

Down-to-the-Wire Virginia Attorney General Race Presages Other Close Races in 2022

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The attorney general race between Democratic incumbent Mark Herring and Republican challenger Jason Miyares could easily have slipped off the radar. Of the 43 states that elect attorneys general, Virginia is the only one holding an election in 2021 — and the simultaneous race for governor has taken top billing. But that's not the case here. Because the issues in that race are similar to those faced by voters in many states just one year from now, the race is being followed closely nationwide. Accordingly, many see it as an early indicator for how attorney general races might play out next year.

Herring and Miyares are heading into election day with recent polls showing a statistical dead heat. Miyares — a former prosecutor and current member of the Virginia House of Delegates — is campaigning on “law and order,” attempting to appeal to suburban swing voters. Herring — who would be the first attorney general in the commonwealth to secure a third term — is campaigning on his efforts to combat the opioid epidemic and fight for Virginia taxpayers, seniors, veterans, and families during his time in office. Herring also created an [office of civil rights](#) and spearheaded legislation intended to establish a cap on interest rates.

Earlier this summer, the candidates participated in two debates highlighting their ideological divide. They sparred over critical issues, such as gun violence, health care coverage, and voting rights, with Herring calling on his record (including his efforts to promote a friendly business climate in the state) and Miyares advocating for a new perspective in the office.

While not garnering as much attention as the governor's race, the race for attorney general has significant implications. Over the last two decades, state attorneys general have extended their influence nationally and are viewed as more than a state's “top cop.” Instead, they have filed a record number of lawsuits against the federal government, positioned themselves as leaders in data privacy, and led the charge against opioid distributors and manufacturers, resulting in billions in penalties and robust injunctive relief.

Most political observers view the Virginia election as a harbinger for 2022. The winner will need to hit the sweet spot on critical issues, turn out the vote, and position themselves with their respective party leaders — both of whom loom large in the commonwealth. Voters' reactions in Virginia may predict the fortunes of the 2022 candidates. Virginians, and anyone interested in the role of the state attorneys general in developing policy and enforcement priorities for critical issues facing all Americans, will eagerly await the results of the race to see whether Herring or Miyares will direct the work of the Virginia attorney general's office going forward.

Implications for 2022 Attorney General Races

Next year promises to be a memorable campaign season with the potential for several seats to flip from red to blue (or vice versa) as some incumbents leave office because of term limits or to seek higher office. Although the political affiliation of each state's attorney general position has not changed since the pandemic, the upcoming election cycle will likely be different. We recently covered the highlights and potential implications of the 2022 state attorney general races [here](#). Not surprisingly, there continue to be developments in several races as candidates jostle for position and stake their claim on the airwaves for the next 12 months. These include the following:

- Maryland Attorney General Brian Frosh revealed on October 21 that he would not seek another term in 2022 after two terms in office. U.S. Representative Anthony Brown has already announced that he will enter the race. He may be joined by additional candidates on both sides of the aisle.
- New York Attorney General Letitia James is leaving the post after one term to run for governor.

We will continue to monitor the 2022 races and reflect on how the results of the Virginia race may impact other state attorney general races and initiatives over the next 12 months.

Incumbents Seeking Higher Office

One particular trend taking shape for 2022 is the significant number of current or former attorneys general seeking to move into other high-profile political roles in their states. The transition from the state's top law enforcement officer to either the state executive position or, in some cases, the federal legislative branch is a natural fit. State attorneys general have the opportunity to shape policy during their term as the state's top law enforcement officer and can continue to shape the state's priorities — including on issues of national significance — from the governor's mansion or a legislative chamber. Furthermore, given the nature of their work, state attorneys general hold a substantial record on critical issues, ranging from consumer protection to civil rights. Some may have established or enhanced the role of certain divisions within the office, focusing on preventing housing discrimination or protecting consumer data privacy. Others may have prioritized human rights initiatives, such as the pursuit of human traffickers.

Voters should also pay close attention to an attorney general's record in enforcement actions and settlements. Some of these actions — such as multistate investigations and settlements related to opioids or well-known technology firms — regularly catch public attention. Others, particularly the regular drumbeat of investigations and settlements related to consumer protection that stem from the actions of smaller organizations, are less well known. Many voters are deeply engaged in data privacy, fair lending, and other consumer protection issues. They want to see that their attorney general has taken action against organizations acting contrary to the public interest. As a result, attorneys general seeking higher office will need to tout a record of significant enforcement actions and settlements.

The 2022 races provide a clear window into the attorneys general's impact on their respective states' policies in recent years. In addition to Derek Schmidt, whose campaign for governor in Kansas is discussed in the article linked above, some of the current or former attorneys general now exploring or engaged in a run for office in 2022

include:

- Mark Brnovich (Arizona) is term limited and running for election to the U.S. Senate in 2022. Over his two terms, Brnovich secured more than \$200 million in restitution for Arizona consumers through settlements with for-profit universities, car manufacturers, internet companies, and other organizations.
- Doug Gansler (Maryland) served as attorney general of Maryland for eight years before leaving office in January 2015. He is running for election as Maryland's governor. Gansler previously ran for governor in 2014 but lost in the Democratic primary. Gansler's term as attorney general was marked by several settlements related to environmental issues. He also established a task force dedicated to pursuing human traffickers.
- Letitia James (New York) announced on October 29 that she is running for governor. James' tenure includes a series of substantial settlements against manufacturers and distributors of opioids.
- Leslie Rutledge (Arkansas) has announced a run for governor in 2022. Rutledge will face off against former White House Press Secretary Sarah Sanders in the Republican primary and will likely call on her record, including establishing a "public integrity" division and preventing Medicaid and disability fraud.
- Eric Schmitt (Missouri) is running for Senate in 2022. Schmitt was appointed in 2018 when the prior attorney general, Josh Hawley, was elected to the U.S. Senate. He won reelection in 2020. As attorney general, Schmitt was involved in investigations of large technology companies.
- Josh Shapiro (Pennsylvania), the current attorney general of Pennsylvania, recently announced his candidacy for the office of governor. Shapiro, who had long been expected to run, is known for investigating the sexual abuse of children by members of the clergy. He also helped lead settlement talks with opioid distributors and led several investigations into national gas drillers.

Conclusion

Significant shifts in the state attorneys general landscape historically result in increased investigations as new attorneys general stake out their ground and execute their policy preferences. The Virginia race is no exception — and the result will send a message to candidates gearing up for races in 2022.

Given the significant number of attorneys general races and attorneys general seeking higher office, the 2022 election season is likely to prominently feature the state attorney general's role in shaping policy initiatives and priorities for the state and its constituents.

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