

state handicap discrimination law based on injuries flowing from the very same accident for which the employee has already been compensated, even though Workers' Compensation awards are supposed to be exclusive.¹⁴⁶ The state Supreme Court's pro-plaintiff rulings in that period gave the state a lasting reputation as a "tort hell" that is hostile to business,¹⁴⁷ although the state judiciary itself has improved slightly since then.¹⁴⁸

6. William Sorrell, Vermont

Few state attorneys general have done more damage to the fabric of the law than William Sorrell of Vermont, appointed by then-Governor Howard Dean in 1997. Shortly after taking office, Sorrell dangled the prospect of money for state coffers in front of the state legislature, which then changed the law to make tobacco companies retroactively liable for the state's Medicaid bills, irrespective of their individual guilt or innocence of fraud towards smokers.¹⁴⁹ With the playing field suddenly tilted against them, the tobacco companies settled soon after Sorrell sued them under the revised law. Wealthy trial lawyers got a big cut of the loot from that lawsuit, and smokers ended up paying the tab.

Almost a decade later, Sorrell's law remains an extremely dangerous precedent for other businesses whose products can be alleged to have an ill effect on public health. Under the logic of Sorrell's law, Vermont businesses could easily be targeted by lawyers in other states.

Under Sorrell's law, the state could sue the tobacco companies based not on individual injuries or losses to the state's Medicaid program, but on national statistics that may or may not be characteristic of Vermont's own Medicaid expenses.¹⁵⁰ As John McClaughry of Vermont's Ethan Allen Institute notes, "[I]f national studies show that, say, 12 percent of all Medicaid expenditures are smoking-related, then Vermont could demand that the tobacco industry pay 12 percent of Vermont's Medicaid costs, year after year,"¹⁵¹ even though fewer people smoke in Vermont than in most states.¹⁵²

More importantly, Sorrell's bill severely undermined the principle of individual responsibility, by holding a tobacco company liable for a smoker's injuries even if the smoker knew the risk of smoking and chose to smoke anyway. Notes McClaughry:

In hundreds of tort cases brought by individual smokers around the country, Big Tobacco has argued that the plaintiff knowingly assumed the risks of smoking and should be responsible for the health consequences. Juries almost always

Few state attorneys general have done more damage to the fabric of the law than William Sorrell.

reject the plaintiff's argument that he was brainwashed into damaging his health by that rascal Joe Camel. Sorrell want[ed] a case he c[ould] win, so his legislation simply strip[ped] away these defenses and declare[d] the state the victor.¹⁵³

McLaughry further notes that Sorrell had been approached by a group of trial lawyers experienced in tobacco litigation, "headed by Steve Berman of Seattle, Richard Scruggs of Mississippi, and Ron Motley of South Carolina, who have gone from state to state to sell their services on a contingency basis to attorneys general eager to pocket big bucks from the much-despised tobacco industry." Indeed, Sorrell's tobacco suits named these three and others as "special assistant attorneys general for the state of Vermont."¹⁵⁴

Sorrell also made sure that the lawyers he hired collected lots of money. They got at least \$10.5 million for their low-risk representation of Vermont in state court, under a contingency fee, even though contingency fees are supposed to compensate lawyers for taking risky cases.¹⁵⁵

In addition, the lawyers received a much larger amount of money for their role in the multi-state Master Settlement Agreement, which Sorrell helped negotiate.¹⁵⁶ Under it, the big tobacco companies agreed to pay more than \$14 billion to lawyers hired by state attorneys general like Sorrell, in annual installments over a period of years.¹⁵⁷

After the settlement went into effect, Sorrell then reshaped it to squelch competition from smaller tobacco companies that refused to join the tobacco settlement because they had never been accused of wrongdoing, in order to protect the market share of the big tobacco companies that had joined the settlement and were making big payments under it to trial lawyers.¹⁵⁸ As a result, one small company's payments increased by *1,000 percent*.¹⁵⁹

While Sorrell's bill targeted only on Big Tobacco specifically, it set a bad precedent for similar legislation that could give the state what the Ethan Allen Institute's McClaughry calls "a sure-fire legal hunting license, aimed at one industry after another wherever a lucrative recovery appears possible. The state could sue liquor companies for the costs of alcoholism." Similarly, it could sue Vermont-based "Ben and Jerry's for peddling artery clogging 15 percent butterfat ice cream, purposely made as tasty as possible to encourage addiction from childhood on."¹⁶⁰

Like Blumenthal, Sorrell is an ideologue who has frequently

supported unconstitutional restrictions on speech and racial quotas.¹⁶¹ He has also attacked private property rights, including advocating that private homes be subject to government seizure for use by developers.¹⁶²

Conclusion

Many state attorneys general across the nation conscientiously fulfill their duties every day. However, others, like those discussed above, have failed to heed the limits on their own power. Instead of focusing on their historical function of defending state agencies in court and providing legal advice, they have chosen to use lawsuits as a weapon by which to undemocratically impose new regulations on the public. In the process, they have usurped the lawmaking authority of state legislatures and Congress. To satisfy their ambitions, and enrich political allies, they have imposed great costs on our nation's economy and system of government, while fostering corruption, and undermining constitutional checks and balances. The power of state AGs needs to be brought back under control.

Many state attorneys general across the nation conscientiously fulfill their duties every day. However, others have failed to heed the limits on their own power.

Notes

- 1 Hans Bader, "The Nation's Top Ten Worst State Attorneys General," Competitive Enterprise Institute, *Issue Analysis* 2007 No. 1, January 24, 2007, <http://cei.org/pdf/5719.pdf>.
- 2 Steven Anderson, "The Rise of State Attorneys General," *Corporate Legal Times*, August 2003, p. A1.
- 3 *Blumenthal v. Barnes*, 804 A.2d 152, 170 (Conn. 2002) (Attorney General cannot enforce law that legislature did not intend to be enforced by state attorney general); But see *In re Cardizem Antitrust Litigation*, 218 F.R.D. 508, 520-22 (E.D. Mich. 2003) (noting variations in powers of attorneys general across state lines).
- 4 Michael S. Greve, "Government by Indictment: Attorneys General and Their False Federalism," Washington, D.C.: American Enterprise Institute, AEI Working Paper No. 110, May 24, 2005, p. 40 n. 19, <http://www.aei.org/publication22565#18451>.
- 5 *Blumenthal v. Barnes*, 804 A.2d 152, 170 (Conn. 2002) ("the office of the attorney general is 'a creature of statute' that is governed by statute, and thus, has no common-law authority").
- 6 *Morales v. Trans World Airlines*, 504 U.S. 374, 383 (1992).
- 7 *Miller Bros. v. Maryland*, 347 U.S. 340, 342 (1954); See also *Healy v. Beer Institute*, 491 U.S. 324, 332 (1989).
- 8 Greve, "Our Parallel Government," Speech, American Enterprise Institute (AEI), June 18, 2002 (www.aei.org/publications/filter.all.pubID.17055/pub_detail.asp); See also Greve, "Government by Indictment: Attorneys General and Their False Federalism"; See also Greve, "When States Screech, Don't Listen," National Review Online, January 23, 2004, http://www.aei.org/publications/filter.all.pubID.19800/pub_detail.asp; See also Greve, "States' Rights on Steroids," AEI Online, September 1, 2002, http://www.aei.org/publications/filter.all.pubID.14296/pub_detail.asp; See also Greve, "Free Eliot Spitzer!," AEI Online, May 1, 2002, http://www.aei.org/publications/filter.all.pubID.13928/pub_detail.asp.
- 9 Mark Curriden, *Up In Smoke*, ABA Journal, March 2007, at 27, 30 (trial lawyers got "\$15.4 billion" from the MSA, and big tobacco companies like Philip Morris were "big winners" at the expense of smokers); see also *A.D. Bedell Wholesale Co. v. Philip Morris*, 263 F.3d 239, 248 (3d Cir. 2001) (court observed that the MSA led to industry-wide price increases passed on to consumers, but upheld the MSA against a legal challenge anyway, citing a loophole in the antitrust laws).
- 10 "Biography of Eliot Spitzer," Office of the Attorney General for the State of New York website, <http://www.oag.state.ny.us/bio.htm> (visited July 19, 2006).
- 11 Shane Goldmacher, "I'm the Wrong Guy, Ad's Target Says," *The Sacramento Bee*, March 31, 2008, p. A3.
- 12 Greve, "Government by Indictment: Attorneys General and Their False Federalism," pp. 6, 14-15, 28-32; See also Greve, "When States Screech, Don't Listen"; See also Greve, "Our Parallel Government."
- 13 Jessica Garrison and Maura Dolan, "Jerry Brown Asks California Supreme Court to Void Gay-Marriage Ban," *The Los Angeles Times*, December 20, 2008.
- 14 Bob Egelko, "Brown now fights Prop. 8 in federal court," *The San Francisco Chronicle*, June 13, 2009, p. A1.
- 15 *Baker v. Nelson*, 409 U.S. 810 (1972); See also *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006).
- 16 Eugene Volokh, "Same Sex Marriage, Jewish Law, and American Law," The Volokh Conspiracy, October 22, 2008, comment by Hans Bader on October 23, 2008, <http://volokh.com/posts/1224695705.shtml#467797>.
- 17 Ibid.
- 18 Peter Scheer, "Brown's Prop. 8 Challenge May Backfire," *The Sacramento Bee*, January 23, 2009.
- 19 See, e.g., *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006); See also *Andersen v. King County*, 1398 P.3d 963 (Wash. 2006); See also *Baker v. Nelson*, 408 U.S. 810 (1972).
- 20 Scheer.
- 21 Egelko, "California Contender: A Federal Appeals Court Nominee Could One Day Become the First Black Woman Justice at the U.S. Supreme Court," *The San Francisco Chronicle*, October 26, 2003, p. D1; See also David Margolick, "Bush's Court Advantage," *Vanity Fair*, December 2003, p. 162.
- 22 Garrison and Dolan.
- 23 Egelko, "Brown now fights Prop. 8 in federal court."
- 24 *Baker v. Nelson*, 409 U.S. 810 (1972).
- 25 *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006).
- 26 *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997).
- 27 Maura Dolan, "Brown Calls 1996 Anti-Affirmative Action Law Unconstitutional," *The Los Angeles Times*, April 24, 2009, <http://articles.latimes.com/2009/apr/24/local/me-209-jerry-brown24>; See also Bob Egelko, "Jerry Brown Calls Prop. 209 Unconstitutional," *The San Francisco Chronicle*, April 23, 2009, p. B1.
- 28 Cheryl Miller, "State Budget Stalled in Tunnel," *The San Francisco Recorder* Vol. 133 No. 6, January 9, 2009; See also Tim Hart, "Environmental Lawsuit Settlement Shows Misdirection of Government," *The Oakland Tribune*, February 15, 2009..
- 29 "Calif. AG Cracks Down on Nestle Bottling Plant," The Associated Press, July 29, 2008; See also Walt Wiley, "Idyllic Town Now Worries About Crime," *The Sacramento Bee*, May 27, 1984.
- 30 David Benda, "Nestle to Renegotiate McCloud Deal," *The Redding Record*, August 6, 2009; See also Letter from J. Mark Evans of Nestle Waters North America to McCloud Community Services District, August 6, 2008, http://www.foodandwaterwatch.org/press/releases/Nestle_Contract_Cancellation.pdf.

- 31 “Deputy Secretary Kupfer Speaks on CD Howe Institute,” U.S. Federal News wire, October 21, 2008; *See also* John C. Kuehner, “U.S. Chamber Lauds Business on Environment,” *The Cleveland Plain-Dealer*, April 21, 2001, p. 1C.
- 32 Rep. Henry Bonilla, “Paying at the Pump,” U.S. Federal News wire, May 12, 2006.
- 33 Katherine Tam, “Chevron Plan Has Brown’s Attention,” *The Contra Costa Times*, March 29, 2008, p. A1; *See also* Matthai Kuruvila and Steve Rubenstein, “Panel Postpones Vote on Refinery,” *The San Francisco Chronicle*, March 22, 2008, p. B2; *See also* Matthai Kuruvila, “400 hear Chevron Make Pitch to Redo Refinery,” *The San Francisco Chronicle*, March 21, 2008, p. B6.
- 34 Laer Pearce, “Jerry Brown, Oil Baron,” *Washington Times*, April 16, 2010. *See also* Western States Petroleum Association, “Energy Alert: The Petroleum Industry in California” (most oil refined in California is from Alaska or California; virtually none is from Indonesia) (www.wspa.org/uploads/documents/WSPA_General_Fact_Sheet_Updated_2012.12.08.pdf); “Refining the Chevron Refinery,” *San Francisco Examiner*, Aug. 27, 2009 (Richmond refinery whose modernization was opposed by Brown drew “much” of its oil supply “from Alaska”).
- 35 Tony Bartlelme, “Attorneys General Oppose Coal Plant,” *The Charleston Post & Courier*, January 29, 2008.
- 36 Andrew MacIntosh, “Capitol Alert: Poizner campaign urges Brown to return \$52,500 in donations,” *The Sacramento Bee*, June 3, 2009, <http://www.sacbee.com/static/weblogs/capitolalert/latest/022799.html>.
- 37 Carla Marinucci, “Jerry Brown’s Favorite Charities Get Millions,” *The San Francisco Chronicle*, June 29, 2009, p. A1.
- 38 Matthew Vadum, “ACORN’s Moonbeam,” *The American Spectator*, November 19, 2009.
- 39 Dennis Romero, “Jerry Brown’s ‘Superfly’ Investigation Into Acorn Pimp-‘N’-Ho Schandal Comcludes With No Arrests,” *LA Weekly*, April 1, 2010 (<http://blogs.laweekly.com/ladaily/city-news/jerry-brown-acorn-investigatio>).
- 40 Greg Moran, “ACORN Cleared, Despite ‘Highly Inappropriate’ Acts,” *San Diego Union-Tribune*, April 1, 2010.
- 41 Alison Leigh Cowan, “Connecticut Is Criticized on Spending on Smoking,” *The New York Times*, January 1, 2008, p. B1; *See also* Office of the Attorney General for the State of Oklahoma, Press Release, “State Receives Additional \$3.8 Million from Tobacco Companies,” April 17, 2008, <http://www.oag.state.ok.us/oagweb.nsf/0/9CE6EF5A8D52D6FA862572B4006F6181!OpenDocument>; *See also* Hans Bader, “What’s Up With Nation’s 10 Worst Attorneys General?,” *The Washington Examiner*, February 7, 2007, p. 22.
- 42 Kevin Mayhood, “\$145 Million Dispute in Federal Court Here,” *The Columbus Dispatch*, January 10, 2005.
- 43 “Tobacco Deal-Breaker?,” *The Wall Street Journal*, Review and Outlook, August 19, 2005, http://www.controlabuseofpower.org/news/news_briefing_WSJ.asp.
- 44 *Freedom Holdings v. Spitzer*, 357 F.3d 205, 226 (2d Cir. 2004).
- 45 Campaign for Tobacco-Free Kids, *A Broken Promise for Our Children: the 1998 State Tobacco Settlement Seven Years Later*, November 30, 2005, pp. 13-14, <http://www.tobaccofreekids.org/reports/settlements/2006/fullreport.pdf>.
- 46 *Martin v. Wilks*, 490 U.S. 755 (1989); *See also* MSA, § IX, Exhibit T.
- 47 MSA, Exhibit T; *See also* *Star Scientific v. Carter*, 2001 WL 1112673 (S.D. Ind. Aug. 20, 2001); *But see* *Virginia v. Patriot Tobacco Co.*, Case No. CH03-44-1 (Virginia Circuit Court, City of Richmond, Oct. 17, 2003) (Melvin Hughes, J.), Letter Opinion at p. 5.
- 48 Thomas Scheffey, “Winning the \$65 Million Gamble,” *Connecticut Legal Tribune*, December 6, 1999, p. 1.
- 49 *Ibid.*
- 50 Margaret Little, “A Most Dangerous Indiscretion: The Legal, Economic, and Political Legacy of the Governments’ Tobacco Litigation,” *Connecticut Law Review* Vol. 33 No. 1143, 2001, pp. 1152-56.
- 51 John Beisner, Jessica Davidson Miller, and Terrell McSweeney, “Bounty Hunters on the Prowl: The Troubling Alliance of State Attorneys General and Plaintiffs’ Lawyers,” Washington, D.C.: Institute for Legal Reform, May 26, 2005, p. 14; *See also* Little, p. 1152.
- 52 Little, pp. 1152-53.
- 53 Beisner, et al., p. 14; *See also* Little, pp. 1151-52.
- 54 *Erickson v. Foote*, 153 A. 853, 854 (Conn. 1931).
- 55 Little, p. 1153 n. 54; *See also* Conn. Agencies Regs. §§ 1-81-28(c), 1-81-28(h).
- 56 *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 372, 780 A.2d 98 (Conn. 2001).
- 57 AEI Federalism Project, “Carve My Turkey,” *AG Watch*, November 21, 2005, <http://federalismproject.org/agwatch/?p=41>; *See also* Office of the Attorney General for the State of New York, Press Release, “Western Union Agrees to Help Combat Telemarketing Fraud,” November 14, 2005, http://www.oag.state.ny.us/press/2005/nov/nov14a_05.html.
- 58 *Ibid.*; *See also* Office of the Attorney General for the State of Massachusettes, Press Release, “AG Reilly Reaches Agreement with Western Union to Protect Consumers Against Fraudulent Telemarketers,” November 14, 2005, <http://www.ago.state.ma.us/sp.cfm?pageid=986&id=1532>.
- 59 *Ibid.*; *See also* AEI Federalism Project, “Carve My Turkey.”
- 60 *R.A.V. v. St. Paul*, 505 U.S. 377, 378 (1992); *See also* *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738, 2758 n.14, 2787 n.30 (2006); *See also* *Brief of the States of New York, Connecticut, Illinois, et al., as Amici Curiae in Support of Respondents* (filed October 10, 2006); *See also* *Gratz v. Bollinger*, 539 U.S. 244 (2003); *See also* *Brief of the States of Maryland, et al., in Support of Respondents* (filed February 19, 2003); *See also* *Randall v. Sorrell*, 548 U.S. 230 (2006); *See also* *Brief of the States of Connecticut, et al., as Amici Curiae in Support of Respondents and Cross-Petitioners* (filed February 8, 2006).

- 61 *Kelo v. New London*, 545 U.S. 469 (2005); See also *Brief of the State of Connecticut Through Its Attorney General As Amicus Curiae In Support of the Respondents* (filed January 21, 2005); See also *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1005 (1992).
- 62 Fergus Cullen, Richard Blumenthal's Real Record, *The Wall Street Journal*, May 22, 2010, p. A11, <http://online.wsj.com/article/SB10001424052748704302304575214491462332922.html>.
- 63 "State of Oklahoma '97 Campaign Contribution Search Results," NIC Technologies Campaign Finance Query System, <http://209.143.196.26/ok97/> (visited September 15, 2008).
- 64 Janice Francis-Smith, "Ethic Commission: SBC employees contributed to OK attorney general's campaign," *Oklahoma City Journal-Record*, May 8, 2006.
- 65 Nolan Clay, "Edmondson accepts Stipe's donation: GOP foe takes funds linked to poultry," *Daily Oklahoman*, November 2, 2006; "State of Oklahoma '97 Campaign Contribution Search Results."
- 66 Editorial, "Not so clear: Ethics rules trip up even the AG," *The Daily Oklahoman*, April 19, 2007; See also Mick Hinton, "AG reimburses campaign \$2,750," *The Daily Oklahoman*, April 17, 2007, p. A10.
- 67 David Averill, "Fee Deals Level the Playing Field," *The Tulsa World*, July 22, 2007, p. G6 (2007 WLNR 14043862 (tobacco lawyers hired by Edmondson received "\$250 million" in tobacco settlement); See also Tim O'Brien, "Lawyers Pay ATLA a Pittance for Use of Its Good Name to Make Millions," *New Jersey Law Journal* Vol. 168 No. 513, May 13, 2002, p. 1; See also Office of the Attorney General for the State of Oklahoma, Press Release, "State Receives Additional \$3.8 Million from Tobacco Companies," April 17, 2008, <http://www.oag.state.ok.us/oagweb.nsf/srch/EA2699E5E273B2C68625742E0075F7DE?OpenDocument>; See also Master Settlement Agreement, Exhibit S, Page S-15, http://www.naag.org/backpages/naap/tobacco/msa/msa-pdf/1109185724_1032468605_cigmsa.pdf; See also "State of Oklahoma '97 Campaign Contribution Search Results," showing thousands of dollars in campaign contributions in years such as 1997 from lawyers at those law firms, including Henry A. Meyer (\$5,000 in 1997), John W. Norman, and thousands of dollars from David Riggs, Ben Abney, Donald Bingham, C.S. Lewis III, Joseph P. Lennart, Mike Turpen, and James C. Orbison of the Riggs Abney firm.
- 68 Barbara Hoberock, "Tabor Petition Circulators in Court," *Tulsa World*, January 29, 2008, p. A5; See also Jennifer Mock, "Petitioners Charged," *The Oklahoman*, December 8, 2007, p. 6A.
- 69 "Oklahoma 3," Ballotpedia, http://ballotpedia.org/wiki/index.php?title=Oklahoma_3.
- 70 Marie Price, "Oklahoma Multicounty Grand Jury Indicts Three People Associated with TABOR," *Oklahoma City Journal-Record*, October 3, 2007; See also Nolan Clay, "Courts: Leader of Political Movement Calls Charges an Attack on First Amendment: Grand Jury Indicts Three Over Signature Gathering," *The Oklahoman*, October 3, 2007, p. 1A.
- 71 Ibid.
- 72 "Oklahoma 3," Ballotpedia; See also *In re Initiative Petition No. 379*, 155 P.3d 32 (Okla. 2006).
- 73 See, e.g., "The People Speak: Petitioner Indictments Short Democratic Rights," *Muskegon Phoenix*, January 19, 2008, http://www.muskogeephoenix.com/opinion/local_story_01914605.html; See also deposition of Susan Johnson in *In re Initiative Petition No. 379*, June 26, 2006, pp. 108-09.
- 74 See *In re Initiative Petition No. 379*, 155 P.3d 32 (Okla. 2006). The court so ruled even though it admitted that such restrictions are supposed to be leniently applied, "because the right of the initiative is so valuable, all doubt as to the construction of pertinent provisions is resolved in favor of a measure."
- 75 *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008); See also *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000).
- 76 *Chandler v. City of Arvada, Colorado*, 292 F.3d 1236 (10th Cir. 2002).
- 77 *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008).
- 78 Price, "Supporters of TABOR Hail Okla. AG's Decision to Drop Case," *Oklahoma City Journal-Record*, January 26, 2009.
- 79 Clay; See also Larue Boyd, "Letters, Inside Joke," *Forbes*, January 7, 2008, p. 12.
- 80 *Chandler v. City of Arvada, Colorado*; See also *VanNatta v. Keisling*, 151 F.3d 1215, 1217-18 (9th Cir. 1998); See also *Landell v. Sorrell*, 382 F.3d 91, 146-47 (2d Cir. 2004); See also *Warren v. Fairfax County*, 196 F.3d 186, 190 (4th Cir. 1999).
- 81 See *American Constitutional Law Found.*, 525 U.S. 182, 192, 206 (1999); See also *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988); See also *Krislov v. Rednour*, 226 F.3d 851, 866 (7th Cir.2000).
- 82 Bob Waldrop, "Who's Next on Political Hit List?," *The Oklahoman*, October 10, 2007, p. 12A.
- 83 *New York Times v. Sullivan*, 376 U.S. 254.
- 84 "Paul Jacob," <http://www.citizensincharge.org/about-us/staff/paul-jacob>. See also *The Politics and Law of Term Limits*, eds. Edward H. Crane and Roger Pilon, Washington, D.C.: Cato Institute, 1994, pp. 27-44.
- 85 Editorial, "Oklahoma's Most Wanted: The Latest Thing in Political Felonies: a Petition Drive," *The Wall Street Journal*, November 19, 2007, p. A18.
- 86 *Brief of the States of Arizona, Oklahoma, et al., as Amici Curiae in Support of the Petitioners* (filed, November 12, 1999) in *United States v. Morrison*, 529 U.S. 598 (2000); See also *Brief of Respondent James LaDale Crawford* (filed, December 13, 1999) in *United States v. Morrison*, 529 U.S. 598 (2000).
- 87 Robert Boczkiewicz, "Courts: Yes on Term Limits Inc. appeals decision, Group wants petition law struck down," *The Oklahoman*, January 12, 2008, p. 6A.

- 88 Bert Rackett, "The Only State," *The Oklahoman*, October 10, 2007, p. 12A. *See also* Marie Price, "Over 40 legislators assured re-election," *Oklahoma City Journal-Record*, July 9, 1998.
- 89 Boczkiewicz.
- 90 Editorial, "Oklahoma's Most Wanted: The Latest Thing in Political Felonies: a Petition Drive."
- 91 *Ibid.*
- 92 *State v. Lead Industries Ass'n*, 951 A.2d 428 (R.I. 2008).
- 93 *Ibid.*, 456-57, *quoting In re Lead Paint Litigation*, 924 A.2d 484, 505 (N.J. 2007).
- 94 *Ibid.*, 435-36.
- 95 Raja Mishra, "Rhode Island Wins Lead Paint Suit," *The Boston Globe*, February 23, 2006, http://www.boston.com/news/local/rhode_island/articles/2006/02/23/rhode_island_wins_lead_paint_suit; *See also* Editorial, "Blaming the Wrong People," *The Providence Journal*, March 6, 2006.
- 96 Editorial, "Blaming the Wrong People."
- 97 *Ibid.*
- 98 James R. Copland, "Lawyer Lead-ership: The Plaintiff's bar's paint profits," *City Journal*, Spring 2006, http://www.city-journal.org/html/16_2_sndgs03.html.
- 99 *See* Rhode Island Board of Elections, "Campaign Finance Electronic Reporting & Tracking System, Public Contribution Report," <http://www.ricampaignfinance.com> (visited May 15, 2006).
- 100 Walter Olson, "R.I. Jury Finds Former Lead Paint Makers Liable," *Overlawyered.com*, February 22, 2006, http://www.overlawyered.com/2006/02/ri_jury_finds_former_lead_pain.html.
- 101 *See* Rhode Island Board of Elections.
- 102 Carroll Andrew Morse, "The Lead Paint Trial Continues," *Anchor Rising*, April 3, 2006, <http://www.anchorrising.com/barnacles/002837.html>.
- 103 Michelle R. Smith, "R.I. Attorney General Faces Ethics Complaint," *The Boston Globe*, July 6, 2006, http://www.boston.com/news/local/rhode_island/articles/2006/07/06/ri_attorney_general_faces_ethics_complaint?mode=PF.
- 104 Smith, "Du Pont Lead Paint Suit Deal Questioned," *The Delaware News-Journal*, August 4, 2006, <http://www.delawareonline.com/apps/pbcs.dll/article?AID=/20060804/BUSINESS/608040336/1003>.
- 105 *Ibid.*
- 106 Little; *See also* *Tyler v. Superior Court*, 30 R.I. 107, 114 (R.I. 1909); *See also* R.I. Gen. Laws § 35-41-2 (2004); *See also* R.I. Gen. Laws § 35-6-71; *See also* R.I. Gen. Laws § 36-6-7; *See also* R.I. Gen. Laws § 36-14-1; *See also* Louisiana Board of Ethics, Opinion No. 2000-381 (May 17, 2001), <http://domino.ethics.state.la.us/EthicRu2.nsf/ecfd552acd8f6446862567f9006e60b6/2612f2554768ab7886256abd0058d0a6?OpenDocument>.
- 107 *State v. Lead Industries Ass'n*.
- 108 Morse, *The Lead Paint Trial Continues*, *Anchor Rising*, April 3, 2006 (<http://www.anchorrising.com/barnacles/002837.html>); *See also accord* Brief of Washington Legal Foundation as Amicus Curiae in *State of Rhode Island v. Lead Indus. Ass'n* (R.I. February 22, 2005) (No. 2004-63-MP), p. 13, <http://www.wlf.org/upload/LeadIndustriesvRhodeIsland.pdf>.
- 109 Eric Tucker, "R.I. Attorney General Hit With Second Fine for Comments in Lead Paint Case," *The Associated Press*.
- 110 *State v. Lead Paint Ass'n, Inc.*
- 111 Pacific Research Institute, "Saints, Sinners, Salvageables, and Suckers: A Tale of Legal Greed and Excess," 2008; *See also* Pacific Research Institute, "U.S. Tort Liability Index: 2008 Report: A State-by-State Ranking of Tort Costs and Tort Laws," http://special.pacificresearch.org/pub/sab/2008/Tort_Index/state.html; Institute for Legal Reform, "2007 U.S. Chamber of Commerce State Liability Systems Ranking Study," <http://www.instituteforlegalreform.com/LawsuitClimate2007/>.
- 112 Editorial, "McGraw's Client is West Virginia, The Money from Its Lawsuits Belong to the People, Not to Him," *The Charleston Daily Mail*, October 5, 2007, p. 4A.
- 113 Lawrence Messina, "W. Va.'s Medicaid Funds Threatened; Federal Government Wants More than \$4.1 Million from the State Program," *The Associated Press*, *The Charleston Gazette*, August 17, 2007, p. 4C; *See also* *The Associated Press*, "U.S. Share of Settlement Ruled High," *The Charleston Gazette*, July 19, 2008, p. 8C; *See also* Messina, "Feds Demand \$634,535 from '04 W. Va. Settlement," AP Alert, December 18, 2007; *See also* Editorial, "McGraw's Handling of Oxycontin Settlement Raises Lots of Questions," *The Morgantown Dominion Post*, August 31, 2007.
- 114 Scott Sabatini, "McGraw Has Taken Outside Counsel Idea to New Heights," *The West Virginia Record*, August 1, 2000, <http://wvrecord.com/news/contentview.asp?c=214002>; *See also* Editorial, "State Should Curb McGraw," *The Charleston Daily Mail*, January 26, 2007, p. 4A.
- 115 Justin D. Anderson, "W.Va. Tops 'Judicial Hellhole' List Again," *The Charleston Daily Mail*, December 16, 2008, p. 2A; *See also* *The Associated Press*, "W. Va. Still on Group's List of Court 'Hellholes,'" *The Charleston Gazette*, December 19, 2007, p. 3A.
- 116 *State v. Vieweg*, 205 W.Va. 687, 520 S.E.2d 854 (W.Va. 1999).
- 117 *Ibid.*, 696 n.12, 520 S.E.2d 854, 863 n.12 (W.Va. 1999).

- 118 Ibid., 689, 520 S.E.2d 854, 855 (W.Va. 1999); See also *State of West Virginia Campaign Financial Statement (Long Form) In Relation to 2004 Election Year*, First Primary, April 2, 2004, <http://www.wvsos.com/elections/PDF/Candidates/004507243.pdf>; See also *State of West Virginia Campaign Financial Statement (Long Form) In Relation to 2004 Election Year*, Pre-Primary, May 3, 2004, <http://www.wvsos.com/elections/PDF/Candidates/004507270.pdf>; See also *State of W. Va. Campaign Financial Statement for Elections in 1996*, April 13, 2001, http://www.wvsos.com/cfrpdfpocs/pdfdocs/WF_3D7.pdf.
- 119 *McGraw v. American Tobacco Co.*, Civ. A No. 94-C-1707 (W. Va. Cir. Ct. Nov. 29, 1995); See also Beisner, et al., p. 34; See also Juliet Terry, "Lawmaker Asks Members for 'Will to Act,'" *The State Journal*, March 9, 2006.
- 120 *McGraw v. American Tobacco Co.*
- 121 Cheryl Carlson, "Our Grievances Pay Handsomely: Lawyers Speaking on Citizens Behalf Got \$33.5 Million?," *The Charleston Daily Mail*, July 10, 2002, p. 5A; See also Phil Kabler, "Legislative Audit Questions Attorney General's Authority," *The Charleston Gazette*, January 8, 2002, p. 5A; See also Sam Trantum, "Lawyer Receives \$3.85 Million; Was Only Briefly Involved in Tobacco Lawsuit," *The Charleston Daily Mail*, June 27, 2002, p. 1A; See also Robert Mauk, "McGraw's Ads Are An Abuse," *The Charleston Daily Mail*, September 4, 2003, p. 4A.
- 122 Carlson; See also Mauk, "Personal Injury Lawyers Thriving: Lawsuit Abuse Taints Government," *The Charleston Daily Mail*, October 29, 2001, p. 5A; See also Editorial, "State Should Curb McGraw."
- 123 "\$4 Million Attorneys' Fees OK'd," AP Alert, January 11, 2009.
- 124 Chris Dickerson, "Drug Companies Question McGraw's Use of Special Assistant AGs," *The West Virginia Record*, July 25, 2006, <http://www.wvrcord.com/news/newsview.asp?c=182166>.
- 125 Editorial, "McGraw's Client is West Virginia, The Money from Its Lawsuits Belong to the People, Not to Him."
- 126 Terry, "AG Funds Drawing Legislative Ire," WOWK-TV, February 23, 2006, <http://wowktv.com/story.cfm?func=viewstory&storyid=8931>.
- 127 Messina, "W. Va.'s Medicaid Funds Threatened; Federal Government Wants More than \$4.1 Million from the State Program"; See also The Associated Press, "U.S. Share of Settlement Ruled High"; See also Messina, "Feds Demand \$634,535 from '04 W. Va. Settlement."
- 128 Kimberley Strassel, "Challenging Spitzerism at the Polls," *The Wall Street Journal*, August 1, 2008, <http://online.wsj.com/article/SB121754833081202775>.
- 129 Terry, "Lawmaker Asks Members for 'Will to Act.'"
- 130 Strassel.
- 131 Terry, "Lawmaker Asks Members for 'Will to Act.'"
- 132 Justin D. Anderson, "McGraw's Office, Medicaid Official at Odds Over Money; Federal Authorities Want Share of Oxycontin Settlement," *The Charleston Gazette*, May 18, 2007, p. 1A.
- 133 Steve Korris, "AG's \$180,000 Award to Tomblin's Wife's College Raises Eyebrows," *The West Virginia Record*, April 13, 2006, <http://www.wvrecord.com/news/newsview.asp?c=1777707>.
- 134 Terry, "Lawmaker Asks Members for 'Will to Act.'"
- 135 Terry, "AG Funds Drawing Legislative Ire."
- 136 Justin D. Anderson, "McGraw's Office, Medicaid Official at Odds Over Money; Federal Authorities Want Share of Oxycontin Settlement."
- 137 Terry, "AG Funds Drawing Legislative Ire"; See also Ted Frank, "AG Darrell McGraw Slush Fund," Point of Law, February 25, 2006, <http://www.pointoflaw.com/archives/002159.php>.
- 138 Chris Dickerson, "Questions Arise Over McGraw's Handling of Settlement Funds," *The West Virginia Record*, February 24, 2006, <http://www.wvrecord.com/news/newsview.asp?c=175190>.
- 139 David Nieparent, "West Virginia Attorney General Involved in Medicaid Fraud?," Overlawyered.com, May 18, 2007, <http://overlawyered.com/2007/05/west-virginia-attorney-general-involved-in-medicaid-fraud/>.
- 140 John O'Brien, "Feds Probing McGraw's Handling of Purdue Pharma Settlement," Legal Newsline, May 17, 2007, <http://www.legalnewsline.com/news/195289-feds-probing-mcgraws-handling-of-purdue-pharma-settlement>.
- 141 Associated Press, "U.S. Share of Settlement Ruled High."
- 142 Messina, "W. Va.'s Medicaid Funds Threatened; Federal Government Wants More than \$4.1 Million from the State Program"; See also Messina, "Feds Demand \$634,535 from '04 W. Va. Settlement."
- 143 Editorial, "McGraw's Handling of Oxycontin Settlement Raises Lots of Questions."
- 144 Mayhood, "\$145 Million Dispute in Federal Court Here."
- 145 "Tobacco Deal-Breaker?," *The Wall Street Journal*.
- 146 *Messer v. Huntington Anesthesia Group*, 218 W.Va. 4, 620 S.E.2d 144 (2005); See also *State of W. Va. Campaign Financial Statement for Elections in 1996*, Walt Auvil, April 13, 2001, http://www.wvsos.com/cfrpdfdocs/pdfdocs/WF_3D7pdf
- 147 Editorial, "Can We Escape Our 'Tort Hell'?", *The State Journal*, June 8, 2006, <http://statejournal.com/story.cfm?func=viewstory&storyid=11469>; See also American Tort Reform Association, "Tort Hells 2007," <http://www.atra.org/reports/hellholes>.

- 148 Pacific Research Institute, “U.S. Tort Liability Index: 2008 Report: A State-by-State Ranking of Tort Costs and Tort Laws.”
- 149 H. 749 (Sorrell’s bill), *encodified as* Vt. Stat. Ann. tit. 33, §§ 1904, 1911 (1998); *See also* John McClaughry, “Sharp Practice,” Ethan Allen Institute Commentary, April 1998, http://www.ethanallen.org/commentary.php?commentary_id=75; *See also* Little; *See also* Robert A. Levy, “The New Business of Government-Sponsored Litigation,” *Kansas Journal of Law & Public Policy* Vol. 9 No. 592, 2000, p. 594.
- 150 *See* H. 749, *encodified as* Vt. Stat. Ann. tit. 33, §§ 1904, 1911 (1998).
- 151 McClaughry.
- 152 “Percent of Adults Who Are Smokers, 2004,” StateHealthFacts.org, <http://www.statehealthfacts.org/cgi-bin/healthfacts.cgi?action=compare&category=Health+Status&subcategory=Smoking&topic=Smoking+Rate>.
- 153 McClaughry.
- 154 *Ibid.* In March 2008, Richard Scruggs pleaded guilty in federal court of trying to bribe a Mississippi state judge. “Prominent Trial Lawyer Pleads Guilty to Bribery,” *The New York Times*, March 15, 2008, http://www.nytimes.com/2008/03/15/business/15scruggs.html?_r=1&ref=richard_f_scruggs.
- 155 Alison Frankel, “Tobacco’s Big Pay Day,” *American Lawyer*, January/February 1999, p. 22; *See also* Rocco Cammarere, “Tobacco Fees: Just Waiting to Inhale,” *New Jersey Lawyer* Vol. 8 No. 3, January 18, 1999, p. 107.
- 156 Tom Precious, “Spitzer Declines to Join Bid to Keep Philip Morris Solvent,” *The Buffalo News*, April 3, 2003, p. A12.
- 157 Mayhood; *See also* Alex Beam, “Greed on Trial,” *The Atlantic Monthly*, June 1, 2004, p. 96.
- 158 John Reid Blackwell, “Small Cigarette Companies Battle Tobacco Industry Giants Over Legislation,” *The Richmond Times-Dispatch*, March 22, 2004, p. D16; *See also* Elizabeth Albanese, “MSA Suit Cleared to Proceed: Supreme Court Declines Appeal,” *Bond Buyer*, October 11, 2006, p. 1.
- 159 Albanese.
- 160 McClaughry.
- 161 *Randall v. Sorrell*, 548 U.S. 230 (2006); *See also* *Landell v. Sorrell*, 118 F.Supp.2d 459, 467 (D.Vt. 2000); *See also* *Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738, 2758 n.14, 2787 n.30 (2006); *See also* *Brief of the States of New York, et al., as Amici Curiae in Support of Respondents* (filed October 10, 2006); *See also* *Gratz v. Bollinger*, 539 U.S. 244 (2003); *See also* *Brief of the States of Maryland, et al., in Support of Respondents* (filed February 19, 2003); *See also* *Boy Scouts v. Dale*, 530 U.S. 640 (2000); *See also* *Brief of the State of New York, et al., as Amici Curiae In Support of Respondent* (filed, March 29, 2000), http://supreme.lp.findlaw.com/supreme_court/briefs/99-699/99-699fo33/brief/brief01.html.
- 162 *See* *Kelo v. New London*, 545 U.S. 469 (2005); *See also* *Brief of the States of Vermont, et al., As Amici Curiae in Support of Respondents* (filed January 21, 2005).

About the Author

Hans Bader is Counsel for Special Projects at the Competitive Enterprise Institute. He has litigated a variety of constitutional cases, focusing on federalism, civil rights, and First Amendment issues. He graduated from the University of Virginia with a Bachelor's in economics and history, and later earned his Juris Doctor from Harvard Law School.

The Competitive Enterprise Institute is a non-profit public policy organization dedicated to the principles of free enterprise and limited government. We believe that consumers are best helped not by government regulation but by being allowed to make their own choices in a free marketplace. Since its founding in 1984, CEI has grown into an influential Washington institution.

We are nationally recognized as a leading voice on a broad range of regulatory issues ranging from environmental laws to antitrust policy to regulatory risk. CEI is not a traditional “think tank.” We frequently produce groundbreaking research on regulatory issues, but our work does not stop there. It is not enough to simply identify and articulate solutions to public policy problems; it is also necessary to defend and promote those solutions. For that reason, we are actively engaged in many phases of the public policy debate.

We reach out to the public and the media to ensure that our ideas are heard, work with policymakers to ensure that they are implemented and, when necessary, take our arguments to court to ensure the law is upheld. This “full service approach” to public policy makes us an effective and powerful force for economic freedom.



Issue Analysis is a series of policy studies published by the Competitive Enterprise Institute. Nothing in *Issue Analysis* should be construed as necessarily reflecting the views of CEI or as an attempt to aid or hinder the passage of any bill before Congress. Contact CEI for reprint permission. Additional copies of *Issue Analysis* may be purchased through CEI's publications department (pubs@cei.org or 202-331-1010).