

Thirty State Attorney General Offices Are up for Grabs

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While many are shifting focus to the federal congressional midterm elections in 2022, there are 30 state attorney general elections over the next two years that will dramatically impact the nation's political landscape.

The federal midterm elections have traditionally coincided with races for more than two-thirds of the 43 elected state attorneys general. However, considering the number of incumbents leaving office due to term limits or to seek higher office, and the potential for a number of seats to flip from red to blue (or vice versa), the next 13 months promises to be a memorable campaign season for state attorneys general across the nation.

Over the last two decades, state attorneys general have extended their influence nationally and are viewed as more than a state's "top cop" focusing solely on issues within state borders. Instead, they have — among other things — filed a record number of lawsuits against the federal government championing federalism, positioned the states as the leaders in data privacy and enforcement, and led the charge against opioid distributors and manufacturers, resulting in billions in penalties and robust injunctive relief.

Attorney general elections are critical for several reasons, including that new attorneys general typically focus on their campaign priorities. Additionally, incumbent attorneys general who are approaching the end of their terms often want to leave office with no unfinished business. Given the political affiliation of each state's attorney general position has not changed since before the pandemic, the upcoming election cycle is likely to create waves in state politics. Here are some races to watch as we near the 2022 state attorney general election cycle.

1) What we can learn from Virginia

Virginia has the only state attorney general election in 2021. Democrat Mark Herring – who could be the first

attorney general in the commonwealth to secure a third term in office – has built a reputation and is campaigning on combatting the opioid epidemic and fighting for Virginia taxpayers, seniors, veterans and families during his time in office. Jason Miyares — a former prosecutor and current member of the Virginia House of Delegates — presents a profile that has traditionally served candidates well in state attorneys general elections.

Most political observers view the Virginia election as a harbinger for 2022 races, as the winner will be determined by the ability of the candidates to hit the sweet spot on those critical issues, turn out the vote, and position themselves in relation to their respective party leaders – both of whom loom large in the commonwealth. Additionally, voters' reactions to these issues in Virginia may portend the fortunes of the 2022 candidates in other states.

The candidates are currently in a tight race, with a [recent poll](#) by Virginia Emerson College / Nexstar Media showing that Herring leads Miyares 46% to 44%, with 10% of respondents still undecided. In the coming weeks, Herring and Miyares will vie for the remaining undecided voters as the race nears its close. Miyares' law-and-order campaign is expected by many pundits to appeal to suburban voters who have oscillated between parties in past elections, while Herring's ticket will be evaluated through the prism of the legal actions he has taken as the commonwealth's chief legal officer.

Earlier this summer, both candidates participated in a virtual debate highlighting the vast ideological divide between them as they sparred over critical issues in Virginia, such as gun violence, health care coverage, and voting rights. A second debate hosted by the Loudoun County Chamber of Commerce is scheduled for later this month with questions posed by business leaders. These topics are sure to implicate Herring's past terms as attorney general, including the creation of an office of civil rights and spearheading the passage of legislation intended to establish a cap on loan interest rates in the commonwealth.

2) Who will win the open seats — and how many will flip?

Three states have incumbent attorneys general who by virtue of their state constitutions are unable to run for re-election: Arizona — Mark Brnovich (R); Arkansas — Leslie Rutledge (R); and New Mexico — Hector Balderas (D). Currently, the fields in both Arizona and Arkansas are crowded as individuals announce and develop the necessary political war chest. Meanwhile, the race is heating up in New Mexico, with two Democratic candidates eyeing Balderas' seat. Both candidates already have amassed over \$300,000, according to the Albuquerque Journal.

3) What other seats will open up as incumbents seek higher office?

Overall, there could be as many as seven attorney general seats open this upcoming 2022 election due to incumbents seeking higher office. This situation creates the potential for new policies, changing administrative procedures, and differing approaches to addressing hot button topics, even if the seat remains on the same side of the political aisle.

Derek Schmidt (R), Kansas' three-term attorney general, is currently campaigning for governor. Two Republican candidates have since announced their candidacy for his position, and former prosecutor, Chris Mann is seeking the Democratic nomination.

Two other Democratic Attorneys General are reportedly considering running for governor. According to the Boston Globe, Massachusetts Attorney General Maura Healey is quietly exploring—but not yet decided on—running for governor. In New York, Andrew Cuomo resigned as governor amidst allegations of sexual harassment and deceptive practices regarding COVID death reporting in nursing homes. Many political observers assume first-term Attorney General Letitia James will run for his office, but she has yet to give a clear answer, and the chairman of the New York State Democratic Party personally endorsed current Gov. Kathy Hochul to continue as governor.

4) California and who is in charge

If California were a sovereign nation, it would be the [world's fifth-largest economy](#), and California's attorney general is often viewed as a trendsetter because of the size of the office's staff and breadth of statutory enforcement authority, including data privacy.

In March 2021, Governor Gavin Newsom appointed Democrat Rob Bonta, then a member of the California State Assembly to the post, after Xavier Becerra became the U.S. Secretary of Health and Human Services. Attorney General Bonta immediately began the process of preparing for the 2022 election cycle. There are already two others, Republican Nathan Hochman, a former U.S. assistant attorney general, and Independent Anne Marie Schubert, the current Sacramento County District Attorney, who have announced their candidacy.

Schubert, a career prosecutor, has repeatedly challenged Bonta's position on criminal justice reform. Political prognosticators have suggested that Bonta is expected to gain strong support from organized labor and criminal justice reform advocates, while law enforcement interests are expected to support his challengers.

5) Exciting things are happening in the Lone Star State

Several candidates have thrown their 10-gallon hats into the ring for Texas Attorney General, as current Republican Attorney General Ken Paxton faces a number of challenges. George P. Bush (R), a former Texas Land Commissioner, is expected to present a strong primary challenge. As political royalty (the son of a former Florida governor and the grandson and nephew of presidents), Bush brings both his family legacy and experience to the fight. His campaign, which focuses on border security, government accountability and law enforcement, will need to convince the Republican primary electorate that Bush's conservative credentials are best for Texas.

The latest candidate to join the campaign trail is Eva Guzman (R), who brings judicial experience from 12 years of service as a Texas Supreme Court Justice. Two candidates will also face off for the Democratic ticket: Joe Jaworski, the former Mayor of Galveston, and Lee Merritt, a civil rights attorney. Merritt is running on a voting rights platform. This topic became a rallying cry of Democrats after several Texas House Democrats left the state to avoid voting on a Republican-backed voting rights bill.

6) Things are stirring up in Georgia

Georgia Attorney General Chris Carr (R) entered the office after being appointed by the governor in 2016. In 2018, he ran for election, defeating Charlie Bailey (D). Bailey is running again, along with Jen Jordan (D), a current member of the Georgia State Senate, for the opportunity to challenge Carr in the general election. Among other

issues, the candidates will likely have to address Georgia's recently enacted voting law, which has generated strong sentiments from various stakeholders within The Peach State.

7) What will happen with Arizona's open seat?

Mark Brnovich (R) is constitutionally term limited as Arizona's attorney general and has launched his campaign for U.S. Senate. While in office, Brnovich has focused his office on consumer protection. For example, he secured over \$200 million in consumer restitution, debt and timeshare fee savings, and event ticket refunds, significant increases over his predecessors.

The lack of an incumbent for the seat has drawn a number of candidates from both sides of the aisle, including Andrew Gould (R), who recently stepped down from the bench as an Arizona Supreme Court Justice; Lacy Cooper, former Section Chief in the Border Security Section of the U.S. Attorney's Office; Diego Rodriguez (D), who currently serves in the Arizona House of Representatives; and Kris Mayes (D), former Arizona Corporation Commissioner. The crowded field means that candidates will have to woo potential supporters on a number of issues, including immigration, border security and election law, prior to the August 2022 primaries.

8) Will anyone challenge Tom Miller as he seeks an 11th term?

In Iowa, Attorney General Tom Miller (D), first elected in 1978 and with 10 terms under his belt, recently announced that he would run in 2022, seeking another term in office in order to handle what he called some "unfinished business," including how the state will spend the hundreds of millions of dollars that it is due to receive from various opioid settlements.

Miller currently operates under an unusual compromise that he reached with Gov. Kim Reynolds in 2019, shortly after Republican-backed Iowa lawmakers passed a measure to require the attorney general's office to obtain approval from the governor to enter out-of-state lawsuits. Although that measure did not become law, Miller agreed that as long as he was serving as attorney general, he would seek the consent of the governor prior to filing or joining any out-of-state proceeding. That compromise would presumably continue through Miller's next term.

Not surprisingly, given Miller's strong national reputation and institutional presence, no candidates have announced plans to run for this office in Iowa. However, despite significant margins of victory in recent elections, political observers expect at least one Republican to mount a challenge in 2022 against the nation's longest-serving attorney general.

Conclusion

Significant shifts in the state attorneys general landscape historically result in increased investigations relating to perceived consumer harm or other alleged regulatory deficiencies as both new and reinstated attorneys general stake out their ground and execute their policy preferences.

An open question exists whether the new officeholders will have an impact on multistate investigations. One area related to multistate investigations to watch is data privacy and cybersecurity, where the states, through both state

attorney general enforcement actions and regulation promulgated pursuant to state data privacy laws, seem to be positioning themselves as the primary regulator for privacy issues.

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