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STATE ATTORNEYS GENERAL POST-ELECTION REPORT 2022

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State attorneys general continue to dominate the national legal and political landscape, with a partisan fervor that sometimes obscures the ongoing investigations and litigation they conduct. It took until the end of December and after a recount and then a lawsuit challenging those results for one state attorney general race, Arizona, to be resolved—a testament to the narrow split seen in other races across the United States.

TOP-LINE RESULTS

Thirty state attorneys general faced election in 2022. When the final campaign finance reports for these races are filed, it is almost a given that the sums expended by attorney general campaigns, and independent expenditures on their behalf, will exceed past spending.

However, the partisan split among attorneys general has less of an effect than it does in Congress or state legislatures. Each attorney general exercises their sovereign independent judgment, and while they may choose to work with others, they are not bound to and do not answer to a party leader.

Initial Predictions

As past is often prologue, we expect that Republican attorneys general will continue to use their authority to litigate against Biden administration actions just as Democrats did during the Trump administration and Republicans did during the Obama administration. New to the toolkit are potential threats to private enterprise posed by attorney general involvement in hot-button issues, such as reproductive rights and environmental, social, and governance (ESG) investing, as some attorneys general use their investigative powers to probe the business community's conduct.

At the same time, we expect that Democratic attorneys general will continue to use their enforcement authority to further partisan and policy goals at a time when the Biden administration may not be able to due to the balance of power in Congress.

The Role of a State Attorney General

A state attorney general serves not only as their state's chief law enforcement and legal officer, but also as a statewide political official. Those two roles—coupled with the current polarization between the two major political parties—have elevated the power and importance of state attorneys general. We expect this trend to continue over at least the next two years.

Attorneys general are never "lame ducks." The investigations they commence, actions they file in court, and settlements they reach on the first day in office are just as effective and noteworthy as they are on the last day in office.

While attorneys general are political officials, their role as chief law enforcement officer should never be overlooked. It is a mistake to presume that because a business may be aligned with the policies of one party or another, or because someone has provided monetary and other support to one party or candidate or another, that they will escape the consequences of conduct alleged to violate state laws.

Most attorney general offices are staffed by trained, experienced prosecutors who have great leeway. A businessperson's merely "knowing" the attorney general is unlikely to be productive. Rather, as it has been in the past, there must be a deep understanding and appreciation of how attorneys general effect results through the proper balance of negotiation and litigation.

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All of this occurs in an environment where state funding issues have diminished importance. State attorneys general have access to a self-funded pool of approximately $250 million held by the National Association of Attorneys General (NAAG), which may be allocated to support investigative and litigation costs (with an expectation that any eventual judgment will include the repayment of those funds). It is a mistake to presume that a state can't afford to litigate because it may well have access to the funds to do so.

Going Forward

Finally, two changes occasioned by current investigations and litigation will almost certainly affect nonpartisan operations going forward. While it may have been historically true that many contingent fee plaintiffs' lawyers identified as Democrats, over the last five years it has become commonplace for Republican attorneys general to retain these lawyers as well.

Furthermore, the entry of county, local, and tribal jurisdictions into what has historically been the sole preserve of attorneys general will likely make it all the more difficult to resolve some major matters.

STATE-BY-STATE RESULTS

We have omitted results for minor third-party candidates where their vote count does not impact the result. We have reported as winners those races in which the opponent has conceded or mainstream media has "called" the race. We intend to update this report as time passes and will include official results and vote margins when results are certified by state election officials.

Alabama (Republican Hold)

Incumbent Steve Marshall (R) won a second term, defeating Wendell Major (D). Marshall was originally appointed to fill the unexpired term of then–attorney general Luther Strange (R) in 2017, and won his first elected term in 2018.

Arizona (Open Seat – Democratic Turnover)

After a recount and an unsuccessful lawsuit to block her certification, Kris Mayes (D), chair of the state's Corporation Commission, has defeated Abe Hamadeh (R), a former local assistant prosecutor. This is an open seat to fill the vacancy created by two-term incumbent Mark Brnovich (R), who unsuccessfully sought his party's nomination for the US Senate.

Arkansas (Republican Hold)

Tim Griffin (R), the incumbent lieutenant governor and a former White House deputy counsel, defeated private practitioner Jesse Gibson (D) to fill the vacancy created by termed-out incumbent Leslie Rutledge (R), who won her race for lieutenant governor.

California (Democratic Hold)

Incumbent Rob Bonta (D) won his first full term against challenger Nathan Hochman (R). Bonta had been appointed by Governor Gavin Newsom (D) in 2021 to fill the unexpired term of then–attorney general Xavier Becerra, who was appointed by President Biden to serve as the secretary of the US Department of Health and Human Services.

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Colorado (Democratic Hold)

Incumbent Phil Weiser (D) won a second term, defeating John Kellner (R), a district attorney.

Connecticut (Democratic Hold)

Incumbent William Tong (D) easily won a second term, defeating Jessica Kordas (R).

Delaware (Democratic Hold)

Incumbent Kathy Jennings (D) easily won a second term, defeating Julianne Murray (R).

District of Columbia (Democratic Hold)

Brian Schwalb (D) was unopposed in his race to succeed retiring two-term incumbent Karl Racine (D).

Florida (Republican Hold)

Incumbent Ashley Moody (R) easily won a second term, defeating Aramis Ayala (D), a former state attorney.

Georgia (Republican Hold)

Incumbent Chris Carr (R) won a second full term, defeating Georgia State Senator Jen Jordan (D).

Idaho (Republican Hold)

Having defeated five-time incumbent Lawrence Wasden in the primary, Raul Labrador (R), a former US representative and former chair of the Idaho Republican party, easily defeated Tom Arkoosh (D), a former local prosecutor.

Illinois (Democratic Hold)

Incumbent Kwame Raoul (D) won a second term, defeating Tom DeVore (R), a private practitioner.

Iowa (Democrat-to-Republican turnover)

Brenna Bird (R), a county attorney, defeated incumbent Tom Miller (D), the nation's longest-serving attorney general (1979–1991 and 1995–present).

Kansas (Republican Hold)

Former Kansas Secretary of State and unsuccessful 2018 gubernatorial candidate Kris Kobach (R) defeated former police officer and assistant local prosecutor Chris Mann (D).

Maine (Democratic Hold)

The Maine attorney general will be elected by the incoming state legislature in December. Incumbent Aaron Frey (D) is currently serving his second two-year term. The Maine Legislature will remain under Democratic control and is expected to elect a Democrat; thus, Frey may see a third term.

Maryland (Democratic Hold)

US Representative Anthony Brown (D) defeated Michael Peroutka (R). He will fill the vacancy created by retiring two-term incumbent Brian Frosh (D) and become the first Black attorney general in Maryland.

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Massachusetts (Democratic Hold)

Former city council member Andrea Campbell (D) defeated James McMahon (R) to become the first Black attorney general in Massachusetts. She will fill the vacancy created by incumbent Maura Healey (D), who was elected governor.

Michigan (Democratic Hold)

Incumbent Dana Nessel (D) won a second term, defeating Matthew DePerno (R).

Minnesota (Democratic Hold)

Incumbent Keith Ellison (D) won a second term, defeating Jim Schultz (R).

Missouri (Republican Hold)

Incumbent Eric Schmitt (R) has won his race for the US Senate and will in due course resign. The Missouri governor, also a Republican, will appoint an acting attorney general to fill Schmitt's unexpired term ending in 2024.

Nebraska (Republican Hold)

Mike Hilgers (R), speaker of the Nebraska Legislature, easily defeated Larry Bolinger (Legal Marijuana Now) to fill the vacancy created by retiring incumbent Doug Peterson (R).

Nevada (Pending)

Incumbent Aaron Ford (D) secured a second term, defeating Sigal Chattah (R), a private practitioner.

New Mexico (Democratic Hold)

Bernalillo County District Attorney Raul Torrez (D) easily defeated Jeremy Gay (R) to fill the vacancy created by termed-out incumbent Hector Balderas (D).

New York (Democratic Hold)

Incumbent Letitia James (D) easily defeated Michael Henry (R) to secure a second term.

North Dakota (Republican Hold)

Incumbent Drew Wrigley (R) was easily elected to his first full term after being appointed by the governor to fill the unexpired term of incumbent Wayne Stenehjehm, who died in January 2022. Wrigley defeated Timothy Lamb (D).

Ohio (Republican Hold)

Incumbent Dave Yost (R) easily defeated state representative Jeffrey Crossman (D) to win a second term.

Oklahoma (Republican Hold)

Gentner Drummond (R) easily defeated Lynda Steele (Libertarian) to secure his first term. He will succeed John O'Connor (R), who lost to Drummond in the Republican primary after being appointed to fill the unexpired term of Mike Hunter (R), who resigned in June 2021.

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Pennsylvania (Democratic Hold)

Second-term incumbent Josh Shapiro (D) has won his race for governor and will in due course resign as attorney general. As governor, he will have the power to appoint a successor to fill the remaining two years of his term as attorney general.

Rhode Island (Democratic Hold)

Incumbent Peter Neronha (D) easily defeated Charles Calenda (R) to secure a second term.

South Carolina (Republican Hold)

Incumbent Alan Wilson (R) was unopposed in his run for a fourth term.

South Dakota (Republican Hold)

Marty Jackley (R), who previously served as state attorney general from 2009 to 2019, ran unopposed. He will fill the vacancy created by Jason Ravnsborg (R), who was impeached and removed from office; this vacancy had been temporarily filled by Mark Vargo (R).

Texas (Republican Hold)

Incumbent Ken Paxton (R) won a third term, defeating Rochelle Garza (D).

Vermont (Republican-to-Democratic Turnover)

Charity Clark (D), chief of staff to the state attorney general, easily defeated Michael Tagliavia (R). She will fill the vacancy created by T.J. Donovan (D), who resigned to accept a private sector position, and Donovan's appointed successor, Susanne Young (R), who decided not to seek a full elected term.

Wisconsin (Democratic Hold)

Incumbent Josh Kaul (D) has won a second term, defeating Eric Toney (R), an elected local prosecutor.

CONTACTS

If you have any questions or would like more information on the issues discussed in this report, please contact any of the following:

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