



Partisan prosecutions: How state attorneys general dove into politics

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Having muscled their way to the front line in the nation's political battles, state attorneys general are now in for getting roughed up along with the other partisan combatants.

The Republican Attorneys General Association, representing just over half the 50 state AGs, has voted to end a "rare bit of bipartisanship in the polarized environment of US politics," to quote Reuters, which reported the news. It's going to ditch an unspoken hands-off agreement with its rival Democratic Attorneys General Association under which each party targeted open seats only and held back from bankrolling challenges against the others' incumbents.

Democrats are expected to respond in kind and start going after incumbent Republicans. If there were still any hope that the chief legal officers of the states could stay above the fray in some genteel way, it's pretty much gone. Truth to tell, it's been gone for years.

As long ago as the 1970s, pushed by pressure groups and some in Washington, AGs began organizing into strike forces to file lawsuits with nationwide impact. One goal was to assert regulatory power over national businesses; another was to try out test-case litigation on the wider stage, not just within states.

Often the rationale was that progressive advocates had been unable to persuade Washington to act on some national problem, and someone needed to do something — right?

A stunning payoff came in 1998, when the multistate tobacco settlement bagged \$246 billion-with-a-b, no small portion of which went as fees to private lawyers who had acted as partners.

Those numbers got everyone's attention and drew more powerful players into the training, care, feeding and nervous placating of AGs.

Each year, AGs continue to harvest hundreds of millions of dollars in lawsuit settlements, which — depending on their state's ground rules — they may funnel to allies in state government,

nonprofits or cozied-up “community groups,” bypassing the ordinary course of legislative appropriations.

New York AG Eric Schneiderman wound up in a big fight with Gov. Cuomo over the eventual carve-up of bank-settlement money, but that script didn’t originate with him — or with New York.

Partisan polarization advanced another step in 1999, when RAGA was formed in the aftermath of the tobacco caper. DAGA followed in 2002. Both groups can serve to channel private donations and influence in ways that can be hard to trace.

Reuters reports, based on its sources, that “a desire by some to roll back same-sex marriage and the potential for increased corporate contributions played a role in [RAGA’s] decision” — not exactly inspiring motives, if you ask me.

Many Democratic AGs, for their part, have been using their powers of office to target thinkers, activists and donors on the opposite side.

Now-Sen. Kamala Harris, when she was California AG, pushed hard to force nonprofits active in the state to disclose the identity of their donors. The expected sequel: public shaming and boycott campaigns against those who give to right-of-center groups.

Her successor, former Rep. Xavier Becerra, just charged filmmaker David Daleiden and Sandra Merritt with 15 felonies. The two had taken secret films inside Planned Parenthood offices as part of an advocacy campaign.

Republican AGs in rural states have gone to bat for “ag-gag” laws making it a misdemeanor to take unauthorized recordings inside ranches and other animal operations; humane groups blast such laws as a First Amendment violation.

Meanwhile, environmental advocates finagled a group of AGs, including Schneiderman and Massachusetts’ Maura Healey, into aiming a subpoena dragnet at advocacy groups, scientists and activists engaged in climate change “denial” and other opinion sins. Officially couched as a fraud investigation of the Exxon Corp., it has featured subpoenas demanding the correspondence and documents of the Competitive Enterprise Institute, a well-known right-of-center player in Washington.

Maryland AG Brian Frosh, another member of the group, has signaled plans to go after the American Legislative Exchange Council, a right-leaning group of state legislators that has been widely demonized on the left.

These days, packs of red- and blue-team AGs roam the political landscape looking for fights to get into, whether over ObamaCare, environmental regulation or immigration. (The battles over “standing” are always fun, since the opposing teams have been known to switch sides in a moment on the question of whether AGs belong in court challenging this or that federal policy at all.)

Washington's and Hawaii's Democratic AGs helped shoot down, for now, Trump's travel bans, following the lead of AGs from Texas and 25 other states who made life hard for President Barack Obama on immigration matters.

Some of this is healthy, even to be applauded, but let's face it: It's politics. And if some of these AGs would rather pose at election time as impartial legal officers and above politics — well, it's way too late for that.

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