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WLF Paper Examines Local-Government Litigation and Proposes Pathways to State Preservation of Authority

“The solutions recommended in this paper are crucial to stopping this growing threat to state attorney general authority. This is not a partisan issue—both Democratic and Republican attorneys general face the same legal threat in their states.”

— Kansas Attorney General Kris Kobach, from the Foreword

WASHINGTON, DC—Washington Legal Foundation today released a *Working Paper* entitled “Reining in Local Government Encroachment on Attorney General Litigating Authority: Legislative and Litigation Solutions.” Authored by former Washington Attorney General **Rob McKenna** and former Chief Deputy Attorney General of Wisconsin **Andy Cook**, this publication assesses public health, safety, and environmental litigation municipalities and counties are pursuing and the strategies state attorneys general and legislatures can utilize to end these incursions. The *Working Paper* features a foreword by Kansas Attorney General **Kris Kobach**.

Litigation brought by states’ political subdivisions, often in partnership with private contingent-fee counsel, treads on the constitutional or statutory authority attorneys general possess as a state’s primary legal officer. Subdivisions’ lawsuits can bind the state to outcomes that are more profitable for the lawyers involved than the citizenry or harm the alleged victims by delaying claims resolution and compensation disbursement. The litigation can also add unnecessary costs for businesses and consumers.

McKenna and Cook first illustrate the rise in political-subdivision lawsuits, focusing on claims aimed at producers of PFAS, climate emissions, “ultra-processed” foods, and plastics. They next explain the legal doctrines that explicitly cabin local governments’ authority to bring such cases.

The authors then turn to legislative and litigation countermeasures. As an example of legislation, they first describe a Texas law that grants the attorney general authority to review and reject a subdivision’s contingent-fee contract with private counsel for litigation services. They also outline a 2025 Kansas legislative proposal, ultimately vetoed by the state’s governor, which enumerates specific conditions localities must meet for the state attorney general to approve a contingent-fee contract.

The paper concludes with a detailed review of litigation strategies the attorneys general of three states—Kansas, Ohio, and Pennsylvania—followed when counties within those states acted as clients for plaintiffs’ lawyers in lawsuits against product manufacturers.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.