

## The Ginsburg/Scalia Initiative

On August 4 and 5, 2021, the Attorney General Alliance held a conference in Colorado Springs to reflect on the state of our democratic republic and how we can encourage dialogue, listening, and collaborative problem solving. This conference kicked off the Attorney General Alliance Chair's initiative, honoring the relationship between U.S. Supreme Court Justices Ruth Bader Ginsburg and Antonin Scalia. The Ginsburg/Scalia Initiative celebrates respectful engagement and emphasizes that, as state attorneys general, we are stewards of the rule of law. The conference highlighted how we must hold fast to a set of norms that guide attorneys general working relationships and encourage collaborative problem solving.

We opened the conference with a screening of *The Social Dilemma*, which highlighted the rise of misinformation, often spread through social networking sites. The ensuing panel discussed the nuances of the increasing polarization in our politics, the spread of misinformation, and the challenges those dynamics pose for attorneys general. As the movie stated, some studies indicate that “fake news”—meaning information that is patently false, rather than information which a person simply disagrees with—can travel more than six times faster than facts do. This reality was powerfully pointed out at a speech given at our dinner that evening by former Colorado attorney general and now Colorado Springs Mayor John Suthers. He related that, after sharing with some constituents that only one of the 56 individuals currently in the hospital in El Paso County for COVID-19 is vaccinated, many refused to believe that information, insisting that their sources for information said otherwise. For state attorneys general, and for our society more generally, the disagreement over basic facts represents a major challenge to sound governance and the rule of law.

Several attorneys general outlined possible public policy initiatives related to the propagation of misinformation online. Hawaii Attorney General Clare Connors suggested, for example, that there are opportunities to curtail the type of misinformation that is deliberately designed to mislead, cause harm, and even spur violence. Several social media companies present at the conference also spoke about their efforts to address misinformation. As several participants noted, public policy efforts to address relevant issues, including requiring disclosure on social media advertisements<sup>1</sup> and ensuring reliable, responsible, and fair use of artificial intelligence<sup>2</sup> are promising, but are only in their incipient stages. Ultimately, while many more questions were raised than answered, the engaging dialogue at the conference emphasized the need to overcome the pressures of polarization and was itself an important step towards progress.

As was discussed at the conference, the nature of state attorney general collaboration reflects, at least in part, the rigor and discipline of our legal training. With a legal system that emphasizes what can be proved in court, as opposed to what soundbite gets traction on Twitter, there is considerable opportunity to engage in dialogue and collaborative problem solving. As was evident from the conversations at the conference and celebrated particularly by Idaho Attorney General Lawrence Wasden, there is also genuine affection between fellow attorneys generals. To a similar end, South

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<sup>1</sup> <https://www.warner.senate.gov/public/index.cfm/the-honest-ads-act>

<sup>2</sup> <https://www.ftc.gov/news-events/blogs/business-blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>; <https://www.gao.gov/assets/gao-21-519sp.pdf>.

Dakota Attorney General Jason Ravensborg related that there are pressures for members of one party to not even be seen with, let alone talk with or be friends with, members of another political party, calling on all of us to avoid and rise above such pressures.

We can all celebrate attorneys general who rise above the pressures to demonize others and contribute to our polarized political climate. As an example, consider the case of Washington Attorney General Bob Ferguson who noted that a reporter in his state was surprised that he would go to a baseball game with his Republican predecessors. To a similar end, Wyoming Attorney General Bridget Hill stated that having different political beliefs should not determine how we interact with and view others in the law, noting that she worked for former Wyoming Attorney General, Greg Phillips, who was from a different political party. Indeed, she said that he is of the finest lawyers and individuals she has ever known.

There was a considerable amount of discussion about how attorneys general might work to limit the escalation of sharp rhetoric towards members of different political parties. As a start, Attorney General Ferguson suggested that we all could be more careful about the tone of emails we send to supporters, taking care not to demonize members of opposing parties or viewpoints. On another front, Nebraska Attorney General Doug Peterson highlighted the important bridge building that occurs in the substantial bipartisan work that happens in the attorney general world. Similarly, Nevada Attorney General Aaron Ford related that he is mindful of the importance of relationships and is working to avoid overheated rhetoric.

This effort towards mutual respect and fondness between those with different viewpoints is exemplified by the relationship between Justices Ginsburg and Scalia. As she stated in *Scalia Speaks*:

If our friendship encourages others to appreciate that some very good people have ideas with which we disagree, and that, despite differences, people of goodwill can pull together for the well-being of the institutions we serve and our country, I will be overjoyed, as I am confident Justice Scalia would be.<sup>3</sup>

As Justice Ginsburg further related at Justice Scalia's memorial service, when Justice Scalia was once asked how the two of them could be friends "given our disagreement on lots of things, he answered: 'I attack ideas. I don't attack people. Some very good people have some very bad ideas.'"<sup>4</sup>

One of the challenges underscored by those at the conference is that young people now see politics as tribalized warfare, not the battle of ideas suggested by Justice Scalia. That presents an opportunity, and perhaps an imperative, to think more seriously about civic education and providing students with a model for respectful dialogue. This would help address the rising trend to view others with different viewpoints "as alien, immoral, a threat."<sup>5</sup> As a result, I hope the

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<sup>3</sup> Ruth Bader Ginsburg, *Foreword* to Antonin Scalia, *Scalia Speaks* xi (Crown Forum, 2017).

<sup>4</sup> <https://www.nytimes.com/2016/03/02/us/politics/at-memorial-scalia-remembered-as-happy-combatant.html>.

<sup>5</sup> <https://www.nytimes.com/2021/04/19/us/democracy-gop-democrats-sectarianism.html>.

Ginsburg/Scalia Initiative can result in the development of materials to encourage creative problem solving, dialogue, and a search for win-win solutions.

Respectful dialogue promises to lead to better results. This discipline is one that attorneys general, as lawyers, are well positioned to model. As North Dakota Attorney General Wayne Stenehjem related, we and our teams should always ask “what will the other side have to say?” And as DISH Chairman Charlie Ergen explained in his fireside chat, winning teams develop a culture where the best arguments can be developed and will win out. To build such a culture, leaders must create an environment where people listen to one another and assume positive intent.

Delaware Attorney General Kathy Jennings told a powerful story of how her commitment to listen yielded a win-win solution. Before deciding not to press charges against protestors charged with disorderly conduct, she sat down both with the protestors and the police. Both sides expressed that they did not feel understood by the other. After building trust and creating space for dialogue, she reported that she was able to build a foundation for a closer working relationship between them. That’s not easy to do in a polarized society. It’s also what is required if we are to revitalize our democratic institutions.

We can all strive to follow the approach of listening to both sides with respectful engagement, the intent to build stronger bonds of citizenship, and the goal of producing better results. The discussions at the AGA conference were uniformly respectful, honest, and even often heartfelt. At a time when we see more division than ever, that counts for a lot.

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Our constitutional tradition calls on lawyers to serve as stewards of the rule of law. As attorneys general, we take that role seriously, recognizing that we must live in the world of evidence and rigorous legal analyses, wherever that leads. At a time when there is decreasing trust, increasing polarization, and rising misinformation, our commitment to this tradition is more important than ever. As the work of the Ginsburg/Scalia Initiative goes forward, the AGA will do its best to elevate and celebrate this work.