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Suthers keeps writing, weighs in on AG activism

by John O'Brien

WASHINGTON, D.C. (Legal Newsline) - A piece co-authored by Colorado Attorney General John Suthers is being featured on the [Washington Legal Foundation's](#) Web site.

Suthers, who has written five books, [details what he sees](#) as a recent expansion of the role of state attorney general, along with Geoff Blue, Suthers' Deputy Attorney General for Legal Policy. They say some attorneys general found the traditional role "too limiting."

"Encouraged by various interest groups, several state attorneys general have come to view their role as including litigation for the purpose of public policy change," Suthers wrote. "This development is a threat to the separation of governmental powers and has the potential to seriously undermine free enterprise."

Suthers, a Republican, became the state's attorney general in 2005 after a gubernatorial nomination and confirmation by the state Senate. He was elected to the post in 2006.



Suthers

His [most recent book](#) describes his work at attorney general, prosecutor and private lawyer. His piece for the WLF says attorneys general "have become more litigious, more high-profile and more politically ambitious."

"State attorneys general are now routinely running for higher office, including governor or U.S. senator," Suthers wrote.

"In fact, political insiders now often joke that AG means 'almost governor' and NAAG (the National Association of Attorneys General) is really the 'National Association of Aspiring Governors.' That reality, in turn, has attracted more lawyers who have primarily a political background, rather than a legal background, to run for the office."

Political aspirations result in activism in office, Suthers wrote. He pointed to a few recent examples -- California's Bill Lockyer and New York's Eliot Spitzer and Andrew Cuomo.

Before Lockyer left office, he sued six major automobile manufacturers, alleging that the emissions of the products harmed the environment and created a public nuisance. He later became state treasurer.

"Not only is public nuisance a novel theory for a suit of this nature, but the case ignored the fact that the California legislature has imposed upon the auto manufacturers auto emission standards that are much stricter than the rest of the nation, and the companies have complied by specially manufacturing a significant portion of their fleets for sale in California," Suthers wrote.

"The suit also didn't acknowledge that it wasn't the auto manufacturers that built all the freeways on which

the cars are driven. California's suit was summarily dismissed by a federal court as non-justiciable. The assistant attorney general in charge of it complained about the dismissal, proclaiming that if there is a problem, '(T)here needs to be a remedy for it.'

Spitzer joined seven other attorneys general to sue five of the nation's largest utilities, claiming they were harming the atmosphere by releasing carbon dioxide. None of the utilities were located in the states represented by the attorneys general.

His successor, Cuomo, has taken steps to deter construction of power plants in Kansas and Colorado, Suthers said. Spitzer resigned as Governor this year after a sex scandal involving a prostitution ring.

"Despite the lack of a coherent legal theory on which to base their lawsuits, attorneys general are oftentimes able to extract settlements from the companies before a suit is filed. Why do the companies settle?" Suthers wrote.

"They settle because publicly-held companies threatened with a lawsuit by state attorneys general can rarely afford to fight it out in court. While they typically have sufficient profits and plenty of high-quality lawyers to fight the lawsuit, they also have an obligation to their shareholders to act in the shareholders' best interests."

Suthers said attorneys general should propose and encourage the passage of legislation, though should only file lawsuits when the law has been broken and there is sufficient evidence to prove it in court.

"It is not appropriate for attorneys general to pursue litigation that doesn't derive from constitutional or statutory authority, but rather represents the attorney general's personal view of what constitutes the public interest," Suthers wrote.

"Some of the litigation that state attorneys general are currently conducting constitutes a dramatic circumvention of the legislative function in a manner that the governor or other executive officer could never accomplish."

The WLF says its mission is to work with friends in government and the legal system to maintain a balance in courts that strengthen America's free enterprise system.

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