

2022 Election: Attorney General Races to Watch This Season

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While pundits are fixated on the midterm elections and who will control Congress in 2023, 31 state attorneys general (AG) races could dramatically impact the country's political landscape. State AGs continue to extend their influence nationally. They are now viewed as much more than a state's top law enforcement official, investigating and taking actions on issues affecting not only their states but extending outside their state borders.

In recent months, state attorneys general made news headlines as they spearheaded initiatives that could impact the status of abortion, voting rights, student loan forgiveness, and even the use of Environmental, Social, and Governance (ESG) criteria by investment companies.

These initiatives have helped AG offices garner more attention, demonstrating that both major political parties have recognized the tremendous power that state attorneys general have in shaping policy through enforcement actions. The continued power and influence state AGs exert has led to some hotly contested races.

The shift in state attorneys general landscape can result in increased investigations, with new attorneys general staking out their ground and executing their policy preferences regarding perceived consumer harm or other alleged regulatory deficiencies.

Now is the time for companies engaged in consumer businesses to get their houses in order. A change in the state's AG can energize the outgoing AG offices to resolve investigations and issues before the change of guard in January, as new AGs, even if belonging to the same political party, may have different priorities.

We are keeping a close eye on the following races that will shape the future of America.

Incumbents facing challenges

This election involves historically high challenges to incumbents who have been fixtures in their offices for many years, leading to some very close races. The effect of national politics played a critical role in these primaries and continues to do so leading up to election Tuesday.

Texas: AG Ken Paxton (R) clinched the party ticket in the primary race, defeating George P. Bush, Texas land commissioner and son of former Florida governor and presidential candidate Jeb Bush. Paxton faces Rochelle

Garza, a Brownsville attorney and the democratic nominee who won a contested primary, which pundits believe poses a credible threat to Paxton. Although Texas shows some signs of a blue shift, recent polls have him with a narrow lead.

Iowa: AG Tom Miller (D), first elected in 1978 and with 10 terms under his belt, is seeking another term and facing Brenna Bird in a re-match. Bird is a former aide to former governor, Terry Branstad (R), who lost to Miller in 2010. This race is a prime example of the struggle between the power of incumbency and national politics. AG Miller operates under an unusual compromise with Governor Kim Reynolds (R) in 2019, where he agreed that as long as he is serving as AG, he would seek the consent of the governor before filing or joining any out-of-state proceeding. Although the compromise would presumably continue through Miller's next term, Governor Reynolds is also on the ballot this year with Senator Chuck Grassley, which may help Bird's chances of turning the seat red.

The effects of national politics, specifically the impact of the Supreme Court decision of *Dobbs v. Jackson Women's Health Organization*, (No. 19-1392, 597 U.S. _ (2022)), will be at issue in the elections in **Wisconsin** and **Michigan**, which have historically been battleground states in past elections. Both involve two incumbent attorneys general whose fate may be sealed with the Governor and Senate (in Wisconsin) and Secretary of State (in Michigan) races on the ballot, with all seats possibly going either red or blue.

In Wisconsin, AG Josh Kaul (D) faces District Attorney of Fond du Lac County, Eric Toney, the top GOP nominee. Michigan AG Dana Nessel (D), running as part of an all-woman ticket, faces GOP nominee Matthew DePerno, an attorney endorsed by former president Donald Trump. Both Kaul and Nessel have raised more money than their opponents and are leading in polls but still face a tough re-election.

Other states with incumbents facing close races include:

- **Georgia:** AG Chris Carr (R) won 73% of the vote in the primary, setting him up to face Georgia State Senator Jen Jordan (D) in the November General Election along with a Libertarian on the ballot, potentially putting a post-election runoff into play. The races for U.S. Senate, governor, and secretary of state have received more attention, allowing the race for AG to remain largely under the radar, which seems to benefit AG Carr.
- **Nevada:** AG Aaron Ford (D) faces Republican nominee Sigal Chattah on election Tuesday in a heavily contested race where both the Republican Attorneys General Association and Democrat Attorneys General Association have spent significant money.
- **Minnesota:** Five Republicans vied for the opportunity to run against incumbent AG Keith Ellison (D), lead counsel in the successful prosecution stemming from the incident involving George Floyd. GOP nominee Jim Schultz, a private practitioner, won the primary contest, where the messaging focused on the unrest resulting from George Floyd's death.

States with open seats

This year, there will be new attorneys general in the District of Columbia and at least 11 states — Arizona, Arkansas, Idaho, Kansas, Maryland, Massachusetts, Nebraska, Oklahoma, New Mexico, South Dakota, and

Vermont — due to current officeholders being term-limited under their state constitutions or incumbents choosing not to seek another term.

In **Arizona**, AG Mark Brnovich (R) is departing office and will leave behind a legacy of a concerted focus on consumer protection issues, securing more than \$200 million in consumer restitution and relief. His departure has opened the door for candidates from both sides of the aisle to run. Arizona's crowded primaries made way for two candidates.

The Republican nominee, Abe Hamadeh, is a former prosecutor in the Maricopa County Attorney's Office and intelligence officer in the U.S. Army Reserve. He faces Democratic nominee Kris Mayes, a former Republican member of the Arizona Corporation Commission whose political platform seeks to build a broad coalition with bipartisan support.

With **New Mexico** AG Hector Balderas (D) being term-limited, the chief prosecutor for the largest county in New Mexico, Bernalillo County — Attorney Raúl Torrez — is the Democratic nominee to keep the AG seat blue. Torrez faces Republican nominee Jeremy Gay, an attorney and Marine veteran. The historically Democratic seat creates favorable odds for Torrez.

Kansas AG Derek Schmidt (R), who has been in office since 2011, is running for governor, leaving the seat open with two candidates. GOP nominee Kris Kobach, a one-time secretary of state, won the nomination for governor in 2018 but lost against Democratic candidate Laura Kelly and lost the GOP primary for the U.S. Senate in 2019. Kobach will face Chris Mann, a former police officer, whose "law and order" credentials may make up for his lack of name recognition.

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