

NAAG Gazette

A Newsletter of the National Association of Attorneys General

JANUARY 2010

Elections for Attorney General to Take Place in 31 States

Thirty-one states will hold elections for Attorney General during 2010, ushering in a number of new Attorneys General as three have reached their term limit and several others are running for another office.



The recent November 2009 elections already brought into office two new Attorneys General. The New Jersey Attorney General is appointed by the governor, and recently elected Governor Christopher Christie nominated Paula T. Dow for the position. At press time, she was serving as acting Attorney General while awaiting state Senate confirmation. Dow has been the Essex County prosecutor since October 2003. From 1994 to 2003, she worked in the U.S. Attorney's Office-District of New Jersey. Her predecessor, Attorney General Anne Milgram served until Jan. 19.



Virginia's Attorney General Ken Cuccinelli was sworn in Jan. 16, following his November election win. His predecessor, Bill Mims, did not run.

Prior to this, General Cuccinelli served in the state Senate of Virginia from August 2002 to January 2010. During his time in the Senate, he served on the Courts of Justice Committee, the Transportation Committee, the Local Government Committee, the Rehabilitation and Social Services Committee, and the Agriculture, Conservation and Natural Resources Committee.

There will also be a new Attorney General in Puerto Rico. Attorney General Antonio Sagardia stepped down in late December. Acting Attorney General Guillermo Somoz-

Colombani is serving until the governor makes a permanent appointment.

The Attorney General is popularly elected in 43 states, and is appointed by the governor in five states (Alaska, Hawaii, New Hampshire, New Jersey and Wyoming) and in the five jurisdictions of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands. In Maine, the Attorney General is selected by secret ballot of the legislature and in Tennessee by its state supreme court. In the District of Columbia, the mayor chooses the Attorney General.

Forty-six states presently provide a four-year term for the Attorney General. Maine and Vermont have a two-year term. Tennessee sets the term at eight years and in Alaska the Attorney General serves at the pleasure of the governor. Among states where the Attorney General is elected to four-year terms, 16 states limit the Attorney General to two such terms. All the others may succeed themselves an unlimited number of times.

The Attorneys General who are term limited and will finish their terms at the conclusion of 2010 are Terry Goddard of Arizona, Mike Cox of Michigan and Patrick Lynch of Rhode Island.

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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The following additional states will have an Attorney General election in which, at press time, the incumbent is likely to run for another term. Check specific state election sites for updated, official candidate announcements and primary information.

- Alabama (Troy King)
- Arkansas (Dustin McDaniel)
- California (Edmund G. "Jerry" Brown)
- Colorado (John Suthers)
- Delaware (Joseph R. "Beau" Biden)
- Idaho (Lawrence Wasden)
- Illinois (Lisa Madigan)
- Iowa (Tom Miller)
- Kansas (Steve Six)
- Maryland (Doug Gansler)
- Massachusetts (Martha Coakley)
- Minnesota (Lori Swanson)
- Nebraska (Jon Bruning)
- Nevada (Catherine Cortez Masto)
- New Mexico (Gary King)
- New York (Andrew Cuomo)
- North Dakota (Wayne Stenehjem)
- Ohio (Richard Cordray)
- South Dakota (Marty J. Jackley)
- Texas (Greg Abbott)
- Vermont (William Sorrell)
- Wisconsin (J.B. Van Hollen)

There are several Attorneys General who are serving while currently running for another office.

- Richard Blumenthal, Connecticut Attorney General, is running for U.S. Senate.
- Bill McCollum, Florida Attorney General, is running for governor.
- Thurbert Baker, Georgia Attorney General, is running for governor.
- Jack Conway, Kentucky Attorney General, is running for U.S. Senate.
- Drew Edmondson, Oklahoma Attorney General, is running for governor.
- Tom Corbett, Pennsylvania Attorney General, has a term that ends in 2012, but he is running for governor this year.
- Henry McMaster, South Carolina Attorney General, is running for governor.

The Attorneys General appointments in Alaska, Hawaii and Wyoming could also be in play depending on the outcome of the 2010 governors' elections in those states. Maine's state legislature, which chooses the Attorney General, will have November 2010 elections as well.

Upcoming Federal Environmental Regulations Will Affect States



PAULA COTTER, ENERGY & ENVIRONMENT COUNSEL

The U.S. Environmental Protection Agency (EPA) has made public its regulatory agenda for the upcoming year, outlining the agency's plans for rulemaking. It has identified five priority areas that will drive its rulemaking: climate change, improvement of air quality, management of chemical risks, water protection, and cleanup of hazardous waste.

The plans are ambitious – they include areas not previously regulated and they impose tighter restrictions than earlier rules. State Attorneys General will feel the impact of the rules. Some of the proposed rules will no doubt trigger litigation in which states may well participate, either supporting EPA as amici curiae or opposing the federal government to the upcoming changes. Moreover, it will probably fall to state Attorneys General to enforce the new rules under the existing system of shared state and federal authority. The full regulatory agenda and plan are available online at <http://www.epa.gov/regulations/documents/regagendabook-fall09.pdf>.

Within the five categories, specific regulations are at various levels of development—running the gamut from areas in which EPA knows that a review and new rulemaking are necessary but has not conceptualized them, to nearly final rules that have already been proposed and reviewed by the public. For instance, EPA is required by Section 402(c)(3) of the Toxic Substances Control Act to develop rules for renovating a defined set of buildings. The purpose of the rules is to reduce the risk of people, particularly children, being exposed to lead. In April 2008, EPA finalized rules for most housing and child-occupied public buildings built before 1978. The statute still requires EPA to address public buildings built before 1978 and commercial buildings not occupied by children. The agency has included that process in its regulatory agenda. However, this particular rulemaking is not far along, and the agency has simply announced that it will issue an Advance Notice of Proposed Rulemaking in April. In contrast, mandatory reporting of greenhouse gas production was finalized in 2009¹ and became effective Jan. 1, 2010.

Among the significant rule changes and promulgations is EPA's proposed tightening of the National Ambient Air Quality Standards for ground level ozone. The proposed rule, which is a reconsideration of the Standard promulgated in 2006, was published in the Jan. 19 Federal Register. It is available at <http://www.epa.gov/air/ozonepollution/fr/20100119.pdf>. Public hearings are scheduled in Virginia and Texas.

Other major rulemaking in the context of air regulation includes three related sets of rules: EPA's proposed finding of endangerment from greenhouse gases. The endangerment finding² was published on Dec. 15, 2009; it may well be appealed to the U.S. Court of Appeals for the District of Columbia. The endangerment finding is a prerequisite for another rule that EPA hopes to issue in March: "tailpipe" standards for greenhouse gases—standards for vehicles.



Brandi Green joined the NAAG staff during one of the busiest times of the year: in the midst of preparing for the 2008 Summer Meeting. She has since grasped her role as the communications

assistant. In this capacity, she fields media calls, fulfill requests for the Attorneys General public information officers, drafts press materials, updates content on the Web site, provides general support for annual meetings and assists the director of communications in other duties.

"I've really grown both professionally and personally during my time at NAAG," she said. "This is my first time encountering legal issues in such a direct manner so I am constantly learning and being challenged."

Brandi first lived in Washington, D.C., while completing a semester-long program during her senior year in college. During that time, she took classes and interned at the Society for Women's Health Research in the media relations department.

"I always knew I wanted to come back to the District," said Brandi. "I love the atmosphere and diversity that the city offers. The possibilities are endless career-wise, especially being in communications. I'm getting the chance to explore areas that I would have not previously considered."

While at NAAG, she especially enjoys interacting with the public information officers and learning more about consumer issues.

This Chicago, Ill., native graduated from Grinnell College with a bachelor's degree in English. She enjoys reading, taking exercise classes, volunteering and creative writing.

1 <http://www.epa.gov/climatechange/emissions/downloads09/GHG-MRR-Full Version.pdf>

2 <http://edocket.access.gpo.gov/2009/pdf/E9-29537.pdf>

The “tailpipe” standards will trigger parallel standards that apply to stationary sources of air pollution, potentially including coal-fired power plants. EPA has said that it plans to issue a “tailoring rule” that will apply requirements binding on stationary sources to larger sources; that rule is also expected in March.

One more significant area that will likely trigger litigation is the requirement for rules governing the financial responsibility of industrial handlers of “hazardous substances,” as that term is used in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Financial responsibility rules promulgated under the Resource Conservation and Recovery Act (RCRA) have long governed hazardous waste producers. However, EPA has never developed rules for those who handle CERCLA hazardous substances, as required by Section 108(b) of the statute. In summer 2009, EPA identified hardrock mining as an industry for which financial responsibility standards were appropriate, but such rules have not yet been published. On Jan. 6, 2010, EPA issued an Advance Notice of Proposed Rulemaking, identifying a broad range of industrial activities that it will consider for financial responsibility requirements. The industries under consideration include coal mining, electricity generation, transmission and distribution, as well as chemical manufacturing and petroleum refining.

State Attorneys General and their clients may wish to review the federal regulatory agenda for environmental rulemaking to see what effect it might have in their states, and to be prepared in the event that the states are drawn into litigation predicated on new rules.

Get to Know: The Council of State Governments



DAVID ADKINS, EXECUTIVE DIRECTOR/CEO,
THE COUNCIL OF STATE GOVERNMENTS

As a former state legislator and member of The Council of State Governments (CSG), I was excited to accept my role a year ago as the organization’s executive director and CEO. I knew how CSG enriched my service as a legislator by providing me with great insight including what

I can learn from the experiences of leaders from other states.

I know the future of CSG is very bright and I want to build on our existing strengths as America’s only regional-ly-based, multi-branch, nonpartisan organization of state leaders.

For 77 years, the states and territories have come together through The Council of State Governments to learn from each other, to advocate for the interest of the states at the federal level and to enhance the ability of state leaders to serve the common good.

When former Colorado state senator Henry Toll founded CSG in 1933, he envisioned an organization that would facilitate greater interstate cooperation, help states interact more productively with the federal government and assist state leaders by developing the tools they need to govern effectively.

As state government has evolved and changed, CSG has adapted to provide those tools, products and services that empower state leaders to achieve more than they might have ever dreamed possible.

The initial leadership of CSG was comprised of legislative and executive branch officials. Among the organizations affiliated with CSG in the early years was the National Association of Attorneys General. From 1936 to 1980, CSG served as NAAG’s secretariat. In the mid-1970s, many of the executive branch organizations established their own offices in Washington, D.C. However, they continue to work cooperatively with CSG as voices of the state government community on Capitol Hill. NAAG and other partners contribute material published annually in CSG’s *Book of the States*.

CSG continues to foster interstate cooperation. The National Center for Interstate Compacts, for example, provides technical assistance to states developing compacts and helped develop the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles, just to name a few.

Interbranch cooperation is promoted by CSG in several ways. The CSG Justice Center board of directors, for example, includes state legislative leaders, judges, corrections administrators, juvenile justice agency directors, and law enforcement professionals; together, they represent a cross-section of the senior-level state officials who work to enhance public safety.

During our annual conference in December, CSG’s Interbranch Working Group hosted a session titled, “A Discussion on the Future of Fair and Impartial State Courts.” The panel was comprised of four state chief justices, who provided CSG’s membership with insights on the unique challenges facing the state judicial systems.

In addition, CSG’s Henry Toll Fellowship Program annually provides a week-long boot camp of leadership development for 40 of the brightest state officials from all three branches of state government.

CSG celebrates state achievements through the annual Innovations Awards and identifies the best legislation from around the country through the Suggested State Legislation program.

In helping states meet the complex demands of governance, the CSG policy staff at the national and regional level tracks public policy issues including education, health, energy and environment, and transportation. Recently, CSG launched the Comparative Performance Measurement Project, which seeks to collect, analyze and publish comparative performance data so states can better set reachable targets for their services and identify successful state practices.

There has never been a more exciting or challenging time to be a state leader. History teaches us that often the greatest leaps forward spring from adversity. While it is clear state leaders will confront some of the most difficult choices ever in the coming year, I believe from that experience new seeds of change will be planted and from those seeds new solutions and transformative innovations will emerge and grow. All of us at CSG look forward to continuing our close and productive partnership with our member states Attorneys General.

David Adkins is a graduate of the University of Kansas School of Law. He served eight years in the Kansas House and four years in the Kansas Senate. Prior to joining CSG as executive director/CEO, Adkins served as Vice Chancellor for External Affairs at the University of Kansas Medical Center. He can be contacted at dadkins@csg.org. For more information on CSG, please visit www.csg.org.

NAAG Welcomes Supreme Court Fellows for Winter Term

The NAAG Supreme Court Fellows program gives state lawyers an opportunity to obtain direct and intensive hands-on exposure to U.S. Supreme Court practice. The Fellows work in NAAG's Washington, D.C., office for three- to four-month periods during the Court's argument session. They watch oral arguments, participate in moot courts, prepare an amicus brief in a Supreme Court case, and draft the Report. The following Fellows joined NAAG for the winter term (January – March):



Jung W. Kim is a deputy attorney general in the environmental enforcement section of the New Jersey Office of Attorney General. In this capacity, she represents the state and the New Jersey Department of Environmental Protection in cases involving various environmental laws such as the Clean Air Act, and reviews and

participates in federal rulemaking actions. Jung recently received the Excellence in Law Support award. Prior to her current position, she clerked for the Honorable Philip Carchman, researching and drafting legal memoranda in criminal and civil matters. Jung received her bachelor's degree in history from Tufts University and her J.D. from the Rutgers University School of Law.



Melody Brown is an assistant attorney general in the capital and collateral litigation section in the South Carolina Office of the Attorney General. She argues capital and non-capital murder direct appeals, and represents the state in collateral litigation challenges (state and federal) to capital sentences, and federal habeas challenges for any state conviction. Melody is the first attorney from the South Carolina office to participate in this fellowship program. Previously, she worked at the South Carolina Office of Appellate for three years as an assistant appellate defender. She received her bachelor's degree in government from Wofford College and her J.D. from the University of South Carolina School of Law.

Congratulations and welcome to our fellows!

NAAG Supports Data Privacy Day

Consumers rely on information technologies for many aspects of their daily lives. While these tools are convenient, they can also pose a threat to users' personal information being compromised, stolen and shared. In an effort to promote the importance of privacy and the necessity of taking measures to protect personal information, state Attorneys General have joined together to formally recognize and promote National Data Privacy Day, held on Jan. 28.

In December, the National Association of Attorneys General adopted a resolution, co-sponsored by North Carolina Attorney General Roy Cooper and Washington Attorney General Rob McKenna, in support of National Data Privacy Day. This day is a collaborative effort on behalf of government officials, privacy professionals, community leaders, and educators to promote awareness about data privacy and protection issues.

Each year, millions of Americans are affected by data privacy issues that include sensitive personal information such as medical records accessed by unauthorized parties, identity theft, Web-based information brokers selling

sensitive data and teens' private information retrieved on social networking sites.

State Attorneys General remain committed to consumer protection issues, specifically protecting the personal information of their constituents and informing them of privacy laws. The NAAG resolution states, "That the National Association of Attorneys General supports National Data Privacy Day and its goal of facilitating the role of consumer privacy and data protection in regulatory controls, technological innovation and consumer protection with key stakeholders; the development and promotion of privacy standards; and the promotion of collaboration, cooperation and shared responsibility in the areas of individual data protection and commercial management of personal information."

A copy of the resolution can be viewed at: <http://www.naag.org/in-support-of-national-data-privacy-day.php>.

NAAG Sign-On Letters

Sign-On letters are policy-oriented letters sent to members of Congress, congressional committees or federal agencies expressing the viewpoint of the signatories. In order for a sign-on letter to be NAAG policy and appear on NAAG letterhead, it must have 36 or more Attorneys General signatures. Only NAAG letters that have completed the sign-on process are posted to the NAAG Web site. Below are the NAAG Sign-On letters for the last quarter. To view these and future NAAG letters, go to http://www.naag.org/sign-on_archive.php.

Free Credit Report Rules

NAAG sends Dec. 7, 2009 comments signed by 43 Attorneys General to the Federal Trade Commission over amendments to the Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures.

<http://www.naag.org/free-credit-report-rules.php>

State Enforcement of Consumer Financial Protection Agency Rules

NAAG sends a Nov. 4, 2009 letter to Congress urging members to uphold the role of the states in enforcing consumer protection laws should the Congress create a Consumer Financial Protection Agency.

<http://www.naag.org/state-enforcement-of-consumer-financial-protection-agency-rules.php>

Discount Pricing Consumer Protection Act (S. 148)

NAAG sends an Oct. 27, 2009 letter to U.S. Senate and House members in support of "The Discount Consumer Protection Act of 2009" (S. 148).

<http://www.naag.org/discount-pricing-consumer-protection-act-s-148.php>

Discount Pricing Consumer Protection Act (H.R. 3190)

NAAG sends an Oct. 27, 2009 letter to U.S. Senate and House members in support of "The Discount Consumer Protection Act of 2009" (H.R. 3190).

<http://www.naag.org/discount-pricing-consumer-protection-act-h.r.-3190.php>

FTC Debt Relief Comments

NAAG submitted Oct. 23, 2009 comments signed by 41 Attorneys General to the Federal Trade Commission regarding its Telemarketing Sales Rule 16 C.F.R. Part 310, to address the sale of debt relief services.

<http://www.naag.org/ftc-debt-relief-comments.php>

White House Names Cyber Coordinator



The White House named Howard Schmidt as its cyber security coordinator Dec. 22. In this role, Schmidt coordinates cyber security policy across the federal government from the military to civilian agencies.

Cyber threats represent "one of the most serious economic and national security challenges we face as a nation," Schmidt said in a posted video following his appointment. "...I look forward to working with our leadership from...state, local and tribal governments...to ensure that our economic and national security interests are enhanced with our combined cyber security efforts."

Attorneys General have a growing role in investigating and prosecuting computer-based crimes. All states have enacted laws that criminalize online child solicitation and pornography, often with enhanced penalties for repeat offenders. Many states have also enacted criminal statutes for computer intrusions, many of which have enhanced penalties for hacking of a government computer. Other computer crimes such as Internet fraud, Internet auction fraud and computer-facilitated identity theft are addressed through updated state consumer protection laws.

Prior to this White House appointment, Schmidt was president and CEO of the Information Security Forum, a nonprofit international consortium that conducts information security research. From 2001 – 2003 he was a cyber adviser for President Bush. His 40-year career includes 31 years in local and federal government service. He served as an advisor to the FBI and has worked at the National Drug Intelligence Center. Schmidt has also

served as chief security officer for Microsoft and as vice president and chief information security officer for eBay.

NAAG Hosts Spring Meeting in Washington, DC

“State-Federal Partnerships: Shaping the Future” is the theme for this year’s annual NAAG Spring Meeting, March 1 – 3, at the Fairmont Hotel in Washington, DC.

As one of the Association’s three national meetings held each year, the Spring Meeting allows Attorneys General and other attendees to discuss a number of complex legal issues including community banking, prescription drug abuse, antitrust, federal legislation, and other pressing areas of interest.

Most of the Attorneys General are expected – last year 43 attended, along with representatives from the ranks of trade associations, law firms, federal and state government officials and staff from other interested agencies and associations. It is a public meeting and open to the media.

Attorneys General are scheduled to meet with a number of key national figures, including U.S. Attorney General Eric Holder and Federal Deposit Insurance Corporation Chairman Sheila Bair. There will be the traditional session on recent Supreme Court cases, along with a Tuesday evening Supreme Court reception.

For more information, including a tentative agenda and registration rates, or to register, go to <http://www.naag.org/spring-meeting.php>. The deadline for securing a hotel room at the discounted NAAG rate is Feb. 5.

Questions? Contact Jeffrey Hunter, jhunter@naag.org.



CALENDAR



Presidential Initiative Summit: “Virtual World-Real Crime”

February 8 - 10, 2010

Ft. Lauderdale, FL

Contact: Dennis Cuevas, dcuevas@naag.org



NAAG 2010 Spring Meeting

March 1 - 3, 2010

Washington, DC

Contact: Jeffrey Hunter, jhunter@naag.org



Eastern States CAFOs Training

March 8 - 9, 2010

Raleigh, NC

Contact: Paula Cotter, pcotter@naag.org