

DOES METHOD MATTER? UNDERSTANDING DIFFERENCES IN ELECTED AND APPOINTED ATTORNEYS GENERAL

*Alexandra Colin Klein**

State Attorneys General are some of the Nation's most powerful actors. Armed with broad jurisdiction, legislative leadership and expertise, and a range of expansive powers, Attorneys General can have massive impacts on both the individuals in the state they represent and beyond their state's borders. Attorneys General are not a monolithic body, with varied powers and methods of coming to power—either election or appointment—depending on their state.

While it is universally true that Attorneys General in the United States wield substantial power, empirical data analyzing nuances and distinctions across different state's Attorneys General has not been formally updated in decades. This article seeks to revisit scholarship created in the 1970s that currently serves as the backbone of our understanding of Attorneys General. It finds a widening gap over the past 50 years in those differences between appointed and elected Attorneys General. Moreover, it adds more complexity to the empirical analysis that was initially performed on the difference between elected and appointed Attorneys General, finding that there are differences within each state's approach to the position. In essence: no state Attorney General is the same.

* Associate, Cuneo Gilbert & LaDuca. N.Y.U. School of Law, J.D. '24. I author this article in my personal capacity. Any views expressed are my own and do not reflect the views of Cuneo Gilbert & LaDuca or any of the firm's attorneys.

I am grateful to Bethany Davis Noll for her feedback and support on this article, and to the editors at the Government Law Review. All errors are my own.

TABLE OF CONTENTS

I. INTRODUCTION	116
II. HISTORY AND PURPOSE OF THE STATE ATTORNEY GENERAL	118
III. DATA ANALYSIS.....	120
<i>A. Personal Background</i>	121
<i>B. Career Aspirations</i>	124
<i>C. State-by-State Variations</i>	125
IV. THE BASIC CONTOURS OF THE UNITARY VERSUS DIVIDED EXECUTIVE POWER DEBATE	129
V. CASELAW AND HISTORY FURTHER REVEAL FLAWS IN THE BROAD THEORY	132
<i>A. Independence in Litigation</i>	132
<i>B. Power to Act as a Check on the Governor</i>	135
<i>C. Removal of Appointed Attorneys General</i>	135
<i>D. Appointed Attorneys General as a Check on Gubernatorial Power</i>	136
<i>E. Legislative Confirmation Can Limit Unitary Executive Power</i>	138
VI. CONCLUSION	140
APPENDIX A: COMPARISON OF THOMPSON DATA TO NEW DATA	141

I. INTRODUCTION

This article presents an updated analysis of the question as to whether we should elect or appoint state Attorneys General. It presents data on state Attorneys General, as well as a case analysis to undermine traditional notions of the automatic divergence between appointed and elected Attorneys General. Ultimately, while elected Attorneys General are more likely to run for higher office after their time in the post, there are state-by-state intricacies that make each state's post of Attorney General unique, complicating the application of much higher-level theorization to the position.

Across the United States there is a division in how state Attorneys General are granted their power. While many follow that model of an appointed Attorney General as is practice in the United States' Executive Branch, the majority are elected by the state's voters. In Alaska, Hawaii, New Jersey, New Hampshire,

and Wyoming, as well as American Samoa, the U.S. Virgin Islands, and Puerto Rico, the position is appointed by the Governor.¹ In forty-three states, the Attorney General is independently elected, and is appointed by the legislature in Maine and the Supreme Court in Tennessee.² Moreover, other Attorneys General are appointed to fill vacancies left by predecessors who depart prior to the end of their term.³ This divide creates enduring questions as to whether appointive and elective Attorneys General are similar in their personal backgrounds, perception of office, and overarching political goals.⁴

The last groundbreaking study on this subject matter was conducted as an analysis by William N. Thompson, who collected data for each of the state Attorneys General from 1930 to 1970.⁵ Much has changed since Thompson's study. For instance, his analysis only considers those forty-eight contiguous states that were available in the period from 1930 to 1970.⁶ Yet, while much academic literature concerning Attorneys General is predicated on his work, no study has sought to update this data to reflect a more current class of Attorneys General.⁷

Much of the literature on state Attorneys General is focused on whether appointed and elected Attorneys General are natural examples of, respectively, the unitary and divided executive. Inherent in that assumption is the idea that if an Attorney General is elected, the structure of state government will be torn between

¹ Neal Devins & Saikrishna Bangalore Prakash, *Fifty States, Fifty Attorneys General, and Fifty Approaches to the Duty to Defend*, 124 YALE L.J. 2100, 2124-25 (2015).

² William P. Marshall, *Break Up the Presidency? Governors, State Attorneys General, and Lessons from the Divided Executive*, 115 YALE L.J. 2446, 2448 n.3 (2006).

³ Jon Campbell, *AG Eric Schneiderman Resigned. Now What Happens?*, ROCHESTER DEMOCRAT AND CHRONICLE, <https://www.democratandchronicle.com/story/news/politics/albany/2018/05/08/ag-eric-schneiderman-replacement/589188002/> [https://perma.cc/YH8Y-BT2B] (May 8, 2018, 5:12 PM ET).

⁴ See William N. Thompson, *Should We Elect or Appoint State Government Executives? Some New Data Concerning State Attorneys General*, 8 AM. REV. PUB. ADMIN. 17 (1974).

⁵ *Id.* at 24.

⁶ *Id.*

⁷ See Marshall, *supra* note 2, at 2453 n.36; “[T]his Note is the first to apply contemporary unitary executive arguments to the case of the state Attorney General. The last significant treatment of this issue was in 1974.” Note, *Appointing State Attorneys General: Evaluating the Unbundled State Executive*, 127 HARV. L. REV. 973, 973-74 n.5 (2014) [hereinafter *Evaluating the Unbundled State Executive*].

Governor and Attorney General. On the other hand, if an Attorney General is appointed, the structure of government will be totally directed by the Governor, with the Attorney General fully acting at their direction.

This article seeks to understand the present-day nature of the differences between elected and appointed Attorneys General. It finds that differences in Attorneys General do appear based on whether that individual is appointed or elected, but that individual state dynamics add incredible variability to that paradigm. First, it explores the history of state Attorneys General and the modern function of the state Attorney General. Second, it presents an updated dataset for Attorney Generals from 1970 to 2020, exploring the personal background and careers of individual Attorneys General. It highlights those differences between appointed and elected Attorneys General presented in the data, while also exploring the ways that aggregate presentation hides state-by-state variability. Third, this article explains the framework of the unitary and divided executive debate as applied to the state Attorney General. Fourth, it explains the ways in which doctrine and history complicate the assumed divergence in those roles of appointed and elected Attorneys General. This fourth section expands first on elected Attorneys General's independence in litigation, second on the ability of elected Attorneys General to act as a check on the Governor, third on removal power for appointees, fourth on the ability of appointees to act against gubernatorial interests, and finally on the problems of confirmation for appointees. In sum, this analysis complicates our conceptions of the state Attorney General, showing that common assumptions about the state's most powerful lawyer do not always hold true.

II. HISTORY AND PURPOSE OF THE STATE ATTORNEY GENERAL

The position of state Attorney General originated in thirteenth century England. Kings appointed lawyers to represent their interests in each major geographical region.⁸ Over the ensuing centuries, the roles and duties of the English Attorney General expanded to take on responsibility for justice, and the public interest.⁹ By the mid-eighteenth century, these Attorneys General had the authority and independent agency to decline prosecution

⁸ See Marshall, *supra* note 2, at 2449.

⁹ See *id.* at 2449–50.

on a particular matter.¹⁰

The state Attorney General was modeled after its English counterpart and established in all thirteen of the original states.¹¹ Originally only Rhode Island provided that its Attorney General would be popularly elected.¹² Soon after, many states adopted this model, creating elected Attorneys General. This was often predicated on the concern of the concentration of too much power in one executive office.¹³ For example, the Minnesota Supreme Court noted that in the state's constitution:

Rather than conferring all executive authority upon a governor, the drafters of our constitution divided the executive powers of state government among six elected officers. This was a conscious effort on the part of the drafters, who were well aware of the colonial aversion to royal governors who possessed unified executive powers.¹⁴

Many states have amended their constitutions to provide for a popular election for the Attorney General,¹⁵ but no state has ever shifted from election to executive appointment of the Attorney General.¹⁶ Since 1970, only one state has shifted its model for Attorney General. In 1980, Pennsylvania established the office of an Attorney General elected by the citizens; the office had previously been appointed.¹⁷

Stemming from that English tradition of representing the legal interests of each state, every Attorney General bears a responsibility to their state and its legal administration. Most Attorneys General acknowledge both an obligation to represent the Governor and the other parts of the state government alongside an obligation to the broader concerns of representing the state, the law, and the public interest. This includes a duty to provide legal counsel to state government officials, represent the state in

¹⁰ *Id.*

¹¹ DANIEL J. MEADOR, *THE PRESIDENT, THE ATTORNEY GENERAL, AND THE DEPARTMENT OF JUSTICE* (1980); see Oliver W. Hammonds, *The Attorney General in the American Colonies*, in 1 *ANGLO-AMERICAN LEGAL HIST. SERIES* 1, 1 (New York University School of Law 1939).

¹² Marshall, *supra* note 2, at 2451 (this practice dates back to 1650); see also *History*, State of R.I. Attorney Gen. Peter F. Neronha, <https://riag.ri.gov/aboutour-office/history> [<https://perma.cc/Q9EF-GDHU>] (last visited Oct. 24, 2023).

¹³ See Marshall, *supra* note 2, at 2452.

¹⁴ *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986).

¹⁵ See Marshall, *supra* note 2, at 2452.

¹⁶ *Id.*

¹⁷ PA. CONST. art. IV, § 4.1.

litigation, and enforce state civil and criminal law. Professor Barbara Babcock states that “the government lawyer should take her definition of the public interest from the . . . administration in which she serves. This sometimes means that the Attorney General should seek guidance on overall litigation policy, or even on the handling of a specific case, from the [Executive].”¹⁸

Across states, there are differences in perceptions of power and role, stemming from variance in office structure and personal perceptions of power. An Attorney General may have a different opinion of the public interest than the Governor or the state agency.¹⁹ Balancing those philosophies can create vastly different outcomes across states.²⁰ Statutory definition can also create differing structures and expectations of Attorneys General. For instance, Pennsylvania statute provides that “[i]t shall be the duty of the Attorney General to uphold and defend the constitutionality of all statutes.”²¹ Other statutes anticipate that Attorneys General might not defend the state in litigation²² or require the Attorney General to notify the Governor, affected agency, or state legislature that she will not defend the state’s position on appeal.²³ Thus, there is a wide range of differentiating factors that determine the behavior of Attorneys General beyond whether they are appointed or elected.²⁴

III. DATA ANALYSIS

Data were collected for each of the 463 state Attorneys General serving in the fifty states from 1970 to 2020. Sources of data include the National Association of Attorneys General website, individual state Attorneys General websites and halls of fame, Wikipedia, Ballotpedia and state election websites, firm websites for former Attorneys General in private practice, news articles,

¹⁸ Barbara A. Babcock, *Defending the Government: Justice and the Civil Division*, 23 J. MARSHALL L. REV. 181, 191 (1990).

¹⁹ See Scott M. Matheson, Jr., *Constitutional Status and Role of the State Attorney General*, 6 U. FLA. J.L. & PUB. POL’Y 1, 13 (1993).

²⁰ See *id.*

²¹ PA. STAT. AND CONS. STAT. ANN. § 723-204(a)(3) (West 1980).

²² ARIZ. REV. STAT. ANN. § 12-1841 (LexisNexis 2023); VA. CODE ANN. § 2.2-510(4) (2023); ILL. SUP. CT. R. 19(c).

²³ CAL. CIV. PROC. CODE § 902.1 (Deering 2023); TENN. CODE ANN. § 8-6-109(b)(9) (2023).

²⁴ See Devins & Prakash, *supra* note 1, at 2144–45, 2147–49 (examining state Attorneys General and their varying duty to defend further).

and obituaries.²⁵

For the purpose of the first two tables of this analysis, echoing that original work of William Thompson, Attorneys General were divided into two groups based upon the way the individuals came to office, rather than the formal selection method of their state.²⁶ Categorization was based on whether the individual was originally appointed or elected to the office. Five states use gubernatorial appointment, while Tennessee uses appointment by the Supreme Court and Maine uses appointment by the state legislature. Pennsylvania changed its process throughout this time period: after 1980, Attorneys General were elected. Additionally, all states have some manner of appointment process for filling vacancies. Of those 463 Attorneys General, thirteen were eliminated from the data pool for a lack of information. Of the remaining 450 Attorneys General studied, 291 or 64.7 percent were elected, and 159 or 35.3 percent were appointed.²⁷

A. Personal Background

Analysis of the personal background of Attorneys General from this period both reflects continued differences between elected and appointed Attorneys General, and changes since that analysis conducted between 1930 and 1970. Elected Attorneys General are still more likely than appointees to have been born in the state that they serve, but likelihood of being born in-state for all Attorneys General has decreased since Thompson's analysis.²⁸ Additionally, in this period, all Attorneys General had either a J.D. or L.L.B., indicating an increased importance of the degree for the position since the prior decades.²⁹

Echoing those original findings by Thompson, appointed

²⁵ Nat'l Ass'n Att'ys Gen., *Past Attorneys General* <https://www.naag.org/attorneys-general/past-attorneys-general/> [<https://perma.cc/R4U9-5ZUX>] (last visited Mar. 25, 2024); BALLOTPEDIA, BALLOTPEDIA.COM https://ballotpedia.org/Main_Page [<https://perma.cc/TXU6-YZ6N>] (last visited Mar. 25, 2024); Alexandra Colin Klein, *AG Analysis* (last visited May 14, 2025) (table on file with author) (the data from this table has been calculated using data the author compiled in an Excel sheet which contains the calculations, and can be provided upon request).

²⁶ See Thompson, *supra* note 4, at 24.

²⁷ See *infra* Tables 1, 2.

²⁸ See Thompson, *supra* note 4, at 26 tbl.1 (showing data that as of 1970, 78.9% of elected Attorneys General were born in-state, while 69.3% of appointees were born in-state). See also *infra* Table A1.

²⁹ See Thompson, *supra* note 4, at 26.

Attorneys General were more likely to have attended prominent law schools.³⁰ Moreover, the data reflects a shift in the attendance of in-state law schools by Attorneys General, defined as having attended a public law school in the state that an individual eventually served. While attendance of in-state law schools by Attorneys General has broadly decreased, the percentage of elected Attorneys General with law degrees from in-state schools is higher than the percentage of appointees; as of Thompson's study, the figures had relative parity with one another.³¹

Another marked shift since Thompson's analysis is the number of elected Attorneys General serving in any legislative post immediately prior to serving as Attorney General. As of 1970, that figure was seventeen percent; here, it has increased to nearly thirty percent.³² Another new divergence in elected and appointed Attorneys General can be seen in the years served as Attorney General. This analysis finds that based on this subset of data, elected Attorneys General serve terms almost two times the length of appointed Attorneys General.³³

Table 1³⁴
Background of State Attorneys General
1970–2020

	Elected 291		Appointed 159	
Place of Birth				
In-state	68.4%	199	61.0%	97
Out of State	31.6%	92	39.0%	62
Education				
Bachelor's Degree	99.3%	289	98.7%	157
Law Degree ^[1]	100.0%	291	100.0%	159
In-state Law School ^[2]	41.2%	120	31.4%	50
Prominent Law School ^[3]	27.1%	79	38.4%	61

³⁰ *Id.* at 25–26.

³¹ See Thompson, *supra* note 4, at 26 tbl.1 (showing data that as of 1970, 60.5% of elected Attorneys General attended in-state law schools, and 61.9% of appointed Attorneys General attended in-state law school). See also *infra* Table A1.

³² See *infra* Table 1.

³³ See *id.*

³⁴ See Klein, *supra* note 25; see also sources cited *supra* note 25.

	Elected		Appointed	
	291		159	
Age				
Average Age Becoming AG	44.85		47.42	
Under 40	28.9%	84	20.1%	32
Over 50	24.4%	71	32.1%	51
Post Held Immediately Prior to Attorney General^[4]				
Local Government Legislator	2.4%	7	0.6%	1
Local Government Official	10.0%	29	3.8%	6
State Government Legislator	24.7%	72	9.4%	15
State Government Official	9.3%	27	11.9%	19
Federal Government Legislator	2.4%	7	0.0%	0
Federal Government Official	3.1%	9	1.9%	3
Any Administrative Post	22.3%	65	17.6%	28
Any Legislative Post	29.6%	86	10.1%	16
Any Judicial Post	2.1%	6	3.1%	5
Average Tenure as Attorney General				
	6.86		3.53	

[1] Law degree includes both L.L.B. degrees achieved as a postgraduate degree and J.D.

[2] Only includes degrees from public institutions within the state that the individual then served as an Attorney General.

[3] Prominent Law Schools are designated to be those law schools whose rankings are consistently in the top 20 law schools throughout the period. These schools are Columbia, Cornell, Duke, Georgetown, Harvard, Northwestern, NYU, Stanford, University of California Berkeley, University of California Los Angeles, University of Chicago, University of Michigan, University of Pennsylvania, University of Texas, University of Virginia, Vanderbilt, Washington University in Saint Louis, and Yale.³⁵

[4] As described in the analysis conducted by Thompson, this category only assesses whether that individual was in that position exactly prior to running for Attorney General.

³⁵ Stephanie Francis Ward, *US News Releases its 2020 Law School Rankings*, ABA JOURNAL (Mar. 12, 2019, 12:01 AM CDT), <https://www.abajournal.com/web/article/little-movement-among-u.s.-news-world-reports-top-20-law-schools> [<https://perma.cc/F2EJ-4C97>].

B. Career Aspirations

Thompson focuses on political ambition and the career aspirations of Attorneys General in his analysis, noting that ambition can be “utilized as a central theme for the explanation of political behavior.”³⁶ Political ambition is the notion that an individual’s plans for their future contribute to their decisions while in office.³⁷ Thompson found that the subsequent careers of the Attorneys General confirmed the assumption that an elective Attorney Generalship is “more likely to be a training ground for higher political office[.]”³⁸ This finding is even more evident in an assessment of recent Attorneys General. Elected Attorneys General were far more likely than appointed Attorneys General to seek high political office.³⁹

Table 2⁴⁰
Careers of Attorneys General After Service
1970–2020

	Elected ^[1]		Appointed ^[1]	
	271	153		
Sought High Political Office^[2]	62.4%	169	17.0%	26
Sought Governorship	48.3%	131	9.2%	14
Elected Governor	15.1%	41	2.0%	3
Sought Lt. Governorship	4.4%	12	1.3%	2
Elected Lt. Governor	3.3%	9	1.3%	2
Sought U.S. Senate Seat	19.2%	52	3.9%	6
Elected to U.S. Senate	7.4%	20	2.0%	3
Sought U.S. House Seat	5.2%	14	3.3%	5
Elected to U.S. House	3.3%	9	0.7%	1
Sought Vice-Presidency	0.7%	2	0.0%	0
Elected Vice-President	0.4%	1	0.0%	0
Sought Presidency	1.8%	5	0.7%	1
Elected President	0.4%	1	0.0%	0

³⁶ Thompson, *supra* note 4, at 29.

³⁷ See JOSEPH A. SCHLESINGER, *AMBITION AND POLITICS: POLITICAL CAREERS IN THE UNITED STATES* 1, 5–6 (1966); WAYNE L. FRANCIS & LAWRENCE W. KENNY, *UP THE POLITICAL LADDER: CAREER PATHS IN U.S. POLITICS* 1, 16 (2000).

³⁸ Thompson, *supra* note 4, at 29; see also *infra* Table A2.

³⁹ See *infra* Table 2.

⁴⁰ See Klein, *supra* note 25; see also sources cited *supra* note 25.

	Elected ^[1]		Appointed ^[1]	
		271		153
Became a Judge^[3]	11.8%	32	21.6%	33
U.S. Supreme Court	0.0%	0	0.7%	1
Federal Court	3.0%	8	6.5%	10
State Court	8.9%	24	15.7%	24

[1] Six appointees and twenty elected Attorneys General were, as of 2020, incumbents who had not sought other offices.

[2] Some Attorneys General are counted multiple times across sub-categories, as they sought or were elected to multiple political offices. This results in a total, summed from all relevant sub-categories, which exceeds the number of individuals who ran for office for both the elected and appointed categories.

[3] The total Attorneys General in the appointed category that “Became a Judge” is less than the total, when added together, of the following individual categories for appointed Attorneys General: U.S. Supreme Court, Federal Court, and State Court. This is due to former New Hampshire Attorney General, the Hon. David Souter, who served as a State Court, Federal Court, and U.S. Supreme Court judge.

Thompson’s finding that appointees were “more oriented toward[s] judicial service” is less evident in the updated data.⁴¹ The proportion of former Attorneys General serving in the judiciary decreased for both appointed and elected Attorneys General, although appointees were still slightly more likely to serve on the bench.⁴²

C. State-by-State Variations

Analyzing Attorneys General data in a state-by-state breakdown reveals that there is huge variability across states for many of those previously analyzed categories.⁴³ While appointed Attorneys General, on average, serve far shorter terms than elected Attorneys General, there are states that operate against this pattern.⁴⁴ For instance, the average term length of elected Attorneys General is certainly increased by Iowa, which had the longest serving Attorney General in office during this time period.⁴⁵ Virginia, Arkansas, and Kentucky had numbers of Attorneys General in this period on par with states with appointed Attorneys General in this period.⁴⁶

⁴¹ Thompson, *supra* note 4, at 31; *see also infra* Table A2.

⁴² *See supra* Table 2.

⁴³ *See infra* Table 3.

⁴⁴ *See infra* Table 3.

⁴⁵ *See infra* Table 3.

⁴⁶ *See infra* Table 3.

There is an additional variance in state Attorneys General found in a closer analysis of the law degrees of Attorneys General.⁴⁷ First, there are states with a clear preference for “within state law degrees.”⁴⁸ These are law degrees earned at either public or private institutions from that state where the individual eventually served as Attorney General. In Florida, Georgia, Louisiana, Minnesota, Oklahoma, South Dakota, and Virginia, every or almost every Attorney General in this period attended a law school in that state.⁴⁹ Alternatively, in New Hampshire, New Jersey, Colorado, Delaware, Maryland, Nevada, Rhode Island, and Vermont, fewer than or equal to twenty percent of Attorneys General attended law schools within that state.⁵⁰

Table 3⁵¹
Patterns of State Attorneys General
1970–2020

State	Number of Attorneys General	Average Length of Service	In-state Law Degrees ^[1]	Within State Law Degrees ^[2]	Prominent Law Degrees ^[3]	AGs Running for Office	AGs Serving on Judiciary
<i>Process: Appointed</i>							
Alaska	18	2.59	0%	0%	44%	11%	0%
Hawaii	15	2.91	13%	13%	27%	13%	20%
Maine	11	4.91	55%	55%	18%	55%	9%
New Hampshire	13	3.67	0%	0%	54%	23%	23%
New Jersey	22	2.23	9%	18%	73%	9%	32%
Pennsylvania, Pre 1981 ^[4]	8	1.29	38%	63%	38%	0%	38%
Tennessee	11	4.64	45%	73%	55%	9%	18%
Wyoming	15	2.86	67%	67%	20%	7%	20%

⁴⁷ See *infra* Table 3.

⁴⁸ See *infra* Table 3.

⁴⁹ See *infra* Table 3.

⁵⁰ See *infra* Table 3.

⁵¹ See sources cited *supra* note 25.

State	Number of Attorneys General	Average Length of Service	In-state Law Degrees ^[1]	Within State Law Degrees ^[2]	Prominent Law Degrees ^[3]	AGs Running for Office	AGs Serving on Judiciary
-------	-----------------------------	---------------------------	-------------------------------------	---	--------------------------------------	------------------------	--------------------------

Process: Elected

Alabama	9	5.44	56%	67%	11%	67%	22%
Arizona	10	5.56	40%	40%	30%	40%	10%
Arkansas	15	3.71	80%	80%	7%	67%	20%
California	9	6.33	22%	56%	44%	78%	0%
Colorado	9	7.33	11%	11%	44%	22%	11%
Connecticut	7	7.57	14%	43%	71%	43%	14%
Delaware	10	5.70	0%	0%	40%	30%	40%
Florida	9	6.11	33%	89%	0%	56%	11%
Georgia	5	11.00	60%	100%	0%	40%	0%
Idaho	8	6.38	63%	63%	13%	50%	38%
Illinois	7	7.29	0%	71%	0%	29%	14%
Indiana	8	6.38	63%	75%	25%	25%	13%
Iowa	3	17.67	33%	67%	33%	33%	0%
Kansas	9	5.67	78%	78%	11%	44%	0%
Kentucky	12	4.73	67%	67%	17%	67%	25%
Louisiana	6	10.67	33%	100%	0%	33%	0%
Maryland	5	10.40	20%	20%	80%	60%	0%
Massachusetts	7	7.29	0%	86%	29%	86%	0%
Michigan	5	11.40	40%	60%	40%	80%	0%
Minnesota	6	8.83	83%	100%	0%	83%	0%
Mississippi	5	10.20	80%	80%	0%	40%	20%
Missouri	7	7.29	43%	57%	43%	100%	0%
Montana	7	7.29	71%	71%	14%	86%	14%
Nebraska	6	9.67	33%	33%	33%	33%	0%
Nevada	10	6.20	0%	0%	10%	70%	10%
New Mexico	9	4.56	44%	44%	22%	67%	0%
New York	9	6.22	11%	44%	56%	44%	0%
North Carolina	7	7.14	57%	71%	14%	71%	14%
North Dakota	6	8.83	33%	33%	33%	67%	17%
Ohio	11	4.64	27%	82%	18%	64%	9%

State	Number of Attorneys General	Average Length of Service	In-state Law Degrees ^[1]	Within State Law Degrees ^[2]	Prominent Law Degrees ^[3]	AGs Running for Office	AGs Serving on Judiciary
Oklahoma	9	5.89	67%	100%	0%	33%	11%
Oregon	9	5.56	22%	22%	44%	22%	33%
Pennsylvania, Post 1981 ^[4]	11	3.55	27%	55%	27%	27%	27%
Rhode Island	11	4.82	0%	9%	27%	36%	9%
South Carolina	5	12.20	80%	80%	20%	40%	0%
South Dakota	9	5.67	100%	100%	0%	33%	11%
Texas	8	6.50	13%	50%	50%	63%	13%
Utah	8	5.75	38%	50%	25%	25%	0%
Vermont	7	7.29	0%	0%	57%	43%	14%
Virginia	17	2.94	53%	94%	41%	53%	12%
Washington	5	9.60	20%	40%	60%	100%	0%
West Virginia	6	8.50	50%	50%	33%	50%	0%
Wisconsin	9	5.67	67%	78%	22%	11%	33%

[1] Only includes degrees from public institutions within the state that the individual then served as an Attorney General.

[2] Includes both public and private institutions within the state that the individual then served as an Attorney General.

[3] Prominent Law Schools are designated to be those law schools whose rankings are consistently in the top 20 law schools throughout the period. These schools are Columbia, Cornell, Duke, Georgetown, Harvard, Northwestern, New York University, Stanford, University of California Berkeley, University of California Los Angeles, University of Chicago, University of Michigan, University of Pennsylvania, University of Texas, University of Virginia, Vanderbilt, Washington University in Saint Louis, and Yale.⁵²

[4] In 1981, Pennsylvania converted its electoral process from an appointed Attorney General to an elected Attorney General.⁵³

⁵² Stephanie Francis Ward, *US News Releases its 2020 Law School Rankings*, ABA JOURNAL (Mar. 12, 2019, 12:01 AM CDT), <https://www.abajournal.com/web/article/little-movement-among-u.s.-news-world-reports-top-20-law-schools> [<https://perma.cc/F2EJ-4C97>].

⁵³ H.B. 84, 1977 Gen. Assemb., Reg. Sess. (Pa. 1978).

States also show a range of preferences for prominent law degrees.⁵⁴ In New Hampshire, New Jersey, Tennessee, Connecticut, Maryland, New York, Texas, Vermont, and Washington, over half of Attorneys General went to prominent law schools.⁵⁵

While the aggregated numbers for elected and appointed Attorneys General show that elected Attorneys General are far more likely to run for higher office, there are many states that complicate this broader statistic.⁵⁶ In Colorado, Indiana, Oregon, Utah, and Wisconsin, twenty-five percent or less of elected Attorneys General sought higher office after their service.⁵⁷ In Maine, a state with an appointed Attorney General, fifty-five percent of Attorneys General ran for higher office.⁵⁸ Moreover, while appointed Attorneys General were more likely to serve on the judiciary following their time in office, no Alaskan Attorneys General followed this path between 1970 and 2020.⁵⁹ Additionally, Delaware and Idaho had a higher percentage of Attorneys General serve on the judiciary following their time in office than did the majority of states with appointed Attorneys General.⁶⁰ Thus, while there are some inherent differences between elected and appointed Attorneys General at a higher level, there are also clearly state-by-state differences in preferences for who fills the seat of Attorney General.⁶¹

IV. THE BASIC CONTOURS OF THE UNITARY VERSUS DIVIDED EXECUTIVE POWER DEBATE

The distinction between elected Attorneys General and appointed Attorneys General is frequently distilled in a conversation regarding the unitary and divided executive.⁶² Elected Attorneys General are assumed to divide the executive branch, splitting accountability for the state's actions between a Governor and an Attorney General.⁶³ Appointed Attorneys

⁵⁴ See *supra* Table 3.

⁵⁵ See *supra* Table 3.

⁵⁶ See *supra* Table 2; see also *supra* Table 3.

⁵⁷ See *supra* Table 3.

⁵⁸ See *supra* Table 3.

⁵⁹ See *supra* Table 3.

⁶⁰ See *supra* Table 3.

⁶¹ See *supra* Table 2; see also *supra* Table 3.

⁶² See Matheson, *supra* note 19, at 5.

⁶³ See *id.* at 14.

General are assumed to be part of a unitary executive branch, working solely at the will of the Governor who appointed them.⁶⁴ This analysis draws a distinction between the Attorney General that represents the people and the Attorney General that represents the government.⁶⁵

Election of the Attorney General is treated as inherently creating a split in the executive branch, wherein the Attorney General is assumed to function as a check on the Governor.⁶⁶ Scholars contend that dividing the executive branch through unbundling “enhances democratic accountability and government performance.”⁶⁷ Critics of the elected Attorney General conclude that direct election of a state Attorney General “overall undermines an informed electorate, executive accountability, and executive branch coordination.”⁶⁸

Scott Matheson Jr., the former United States Attorney for the District of Utah, states that, “[e]lected attorneys general contend that an important aspect of their jobs is to serve as a watchdog over the executive branch, sniffing around the governor and the administration to prevent and prosecute unlawful conduct.”⁶⁹ Implicit in the watchdog analysis is the assumption that the Attorney General is less susceptible to bad behavior and therefore tasked with seeking out wrongdoing in the executive branch.⁷⁰ The theory of the divided executive presumes that the elected Attorney General will lack administrative accountability to the Governor and instead serve the electorate, constituting a check and balance feature of the executive branch of state government.⁷¹

This division has created an immense history of legal and political infighting between Governors and their Attorneys General. As the Rhode Island Governor shared, “I have had some

⁶⁴ *See id.*

⁶⁵ *Id.* at 12 (citing Michael B. Holmes, *The Constitutional Powers of the Governor and Attorney General: Which Officer Properly Controls Litigation Strategy When the Constitutionality of a State Law is Challenged?*, 53 LA. L. REV. 209, 214 n.25 (1992) (arguing that the Attorney General controls litigation strategy for the state)).

⁶⁶ *See id.* at 10–11 (quoting THE FEDERALIST NO. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961)).

⁶⁷ Christopher R. Berry & Jacob E. Gersen, *The Unbundled Executive*, 75 U. CHI. L. REV. 1385, 1387 (2008).

⁶⁸ *Evaluating the Unbundled State Executive*, *supra* note 7, at 974.

⁶⁹ Matheson, *supra* note 19, at 10.

⁷⁰ *See id.* at 11.

⁷¹ *See id.* at 10–11 (quoting THE FEDERALIST NO. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961)); *Evaluating the Unbundled State Executive*, *supra* note 7, at 989.

problems with my attorney general . . . my perception is that the attorney general essentially serves as counsel to the governor, and his perception is that he is an autonomously elected public official and solely represents the interests of the public, and the officer of the governor when he has adequate time and staff.”⁷² It is further assumed that an independent Attorney General blurs the lines of responsibility among executive branch officials and further obscures the question of who the Attorney General’s client is in a particular case.⁷³

Alternatively, the appointed Attorney General is perceived as part of a unitary executive, perceived as avoiding some of that critical infighting inherently attached to an elected Attorney General and thus divided state executive branch. Proponents argue that a single head of state administration is a method of promoting cooperation, stopping duplication of tasks, and meeting needs for necessary services.⁷⁴

Organizations such as the National Municipal League and Advisory Council on Intergovernmental Relations have recommended a unified state executive with an elective Governor appointing all department heads.⁷⁵ South Carolina delegate to the Federal Convention Pierce Butler espoused his support for the unitary executive by explaining that “delays, divisions and dissensions arise from an executive consisting of many.”⁷⁶ The unitary executive model is perceived as creating more efficiency through centralizing and coordinating authority.⁷⁷ Proponents emphasize that Governors function more effectively when they can remove an officer and acquire one who will do the job more properly.⁷⁸

⁷² LARRY J. SABATO, *GOOD-BYE TO GOOD-TIME CHARLIE: THE AMERICAN GOVERNORSHIP TRANSFORMED* 64–65 (2d ed. 1983).

⁷³ See *Evaluating the Unbundled State Executive*, *supra* note 7, at 988.

⁷⁴ See Thompson, *supra* note 4, at 19.

⁷⁵ See Matheson, *supra* note 19, at 18.

⁷⁶ See *id.* at 19 (quoting 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 90 (Max Farrand ed., 1966)) (brackets omitted).

⁷⁷ See *id.* at 7.

⁷⁸ Cf. Thompson, *supra* note 4, at 19 (stating that “where the governor is handicapped by such a lack of cooperation, or when he discovers waste or inefficiency or maladministration in an elective officer’s department, he is completely incapable of removing the officer and acquiring another who will do the job properly.”).

V. CASELAW AND HISTORY FURTHER REVEAL FLAWS IN THE BROAD THEORY

An analysis of appointed and elected Attorneys General as inherently different is further complicated by an analysis of history and caselaw across states. There are basic functions and abilities that are assumed to be paired with how Attorneys General are selected for office. Yet, caselaw reveals that these factors are non-universal, adding to those complications mentioned earlier, and further adding to the understanding that every state's Attorney General is unique.

This section will first challenge the assumption of independence in litigation for elected Attorneys General, and second complicate the assumption that elected Attorneys General can act as a check on their government. Third, it will rebut the vision of removal as a check on the appointed Attorney General. Fourth, it will expand on the ways in which appointed Attorneys General can act against gubernatorial interest. Finally, it notes the way in which appointed Attorneys General are barred from acting due to complications of legislative confirmation.

A. Independence in Litigation

State Attorneys General often exercise their independent authority to seek judicial review on important legal questions. Legal scholarship posits that if a deputy or assistant Attorney General is assigned to provide legal counsel to a state agency, that attorney's duty of loyalty lies exclusively with that agency, but that if the Attorney General disagrees with the policies of the agency, there may be a conflict.⁷⁹ Within the debate of the divided (as synonym for elected Attorney General) and unitary (as synonym for appointed Attorney General) executive, theorists presume that divergent interests in litigation will be even more common under a divided model.⁸⁰

Critics of the divided executive stress that this structure allows the Attorney General to ignore the Governor as a client.⁸¹ As former Alaska Attorney General John Havelock put it, "There has

⁷⁹ See Matheson, *supra* note 19, at 20.

⁸⁰ *Evaluating the Unbundled State Executive*, *supra* note 7, at 992 (stating that divergent interests in litigation are more common under an elected model, and that unitary function would allow better enforcement policies to accommodate other executive action).

⁸¹ See SABATO, *supra* note 72.

been occasional misunderstanding of the role of the attorney general, sometimes by a governor. . . . The attorney general does not work for the person of the governor; he works for the Office of the Governor.”⁸²

First, such analysis ignores that state courts are divided on whether it is within the legal powers of the state Attorney General to exercise independent legal authority diverging from that interest of their executive branch client. Such an issue has, in fact, been hotly contested by the judicial branches of states with an independently elected state Attorney General.

In *Manchin v. Browning*, the West Virginia Supreme Court considered the issue of whether the Attorney General of West Virginia could be compelled to provide legal representation from the Attorney General’s office for the executive branch.⁸³ The court ruled that the Secretary of State may make a good faith determination that a statute which he is required to administer or implement is unconstitutional, and that such determination cannot be disregarded by the Attorney General.⁸⁴ This duty therefore requires the Attorney General to provide the Secretary of State with adequate, effective legal representation, regardless of the independent judgment of that Attorney General.⁸⁵ *Manchin*’s dicta posited that the Attorney General of West Virginia did not have common law powers, calling into question the notion of the Attorney General of West Virginia as an independent legal actor.⁸⁶ In 2013, West Virginia revisited that ruling and found that the holding that the Office of the Attorney General did not retain inherent common law powers had to be overruled.⁸⁷

⁸² John Havelock, *Top Attorney in State Works for Office, Not for Governor*, ANCHORAGE DAILY NEWS, <https://www.adn.com/voices/article/top-attorney-state-works-office-not-governor/2012/01/14/> [https://perma.cc/ZS23-FXTT] (Sept. 29, 2016).

⁸³ *Manchin v. Browning*, 296 S.E.2d 909, 912 (W. Va. 1982)

⁸⁴ *Id.* at 923.

⁸⁵ *Id.*

⁸⁶ *Id.* at 915 (“The plain language of [the state] constitutional provision, when viewed against the historical backdrop of the development of the office of Attorney General in the Virginias, leads us to conclude that the Attorney General of West Virginia does not possess the common law powers attendant to that office in England and in British North America during the colonial period. By removing the traditional executive office of Attorney General to the judicial department and establishing a tri-partite state government, with separate legislative, executive and judicial departments, the framers of the first Virginia Constitution in effect abrogated any common law executive powers the holder of that office may have had.”).

⁸⁷ *State ex rel. Discover Fin. Servs. v. Nibert*, 744 S.E.2d 625, 625, 650–651

Alabama courts took up the same issue, but eventually upheld the opposite position. In 1990, the state supreme court reiterated its position that “the attorney general, as the chief law officer of the state, [is] fully empowered to make any bona fide disposition of the cause as in his judgment might be deemed to be to the best interest of the state, unless inhibited by organic law.”⁸⁸ The Alabama court held that the Attorney General “has the authority to move to dismiss the State Department of Insurance’s proceedings in the Court of Civil Appeals over the objection of the commissioner of insurance.”⁸⁹ Yet, debate continued over whether the Governor may intervene in litigation and take positions contrary to those argued by the Attorney General. In 2010, the Alabama Supreme Court overruled its 1990 holding, finding “there is a constitutional hierarchy within the executive branch and one office – the Governor – is at its top.”⁹⁰ The court explained that “[w]hen considered in the light of the Governor’s constitutional mandate, the seemingly broad power granted to the attorney general by [statute] to direct and control litigation is clearly restricted.”⁹¹

Arizona courts have affirmed this same principle, holding that the Arizona Attorney General lacked the authority to maintain an appeal without the approval of his agency client.⁹² The Supreme Court of Arizona concluded that the Governor alone is empowered to protect the public interest and ensure that the laws are “faithfully executed.”⁹³ In that case, the Arizona Attorney General was bound to represent the position of the executive branch and not his own views of the public interest in order to preserve the appropriate division of powers within the executive branch.⁹⁴

Thus, the assumption that elected Attorneys General can always act with independent legal authority in state courts is not necessarily true in all states. Full independent legal authority of the Attorney General is subject to division and deliberation; huge variation exists across the states. It is not necessarily true that elected state Attorneys General can in fact act with legal authority

(W. Va. 2013).

⁸⁸ *Ex parte Weaver*, 570 So. 2d 675, 679 (Ala. 1990) (citation omitted).

⁸⁹ *Id.* at 684.

⁹⁰ *Riley v. Cornerstone Cmty. Outreach, Inc.*, 57 So. 3d 704, 740 (Ala. 2010).

⁹¹ *Id.* at 738 (quoting *Weaver*, 570 So. 2d at 688 (Houston, J., dissenting)).

⁹² *See Santa Rita Mining Co. v. Dep’t of Prop. Valuation*, 530 P.2d 360, 363 (Ariz. 1975).

⁹³ *Ariz. State Land Dep’t v. McFate*, 348 P.2d 912, 918 (Ariz. 1960).

⁹⁴ *See id.*

independent from their Governor.

B. Power to Act as a Check on the Governor

Critics and advocates of the divided executive further assume that the elected Attorney General will act as a check on the power of the Governor, utilizing their power to sue the Governor or other executive officers.⁹⁵ Yet, not all Attorneys General can sue their state's Governor.

The majority rule does vest power in the Attorney General to bring an action against the Governor, but such rule does not mean that all Attorneys General unequivocally have this power.⁹⁶ The Arizona Supreme Court has held that the Attorney General cannot sue a state agency to enjoin its sale of public lands.⁹⁷ The court stated that “the Governor alone, and not the Attorney General, is responsible for the supervision of the executive department and is obligated and empowered to protect the interests of the people and the State.”⁹⁸ Texas's Court of Civil Appeals held that the Attorney General lacked the authority to bring suit to set aside an agency rule, finding no independent authority for the Attorney General to represent the public interest against the specific interests of his agency client.⁹⁹ Again, it is therefore unclear that election necessarily entails that check function expanded upon in the literature on unitary and divided executives, as in many states the Attorney General may lack the power to bring suit against the Governor or other executive offices of their own state.

C. Removal of Appointed Attorneys General

Proponents of the appointed Attorney General claim that “when the attorney general is elected independently of the governor, the

⁹⁵ See Matheson, *supra* note 19, at 10–11 (quoting THE FEDERALIST NO. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961)). Cf. *Evaluating the Unbundled State Executive*, *supra* note 7, at 989 (discussing that, while the election of Attorneys General may actually hinder their accountability, an Attorney General who is elected may feel more accountable to the public and less loyal to the governor and the governor's political party).

⁹⁶ See Marshall, *supra* note 2, at 2258–59 (discussing how the Attorney General can sue the Governor, in certain circumstances but that “the right of the Attorney General to sue the executive branch officers or agencies has not been universally approved”).

⁹⁷ *McFate*, 348 P.2d at 918.

⁹⁸ *Id.*

⁹⁹ *Hill v. Tex. Water Quality Bd.*, 568 S.W.2d 738 (Tex. Civ. App. 1978).

governor cannot remove the attorney general from office on grounds of disloyalty or poor performance.”¹⁰⁰ Yet, in most states that have an appointed Attorney General, that Attorney General is not removable at the sole will of the Governor. In Hawaii, New Hampshire, and New Jersey, the Attorney General is appointed by the Governor but is not removable at will; the Attorney General is supposed to serve for the entirety of the gubernatorial term.¹⁰¹

D. Appointed Attorneys General as a Check on Gubernatorial Power

Theory of the unitary executive further assumes that an appointed state Attorney General will never take action that undermines the interests or desires of the Governor. Yet, this is not necessarily the case.

For instance, Denise N. George, former Attorney General of the U.S. Virgin Islands, was fired, reportedly for her handling of an investigation into the activities of Jeffrey Epstein.¹⁰² Attorney General George had served the Virgin Islands for four years and won a \$105 million settlement from Epstein’s estate.¹⁰³ Yet, Governor Albert Bryan Jr.—who had appointed George to the role of Attorney General in 2019—dismissed George merely days after her office sued JPMorgan Chase for its relationship with Mr. Epstein.¹⁰⁴ Those briefed on the matter said that “there had been tension between the two public officials for a while . . . tied to Mr. Bryan feeling that Ms. George didn’t keep him apprised about the investigation.”¹⁰⁵ Given that Attorney General George’s work on the Epstein investigation was ongoing, if reports are to be believed that the Governor did not agree with her efforts, she was still seemingly permitted to continuously work against the Governor’s

¹⁰⁰ See Matheson, *supra* note 19, at 16.

¹⁰¹ See HAW. CONST. art. V, § 6; N.H. CONST. pt. 2, arts. 46–47, 73; N.J. CONST. art. V, § 4, ¶¶ 3, 5.

¹⁰² Matthew Goldstein, *Tensions with Virgin Islands Governor over Epstein Led to Attorney General’s Firing*, N.Y. TIMES (Jan. 6, 2023), <https://www.nytimes.com/2023/01/06/business/virgin-islands-epstein-attorney-general.html> [<https://perma.cc/C3X6-4GZZ>].

¹⁰³ See *id.*; Matthew Goldstein, *Epstein Estate Agrees to Pay More than \$105 Million to U.S. Virgin Islands*, N.Y. TIMES (Nov. 30, 2022), <https://www.nytimes.com/2022/11/30/business/jeffrey-epstein-settlement-virgin-islands.html> [<https://perma.cc/QFC7-N65W>].

¹⁰⁴ See Goldstein, *supra* note 102.

¹⁰⁵ *Id.*

interest for at least some time.¹⁰⁶ While it is true that Attorney General George was fired, her actions nonetheless may indicate a pattern of years of independence in legal action that the unitary executive theory does not accord an appointed Attorney General.

In the spring of 2024, New Jersey Attorney General Matthew Platkin defied the personal and political will of Governor Phil Murphy, both refusing to defend and submitting a legal filing criticizing the state's party-line ballot design.¹⁰⁷ The design places candidates endorsed by county political parties on a single "line," or column, on primary ballots.¹⁰⁸ Studies find that candidates who are placed on the line have a significant primary election advantage.¹⁰⁹ Then-Senate Candidate Andy Kim filed a lawsuit challenging the ballot design process.¹¹⁰ In a letter to the judge on that matter, Attorney General Platkin stated, "[t]his is an exceptional case, justifying the Attorney General's exceptionally rare decision not to defend the constitutionality of the challenged statutes."¹¹¹ Platkin also called the party line ballot design "unconstitutional."¹¹² This letter was contrary to the desire of Governor Phil Murphy, who released a statement asserting that Attorneys General have an obligation to defend the constitutionality of state law.¹¹³ Notably, the New Jersey Senate Candidate most likely to benefit from the party line ballot system in the State's primary was Tammy Murphy, the Governor's wife.¹¹⁴ In March of 2024, a federal judge issued a preliminary stay on the

¹⁰⁶ *See id.*

¹⁰⁷ Azi Paybarah, *Primary Ballot in N.J. Is 'Unconstitutional,' State Attorney General Says*, WASH. POST, <https://www.washingtonpost.com/politics/2024/03/18/new-jersey-ballot-attorney-general/> [<https://perma.cc/NQK8-GNJH>], (Mar. 18, 2024, 1:45 PM EDT).

¹⁰⁸ Daniel Han, *Federal Judge Unsure About New Jersey AG's Claims on Ballot Design in Senate Race Lawsuit*, POLITICO (Mar. 18, 2024, 2:44 PM EDT), <https://www.politico.com/news/2024/03/18/federal-judge-unsure-whether-hell-consider-platkin-claims-on-the-line-in-lawsuit-00147581> [<https://archive.is/nUx1a>].

¹⁰⁹ *Id.*

¹¹⁰ *See* Paybarah, *supra* note 107.

¹¹¹ Letter from New Jersey Attorney General Matthew J. Platkin at 4, *Kim v. Hanlon*, 2024 WL 1342568 (D.N.J. 2024) (No. 24-cv-1098 (ZNQ)(TJB)), <https://www.washingtonpost.com/documents/d32b544a-e5c8-4a75-b55a-4c92cb604863.pdf> [<https://perma.cc/R2GK-EQBQ>].

¹¹² *Id.* at 1.

¹¹³ Daniel Han, *New Jersey AG Says Controversial Ballot Design in Senate Race to Replace Menendez Is Unconstitutional*, POLITICO, <https://www.politico.com/news/2024/03/17/matt-platkin-andy-kim-lawsuit-00147494> [<https://perma.cc/L5KF-3HUD>] (Mar. 17, 2024, 8:14 PM EDT).

¹¹⁴ *Id.*

party line ballot,¹¹⁵ and despite his defiance of Governor Murphy, Platkin remains in his role as state Attorney General.¹¹⁶

An even more extreme example developed in the state of Alaska, a state with an appointed Attorney General.¹¹⁷ In 1985, Alaska Attorney General Norman Gorsuch oversaw the Grand Jury Trial of Governor Bill Sheffield, who had allegedly participated in illegal favor trading with a political supporter.¹¹⁸ Subsequently, Gorsuch appointed outside counsel for the matter and that attorney recommended a charge of perjury against Governor Sheffield.¹¹⁹ The Alaska legislature held impeachment hearings, but ultimately declined to impeach the Governor.¹²⁰ Governor Sheffield did not fire Gorsuch, although Gorsuch did eventually make the decision to retire from the position.¹²¹ Gorsuch's investigation of the Alaska Governor represents a potentially profound rejection of the notion that a unitary executive or appointed Attorney General would never take action against that individual who had appointed them. This undermines that very notion that appointed Attorney Generals are not going to see their role as independently serving the public interest, distinct from that role taken on by an elected Attorney General.

E. Legislative Confirmation Can Limit Unitary Executive Power

Advocates of the appointed Attorney General praise the structure of appointment rather than election as a way of empowering the Governor. Nonetheless, appointment does not necessarily mean that Governors will be able to exert full control over the Attorney General. Appointment can be hindered by state legislatures through the political process of notice and

¹¹⁵ Nikita Biryukov, *A Revamped Ballot Design Jumpstarts Democracy in New Jersey*, N.J. MONITOR (May 31, 2024, 10:13 AM), <https://newjerseymonitor.com/2024/05/31/a-revamped-ballot-design-jumpstarts-democracy-in-new-jersey/> [<https://perma.cc/JD6S-QJKU>].

¹¹⁶ *Matthew J. Platkin: Attorney General*, STATE OF N.J. DEP'T OF L. & PUB. SAFETY, <https://www.njoag.gov/> [<https://perma.cc/5D8V-CPE8>] (last visited May 14, 2025).

¹¹⁷ *About & Contact*, ALASKA DEP'T OF L., <https://law.alaska.gov/department/about.html> [<https://perma.cc/E8DX-R4BZ>] (last visited May 14, 2025).

¹¹⁸ STEPHEN HAYCOX, *THE LAW OF THE LAND: A HISTORY OF THE OFFICE OF THE ATTORNEY GENERAL AND THE DEPARTMENT OF LAW IN ALASKA* 143 (1998); Havelock, *supra* note 82.

¹¹⁹ See HAYCOX, *supra* note 118, at 145.

¹²⁰ *Id.* at 145–46.

¹²¹ Havelock, *supra* note 82; *id.* at 146.

nomination of Matthew Platkin to Attorney General in limbo for six months before advancing his candidacy to a vote on the

Senate floor.¹²⁹ Platkin was nominated to the position by Governor Phil Murphy in February of 2022, but his confirmation was delayed because two of his home county Senators did not immediately sign off on the appointment, which allowed his nomination to be temporarily blocked.¹³⁰

VI. CONCLUSION

The traditional conceptualization of the state Attorney General condenses theoretical views of the Attorney General into two distinct lanes: the appointed Attorney General and the elected Attorney General. Each of these typologies is seen as having distinct advantages and disadvantages, usually simply theorized through the notion of the unitary and divided executive. Yet, the statutory structure, data on Attorneys General from 1970 through 2020, and case law complicate these theoretical patterns.

Every state is distinctly unique, with preferences, legal structures, and case law that define the role of its top lawyer. Placing these positions into broader buckets ignores their specificities and erases nuances. There are fifty states, with fifty state Attorneys General.

¹²⁹ Nikita Biryukov, *After Six Months in Limbo, Attorney General Nomination Advances to Full Senate*, N.J. MONITOR (Aug. 8, 2022), <https://newjerseymonitor.com/2022/08/08/after-six-months-in-limbo-attorney-generalnomination-advances-to-full-senate/> [https://perma.cc/UAT9-FFHC].

¹³⁰ *Id.*

APPENDIX A: COMPARISON OF THOMPSON DATA TO NEW DATA

Table A1¹³¹
Comparison of Data on Background of State Attorneys General

	Elected		Appointed	
	1970 ^[1]	2020	1970 ^[1]	2020
Place of Birth				
In-state	78.9%	68.4%	69.3%	61.0%
Education				
Bachelor's Degree	52.8%	99.3%	59.6%	98.7%
Law Degree ^[2]	86.5%	100.0%	87.3%	100.0%
In-state Law School ^[3]	60.5%	41.2%	61.9%	31.4%
Prominent Law School ^[4]	22.2%	27.1%	27.8%	38.4%
Age				
Average When Becoming AG	44.3	44.85	47.4	47.42
Under 40	30.1%	28.9%	22.2%	20.1%
Over 50	22.0%	24.4%	39.2%	32.1%
Post Held Immediately Prior to Attorney General^[5]				
Local Government Attorney	24.3%	10.0%	12.7%	3.8%
State Government Attorney	21.9%	9.3%	32.3%	11.9%
Legislative	17.0%	29.6%	15.2%	10.1%
Any Judicial Post	9.7%	2.1%	10.8%	3.1%
Average Tenure as Attorney General				
	4.23	6.86	4.51	3.53

[1] William N. Thompson, *Should We Elect or Appoint State Government Executives? Some New Data Concerning State Attorneys General*, 8 AM. REV. PUB. ADMIN. 17, 26 tbl.1, 27 tbl.2 (1974).

[2] Law degree includes both L.L.B. degrees achieved as a postgraduate degree and J.D.

[3] Only includes degrees from public institutions within the state that the individual then served as an Attorney General.

[4] For Thompson's analysis, prominent law schools are those whose law journals are cited in *Sheppard's Citations*. Those schools were California, Chicago, Columbia, Cornell, Duke, Harvard, Michigan, Minnesota, Northwestern, New York University, Pennsylvania, Stanford, Texas, Virginia, and Yale. For the 2020 analysis, prominent Law Schools are designated to be those law schools whose rankings are consistently in the top 20 law schools throughout the period. These schools are Columbia, Cornell, Duke, Georgetown, Harvard, Northwestern, NYU, Stanford, University of California Berkeley, University of California Los Angeles, University of Chicago, University of Michigan, University of Pennsylvania, University of Texas, University of Virginia, Vanderbilt, Washington University in Saint Louis, and Yale.

[5] As described in the analysis conducted by Thompson, this category only assesses whether that individual was in that position exactly prior to running for Attorney General. Note that the Thompson Article uses the term "Attorney" rather than the term "Official" (as used in this article) to describe the Local and State Government positions presented here.

¹³¹ See sources cited *supra* note 25.

Table A2¹³²
Comparison of Data on Careers of State Attorneys General

	Elected ^[1]		Appointed ^[1]	
	1970 ^[2]	2020	1970 ^[2]	2020
Sought High Political Office^[3]	36.8%	62.4%	19.4%	17.0%
Sought Governorship	26.0%	48.3%	13.4%	9.2%
Elected Governor	10.8%	15.1%	6.0%	2.0%
Sought Lt. Governorship	3.0%	4.4%	0.0%	1.3%
Elected Lt. Governor	1.5%	3.3%	0.0%	1.3%
Sought U.S. Senate Seat	9.3%	19.2%	4.7%	3.9%
Elected to U.S. Senate	3.0%	7.4%	0.7%	2.0%
Sought U.S. House Seat	2.2%	5.2%	1.3%	3.3%
Elected to U.S. House	1.5%	3.3%	1.3%	0.7%
Sought Vice-Presidency	0.8%	0.7%	0.0%	0.0%
Elected Vice-President	0.0%	0.4%	0.0%	0.0%
Sought Presidency	0.0%	1.8%	0.0%	0.7%
Elected President	0.0%	0.4%	0.0%	0.0%
Became a Judge^[4]	22.3%	11.8%	32.2%	21.6%
U.S. Supreme Court	0.4%	0.0%	0.0%	0.7%
Federal Court ^[5]	3.7%	3.0%	2.7%	6.5%
State Court ^[6]	18.3%	8.9%	29.5%	15.7%

[1] For 1970, nine appointees and nineteen elected Attorneys General were incumbents who had not sought other offices. For 2020, six appointees and twenty elected Attorneys General were incumbents who had not sought other offices.

[2] William N. Thompson, *Should We Elect or Appoint State Government Executives? Some New Data Concerning State Attorneys General*, 8 AM. REV. PUB. ADMIN. 17, 30 tbl.3 (1974).

[3] Some Attorneys General are counted multiple times across sub-categories, as they sought or were elected to multiple political offices. This results in a total percentage, summed from all relevant sub-categories, which exceeds the percentage for the number of individuals who ran for office for both the elected and appointed categories.

[4] The total percentage of Attorneys General in the appointed category that "Became a Judge" is less than the total percentage, when added together, of the following individual categories for appointed Attorneys General: U.S. Supreme Court, Federal Court, and State Court. This is due to former New Hampshire Attorney General, the Hon. David Souter, who served as a State Court, Federal Court, and U.S. Supreme Court judge.

[5] The Thompson Article broadly references "Other Federal Court," while numbers here are presented in a way that creates the best attempt at parity between the articles.

[6] The Thompson Article references "Highest State Court" and "Lower State Court" separately, while numbers here are summarized and presented in a way that creates the best attempt at parity between the articles.

¹³² See sources cited *supra* note 25.