



## State Attorneys General Target Business

Intrusive statism has many ways of harassing citizens. The most conspicuous, and in many ways the least dangerous, is by passing statutes. These laws, at least, are public and subject to debate before enactment. Laws, in theory, apply to all citizens equally.

The constitutional process for making law in our republic is by congressional, state, or local legislative action. Other sources of law — judicial opinions on the Constitution, executive orders, rules enacted by regulatory agencies, and so on — are murky and have very dubious constitutional authority. Nevertheless, Americans have become accustomed to these pseudo-statutes that never are formally enacted by a legislative body.



Worse is the growing power of state attorneys to bring lawsuit as a way of creating policy. Chris Tolles, the CEO of Topix, has [endured litigation by 33 different state attorneys general](#) on a matter that Tolles had believed, through his company's open cooperation with these public lawyers, had been resolved amicably. Through his lawyers, Tolles learned that neither his companies nor its employees were being accused of any criminal misconduct.

However, that did not stop attorneys general from first "communicating" with Chris Tolles via press conferences and news releases (i.e. blindsiding him with issues either not formally raised or presumed resolved). Why operate this way? The state attorney general is almost always an elected official and is almost always trying to use his office as a jumping stone to higher office.

Martha Coakley, the Massachusetts Attorney General, ran unsuccessfully for Kennedy's Senate seat. Connecticut Attorney General Richard Blumenthal is running for Chris Dodd's Senate seat. New York Attorney General Andrew Cuomo is running for governor, as are Attorneys General Bill McCullom in Florida, Edmund Brown in California, and Tom Corbett in Pennsylvania. Simply doing an honorable job as a state attorney general is not a particularly glamorous job. So the newest tool of vicarious litigation, filing public interest lawsuits against companies, has gained a cachet among the politically ambitious (which means, almost, every politician.)

Equally troubling to Tolles was the unexpected source of complaints by state attorneys general. He did not view them as malicious, but rather responsive to any cranky or unhappy consumer, competitor, or employee. Although every citizen has the right to retain legal counsel and pursue litigation against a company, if a state attorney general can be persuaded to champion the little guy against the big, bad corporation, then legal services can be obtained for "free" — at taxpayer expense. Then there is also the damage that the negative publicity can inflict, in the court of public opinion, on a business' reputation, which could be viewed as a company's most valuable asset. Of course, the negative publicity can be



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particularly damaging when 33 attorneys general jointly weigh in.

As Tolles describes it: “being communicated at via excoriatory press release proved to be a consistent theme.” These press releases, often as carefully crafted as a complex legal document, invariably present the gaggle of state attorneys general as noble public servants protecting consumers from predatory practices of greedy or insensitive businesses. Tolles says: “Pissed off people, not illegality, is the issue to watch.” After his ordeal, Chris Tolles and Topix view the state attorney general in a different light.

The process creates the need for more lawyers by all involved, more reporters investigating more alleged wrongs by big business, and more politicians (in the form of state attorneys general) to replace the marketplace mechanisms for rewarding and punishing business. More laws, more regulation, more “resolved” public interest lawsuits or threatened lawsuits — just what our nation needs, and what we are getting, thanks to attorneys general around our state capitols.

*Photo: Chris Tolles, CEO of Topix*



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