

State Attorneys General Play Pivotal Role in Protecting Democracy

Introduction

What role do state Attorneys General (AGs) play in protecting democracy?

Quite a substantial and multifaceted one, as it turns out. As states' chief legal officials, AGs interpret and enforce laws that protect voters, prohibit voter intimidation, and ensure efficient and fair administration of elections. State AGs represent state agencies in legal proceedings, which means that AGs defend Secretaries of State and state Boards of Elections in their implementation of state laws in litigation. AG offices also may support other states or parties facing similar issues by providing amicus briefs in litigation to which they are not formal parties. State AGs may provide legal guidance to local officials on how best to adhere to state and federal law, and to the public to inform them of their rights and guard against efforts to undermine the electoral process. In addition, several states have their own voting rights laws that require AGs affirmatively to protect voting rights through preclearance processes and direct services to voters.

In short, state AGs are key players in the effort to protect and promote democracy.

Protecting Voters Against Intimidation

State AGs may protect voters and election processes by enforcing both civil and criminal law. For instance, after two individuals in 2020 targeted thousands of Black voters in Michigan with robocalls filled with threatening disinformation to dissuade them from voting, Michigan Attorney General Dana Nessel responded by filing [multiple criminal charges](#) including intimidating voters, conspiracy, and computer crimes.ⁱ At the same time, New York [Attorney General Lititia James joined a civil suit](#) against these same defendants for robocalls placed to voters in New York, resulting in a [judgment worth up to \\$1.25 million](#). Not only do these proceedings ensure accountability for the defendants' actions, but they also deter others from intimidating voters in future elections. With the added threat of [artificial intelligence \(AI\) creating "deepfake" content](#) to deceive voters, this enforcement function will be increasingly important in the 2024 election cycle.

Representing Election Officials

AGs also represent other officials in litigation. When plaintiffs sue states over election practices, the AG is responsible for defending the state agency and the law or practices. As one example, the Secretary of the Commonwealth of Massachusetts was sued in 2022 over legislation that allowed for early voting and that directed the Secretary to provide absentee ballot applications to all voters. Plaintiffs argued that the law violated the state constitution. But the Massachusetts [Attorney General successfully defended](#) both the law and the Secretary's implementation,ⁱⁱ allowing voters to cast their ballots by the method of their own choosing.

Filing Amicus Briefs

Many times, an AG in one state has a vested interest in the outcome of a lawsuit in another state. In such cases, the interested AG's office may provide a "friend of the court," or *amicus* briefing. Such briefings provide insights into how the court should rule in the case before it based on that office's interests, legal expertise or experience in a similar case. For instance, a panel of judges in the Eighth Circuit Court of Appeals ruled—without precedent and in a reversal of longstanding practice—that the federal Voting Rights Act (VRA) may only be enforced by the federal Department of Justice, and that private parties had no standing to enforce that landmark voting rights law.ⁱⁱⁱ Minnesota Attorney General Keith Ellison filed [an amicus brief](#) arguing that both law and precedent demonstrated that private parties had long played a vital role in upholding the protections of the VRA against unlawful state restrictions. Progressive AGs have also worked together to protect voting rights, such as when a coalition of [fifteen state AGs filed an amicus brief](#) with the North Carolina Supreme Court to support restoring the voting rights of former felons in that state.^{iv} Amicus briefs coming from experts in the legal matter at issue are often given great deference by judges considering these cases.

Issuing Legal Guidance

AGs also interpret and advise on how laws should be applied. New Jersey Attorney General Matthew Platkin has issued [updated guidance every election year](#) to law enforcement officers and county prosecutors related to state and federal laws on voter intimidation and police presence at polling places. Issuing legal guidance to government actors clarifies legal questions and ensures equal enforcement of critical voter protections across the state, regardless of differences in local jurisdiction.

Educating the Public

Attorneys General also offer public guidance on election activities. These guidance statements can help establish a safe and secure environment for voters and election workers and ensure that voters have the information they need to participate in the electoral process. In the lead-up to the 2020 elections, the Vermont Attorney General [issued public guidance](#) about what conduct was prohibited under state and federal law as voter intimidation and harassment.^v Not only did issuing this guidance prior to the election reassure voters and election workers, but it also aimed to deter disruption of the electoral process with the promise that the AG would vigorously enforce the law. Attorneys General in [Maryland](#) and [Michigan](#), meanwhile, act as a trusted sources of information on when, where, and how to register and vote, as well as providing [public warnings of specific threats](#).

Enforcing Voting Rights

Attorneys General can take a proactive role in protecting voting rights of their citizens. California [Attorney General Rob Bonta recently filed suit](#) against the City of Huntington Beach to prevent the municipality from enforcing an amendment to its city charter that would require voters to provide an ID to be permitted to vote, which is contrary to state election laws that only require ID to be provided at registration.^{vi} Some state AGs also play a key role in implementing their own state voting rights acts, which can provide voters greater protections than federal law. New York's Voting Rights Act, for instance, requires the AG office to [determine which jurisdictions](#) will be subject to a preclearance process starting September 2024, which will require these jurisdictions to submit any proposed changes in voting procedures for review to ensure that voters will not be harmed disproportionately.^{vii} The New York AG office also [operates a voter hotline](#) to answer voters' questions and resolve problems with accessing and casting ballots.

Conclusion

Election officials and voters alike are facing a unique set of challenges in the 2024 cycle. A flurry of [law suits](#) have already been filed by parties seeking to undermine faith in election administration or interfere with voter participation in elections, and more are anticipated. Fears of [threats against election officials and voters](#) are rising, and [AI technology has already been used](#) to spread disinformation to voters in the primary season, with more such efforts expected. AGs play a critical role in protecting voters and election processes against these novel threats and many are actively promoting voting rights in their states.

ⁱ See, *People v. Burkman*, 341 Mich. App. 734 (Mich. Ct. App. 2022).

ⁱⁱ *Lyons v. Secretary of Commonwealth*, 490 Mass. 560, 192 N.E.3d 1078 (2022).

ⁱⁱⁱ *Ark. State Conference NAACP v. Ark. Bd. of Apportionment*, No. 22-1395 (8th Cir. Nov. 20, 2023)

^{iv} *Cnty. Success Initiative v. Moore*, 871 S.E.2d 510 (N.C. 2022).

^v See, e.g., 17 V.S.A. § 1972, 2017, 2019; 18 U.S.C. § 594.

^{vi} Cal. Elec. Code §§ 2150, 2188, 14216; *see also* Voter Bill of Rights, Cal. Elec. Code § 2300.

^{vii} N.Y. Elec. Law § 17-210.