

# THE PROBLEM WITH THE LIEUTENANT GOVERNOR: A LEGISLATIVE OR EXECUTIVE POSITION UNDER THE SEPARATION OF POWERS CLAUSE

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## INTRODUCTION

Currently, forty-three states employ the position of lieutenant governor within their state government. The original purpose of the office was to ensure the continuity of the executive office should the governor be unable to serve out the remainder of the term.<sup>1</sup> All states that utilize a lieutenant governor list the position under the executive branch within their state constitutions. However, a majority of these lieutenant governors by virtue of their office also serve in a legislative capacity, as the president of the senate in their respective states.<sup>2</sup> “Tradition, perhaps more than justifiable need, has made the Lieutenant Governor the presiding officer of the Senate.”<sup>3</sup>

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<sup>1</sup> Richard H. Hansen, *Executive Disability: A Void in State and Federal Law*, 40 NEB. L. REV. 697, 701-02 (1961).

<sup>2</sup> See *infra* Appendix B.

<sup>3</sup> 6 RECORD OF PROCEEDINGS: SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 1372 (1972).

Having a member of the executive branch functioning within the legislative branch creates a separation of powers clause issue. The separation of powers clause divides the government into three branches: legislative, executive, and judiciary, and it vests each branch with that power. Chief Justice John Marshall wrote that “[t]he difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law.”<sup>4</sup> In addition, the separation of powers clause was originally designed to prevent an abuse of power through dual-office holding, or “a commingling of these essentially different powers.”<sup>5</sup>

All fifty states have a separation of powers clause. Forty state constitutions contain an explicit separation of powers clause.<sup>6</sup> Ten states lack an explicit separation of powers clause;<sup>7</sup> however, these ten states read an implicit separation of powers clause into

<sup>4</sup> *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 46 (1825).

<sup>5</sup> See *State ex rel. W. Va. Citizens Action Grp. v. W. Va. Econ. Dev. Grant Comm.*, 580 S.E.2d 869, 878 (W. Va. 2003) (“In addition to upsetting the balance of powers between the branches, we identified the risk that maximization of self-interest could result where the normal limits on discretionary power are no longer in place due to legislative involvement in an executive function.”) (citing *State ex rel. Barker v. Manchin*, 279 S.E.2d 622, 636 (W. Va. 1981)); *O’Donoghue v. United States*, 289 U.S. 516, 530 (1933).

<sup>6</sup> ALA. CONST. art. III, §§ 42-43; ARIZ. CONST. art. III, § 1; ARK. CONST. art. 4, §§ 1-2; CAL. CONST. art. III, § 3; COLO. CONST. art. III; CONN. CONST. art. II, § 1; FLA. CONST. art. II, § 3; GA. CONST. art. I, § II, para. III; IDAHO CONST. art. II, § 1; ILL. CONST. art. II, § 1; IND. CONST. art. 3, § 1; IOWA CONST. art. III, § 1; KY. CONST. §§ 27-28; LA. CONST. art. II, §§ 1-2; ME. CONST. art. III, §§ 1-2; MD. DECLARATION OF RIGHTS art. 8; MASS. CONST. pt. 1, art. XXX; MICH. CONST. art. III, § 2; MINN. CONST. art. III, § 1; MISS. CONST. art. 1, §§ 1-2; MO. CONST. art. II, § 1; MONT. CONST. art. III, § 1; NEB. CONST. art. II, § 1; NEV. CONST. art. 3, § 1; N.H. CONST. pt. 1, art. 37; N.J. CONST. art. III, para. 1; N.M. CONST. art. III, § 1; N.C. CONST. art. I, § 6; OKLA. CONST. art. IV, § 1; OR. CONST. art. III, § 1; R.I. CONST. art. V; S.C. CONST. art. I, § 8; S.D. CONST. art. II; TENN. CONST. art. II, §§ 1-2; TEX. CONST. art. II, § 1; UTAH CONST. art. V, § 1; VT. CONST. ch. II, § 5; VA. CONST. art. I, § 5; VA. CONST. art. III, § 1; W. VA. CONST. art. V, § 1; WYO. CONST. art. 2, § 1.

<sup>7</sup> ALASKA CONST. art. II, § 1; ALASKA CONST. art. III, § 1; ALASKA CONST. art. IV, § 1; DEL. CONST. art. II, § 1; DEL. CONST. art. III, § 1; DEL. CONST. art. IV, § 1; HAW. CONST. art. III, § 1; HAW. CONST. art. V, § 1; HAW. CONST. art. VI, § 1; KAN. CONST. art. 1, § 3; KAN. CONST. art. 2, § 1; KAN. CONST. art. 3, § 1; N.Y. CONST. art. III, § 1; N.Y. CONST. art. IV, § 1; N.Y. CONST. art. VI, § 1; N.D. CONST. art. III, § 1; N.D. CONST. art. V, § 1; N.D. CONST. art. VI, § 1; OHIO CONST. art. II, § 1; OHIO CONST. art. III, § 5; OHIO CONST. art. IV, § 1; PA. CONST. art. II, § 1; PA. CONST. art. IV, § 2; PA. CONST. art. V, § 1; WASH. CONST. art. II, § 1; WASH. CONST. art. III, § 1; WASH. CONST. art. IV, § 1; WIS. CONST. art. IV, § 1; WIS. CONST. art. V, § 1; WIS. CONST. art. VII, § 2.

their state constitutions, similar to the United States Constitution.<sup>8</sup> Some states liberalize the separation of powers clause prohibition on “dual-office” holding by creating an exception within their respective separation of powers clauses, which reads “except as permitted by this Constitution.”<sup>9</sup> This exception superficially legitimizes a clear violation of the separation of powers clause—one state public official holding power in two branches of government.

Few state courts have directly addressed the issue or attempted to reconcile how an executive official can permissibly have legislative powers without violating the separation of powers clause.<sup>10</sup> The issue commonly turns on whether judges, politicians, and state constitutional law scholars view the separation of powers clause under a “formalism vs. functionalism” approach. If the separation of powers clause is read strictly under the “formalist” approach, the lieutenant governor would violate the separation of powers clause where the lieutenant governor performed *any* legislative function, for instance presiding over the state senate. If the separation of powers clause is interpreted under a “functionalist” approach, like some state courts have, then the lieutenant governor would violate the separation of powers clause where the lieutenant governor performed a “core function” of the legislative branch, such as introducing a bill.<sup>11</sup> However, as one Mississippi justice noted, “[t]here is no natural law of separation of powers. Rather, the powers of government are separate only insofar as the Constitution makes them separate.”<sup>12</sup>

Little attention has been spent on how to reconcile the lieutenant governor position with the separation of powers clause. Most scholars have simply noted it as one of those rare exceptions in state constitutional law without much further elaboration. Few state supreme courts have directly addressed the issue or

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<sup>8</sup> See *supra* note 7 and accompanying text.

<sup>9</sup> See, e.g., CAL. CONST. art. III, § 3.

<sup>10</sup> For a state attorney general’s opinion on the lieutenant governor’s right to cast tie-breaking votes on legislation, see NEB. OP. ATT’Y GEN. No. 94002 (1994). See also 1990 IDAHO OP. ATT’Y GEN. 47.

<sup>11</sup> *Marine Forests Soc’y v. Cal. Coastal Comm’n*, 113 P.3d 1062, 1065-67 (Cal. 2005); *Dye v. State ex rel. Hale*, 507 So. 2d 332, 334 (Miss. 1987). Here, state supreme courts applied a “functionalist” approach to the separation of powers.

<sup>12</sup> *Dye*, 507 So. 2d at 346.

attempted to reconcile how an executive official can have legislative powers without violating the separation of powers clause.<sup>13</sup> However, case law does support the notion that state supreme courts look to other jurisdictions for guidance on separation of powers issues.<sup>14</sup> Regardless of how the separation of powers clause is interpreted, every state has a separation of powers clause.<sup>15</sup>

Rather than propose a new separation of powers test, this Comment surveys the field and lays the foundation for a topic in need of further discussion.<sup>16</sup> Part I surveys the various duties of the lieutenant governor within the executive and legislative branches of state governments. Part II surveys relevant case law challenging the roles and the limits of power for the lieutenant governor within the executive and legislative branches. Recognizing that a “one size fits all” approach cannot possibly apply to all fifty state constitutions,<sup>17</sup> Part III will advance three possible solutions for states to address a separation of powers violation.

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<sup>13</sup> Some states have dealt with the issue, and include: *Dye v. State ex rel. Hale*, 507 So. 2d 332 (Miss. 1987) (challenging the right of lieutenant governor as president of the senate to appoint senate committee members); *Lawless v. Jubelirer*, 789 A.2d 820 (Pa. Commw. Ct. 2002) (challenging senator’s right to retain senate seat while holding office as lieutenant governor as a separation of powers violation); *State v. Cason*, 507 S.W.2d 405 (Mo. 1973) (challenging lieutenant governor’s right to preside over the senate as a violation of the separation of powers); *Sweeney v. Otter*, 804 P.2d 308 (Idaho 1990) (challenging lieutenant governor as president of the senate’s right to vote as a violation of the separation of powers); *Rouse v. Johnson*, 28 S.W.2d 745 (Ky. 1930) (arguing lieutenant governor was a member of the legislature by holding office as president of the general assembly and thus could not hold executive duties); *Op. of the Justices*, 225 A.2d 481 (Del. 1966).

<sup>14</sup> Other states do look to sister states on “separation of powers” issues. *See State ex rel. Wallace v. Bone*, 286 S.E.2d 79 (N.C. 1982); *State ex rel. State Bldg. Comm’n v. Bailey*, 150 S.E.2d 449 (W. Va. 1966); *Greer v. State*, 212 S.E.2d 836 (Ga. 1975); *Book v. State Office Bldg. Comm’n*, 149 N.E.2d 273 (Ind. 1958); *Marine Forests Soc’y v. Cal. Coastal Comm’n*, 113 P.3d 1062 (Cal. 2005); *Fox v. McDonald*, 13 So. 416 (Ala. 1893); *Rouse v. Johnson*, 28 S.W.2d 745 (Ky. 1930).

<sup>15</sup> Forty states have a separation of powers clause, and ten have an implied separation of powers clause. *See supra* notes 6-7.

<sup>16</sup> This could be a very fruitful topic in the future. However, an accurate analysis and application for each state in relation to constitutional interpretation and jurisprudence would be unwieldy and beyond the goal of this paper.

<sup>17</sup> This would be contrary to the fact that each state has a unique constitution, jurisprudence, and practical needs. Robert F. Williams makes a similar argument in *THE LAW OF AMERICAN STATE CONSTITUTIONS* 238 (2009).

## I. THE LIEUTENANT GOVERNOR

A. *A Survey of States with Lieutenant Governors*

## 1. States Where Lieutenant Governor Serves as President of the Senate

Forty-three states have a lieutenant governor.<sup>18</sup> All forty-three state constitutions list the lieutenant governor as a member of the executive branch of government.<sup>19</sup> Twenty-four state lieutenant governors also function as the president of the state senate.<sup>20</sup> Thirteen states have removed the lieutenant governor as the president of the senate.<sup>21</sup>

The president of the senate is the presiding officer of the upper house of the legislature. While the duties of the president of the senate vary by state, the president of the senate generally refers new bills to the appropriate committee. In some states the president of the senate fills the vacancy created by the lieutenant governor's succession to governor, such as in Minnesota.<sup>22</sup> While

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<sup>18</sup> The number could technically be higher. However, the other seven states will most likely not be included in this discussion, or at least at this point in time. Some surveys count this number at forty-five states, including Tennessee (TENN. CODE ANN. § 8-2-102 (2002)) and West Virginia (W. VA. CODE ANN. § 6A-1-4 (LexisNexis 2010)), who both have a lieutenant governor position, but it is essentially a ceremonial title for the president of the state senate, and the president of the senate is not part of the executive branch in both of these states. The five states that do not have the position of lieutenant governor include: Arizona (secretary of state); Oregon (secretary of state); Wyoming (secretary of state); Maine (president of the senate); and New Hampshire (president of the senate). However, in the three states that employ the secretary of state (as next in line for succession), that position is analogous to that of the lieutenant governor.

<sup>19</sup> See *infra* Appendix B. This is not completely indicative of the fact that the lieutenant governor is solely an executive official. However, the primary responsibility of a lieutenant governor is to ensure the continuity of the executive branch leadership.

<sup>20</sup> See *infra* Appendix B.

<sup>21</sup> This erosion has been gradual over the last forty years. These states include Colorado, Florida, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Montana, Ohio, Rhode Island, South Carolina, and Wisconsin. Rhode Island removed their lieutenant governor when it passed a constitutional amendment. See R.I. CONST. art. VIII, § 2. In South Carolina, the lieutenant governor will function as president of the senate until 2018. See 2014 S.C. Acts 214; S.C. CONST. art. III, § 37.

<sup>22</sup> MINN. CONST. art. V, § 5.

in other states, the governor fills the lieutenant governor's office by appointment, like in Louisiana.<sup>23</sup>

## 2. States that Removed Lieutenant Governor as President of the Senate

States have removed a lieutenant governor as president of the senate for several reasons. The most prevalent impetus for removal occurred when the legislature proposed that governor and lieutenant governor run on a single-party tied-ticket during elections. In Illinois, during the Sixth Constitutional Convention the delegates amended the state constitution, removing the lieutenant governor as president of the senate.<sup>24</sup> Their justification was based on the separation of powers between the legislature and the executive:

The existing Constitution contains references to the functions of the Lieutenant Governor only as an understudy chief executive and as President of the State Senate. We propose that the Senate be permitted to choose its own presiding officer, as has long been the practice with regard to the House of Representatives. Continued chairing of the upper house by an outsider who is now to be selected as a teammate of the Governor is inconsistent with the theory of a functional *separation of powers*.<sup>25</sup>

Similarly, Colorado removed their lieutenant governor as president of the senate when the governor and lieutenant governor began running as a team during elections.<sup>26</sup> More recently in 2014, the South Carolina legislature ratified a constitutional amendment, removing the lieutenant governor as president of the senate.<sup>27</sup> The proposed amendment was submitted to the voters in the 2012 general election. The proposed

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<sup>23</sup> LA. CONST. art. IV, § 15.

<sup>24</sup> 6 RECORD OF PROCEEDINGS: SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 379 (1972).

<sup>25</sup> *Id.* (emphasis added).

<sup>26</sup> George A. Bell, *State Administrative Organization Activities, 1974-1975*, in THE BOOK OF THE STATES, 1976-1977, at 105, 109 (1976), available at [http://knowledgecenter.csg.org/kc/system/files/bos\\_1976\\_3.pdf](http://knowledgecenter.csg.org/kc/system/files/bos_1976_3.pdf).

<sup>27</sup> See 2014 S.C. Acts 214.

amendment passed and will go into effect in 2018.<sup>28</sup> The removal of the lieutenant governor as president of the senate coincided with the decision to have the governor and lieutenant governor run on the same ticket. The rationale was that the “hand-picked lieutenant governor should not be making decisions in the legislature.”<sup>29</sup> However, elections are not the only reason for amending the duties of the lieutenant governor. In Kansas, the office of president of the senate was, prior to a 1972 amendment, largely abandoned by the lieutenant governor with the President Pro Tempore of the state senate unofficially filling the role.<sup>30</sup>

### 3. States Where Lieutenant Governor Never Served as President of the Senate

In six states, the lieutenant governor did not serve as president of the senate.<sup>31</sup> Alaska, Hawaii, and Utah restyled the office of the secretary of state as lieutenant governor.<sup>32</sup> For example, in Alaska, “[t]he position [of lieutenant governor] did not exist prior to statehood of Alaska, though the territorial-era Secretary of Alaska was somewhat analogous. Prior to August 25, 1970, the position was referred to as secretary of state, but was functionally identical.”<sup>33</sup>

#### *B. The Role of Lieutenant Governor*

The lieutenant governor’s duties vary widely among the states. In Indiana, the lieutenant governor oversees a billion dollar agency budget, while in Florida, the lieutenant governor’s

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<sup>28</sup> Tom Hayes, *Voters Decide Gov. and Lt. Gov. on Same Ticket Starting in 2018*, S.C. RADIO NETWORK (Nov. 7, 2012), <http://www.southcarolinaradionetwork.com/2012/11/07/election-2012-gov-and-lt-gov-will-now-be-on-same-ticket/>.

<sup>29</sup> Personal correspondence with a South Carolina state senator.

<sup>30</sup> FRANCIS H. HELLER, *THE KANSAS STATE CONSTITUTION: A REFERENCE GUIDE* 68 (1992).

<sup>31</sup> These states include: Alaska, Hawaii, Maryland, Massachusetts (the lieutenant governor never served in such a capacity, possibly due to the British colonial government or the heavy influence of John Adams), New Jersey (created in 2005 to combat gubernatorial succession issues), and Utah (created in 1974 to replace the office of secretary of state).

<sup>32</sup> See *supra* note 31.

<sup>33</sup> *Lieutenant Governor of Alaska*, BALLOTPEDIA, [http://ballotpedia.org/Lieutenant\\_Governor\\_of\\_Alaska](http://ballotpedia.org/Lieutenant_Governor_of_Alaska) (last visited Aug. 3, 2015).

only official task is to be ready to take over if the governor cannot serve.<sup>34</sup> Some lieutenant governors spend the majority of their time with the legislature, while others work exclusively with the executive branch. The lieutenant governor serves three main roles: succeed the governor in case of vacancy, president of the senate, and any duties delegated to lieutenant governor by the governor or the legislature.

### 1. Gubernatorial Succession

In all forty-three states with a lieutenant governor, he or she is the first in line to succeed the governor.<sup>35</sup> “Gubernatorial succession begins when the office is vacated prior to completion of a person’s official term . . . as a result of death, resignation, incapacitation, impeachment or recall.”<sup>36</sup> There were twenty gubernatorial successions from 2000 to 2010.<sup>37</sup> After repeated vacancies in the New Jersey governor’s office, New Jersey reinstated the position of lieutenant governor in 2005 because the president of the senate had to keep stepping in to be governor.<sup>38</sup>

States vary on when the lieutenant governor succeeds and what powers the lieutenant governor has upon succession. Succession does not simply stand for the proposition that the lieutenant governor sits idly by awaiting the governor’s return.<sup>39</sup> Some states, like California, authorize the lieutenant governor to assume the full powers of the governor’s office when the governor

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<sup>34</sup> In Florida, former lieutenant governor Jeff Kottkamp had no official duties and allegedly spent most of his time traveling at the state’s expense. Mike Deeson, *Florida Constitution: Lt. Governor Has Almost No Duties*, WTSP (Feb. 4, 2011, 2:37 PM), <http://origin.wtsp.com/news/article/172756/0/Florida-Constitution-Lt-Governor-has-almost-no-duties>.

<sup>35</sup> Julia Hurst, *The Office of Lieutenant Governor: A Bedrock Principle*, in THE BOOK OF THE STATES, 2012, at 243, 243 (2012) [hereinafter Hurst, *Bedrock Principle*], available at [http://knowledgecenter.csg.org/kc/system/files/julia\\_hurst\\_2012.pdf](http://knowledgecenter.csg.org/kc/system/files/julia_hurst_2012.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> Julia Hurst, *Office of Lieutenant Governor: Unheralded but Critical Leadership*, in THE BOOK OF THE STATES, 2010, at 225, 228 (2010) [hereinafter Hurst, *Critical Leadership*], available at <http://knowledgecenter.csg.org/kc/system/files/Hurst.pdf>.

<sup>38</sup> N.J. CONST. art. V, § I, para. 6.

<sup>39</sup> In California, “more than 1,400 gubernatorial actions [were] taken in the last 16 years by Lieutenant Governors or other acting governors during the Governor’s absence.” *In re Comm’n on the Governorship of Cal.*, 603 P.2d 1357, 1364 (Cal. 1979).

is physically “absent” from the state.<sup>40</sup> The definition of “absence” created a problem for the governor of California when, in 1979, the lieutenant governor appointed a judge to a vacant seat on the California Court of Appeals while the governor was out of the state.<sup>41</sup> The Supreme Court of California held that the appointment was valid,<sup>42</sup> but the governor could withdraw the appointment upon returning to the state because the appointment was never confirmed by the Commission on Judicial Appointments.<sup>43</sup> Thus, while some states construe this “absence” language literally to mean that the governor surrenders his powers immediately upon leaving the state, others apply it on a “functional” basis.<sup>44</sup> In Alabama, for instance, the lieutenant governor cannot assume the office of the governor until the governor has been “absent from the state over twenty days.”<sup>45</sup>

## 2. Executive Duties

Unlike succession provisions, the constitutional provisions listing the lieutenant governor’s duties within the executive branch can be incredibly vague. A typical example of such provision reads: “There shall be a lieutenant governor, who shall perform such duties pertaining to the office of governor as shall be assigned by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law.”<sup>46</sup> The provision’s vagueness gives the office of the lieutenant governor the benefit of flexibility, allowing a lieutenant governor to serve where needed within the executive branch. However, these non-descript provisions also create the potential for separation of powers violations in states where the lieutenant governor functions within the state legislature, as president of the senate, or where the legislature unlawfully empowers the lieutenant governor’s executive duties at the expense of the governor.

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<sup>40</sup> CAL. CONST. art. V, § 10.

<sup>41</sup> *In re Comm’n*, 603 P.2d at 1359.

<sup>42</sup> *Id.* at 1364.

<sup>43</sup> *Id.* at 1364-66.

<sup>44</sup> See Calvin Bellamy, *Presidential Disability: The Twenty-Fifth Amendment Still an Untried Tool*, 9 B.U. PUB. INT. L.J. 373, 382-86 (2000).

<sup>45</sup> ALA. CONST. art. V, § 127.

<sup>46</sup> FLA. CONST. art. IV, § 2.

Essentially, “[i]f the lieutenant governor is to have a major [executive-branch] role, it is essential that he be an arm of, and not an obstacle to, the governor.”<sup>47</sup> In addition to constitutional provisions, a lieutenant governor’s duties are derived from two other sources: statutes and delegations by the governor.

#### *a. Political Parties and Elections*

Typically, in states where the governor and the lieutenant governor run on a single-party tied-ticket, the lieutenant governor’s executive duties are more extensive. New York was the first to institute a single-party tied-ticket election of the governor and lieutenant governor in 1953.<sup>48</sup> From 1965 to 1984, governor-lieutenant governor team elections rose from seven to twenty-two.<sup>49</sup> Now, twenty-five lieutenant governors run on a single-party tied-ticket with the governor.<sup>50</sup> Eighteen lieutenant governors run on a split-ticket with or separately from the governor.<sup>51</sup>

#### *b. Advisory Boards*

The lieutenant governor functions as part of an advisory board to the governor in Maryland, Massachusetts, Minnesota,

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<sup>47</sup> Steve Adams & Richard Bostic, *The Lieutenant Governor—A Legislative or Executive Office?*, N.C. INSIGHT, Nov. 1982, at 2, 7 (internal quotation marks omitted).

<sup>48</sup> THE ENCYCLOPEDIA OF NEW YORK STATE 898 (Peter Eisenstadt & Laura-Eve Moss eds., 2005).

<sup>49</sup> Thad L. Beyle, *The Executive Branch: Elective Officials and Organization*, in THE BOOK OF THE STATES, 1984-1985, at 44, 44 (1984), available at [http://knowledgecenter.csg.org/kc/system/files/bos\\_1984\\_2.pdf](http://knowledgecenter.csg.org/kc/system/files/bos_1984_2.pdf).

<sup>50</sup> See ALASKA CONST. art. III, § 8; COLO. CONST. art. IV, § 3; CONN. CONST. art. IV, § 3; FLA. CONST. art. IV, § 5(a); HAW. CONST. art. V, § 2; ILL. CONST. art. V, § 4; IND. CONST. art. 5, § 4; IOWA CONST. art. IV, § 3; KAN. CONST. art. 1, § 1; KY. CONST. § 70; MD. CONST. art. II, § 1B; MICH. CONST. art. V, § 21; MINN. CONST. art. V, § 1; MONT. CONST. art. VI, § 2; NEB. CONST. art. IV, § 1; N.J. CONST. art. V, § I, para. 4; N.M. CONST. art. V, § 1; N.Y. CONST. art. IV, § 1; N.D. CONST. art. V, § 3; OHIO CONST. art. III, § 1a; PA. CONST. art. IV, § 4; S.C. CONST. art. IV, § 8; S.D. CONST. art. IV, § 2; UTAH CONST. art. VII, § 2(2); WIS. CONST. art. V, § 3. As discussed *supra* notes 21 and 27, South Carolina has amended its constitutional provisions regarding the lieutenant governor. South Carolina will hold a joint election for governor and lieutenant governor beginning in 2018 and thus will be included in this category in order to update Jamin Soderstrom’s numbers *infra* note 51.

<sup>51</sup> Jamin Soderstrom, Comment, *Back to the Basics: Looking Again to State Constitutions for Guidance on Forming a More Perfect Vice Presidency*, 35 PEPP. L. REV. 967, 1012-17 (2008).

North Carolina, and Ohio.<sup>52</sup> In North Carolina, a new state constitution in 1971 “made the lieutenant governor a member of the Council of State,” which is analogous to the United States President’s cabinet members.<sup>53</sup>

*c. Executive Boards and Departments*

Lieutenant governors serve on a variety of state boards, agencies, and departments. In 2009, the lieutenant governor was formally made a member of the North Carolina Board of Education.<sup>54</sup> The North Carolina Board of Education supervises the public school system, administers the budget,<sup>55</sup> and sets the curriculum<sup>56</sup> and teacher salary.<sup>57</sup> In Delaware and Pennsylvania, the lieutenant governor functions as the head of the state pardoning board.<sup>58</sup> The Pennsylvania governor cannot grant a pardon or commute a sentence without a recommendation by a majority of Board of Pardons members.<sup>59</sup>

The lieutenant governor can also function as the head of the state department. In Florida and New Jersey, the governor can appoint the lieutenant governor as head of any state department.<sup>60</sup> In Indiana, the lieutenant governor “manages five state agencies [and] administer[s] nearly \$1 billion in programs.”<sup>61</sup>

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<sup>52</sup> MD. CODE ANN., STATE GOV’T § 8-103 (LexisNexis 2009); MASS. CONST. pt. 2, ch. II, § II, art. II; MINN. STAT. § 9.011 (2014); N.C. CONST. art. III, § 8; OHIO REV. CODE ANN. § 108.05 (LexisNexis 2007).

<sup>53</sup> Adams & Bostic, *supra* note 47, at 3 (“The Council of State controls contingency and emergency funds, coordinates state data services, serves as an advisory council to the governor, and controls the sale, purchase, and improvement of state land and buildings.”); Conner v. N.C. Council of State, 716 S.E.2d 836, 842 (N.C. 2011) (“Whereas each administrative department focuses on a discrete area of expertise, the Council of State advises the Governor and approves certain actions taken by other agencies.”) (citations omitted).

<sup>54</sup> N.C. GEN. STAT. § 115C-10 (2015). “From 1943-54, the lieutenant governor had been the state official who chaired the State Board—but then only by tradition, not by state law.” Adams & Bostic, *supra* note 47, at 2.

<sup>55</sup> N.C. CONST. art. IX, § 5.

<sup>56</sup> N.C. GEN. STAT. § 115C-81 (2015).

<sup>57</sup> N.C. GEN. STAT. § 115C-302.1 (2015).

<sup>58</sup> DEL. CONST. art. VII, § 2; PA. CONST. art. IV, § 9.

<sup>59</sup> PA. CONST. art. IV, § 9. The Pennsylvania Board of Pardons consists of five members: the lieutenant governor, attorney general, and three members appointed by the governor—a crime victim, a corrections officer, and a doctor of medicine. *Id.*

<sup>60</sup> *See, e.g.*, FLA. CONST. art. IV, § 6.

<sup>61</sup> Hurst, *Bedrock Principle*, *supra* note 35, at 245.

The lieutenant governor of Indiana also has the power to appoint the director for the Indiana Office of Defense Development.<sup>62</sup> In California, the lieutenant governor serves as the chairman of the Commission for Economic Development, which advises the legislature and the executive on economic issues.<sup>63</sup> Thus, while the lieutenant governor is often overshadowed by the governor, lieutenant governors can and do exercise real power within the state government.

#### *d. Gubernatorial Delegation and Personal Initiative*

In addition, lieutenant governors can be charged by the governor with “tackling” a specific issue. For instance, in Kansas, the governor appointed lieutenant governor Jeff Coyler to lead the state’s efforts in reforming Medicaid.<sup>64</sup> In Minnesota, “the Lt. Governor visited China on a trade mission and Germany twice on health care and energy policy exchange trips.”<sup>65</sup> In Kentucky, the lieutenant governor is leading the “Governor’s Blue Ribbon Commission on Tax Reform.”<sup>66</sup> These ad hoc initiatives permit the lieutenant governor to tackle state specific issues like education and economic growth.

### 3. Legislative Duties

Twenty-four states have a lieutenant governor who functions as the president of the state senate. The lieutenant governor serves a variety of legislative roles, such as casting the tie-breaking vote on legislation, and possesses the powers to appoint committee members, debate legislation, and determine which bills the upper chamber of the state legislature will consider. The lieutenant governor’s legislative capacity as president of the senate comes from three sources: (1) those provided for by the

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<sup>62</sup> IND. CODE § 4-4-34-5 (2015). The Office of Defense Development’s goal is to attract defense sector business to Indiana. *Indiana Office of Defense Development*, IN.GOV, <http://www.indianaofficeofdefensedevlopment.com/> (last visited Aug. 3, 2015).

<sup>63</sup> CAL. GOV’T CODE § 14999.1 (West 2015).

<sup>64</sup> KANCARE, EXECUTIVE SUMMARY, KANCARE: REINVENTING MEDICAID FOR KANSAS (2011), available at [http://www.kancare.ks.gov/medicaid\\_reform.htm](http://www.kancare.ks.gov/medicaid_reform.htm).

<sup>65</sup> *Lt. Gov. Prettner Solon in Action*, MINNESOTA.GOV, <http://mn.gov/governor/dayton/Lt-governor/lgtgovinaction.jsp> (last visited Feb. 10, 2015).

<sup>66</sup> *Lieutenant Governor Jerry Abramson*, KENTUCKY.GOV, <http://lgtgovernor.ky.gov/about/Pages/default.aspx> (last visited Oct. 24, 2014).

state constitution; (2) by statute; and (3) those delegated to it by the legislature under its rule-making provision in the state constitution.<sup>67</sup>

*a. Political Parties and Elections*

Statistically, the lieutenant governor has greater legislative powers when governors and lieutenant governors are from different political parties or run on a split-ticket. Fifteen out of twenty-four states have a lieutenant governor who functions as president of the senate when the state has “untied” elections for governor and lieutenant governor.<sup>68</sup> In those fifteen states with split-ticket election, the lieutenant governor, rather than serving as a check on the senate by presiding over it, serves as a check on the executive, which is contrary to the constitutional intent of the lieutenant governor’s office. However, in the other nine states with tied-ticket election, the lieutenant governor can serve as an extension of the executive branch directly into the legislature, voting on legislation favored by the governor.<sup>69</sup>

*b. The Tie-Breaking Vote*

The most common power among the presidents of the senate is to cast the tie-breaking vote on legislation. In twenty-three of twenty-four states, the president of the senate can cast the tie-breaking vote on legislation.<sup>70</sup> Only in Georgia does president of

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<sup>67</sup> See *infra* Part I.B.3.b-e. A prime example is the Texas lieutenant governor. See *infra* Appendix B.

<sup>68</sup> In an untied election, the governor and lieutenant governor are elected separately and can be from a different political party. These fifteen states include AL, AR, CA, DE, GA, ID, MS, MO, NV, NC, OK, TX, VA, VT, and WA. See ALA. CONST. art. V, § 114; ARK. CONST. amend. 6, § 3; CAL. CONST. art. V, § 11; DEL. CONST. art. III, § 19; GA. CONST. art. V, § I, para. III; IDAHO CONST. art. IV, § 2; MISS. CONST. art. 5, § 128; MO. CONST. art. IV, § 17; NEV. CONST. art. 5, § 17; N.C. CONST. art. III, § 2(1); OKLA. CONST. art. VI, § 4; TEX. CONST. art. IV, § 16(a); VA. CONST. art. V, § 13; VT. CONST. ch. II, § 47; WASH. CONST. art. III, § 1.

<sup>69</sup> These states include Connecticut, Indiana, Michigan, Nebraska, New Mexico, New York, North Dakota, Pennsylvania, and South Dakota. See *infra* Appendix B.

<sup>70</sup> ALA. CONST. art. V, § 117; ARK. CONST. amend. 6, § 5; CAL. CONST. art. V, § 9; CONN. CONST. art. IV, § 17; DEL. CONST. art. III, § 19; IDAHO CONST. art. IV, § 13; IND. CONST. art. 5, § 21; MICH. CONST. art. V, § 25; MISS. CONST. art. 5, § 129; MO. CONST. art. IV, § 10; NEB. CONST. art. III, § 10; NEV. CONST. art. 5, § 17; N.M. CONST. art. V, § 8; N.Y. CONST. art. IV, § 6; N.C. CONST. art. III, § 6; N.D. CONST. art. V, § 12; OKLA.

the senate not have the right to vote in the case of a tie; the President Pro Tempore has that right instead.<sup>71</sup> In states with a bicameral legislature, the President Pro Tempore of the senate is generally the second-highest ranking officer, who is elected by a majority of senate members. The President Pro Tempore succeeds to the office of the president of the senate in the event of the president of the senate's temporary disability, permanent disability, succession to the office of lieutenant governor, resignation, or death.<sup>72</sup>

The power of the tie-breaking vote should not be underestimated. "Just past the midway point in the 2012 General Assembly session, Virginia Lt. Gov. Bill Bolling had cast 10 tiebreaking votes on issues ranging from voting to eminent domain to drug screening some welfare recipients."<sup>73</sup> In 2005, the North Carolina lieutenant governor's "tie-breaking vote created a North Carolina state lottery."<sup>74</sup> In Nebraska, the lieutenant governor exercised his right to a tie-breaking vote in the unicameral legislature and then signed the bill into law while the governor was out of the state.<sup>75</sup> In response, some states limit when the lieutenant governor can cast a tie-breaking vote. In Pennsylvania, the lieutenant governor is prohibited from casting the tie-breaking vote on the final passage of a bill or joint resolution.<sup>76</sup> In Washington and Kansas, for example, the final passage of a bill requires a majority of "members of the senate"; hence, the vote doesn't include the president of the senate.<sup>77</sup>

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CONST. art. VI, § 15; PA. CONST. art. IV, § 4; S.D. CONST. art. IV, § 5; TEX. CONST. art. IV, § 16; VT. CONST. ch. II, § 19; VA. CONST. art. V, § 14; WASH. CONST. art. II, § 10.

<sup>71</sup> GA. SEN. R. 1-1.3, available at <http://www.senate.ga.gov/sos/Documents/senaterules2013.pdf>.

<sup>72</sup> GA. CONST. art. III, § III, para. I.

<sup>73</sup> Hurst, *Bedrock Principle*, supra note 35, at 244.

<sup>74</sup> Hurst, *Critical Leadership*, supra note 37, at 228.

<sup>75</sup> Thad L. Beyle, *The Governors and the Executive Branch, 1980-81*, in THE BOOK OF THE STATES, 1982-1983, at 141, 142-43 (1982), available at [http://knowledgecenter.cs.g.org/kc/system/files/bos\\_1982\\_3.pdf](http://knowledgecenter.cs.g.org/kc/system/files/bos_1982_3.pdf).

<sup>76</sup> "[H]e may vote in case of a tie on any question except the final passage of a bill or joint resolution, the adoption of a conference report or the concurrence in amendments made by the House of Representatives." PA. CONST. art. IV, § 4.

<sup>77</sup> WASH. CONST. art. II, § 22; WASH. SEN. R. 1.9, available at [http://leg.wa.gov/Senate/Administration/Pages/senate\\_rules.aspx](http://leg.wa.gov/Senate/Administration/Pages/senate_rules.aspx); KAN. CONST. art. 2, § 13.

*c. Appointment Powers*

The president of the senate has to the power to appoint state senate committee members in five states: Alabama, Georgia, Mississippi, Texas, and Washington. “[A]s any freshman political science student knows, the power to appoint committees and control referral of bills to and among the various committees are powers of great practical effect in the Senate.”<sup>78</sup> In Texas, the president of the senate appoints the chairman, vice-chairman, and members of the committees.<sup>79</sup> In Mississippi, the president of the senate appoints members of standing and special senate committees.<sup>80</sup> In Georgia, the lieutenant governor as president of the senate was stripped of the sole power to appoint senate committees in 2003.<sup>81</sup> Under the 2013 senate rules, the lieutenant governor chairs the Committee on Assignments, which appoints all members of a standing committee, and is composed of him and four other people.<sup>82</sup> In Alabama, the lieutenant governor is a member of the Senate Committee on Assignments, which “appoint[s] the Chairperson, Vice Chairperson, and membership of all Senate Standing Committees and Select Committees.”<sup>83</sup> In Washington, the power was statutorily conferred on the president

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<sup>78</sup> *Dye v. State ex rel. Hale*, 507 So. 2d 332, 345 (Miss. 1987).

<sup>79</sup> TEX. SEN. R. 11.04, available at <http://www.senate.state.tx.us/Rules/Rules.htm>. “The President shall designate the chair and vice-chair of each standing committee and of each standing subcommittee appointed by the President.” *Id.*; see also TEX. SEN. R. 11.01 (“All committees and standing subcommittees shall be appointed by the President of the Senate, unless otherwise directed by the Senate.”).

<sup>80</sup> MISS. SEN. R. 37, available at [http://billstatus.ls.state.ms.us/htmls/s\\_rules.pdf](http://billstatus.ls.state.ms.us/htmls/s_rules.pdf). “Standing, select and conference committees shall be appointed by the President.” *Id.*

<sup>81</sup> See Melvin B. Hill Jr. & LaVerne Williamson Hill, *Georgia: Tectonic Plates Shifting*, in THE CONSTITUTIONALISM OF AMERICAN STATES 287, 288 (George E. Connor & Christopher W. Hammons eds., 2008); Scott E. Buchanan, *Lieutenant Governor*, NEW GA. ENCYCLOPEDIA (June 5, 2014), <http://www.georgiaencyclopedia.org/articles/government-politics/lieutenant-governor>.

<sup>82</sup> GA. SEN. R. 2-1.1, available at <http://www.senate.ga.gov/sos/Documents/senaterules2013.pdf>. However, the lieutenant governor has the power to appoint two of those four members. *Id.*

<sup>83</sup> ALA. SEN. R. 47(b), available at [http://www.legislature.state.al.us/aliswww/ALSenRules\\_Presiding.aspx](http://www.legislature.state.al.us/aliswww/ALSenRules_Presiding.aspx). The Alabama lieutenant governor is one member of the six members on the committee. *Id.*

of the senate, as well as under the 2013 Washington Senate Rules.<sup>84</sup>

*d. Senate Bill Referral*

The president of the senate refers bills to the proper committee in three states: Texas, Alabama, and Mississippi.<sup>85</sup> However, this provision is not meant to give the lieutenant governor power over whether or not the bill is actually referred to a committee.<sup>86</sup> The lieutenant governor also has the right to debate in the senate in Connecticut, Mississippi, Indiana, Texas, and Missouri.<sup>87</sup> This presence on the senate floor can have a significant impact on the legislation.

*e. Committee Membership*

Lastly, the lieutenant governor can also be a member of a legislative branch board or committee. In Texas, the lieutenant governor is the chair of the Legislative Budget Board. The Texas Legislative Budget Board proposes a budget at the start of every session and analyzes the efficiency of state programs.<sup>88</sup> In Mississippi, the lieutenant governor is also the chairman of the

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<sup>84</sup> WASH. REV. CODE § 43.15.020 (2015); WASH. SEN. R. 1.6, *available at* [http://www.leg.wa.gov/Senate/Administration/Pages/senate\\_rules.aspx](http://www.leg.wa.gov/Senate/Administration/Pages/senate_rules.aspx).

<sup>85</sup> TEX. SEN. R. 7.06, *available at* <http://www.senate.state.tx.us/Rules/Rules.htm>; ALA. SEN. R. 36, *available at* [http://www.legislature.state.al.us/aliswww/ALSenRules\\_General.aspx](http://www.legislature.state.al.us/aliswww/ALSenRules_General.aspx); MISS. SEN. R. 75, *available at* [http://billstatus.ls.state.ms.us/htmls/s\\_rules.pdf](http://billstatus.ls.state.ms.us/htmls/s_rules.pdf).

<sup>86</sup> *See* TEX. SEN. R. 7.06 editorial notes.

This rule clearly forbids tabling a bill that has not been reported from a committee. The practice of tabling a bill not properly before the Senate for consideration is not in accordance with good parliamentary practice, since the practice deprives the sponsors of a fair opportunity of protecting the life of the bill.

Lieutenant Governor Barry Miller declined to refer a bill that had been presented for introduction at a called session, holding that it was not covered by the call of the Governor (41 S.J. 5 C.S. 9, 14 (1930)). (See also Appendix under heading Jurisdiction—Special Sessions.)

*Id.*

<sup>87</sup> CONN. CONST. art. IV, § 17; MISS. CONST. art. 5, § 129; IND. CONST. art. 5, § 21; TEX. CONST. art. IV, § 16; MO. CONST. art. IV, § 10.

<sup>88</sup> TEX. GOV'T CODE ANN. §§ 322.001, 322.011 (West 2005).

Joint Legislative Budget Committee.<sup>89</sup> In Alabama, the lieutenant governor is a member of the Joint Legislative Committee on Finances and Budgets.<sup>90</sup>

## II. CHALLENGES TO THE LIEUTENANT GOVERNOR'S DUTIES

A separation of powers clause issue arises in situations where the legislature grants additional executive authority to the lieutenant governor, who is also the president of the senate. Where does the appointment power lie—in the executive or the legislature? This issue turns on whether the governor is explicitly vested with the appointment power or the legislature is expressly forbidden from making appointments. In states without either constitutional provision, the state should look to the separation of powers clause for guidance. In addition, policy concerns such as the strength of the governor's office are to be considered. Challenges to the expansion of lieutenant governor's executive power often occur in two instances: (1) creating an administrative agency or commission, where the lieutenant governor has the power to appoint members, or (2) creating an administrative agency, where the lieutenant governor is a permanent member. If the lieutenant governor is not exercising executive function until he becomes governor, but he functions in the legislature, then the legislature cannot confer executive duties on the lieutenant governor under the separation of powers.

### *A. Rouse v. Johnson – The Expansion of the Lieutenant Governor's Executive Powers by the Legislature Held Constitutional*

In *Rouse v. Johnson*, the Kentucky Supreme Court addressed whether the legislature unconstitutionally conferred executive "appointment" powers upon the lieutenant governor.<sup>91</sup> In 1930, the Kentucky general assembly passed an act creating the State

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<sup>89</sup> MISS. CODE ANN. § 27-103-101 (2010). The chairmanship alternates with the Mississippi speaker of the house of representatives. *Id.*

<sup>90</sup> ALA. CODE § 29-2-81 (2015).

<sup>91</sup> *Rouse v. Johnson*, 28 S.W.2d 745, 747 (1930) (holding the Kentucky lieutenant governor is primarily an executive not legislative office; therefore, Kentucky legislature could confer executive duties on lieutenant governor).

Highway Commission of Kentucky.<sup>92</sup> Under the act, the power to appoint members to the commission was taken away from the governor and given to the “Appointing Board.” The Board consisted of the governor, lieutenant governor, and attorney general.<sup>93</sup>

The governor argued that the act was unconstitutional because the lieutenant governor’s office was “primarily and essentially” a part of the legislature, as president of the senate.<sup>94</sup> Thus, the lieutenant governor could not “be vested by the Legislature with the executive authority to appoint” members of the Kentucky Highway Commission because it violated Kentucky’s separation of powers clause.<sup>95</sup> The court disagreed, concluding that the lieutenant governor was an executive official, and thus an executive official appointing members to an executive agency did not violate the separation of powers clause.<sup>96</sup>

The court’s reasoning relied primarily on the text of the Kentucky constitution and the “conditional” nature of the lieutenant governor’s duties. From the text of the constitution, the court found that the lieutenant governor was a member of the executive branch for three reasons. First, during the Kentucky constitutional convention, the office of the lieutenant governor “was referred to the *executive* committee.”<sup>97</sup> In addition, that same executive committee presented Section 83 of the constitution, conferring upon the lieutenant governor the office of president of the senate and the tie-breaking vote.<sup>98</sup> Second, the Kentucky constitution did not list the president of the senate as an explicit member of the general assembly.<sup>99</sup> Third, the constitution contained an exception to the separation of powers clause, stating “[e]xcept in the instances hereinafter expressly directed or

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<sup>92</sup> *Id.* at 746.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 747.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 750-51.

<sup>97</sup> *Id.* at 748.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

permitted.”<sup>100</sup> Thus, the legislature could confer executive or legislative power, unless prohibited by the constitution.<sup>101</sup>

Concerning the duties of the lieutenant governor, the court found that the lieutenant governor’s executive powers were conditional in the same manner as the lieutenant governor’s right to vote. Thus, the possibility that he may exercise neither did not preclude his executive status.<sup>102</sup> The court reasoned that if the constitutional convention had hypothetically created an office of president of the senate with the same legislative duties, but the constitution conferred on the president of the senate “that ‘by virtue of this office’ he should discharge the duties of Governor when the latter died,” then he would still be a member of the executive.<sup>103</sup> However, the court acknowledged that the senate rules’ vesting of the lieutenant governor with the power to appoint committees granted the lieutenant governor an “influence on legislation.”<sup>104</sup>

#### 1. The West Virginia Challenge to the *Rouse* Majority Opinion

In *State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, the West Virginia Supreme Court addressed the *Rouse* opinion’s *reductio ad absurdum* argument in the negative.<sup>105</sup> West Virginia statutorily conferred upon the president of the senate the title of lieutenant governor, but whose only executive function was first in line for succession to the governorship.<sup>106</sup> In *West Virginia Citizens Action Group*, a newly enacted statute authorized the president of the senate to submit a list of five names, and the governor could

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<sup>100</sup> *Id.* at 747.

<sup>101</sup> *Id.* at 750.

<sup>102</sup> *Id.* at 748-49.

<sup>103</sup> *Id.* at 748.

<sup>104</sup> *Id.* at 750.

<sup>105</sup> *State ex rel. W. Va. Citizens Action Grp. v. W. Va. Econ. Dev. Grant Comm.*, 580 S.E.2d 869, 894 (W. Va. 2003) (holding statute directing the president of the senate to submit a list of prospective candidates to the governor for appointment to an executive committee as unconstitutional under the separation of powers clause).

<sup>106</sup> W. VA. CODE ANN. § 6A-1-4 (LexisNexis 2010). “[T]he President of the Senate is functioning similarly to a Lieutenant Governor. Therefore, the Legislature determines that the president of the Senate shall be additionally designated the title of ‘Lieutenant Governor’ in acknowledgment of the President’s responsibility as first successor to the Governor.” *Id.*

appoint three persons from the list to the West Virginia Economic Development Grant Committee.<sup>107</sup> Challenging the statute as unconstitutional, the West Virginia Citizens Action Group argued that the statute violated the separation of powers clause and “usurp[ed] the governor’s appointment power.”<sup>108</sup> The West Virginia Supreme Court held that the statute was unconstitutional as a violation of the separation of powers.<sup>109</sup> In effect, “the Legislature cannot ‘pick the jury pool’ from whom the Governor selects appointees—this violates elementary principles of the separation of powers.”<sup>110</sup>

## 2. The *Rouse* Dissent

The *Rouse* dissent found that the lieutenant governor was certainly a part of the legislative branch.<sup>111</sup> Addressing the majority’s constitutional construction argument, Justice Willis argued that the placement of the lieutenant governor within the executive was meant to provide for a contingent successor of the governor within a workable organizational framework and was not indicative that the lieutenant governor was solely a member of the executive.<sup>112</sup> In addition, while the president of the senate was not a listed member of the senate, the lieutenant governor exercised all the rights of a senator, constituting a violation of the separation of powers clause.<sup>113</sup>

Next, Justice Willis argued that a public official’s “present” and “potential” duties determine the nature of the office.<sup>114</sup> The lieutenant governor’s “present” duties were solely legislative, and included presiding over the Kentucky general assembly, voting in the event of a tie, debating legislation, and signing enactments.<sup>115</sup> The lieutenant governor’s only executive duty was “potential”—to

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<sup>107</sup> *W. Va. Citizens Action Grp.*, 580 S.E.2d at 874.

<sup>108</sup> *Id.* at 875.

<sup>109</sup> *Id.* at 881.

<sup>110</sup> *Id.* at 896 (Starcher, C.J., concurring).

<sup>111</sup> *Rouse v. Johnson*, 28 S.W.2d 745, 753-54 (Ky. 1930) (Willis, J., dissenting).

<sup>112</sup> *Id.* at 753. “The mere mechanics of mentioning him in the Constitution with the executive department sheds no light. Obviously that was done because it dealt with the succession to the governorship in case of a vacancy in that office.” *Id.*

<sup>113</sup> *Id.* at 754.

<sup>114</sup> *Id.* at 752-53.

<sup>115</sup> *Id.* at 754.

succeed the governor.<sup>116</sup> The lieutenant governor's "present" salary also supported his status as a legislative officer.<sup>117</sup> The lieutenant governor's salary was based on his service as president of the senate, which was equal to speaker of the house.<sup>118</sup> In the event that the lieutenant governor succeeded to the office of governor, the pay changed accordingly.<sup>119</sup>

*B. Tucker v. State – The Expansion of the Lieutenant  
Governor's Executive Powers by the Legislature Held  
Unconstitutional*

In *Tucker v. State*, the Indiana Supreme Court declared a 1941 legislative act unconstitutional that tried to break up the appointment power of the governor and give the lieutenant governor and other elected executive officials that power.<sup>120</sup> The court did not strike down the provisions in the act pertaining to the increase in the lieutenant governor's appointment powers based on a separation of powers argument.<sup>121</sup> However, the court adhered to strict constitutional interpretation of the role of the lieutenant governor within the meaning of the Indiana state constitution. The court reasoned that the principal purpose of the office of the lieutenant governor was to succeed to the governor's office should the governor be unable to serve, and the constitution did not confer any other executive powers upon him.<sup>122</sup> Therefore, the court concluded the lieutenant governor could not exercise any additional executive powers, until a contingency arose whereby the lieutenant governor became governor.<sup>123</sup>

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<sup>116</sup> *Id.* at 753.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Tucker v. State*, 35 N.E.2d 270 (Ind. 1941).

<sup>121</sup> *Id.* at 293 ("It is true that it is provided in the Constitution that the Lieutenant Governor is to preside in the Senate, with power to vote and exercise the legislative function in certain instances. But these provisions must be treated as exceptions to the rule that officers with duties in one department may not function in another.").

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

C. *State ex rel. Link v. Olson – The Expansion of the Lieutenant Governor’s Executive Powers by the Legislature Held Unconstitutional*

In *State ex rel. Link v. Olson*, the North Dakota Supreme Court held that the legislature was not authorized to assign duties to the lieutenant governor.<sup>124</sup> Here, legislation assigning the position of federal aid coordinator to the lieutenant governor was unconstitutional in part because the constitution only permitted the governor to prescribe additional duties to the lieutenant governor and in part because it took away the veto power of the governor.<sup>125</sup> While the court did not extensively address the separation of powers violation, the North Dakota Supreme Court later interpreted this case to apply to such issues.<sup>126</sup> In *Peterson*, the court held that the governor had the power to delegate executive authority to the lieutenant governor.<sup>127</sup> Strictly reading the constitutional provision concerning the duties of the lieutenant governor, the court read “[a]dditional duties shall be prescribed by the governor” to read *only* the governor can prescribe duties to the lieutenant governor not listed in the constitution.<sup>128</sup>

D. *State ex rel. Wallace v. Bone – The Expansion of the President of the Senate’s Executive Powers by the Legislature Held Unconstitutional*

Generally, states are more willing to strike down statutes granting legislators positions on executive agencies, boards, and commissions.<sup>129</sup> In *State ex rel. Wallace v. Bone*, the North Carolina Supreme Court ruled that a statute granting the

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<sup>124</sup> *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979).

<sup>125</sup> *Id.* at 264.

<sup>126</sup> *State ex rel. Peterson v. Olson*, 307 N.W.2d 528, 532 (N.D. 1981) (“However, the instant case involves the extent of the Governor’s authority to delegate duties to the Lieutenant Governor, which is a situation different from that in *State ex rel. Link v. Olson*, *supra*, because the separation-of-powers doctrine is not at issue here.”).

<sup>127</sup> *Id.* at 533.

<sup>128</sup> *Id.* at 532-33.

<sup>129</sup> See generally John Devlin, *Toward a State Constitutional Analysis of Allocation of Powers: Legislators and Legislative Appointees Performing Administrative Functions*, 66 TEMP. L. REV. 1205 (1993).

president of the senate<sup>130</sup> and the speaker of the house the power to appoint members to the Environmental Management Commission, an executive administrative board, was a violation of the separation of powers.<sup>131</sup> The court found “that the legislature cannot constitutionally create a [commission or board] and then retain some control over [it] by appointing legislators to the governing body.”<sup>132</sup>

*E. Mississippi and Missouri – The Role of the Lieutenant Governor’s Legislative Powers*

In *State ex rel. Danforth v. Cason*, the Missouri President Pro Tempore of the senate challenged the lieutenant governor’s right as president of the senate to preside over the senate.<sup>133</sup> As in the previous cases, the Missouri Supreme Court had to resolve the tension between Article IV, Section 10 of the Missouri constitution, which “confer[red] on the lieutenant governor the right to preside over the senate,” and Article III, Section 18, which authorized the senate “to adopt rules for its own proceedings.”<sup>134</sup> The court found that no conflict existed because Article III, Section 18 was the general provision, and Article IV, Section 10

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<sup>130</sup> *State ex rel. Wallace v. Bone*, 286 S.E.2d 79 (N.C. 1982). At this time, the North Carolina president of the senate also served as the lieutenant governor. *Id.* at 80.

<sup>131</sup> *Id.* at 81.

Numerous decisions from sister states show strict adherence to the separation of powers principle and do not tolerate legislative encroachment or control over the function and power of the executive branch. See *Book v. State Office Building Commission*, *supra*; *State ex rel. State Building Commission of West Virginia v. Bailey*, 151 W. Va. 79, 150 S.E.2d 449 (1966); *Greer v. Georgia*, 233 Ga. 667, 212 S.E.2d 836 (1975); *Stockman v. Leddy*, 55 Colo. 24, 129 P. 220 (1912). See also *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976); *Ahearn v. Bailey*, 104 Ariz. 250, 451 P.2d 30 (1969); *In re Advisory Opinion to the Governor*, 276 So. 2d 25 (Fla. 1973); *In re Opinion of the Justices to the Governor*, 369 Mass. 990, 341 N.E.2d 254 (1976) (This case stated flexibility in allocation of functions may sometimes be permissible, but only if it creates no interference by one department with the power of another.); *Dearborn TP. v. Dail*, 334 Mich. 673, 55 N.W.2d 201 (1952); and *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 208 N.W.2d 780 (1973).

*Id.* at 84-85.

<sup>132</sup> *Id.* at 88.

<sup>133</sup> *State ex rel. Danforth v. Cason*, 507 S.W.2d 405, 407 (Mo. 1973).

<sup>134</sup> *Id.* at 407.

was the specific provision.<sup>135</sup> Therefore, the specific provision governed in this case.<sup>136</sup> The court found that the lieutenant governor was the presiding officer of the senate, as president of the senate, and had “a constitutional right to so serve.”<sup>137</sup> However, while presiding, the lieutenant governor had to conform to the procedural rules adopted by the senate.<sup>138</sup>

In *Dye v. State ex rel. Hale*, the Mississippi Supreme Court addressed the exact opposite situation as in *Danforth*.<sup>139</sup> In *Dye*, two Mississippi state senators challenged senate rules authorizing the lieutenant governor, in his capacity as president of the senate, to control the membership of all committees and the referral of bills to these committees.<sup>140</sup> The court stated that “the combined effect of these rules goes ‘straight to the heart of the legislative process.’”<sup>141</sup> However, the court reasoned that the senate could just as easily withdraw these powers and still be consistent with the constitution.<sup>142</sup> Therefore, the court found that the senate rules were constitutional.<sup>143</sup> The dissent cautioned that the court was sanctioning the creation of “a super-senator, vested with sufficient legislative authority to virtually dominate the entire Senate.”<sup>144</sup>

### III. PROPOSED SOLUTIONS FOR ADDRESSING SEPARATION OF POWERS VIOLATIONS

#### *A. Amend the Constitution*

States could amend their constitutions in several ways to address a separation of powers violation. First, states could remove the lieutenant governor as president of the senate. This

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<sup>135</sup> *Id.* at 413.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 413-14.

<sup>138</sup> *Id.* at 414.

<sup>139</sup> *Dye v. State ex rel. Hale*, 507 So. 2d 332, 347 (Miss. 1987) (holding that “the Senate has constitutional authority to confer upon the Lieutenant Governor” additional powers within the senate under its rule-making authority).

<sup>140</sup> *Id.* at 335-36.

<sup>141</sup> *Id.* at 345.

<sup>142</sup> *Id.* at 347.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 348 (Sullivan, J., concurring in part and dissenting in part).

solution is not without precedent. Thirteen states have removed their lieutenant governors as president of the senate.<sup>145</sup> This would also correct the primary separation of powers violation. In the alternative, in states such as Mississippi, Georgia, Alabama, and Texas—where the lieutenant governor is also president of the senate but functions primarily in a legislative capacity—states could amend the constitution to make the office a part of the legislature. This would in effect make them functionally similar to states like West Virginia and Tennessee, where the president of the senate’s only executive duty is to serve as next in line for succession as governor.

Second, the states could create a constitutional exception to the separation of powers clause. However, this does not fully address the issue; it merely side-steps the issue. Thirteen states have an explicit separation of powers clause without an exception.<sup>146</sup> Six of those states provide for the lieutenant governor to serve as the president of the senate.<sup>147</sup> Therefore, under strict constitutional interpretation those states have the strongest argument for being in violation of the separation of powers clause.

The other seven states do not need to amend their constitutions to address this issue.<sup>148</sup> In Massachusetts, the lieutenant governor holds no position in the legislature.<sup>149</sup> In West

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<sup>145</sup> See *supra* Part I.A.2.

<sup>146</sup> These states include: CONN. CONST. art. II, § 1; ILL. CONST. art. II, § 1; MD. DECLARATION OF RIGHTS art. 8; MASS. CONST. pt. 1, art. XXX; MISS. CONST. art. 1, §§ 1-2; N.H. CONST. pt. 1, art. 37; N.C. CONST. art. I, § 6; R.I. CONST. art. V; S.C. CONST. art. I, § 8; S.D. CONST. art. II; VT. CONST. ch. II, § 5; VA. CONST. art. I, § 5; W. VA. CONST. art. V, § 1.

<sup>147</sup> These states are Connecticut, Mississippi, North Carolina, South Dakota, Vermont, and Virginia. See *infra* Appendix A; Appendix B.

<sup>148</sup> These states include Illinois, Maryland, Massachusetts, New Hampshire, Rhode Island, South Carolina, and West Virginia. See *infra* Appendix A; Appendix B.

<sup>149</sup> See Kenneth L. Manning, *The Massachusetts Constitution: Liberty and Equality in the Commonwealth*, in THE CONSTITUTIONALISM OF AMERICAN STATES 35, 43 (George E. Connor & Christopher W. Hammons eds., 2008) (“[T]he lieutenant governor is largely a ceremonial position, and the occupant holds no position in the legislature.”). The Massachusetts Constitution of 1780 reads, “The Senate shall choose its own President . . . .” 1 CONSTITUTIONS OF THE WORLD FROM THE LATE 18TH CENTURY TO THE MIDDLE OF THE 19TH CENTURY: CONSTITUTIONAL DOCUMENTS OF THE UNITED STATES OF AMERICA 1776-1860, PART IV: MASSACHUSETTS—NEW HAMPSHIRE 27 (Horst Dippel ed., 2007).

Virginia, the president of the senate is statutorily conferred the title of lieutenant governor, so this state does not apply.<sup>150</sup> In 2014, South Carolina ratified a constitutional amendment removing their lieutenant governor as president of the senate.<sup>151</sup> Illinois removed their lieutenant governor from the position of president of the senate in the 1970s.<sup>152</sup> Rhode Island removed their lieutenant governor as president of the senate in 2003.<sup>153</sup> Maryland had a lieutenant governor under its 1864 constitution, where the lieutenant governor served briefly as president of the senate.<sup>154</sup> However, the position was eliminated by its 1867 constitution.<sup>155</sup> The position was re-created in 1970 to address the need for a successor to the governor.<sup>156</sup> New Hampshire does not have a lieutenant governor; instead it relies upon the president of the senate as the next in line for succession.<sup>157</sup>

### *B. Declare the Statute as Unconstitutional*

If a statute conflicts with the language of the state's constitution, state supreme courts could strike down a statutory grant of power to the lieutenant governor as unconstitutional. This solution has drawbacks. It relies on courts to play referee between the executive and legislative branches. However, several hypothetical situations exist where this would be appropriate. For instance, if the lieutenant governor is exercising primarily in a legislative function as the president of the senate, then he should be considered a member of the legislature. Therefore, any attempt to confer executive authority on the lieutenant governor is a violation of the separation of powers. Another instance of unconstitutional delegation of authority would be in states without a delegation provision, i.e. a constitutional provision that

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<sup>150</sup> W. VA. CODE ANN. § 6A-1-4 (LexisNexis 2010).

<sup>151</sup> See 2014 S.C. Acts 214.

<sup>152</sup> 5 RECORD OF PROCEEDINGS: SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 4308-09 (1972).

<sup>153</sup> R.I. CONST. art. VIII, § 2.

<sup>154</sup> PROCEEDINGS OF THE STATE CONVENTION OF MARYLAND TO FRAME A NEW CONSTITUTION 732 (1864).

<sup>155</sup> DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 35 (Philip B. Perlman ed., 1923).

<sup>156</sup> MD. CONST. art. II, § 1A.

<sup>157</sup> N.H. CONST. pt. 2, art. 49.

provides for the governor to delegate tasks to the lieutenant governor. If the power is not granted by the constitution, then it cannot be delegated to the lieutenant governor.

The separation of powers clause should not be read so strictly as to defy practical wisdom. However, it must be read. A separation of powers violation does not occur by a coup de force. It occurs with the gradual erosion and encroachment on another branch of government. It is the proper province of the state supreme courts to address this issue of where to draw the line in relation to the separation of powers clause in their constitutions.

### *C. Dilute the Separation of Powers Clause*

State courts cannot ignore an explicit separation of powers clause in their constitution. These courts must draw a line somewhere, as best they can, because a constitutional contradiction exists. It is for each state to decide where that line exists. However, most states have yet to draw it in regards to the lieutenant governor, especially where a lieutenant governor is exercising legislative power or being conferred executive power by the legislature. If a state court chooses not to strike down a statute under the separation of powers clause, then it would in effect dilute the separation of powers clause.

A case brought against the lieutenant governor for a violation of the separation of powers clause would give a court standing to examine this unsettled issue in state constitutional law. Any number of people from state senators to citizens affected by an executive agency run by the lieutenant governor could bring such a case.

## CONCLUSION

The vast majority of states employ the lieutenant governor within their constitutional framework. Within these states the functions of the lieutenant governor and the power they wield varies. The primary purpose of the lieutenant governor is to ensure the continuity of the executive branch of government. However, in some states the lieutenant governor also functions within the legislature as president of the senate. One officer

having a power in two branches of government is a violation of the separation of powers.

This Comment helps to highlight this issue and offers three possible solutions: (1) amend the state's constitution; (2) strike down the statute as unconstitutional; and (3) dilute the state's separation of powers clause. States should no longer be silent on the issue of the lieutenant governor because his position in most states grants him executive and legislative power, which violates the separation of powers doctrine.

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## APPENDIX A: SEPARATION OF POWERS CLAUSE

<b>Explicit (40 states)</b>	<b>Implicit (10 states)</b>
ALA. CONST. art. III, §§ 42-43	ALASKA CONST. art. II, § 1; ALASKA CONST.
ARIZ. CONST. art. III, § 1	art. III, § 1; ALASKA CONST. art. IV, § 1
ARK. CONST. art. 4, §§ 1-2	DEL. CONST. art. II, § 1; DEL. CONST. art. III, §
CAL. CONST. art. III, § 3	1; DEL. CONST. art. IV, § 1
COLO. CONST. art. III	HAW. CONST. art. III, § 1; HAW. CONST. art. V,
CONN. CONST. art. II, § 1	§ 1; HAW. CONST. art. VI, § 1
FLA. CONST. art. II, § 3	KAN. CONST. art. 1, § 3; KAN. CONST. art. 2, §
GA. CONST. art. I, § II, para. III	1; KAN. CONST. art. 3, § 1
IDAHO CONST. art. II, § 1	N.Y. CONST. art. III, § 1; N.Y. CONST. art. IV, §
ILL. CONST. art. II, § 1	1; N.Y. CONST. art. VI, § 1
IND. CONST. art. 3, § 1	N.D. CONST. art. III, § 1; N.D. CONST. art. V, §
IOWA CONST. art. III, § 1	1; N.D. CONST. art. VI, § 1
KY. CONST. §§ 27-28	OHIO CONST. art. II, § 1; OHIO CONST. art. III,
LA. CONST. art. II, §§ 1-2	§ 5; OHIO CONST. art. IV, § 1
ME. CONST. art. III, §§ 1-2	PA. CONST. art. II, § 1; PA. CONST. art. IV, § 2;
MD. DECLARATION OF RIGHTS art. 8	PA. CONST. art. V, § 1
MASS. CONST. pt. 1, art. XXX	WASH. CONST. art. II, § 1; WASH. CONST. art.
MICH. CONST. art. III, § 2	III, § 1; WASH. CONST. art. IV, § 1
MINN. CONST. art. III, § 1	WIS. CONST. art. IV, § 1; WIS. CONST. art. V, §
MISS. CONST. art. 1, §§ 1-2	1; WIS. CONST. art. VII, § 2
MO. CONST. art. II, § 1	
MONT. CONST. art. III, § 1	
NEB. CONST. art. II, § 1	
NEV. CONST. art. 3, § 1	
N.H. CONST. pt. 1, art. 37	

N.J. CONST. art. III, para. 1	
N.M. CONST. art. III, § 1	
N.C. CONST. art. I, § 6	
OKLA. CONST. art. IV, § 1	
OR. CONST. art. III, § 1	
R.I. CONST. art. V	
S.C. CONST. art. I, § 8	
S.D. CONST. art. II	
TENN. CONST. art. II, §§ 1-2	
TEX. CONST. art. II, § 1	
UTAH CONST. art. V, § 1	
VT. CONST. ch. II, § 5	
VA. CONST. art. I, § 5; VA. CONST. art. III, § 1	
W. VA. CONST. art. V, § 1	
WYO. CONST. art. 2, § 1	

## APPENDIX B: LIEUTENANT GOVERNORS

State	Lieutenant Governor	Executive Duties	President of the Senate	Legislative Duties
AL	ALA. CONST. art. V, § 112	ALA. CONST. art. V, § 127 (succession); ALA. CODE § 12-9-2 (2014) (member of the Judicial System Study Commission and appoints five members of committee); ALA. CODE § 33-17-6 (2014) (vice president of Tombigbee Valley Development Authority); ALA. CODE § 33-16-6 (2014) (vice president of Coosa Valley Development Authority)	ALA. CONST. art. V, § 117	ALA. CODE § 29-2-81 (2014) (member of the Joint Legislative Committee on Finances and Budgets)
AK	ALASKA CONST. art. III, § 7	ALASKA CONST. art. III, § 11 (succession); ALASKA CONST. art. III, § 7 (additional duties); ALASKA STAT. § 41.35.310 (2014) (member of the Alaska Historical Commission); ALASKA STAT. § 23.15.550 (2014) (member of the Alaska Workforce Investment Board); ALASKA STAT. § 15.10.105 (2014) (supervise the Division of Elections); ALASKA STAT. § 15.45.020 (2014) (supervise citizen's ballot initiative); ALASKA STAT. § 44.62.320 (2014) (file regulations); ALASKA STAT. § 44.62.130 (2014) (publish the Alaska Administrative Code and the Online Public Notice System); ALASKA STAT. § 44.50.010 (2014) (commission notaries public); ALASKA STAT. § 44.19.022 (2014) (regulate use of state seal)		
AZ	No lieutenant governor			
AR	ARK. CONST. amend. 6, § 2	ARK. CONST. amend. 6, § 4 (succession)	ARK. CONST. amend. 6, § 5	

CA	CAL. CONST. art. V, § 9	CAL. CONST. art. V, § 10 (succession); CAL. CONST. art. IX, § 9 (member of the University of California Board of Regents); CAL. EDUC. CODE § 66602 (West 2015) (member of the California State University Board of Trustees); CAL. GOV'T CODE § 14999.1 (West 2015) (serves as the chair of the Commission for Economic Development); CAL. PUB. RES. CODE § 6101 (West 2015) (member of the State Lands Commission)	CAL. CONST. art. V, § 9	
CO	COLO. CONST. art. IV, § 1	COLO. REV. STAT. ANN. § 24-44-104 (West 2015) (chairman of the Commission of Indian Affairs); COLO. REV. STAT. ANN. § 22-7-1014 (West 2015) (Early Childhood Leadership Commission)		
CT	CONN. CONST. art. IV, § 1	CONN. GEN. STAT. ANN. § 4-93 (West 2015) (member of the Finance Advisory Committee); CONN. GEN. STAT. ANN. § 10-16nn (West 2015) (chairperson of the Interagency Council for Ending the Achievement Gap); CONN. GEN. STAT. ANN. § 19a-725 (West 2015) (chairperson of the governor's Health Care Cabinet); CONN. GEN. STAT. ANN. § 19a-750 (West 2015) (member of the Health Information Technology Exchange)	CONN. CONST. art. IV, § 17	
DE	DEL. CONST. art. III, § 19	DEL. CONST. art. III, § 20 (succession); DEL. CONST. art. VII, § 2 (member of the Board of Pardons)	DEL. CONST. art. III, § 19	

FL	FLA. CONST. art. IV, § 2	FLA. CONST. art. IV, § 2 (additional assigned duties); FLA. CONST. art. IV, § 6 (may serve as head of executive department)		
GA	GA. CONST. art. V, § I, para. III	GA. CONST. art. V, § I, para. III (additional delegated duties); GA. CODE ANN. § 17-12-3 (West 2015) (appoints two members of the Public Defender Council); GA. CODE ANN. § 12-10-2 (West 2015) (appoints a member of the senate to the Southern States Energy Board); GA. CODE ANN. § 50-8-51 (West 2015) (appoints a non-voting member of the senate to the Commission on Regional Planning); GA. CODE ANN. § 35-2-1 (West 2015) (appoints a member of the Board of Public Safety)	GA. CONST. art. V, § I, para. III	
HI	HAW. CONST. art. V, § 2	HAW. CONST. art. V, § 4 (succession); HAW. CONST. art. V, § 2 (additional duties); HAW. REV. STAT. § 26-1 (West 2015) (secretary of state)		
ID	IDAHO CONST. art. IV, § 1		IDAHO CONST. art. IV, § 13	

IL	ILL. CONST. art. V, §§ 1, 14	ILL. CONST. art. V, § 14 (additional delegated duties); 20 ILL. COMP. STAT. 605/605-215 (2015) (chair of the Interagency Military Base Support and Economic Development Committee); 20 ILL. COMP. STAT. 3967/15 (2015) (chair of the Illinois River Coordinating Council); 20 ILL. COMP. STAT. 4003/10 (2015) (chair of the Mississippi River Coordinating Council); 20 ILL. COMP. STAT. 4060/10 (2015) (chair of the Wabash and Ohio Rivers Coordinating Council); 20 ILL. COMP. STAT. 720/30 (2015) (Ambassador of the Illinois Main Street Program)		
IN	IND. CONST. art. 5, § 2	IND. CONST. art. 5, § 10 (succession); IND. CODE § 4-4-2.3-1 (2015) (secretary of agriculture and rural development); IND. CODE § 5-20-1-3 (2015) (member of the Housing and Community Development Authority); IND. CODE § 4-4-34-5 (2015) (Office of Defense Development); IND. CODE § 4-4-9.7-5 (2015) (appoints the director of the Office of Community and Rural Affairs); IND. CODE § 5-29-2-2 (2015) (appoints the director of the Office of Tourism Development); IND. CODE § 10-19-8-3 (2015) (chairs the Counterterrorism and Security Council)	IND. CONST. art. 5, § 21	
IA	IOWA CONST. art. IV, § 2	IOWA CONST. art. IV, § 17 (succession); IOWA CONST. art. IV, § 18 (additional delegated duties)		

KS	KAN. CONST. art. 1, § 1	KAN. CONST. art. 1, § 11 (succession); KAN. CONST. art. 1, § 12 (additional duties); KAN. STAT. ANN. § 75-303 (West 2015) (may serve as secretary of a state department, upon appointment by the governor)		
KY	KY. CONST. § 70	KY. CONST. § 84 (succession); KY. REV. STAT. ANN. § 11.400 (LexisNexis 2015) (vice chairman of the State Property and Buildings Commission, vice chairman of the Kentucky Turnpike Authority, member of the Kentucky Council on Agriculture, member of the Board of the Kentucky Housing Corporation, appoints one member to the Public Officials' Compensation Commission, and serves on the following interstate compact commissions or boards: Southern Growth Policies Board, Breaks Interstate Park Commission, Falls of the Ohio Interstate Park Commission, Tennessee-Tombigbee Waterway Development Authority, Interstate Water Sanitation Control Commissions, and Kentucky Mining Advisory Council for the Interstate Mining Compact)		

LA	LA. CONST. art. IV, § 1	LA. CONST. art. IV, § 14 (succession); LA. CONST. art. IV, § 6 (additional delegated duties); LA. REV. STAT. ANN. § 36:203 (2015) (either appoints or acts as the secretary of the Department of Culture, Recreation and Tourism); LA. REV. STAT. ANN. § 25:2 (2015) (appoints all members of the board of commissioners of the State Library of Louisiana); LA. REV. STAT. ANN. § 51:924 (2015) (member of the State Board of Commerce and Industry)		
ME	No lieutenant governor			
MD	MD. CONST. art. II, § 1A	MD. CONST. art. II, § 6 (succession); MD. CONST. art. II, § 1A (additional delegated duties); MD. CODE ANN., STATE GOV'T § 8-103 (LexisNexis 2009) (member of Governor's Executive Council)		
MA	MASS. CONST. pt. 2, ch. II, § II, art. I	MASS. CONST. pt. 2, ch. II, § II, art. III (succession); MASS. CONST. pt. 2, ch. II, § II, art. II (member of Governor's Council)		
MI	MICH. CONST. art. V, § 21	MICH. CONST. art. V, § 26 (succession); MICH. CONST. art. V, § 25 (additional duties); MICH. COMP. LAWS § 17.1 (2014) (member of the state administrative board); MICH. COMP. LAWS § 408.213 (2014) (chairperson of the Michigan Council on Technical Excellence)	MICH. CONST. art. V, § 25	

MN	MINN. CONST. art. V, § 1	MINN. CONST. art. V, § 5 (succession); MINN. STAT. § 4.04 (2014) (delegated additional duties, unless prohibited by constitution); MINN. STAT. § 9.011 (2014) (member of the executive council); MINN. STAT. § 15B.03 (2014) (chair of the Capitol Area Architectural and Planning Board); MINN. STAT. § 299E.04 (2014) (chair of the advisory committee on Capitol Area Security)		
MS	MISS. CONST. art. 5, § 128	MISS. CONST. art. 5, § 131 (succession); MISS. CODE ANN. § 43-33-704 (2014) (appoints three members of the Mississippi Home Corporation); MISS. CODE ANN. § 41-105-1 (2014) (appoints five members of the Healthcare Coordinating Council); MISS. CODE ANN. § 41-3-1.1 (2014) (appoints two members of the State Board of Health); MISS. CODE ANN. § 37-1-1 (2014) (appoints two members of the State Board of Education)	MISS. CONST. art. 5, § 129	MISS. CODE ANN. § 27-103-101 (2014) (member and alternative chairman of the Joint Legislative Budget Committee)

MO	MO. CONST. art. IV, § 10	<p>MO. CONST. art. IV, § 11(a) (succession); MO. CONST. art. IV, § 12; MO. ANN. STAT. § 660.620 (West 2015) (contains the Office of Advocacy and Assistance for Senior Citizens); MO. ANN. STAT. § 178.695 (West 2015) (advisor to the Department of Elementary and Secondary Education on Early Childhood Education and Parents-as-Teachers Programs); MO. ANN. STAT. § 33.300 (West 2015) (member of the Board of Fund Commissioners); MO. ANN. STAT. § 8.010 (West 2015) (member and secretary of the Board of Public Buildings); MO. ANN. STAT. § 620.586 (West 2015) (member of the Community Service Commission); MO. ANN. STAT. § 100.265 (West 2015) (member of the Missouri Development Finance Board); MO. ANN. STAT. § 215.020 (West 2015) (member of the Missouri Housing Development Commission); MO. ANN. STAT. § 620.455 (West 2015) (member of the Tourism Commission); MO. ANN. STAT. § 8.003 (West 2015) (ex officio member of the Second State Capitol Commission); MO. ANN. STAT. § 208.533 (West 2015) (non-voting member of the Commission on the Special Health, Psychological and Social Needs of Minority Older Individuals)</p>	MO. CONST. art. IV, § 10	
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MT	MONT. CONST. art. VI, § 1	MONT. CONST. art. VI, § 14 (succession); MONT. CONST. art. VI, § 4 (additional delegated duties); MONT. CODE ANN. § 2-15-302 (2014) (additional and delegated duties)		
NE	NEB. CONST. art. IV, § 1	NEB. CONST. art. IV, § 16 (succession); NEB. CONST. art. IV, § 1 (additional duties)	NEB. CONST. art. III, § 10	
NV	NEV. CONST. art. 5, § 17	NEV. CONST. art. 5, § 18 (succession); NEV. REV. STAT. § 408.106 (2015) (member of the State Board of Transportation); NEV. REV. STAT. § 353A.038 (2015) (member of the Executive Branch Audit Committee)	NEV. CONST. art. 5, § 17	
NH	No lieutenant governor			
NJ	N.J. CONST. art. V, § I, para. 4	N.J. CONST. art. V, § I, para. 6 (succession); N.J. CONST. art. V, § I, para. 10 (additional duties); N.J. CONST. art. V, § IV, paras. 2, 4 (may serve as department head)		

NM	N.M. CONST. art. V, § 1	N.M. CONST. art. V, § 7 (succession); N.M. STAT. ANN. § 8-3-1 (2015) (act as liaison between the people of the state and the state agencies); N.M. STAT. ANN. § 6-1-1 (2015) (member of the State Board of Finance); N.M. STAT. ANN. § 58-27-4 (2015) (non-voting member of the New Mexico Border Authority); N.M. STAT. ANN. § 32A-22-2 (2015) (member of the New Mexico Children's Cabinet); N.M. STAT. ANN. § 11-6-4 (2015) (member of the Community Development Council); N.M. STAT. ANN. § 9-15-49 (2015) (member of the Military Base Planning Commission); N.M. STAT. ANN. § 58-18-4 (2015) (member of the Mortgage Finance Authority); N.M. STAT. ANN. § 58-31-4 (2015) (non-voting member of the New Mexico Spaceport Authority); N.M. STAT. ANN. § 9-2A-20 (2015) (receives recommendations from the New Mexico Youth Alliance)	N.M. CONST. art. V, § 8	
NY	N.Y. CONST. art. IV, § 1	N.Y. CONST. art. IV, § 5 (succession); N.Y. UNCONSOL. LAW § 9111 (McKinney 2014) (member of the State Defense Council)	N.Y. CONST. art. IV, § 6	

NC	N.C. CONST. art. III, § 2	N.C. CONST. art. III, § 3 (succession); N.C. CONST. art. III, § 6 (additional duties); N.C. CONST. art. III, § 8 (member of Council of State); N.C. CONST. art. IX, § 4 (member of state Board of Education); N.C. GEN. STAT. § 115D-2.1 (2015) (member of State Board of Community Colleges); N.C. GEN. STAT. § 127C-2 (2015) (non-voting member of the N.C. Military Affairs Commission)	N.C. CONST. art. II, § 13	
ND	N.D. CONST. art. V, § 2	N.D. CONST. art. V, § 11 (succession); N.D. CENT. CODE § 54-08-01 (2015) (duties prescribed by the constitution)	N.D. CONST. art. V, § 12	
OH	OHIO CONST. art. III, § 1	OHIO CONST. art. III, § 15 (succession); OHIO CONST. art. III, § 1b (additional duties); OHIO REV. CODE ANN. § 108.05 (LexisNexis 2007) (member of governor's cabinet and can be appointed head of an administrative department); OHIO REV. CODE ANN. § 108.04 (LexisNexis 2007) (deputy commander-in-chief of state militia)		

OK	OKLA. CONST. art. VI, § 1	OKLA. CONST. art. VI, § 16 (succession); OKLA. CONST. art. VI, § 1 (additional duties); OKLA. STAT. tit. 74, § 2203 (2015) (member of the Oklahoma Tourism and Recreation Commission); OKLA. STAT. tit. 74, § 1226.2 (2015) (member of the Native American Cultural and Educational Authority); OKLA. STAT. tit. 74, § 2007.3 (2015) (can participate in international activities for economic development and negotiate international contracts); OKLA. CONST. art. X, § 21 (member of the State Board of Equalization); OKLA. STAT. tit. 67, § 305 (2015) (member of the Archives and Records Commission); OKLA. STAT. tit. 85, § 375.4 (2015) (member of the CompSource Board of Directors); OKLA. CONST. art. VI, § 32 (member of the Commissioners of the Land Office); OKLA. STAT. tit. 62, § 88.4 (2015) (member of the Small Business Linked Deposit Review Board)	OKLA. CONST. art. VI, § 15	
OR	No lieutenant governor			
PA	PA. CONST. art. IV, § 1	PA. CONST. art. IV, § 13 (succession); PA. CONST. art. IV, § 9 (chair of the Board of Pardons); 35 PA. CONS. STAT. § 7312 (2015) (member of the Emergency Management Council); 71 PA. STAT. ANN. § 1709.503 (West 2014) (chair of the Local Government Advisory Committee)	PA. CONST. art. IV, § 4	

RI	R.I. CONST. art. IX, § 1	R.I. CONST. art. IX, § 9 (succession); R.I. GEN. LAWS § 30-15-6 (2014) (chair of the Emergency Management Advisory Council); R.I. GEN. LAWS § 42-91-2 (2014) (chair of the Small Business Advocacy Council); R.I. GEN. LAWS § 23-17.3-2 (2014) (member of the Long-Term Care Coordinating Council); R.I. GEN. LAWS § 42-131-2 (2014) (chair of the Intergovernmental Relations Council)		
SC	S.C. CONST. art. IV, § 8	S.C. CONST. art. IV, § 11 (succession); S.C. CODE ANN. § 1-3-620 (2014) (duties of the office are part-time); S.C. CODE ANN. § 43-21-130 (2014) (member of the Long Term Care Council); S.C. CODE ANN. § 43-21-10 (2014) (Division on Aging created in the office of the lieutenant governor)	2014 S.C. Acts 214; S.C. CONST. art. III, § 37 (lieutenant governor remains president of the senate through 2018)	
SD	S.D. CONST. art. IV, § 2	S.D. CONST. art. IV, § 6 (succession); S.D. CONST. art. IV, § 5 (delegated duties); S.D. CODIFIED LAWS § 62-2-10 (2015) (chair of the Workers' Compensation Advisory Council)	S.D. CONST. art. IV, § 5	
TN	TENN. CODE ANN. § 8-2-102 (2002) (president of the senate conferred title of lieutenant governor)			

TX	TEX. CONST. art. IV, § 1	TEX. CONST. art. IV, § 16 (succession); TEX. GOV'T CODE ANN. § 404.122 (West 2013) (member of the Cash Management Committee); TEX. GOV'T CODE ANN. § 1231.021 (West 2013) (member of the Bond Review Board)	TEX. CONST. art. IV, § 16	TEX. GOV'T CODE ANN. § 322.001 (West 2013) (member and joint chair of the Legislative Budget Board); TEX. GOV'T CODE ANN. § 323.001 (West 2013) (member and joint chair of the Legislative Council); TEX. GOV'T CODE ANN. § 321.002 (West 2013) (member and joint chair of the Legislative Audit Committee)
UT	UTAH CONST. art. VII, § 1	UTAH CONST. art. VII, § 11 (succession); UTAH CONST. art. VII, § 14 (additional duties); UTAH CODE ANN. § 67-1a-6 (West 2014) (designated as secretary of state); UTAH CODE ANN. § 67-1a-10 (West 2014) (chair of the Commission on Civic and Character Education); UTAH CODE ANN. § 67-1a-2 (West 2014) (serve at governor's request as department head, the chairperson of any cabinet group, liaison between the governor and the state legislature, liaison between the governor and other officials of local, state, federal, and international governments, personal advisor to the governor, and chair or member of any other groups appointed by the governor; chief election officer; custodian of the Great Seal of Utah; register official acts of the governor; certify government records)		
VT	VT. CONST. ch. II, § 3	VT. CONST. ch. II, § 3 (succession)	VT. CONST. ch. II, § 19	

VA	VA. CONST. art. V, § 13	VA. CONST. art. V, § 16 (succession); VA. CODE ANN. § 2.2-2316 (2014) (member of the Board of Directors for the Virginia Tourism Authority)	VA. CONST. art. V, § 14	
WA	WASH. CONST. art. III, § 1	WASH. CONST. art. III, § 10 (succession); WASH. CONST. art. III, § 16 (additional duties); WASH. REV. CODE § 43.15.020 (2015) (serves on the following boards and committees: Capitol Furnishings Preservation Committee, Higher Education Facilities Authority, Productivity Board, State Finance Committee, State Capitol Committee, Health Care Facilities Authority, State Medal of Merit Nominating Committee, Medal of Valor Committee, Association of Washington Generals)	WASH. CONST. art. III, § 16	WASH. REV. CODE § 43.15.020 (2015) (as president of the senate, appoints members to: Civil Legal Aid Oversight Committee, Office of Public Defense Advisory Committee, State Gambling Commission, Sentencing Guidelines Commission, State Building Code Council, Financial Education Public-Private Partnership, Joint Administrative Rules Review Committee, Capital Projects Advisory Review Board, Select Committee on Pension Policy, Legislative Ethics Board, Washington Citizens' Commission on Salaries, Legislative Oral History Committee, State Council on Aging, State Investment Board, Capitol Campus Design Advisory Committee, Washington State Arts Commission, Information Services Board, Council for Children and Families, PNWER-Net Working Subgroup, Community Economic Revitalization Board,

				Washington Economic Development Finance Authority, Life Sciences Discovery Fund Authority, Legislative Children's Oversight Committee, Joint Legislative Audit and Review Committee, Joint Committee on Energy Supply and Energy Conservation, Legislative Evaluation and Accountability Program Committee, Agency Council on Coordinated Transportation, Washington Horse Racing Commission, Correctional Industries Board of Directors, Joint Committee on Veterans' and Military Affairs, Joint Legislative Committee on Water Supply During Drought, Statute Law Committee, and Joint Legislative Oversight Committee on Trade Policy)
WV	W. VA. CODE ANN. § 6A-1-4 (LexisNexis 2010) (president of the senate conferred title of lieutenant governor)			

WI	WIS. CONST. art. V, § 1	WIS. CONST. art. V, § 7 (succession); WIS. STAT. § 14.34 (2015) (represent the governor on any statutory commission, board, or committee on which the governor is entitled to membership; represent the governor on any non-statutory committee created by the governor; represent the governor on any inter-governmental body created for the purpose of maintaining relationships with the federal government, state government, regional agencies, or local government; upon designation by governor to coordinate state services and programs)		
WY	No lieutenant governor			