Morgan Lewis

STATE ATTORNEYS GENERAL POST-ELECTION REPORT 2018

Morgan Lewis Consulting
November 7, 2018

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State Attorneys General Post-Election Report 2018

The Top Line Results

New Attorneys General
18 new attorneys general will take office in January as a result of this election cycle, including

- 10 Democrats elected (Colorado, Connecticut, Delaware, Illinois, Michigan, Minnesota, Nevada, New York, Rhode Island, and Wisconsin)
- 3 Republicans elected (Florida, Ohio, and South Dakota)
- 4 attorneys general yet to be appointed (Wyoming, Alaska, Hawaii, Maine)
- 1 attorney general to be appointed to fill a vacancy (Missouri)

Turnovers
There were four states that turned over party control. All turnovers were Republican to Democrat: Colorado, Wisconsin, Michigan, and Nevada. In all of these races, the governorship went to the Democratic candidate as well.

Partisan Split
Party control among attorneys general is expected to be split among 27 Democratic and 24 Republican attorneys general, assuming that the three governor-appointed attorneys general will follow the governor's party (Alaska, Wyoming, and Hawaii) and that Maine will be Democratic based on the composition of the state legislature. Before the election, the partisan split was 28 Republicans, 22 Democrats, and one Independent.

Incumbency
All incumbents seeking reelection won another term, except for one. Republican Brad Schimel (WI) lost his bid for reelection.

Attorneys General Running for Higher Office
9 incumbent attorneys general sought higher office, with only three (Maine, Missouri, and Ohio) succeeding in that effort. Cynthia Coffman (R-CO) lost her party's nomination for governor; Janet Mills (D-ME) won the governorship; Lori Swanson (D-CO) lost her party's nomination for governor; Josh Hawley (R-MO) won a seat in the US Senate; Adam Paul Laxalt (R-NV) lost his race for governor; Mike DeWine (R-OH) won his race for governor; Bill Schutte (R-MI) lost his race for governor; Marty Jackley (R-SD) lost his party's nomination for governor; and Patrick Morrissey (R-WV) lost a race for a Senate seat and will thus remain as attorney general.

Governors
Democrats turned over seven governorships from Republican to Democrat. Republicans turned over one governorship (Alaska) from Independent to Republican. The partisan split before the election was 34 Republicans, 15 Democrats and 1 Independent. Post-election, the split is 28 Republicans and 22 Democrats.

What the Results Mean

Federal State Cooperation on High-Profile Issues
Collaboration between activist state attorneys general and Democrats now in control of the US House of Representatives will likely lead to a synergy of potent oversight by Congress and enforcement by states, which poses significant and unpredictable risks for businesses operating across national and state borders.

Partisan Litigation Will Continue
Democrats, often armed with newly appropriated funds for additional prosecutors, will continue their efforts against the president's business and social agenda, primarily attacking "regulatory rollback" in Washington, DC, and immigration policies. This mirrors what Republicans did under the prior administration, where they routinely attacked what they termed "regulatory excess" by the Obama administration, thus continuing the "shoe is on the other foot" seesaw of the balance of power between Washington and the states.

All of this poses significant risk for operating businesses that may be caught in the crosshairs of "regulatory rollback" or find their efforts to take advantage of new opportunities created by that "rollback" diminished as the result of independent state enforcement.

The Major Issues
The good news for state attorneys general is that after having taken tough positions on key issues, they have been elected. The bad news is that they now "own" those issues and may be held accountable by their constituents for inaction or lack of success. Thus, on key issues such as the opioid crisis, drug pricing, privacy, technology competition, and financial services consumer protection, both the individual attorneys general and their parties face some degree of judgment in the next cycle, which includes a presidential election in 2020.

What's Next?

In 2019, there are only three attorney general races. Kentucky Attorney General Andy Beshear (D) and Mississippi Attorney General Jim Hood (D) are declared candidates for governor of their respective states, thus creating two open seats. Louisiana Attorney General Jeff Landry (R) could seek a second term.

State by State

These preliminary results are based on public reporting, but have not been certified by any state's election authority. All are subject to change pending each election authority's final action.

Alabama (REPUBLICAN HOLD)
Incumbent Steve Marshall (R) secured his first full term by defeating Joe Siegelman (D), son of the former Alabama governor. Marshall was appointed attorney general in 2017 to fill the vacancy created by the resignation of Luther Strange (R) when Strange was appointed to serve the unexpired term of then Senator Jeff Sessions (R). Marshall, originally elected as a Democrat, served as a local prosecutor from 2001 until 2017. As a local prosecutor, he was known for his "tough on crime" initiatives.

Alaska (OPEN SEAT, NO IMMEDIATE SELECTION)
Incumbent Attorney General Jahna Lindemuth (I) was appointed by Governor Bob Walker (I), who dropped out of the three-way race for governor two weeks before the election and endorsed the Democratic candidate. That race has been called for Mike Dunleavy (R) and he will, in due course, have the opportunity to appoint an attorney general.

Arizona (REPUBLICAN HOLD)
Mark Brnovich (R) was reelected to his second term as attorney general, defeating Democratic challenger January Contreras, a former prosecutor. Bronvich previously served as the director of the Arizona Department of Gaming and before that as an assistant US attorney. Bronvich is the immediate past chair of the Conference of Western Attorneys General (CWAG).

Arkansas (REPUBLICAN HOLD)
Incumbent Leslie Rutledge (R) has secured a second term, beating Mike Lee (D). Rutledge is also the chair of the Republican Attorneys General Association (RAGA) and is closely aligned with the Trump administration. She has a background as an attorney at both the Environmental Protection Agency (EPA) and the Republican National Committee.

California (DEMOCRATIC HOLD)
Incumbent Xavier Becerra (D) won his first full term, beating Steven Bailey (R). Becerra was appointed to his position by outgoing Governor Jerry Brown (D) to fill the unexpired term of Kamala Harris (D). Harris resigned when she was elected to the Senate in 2016. Becerra is a former Congressman from Los Angeles and before that served as a career prosecutor in the office he now heads.

Colorado (TURNOVER REPUBLICAN TO DEMOCRAT, OPEN SEAT)
Phil Weiser (D) defeated George Brauschler (R) to fill a vacancy created by Cynthia Coffman (R) who unsuccessfully sought the Republican nomination for governor and did not seek reelection as attorney general. Weiser is a former Obama Justice Department official and dean of the Colorado University Law School. He is expected to focus on immigration, opioid, and drug-pricing issues with an active law enforcement and policy agenda.

Connecticut (DEMOCRATIC HOLD, OPEN SEAT)
State Representative William Tong (D) defeated State Attorney Susan Hatfield (R). Tong has served in leadership roles in the Connecticut legislature as well as worked as an attorney in private practice. In his campaign, Tong emphasized his role as a "fighter" who will take on the president, pointing to his work taking on the National Rifle Association by enacting stricter gun control laws, as well as his background as the child of Chinese immigrants. As attorney general, he will take on important leadership roles in multistate investigations of consumer protection concerns regarding the marketing of opioids, and separately, antitrust concerns regarding generic drug pricing as well.

Delaware (DEMOCRATIC HOLD, OPEN SEAT)
Kathy Jennings (D) defeated Bernard Pepukayi (R) to fill a vacancy created by the retirement of Matt Denn (D) after one term. Jennings has a background as a longtime prosecutor in the office and is closely associated with both former Vice President and Senator Joe Biden and the late Beau Biden, who died in office as the state's attorney general. As one of six attorneys general who is also the state's securities regulator and enforcer, Jennings can be expected to continue

the state's preeminent role in financial services consumer protection matters, and also, during her campaign, she pledged to continue her predecessor's efforts against opioid manufacturers.

District of Columbia (DEMOCRATIC HOLD)
Incumbent Carl Racine (D) was elected without functional opposition to a second term. Racine is the first elected attorney general of the District. Prior to 2014, the attorney general was appointed by the mayor. Prior to serving as attorney general, Racine worked in the DC public defender's office, as associate White House counsel to President Bill Clinton (D), and in private practice. He is a co-chair of the Democratic Attorneys General Association (DAGA) and has been a leader in multistate legal challenges to the administration's immigration and regulatory agendas.

Florida (REPUBLICAN HOLD, OPEN SEAT)
Ashley Moody (R) defeated Sean Shaw (D) to fill the vacancy created by termed-out Pam Bondi (R). Moody is a former state judge and federal prosecutor. She is expected to focus on healthcare issues and what she has termed Washington "overreach." Her comments on opioid issues have focused on a law enforcement approach rather than a corporate accountability approach.

Georgia (REPUBLICAN HOLD)
Incumbent Chris Carr (R) won his first full term, beating Charlie Bailey (D). Carr was appointed in November 2016 to serve the unexpired term of his predecessor, who resigned midterm to take a position in academia. Carr came to office having served as the state's commissioner of economic development and previous to that was the chief of staff for US Senator Johnny Isakson (R) for six years.

Hawaii (DEMOCRATIC HOLD)
This office has been vacant and filled by a career acting official since the resignation of Doug Chin (D), who ran unsuccessfully for Congress. In this state the position is appointed, and Governor David Ige (D), who won reelection, will have the opportunity to appoint a new attorney general in due course.

Idaho (REPUBLICAN HOLD)
Incumbent Lawrence Wasden (R) was elected to his fifth term against surprisingly strong opposition. Before being elected attorney general Wasden previously served on the Idaho AG's office as deputy chief of staff and then chief of staff. Since his election, Wasden has been active in multistate organizations including as president of the National Association of Attorneys General and chair of CWAG.

Illinois (DEMOCRATIC HOLD, OPEN SEAT)
Kwame Raoul (D) defeated Erika Harold (R), and will succeed longtime Attorney General Lisa Madigan (D), who did not see reelection. Raoul is a state senator with strong Chicago and party ties. He was first appointed in 2004 to fill the vacancy created when then state Senator Barack Obama was elected to the US Senate. Raoul has a history of working with Republicans to accomplish mutual goals.

Iowa (DEMOCRATIC HOLD)
Incumbent Tom Miller (D) was elected to a historic 10th term without opposition. He is the "dean" of the state attorneys general and has taken a leading role in many key multistate investigations over the years. As the state's attorney general, he developed a significant block of support from Republicans, who, despite his national reputation as a partisan Democrat and the first statewide official to endorse then Senator Barack Obama in 2008, view Miller as a steady hand on Iowa matters.

Kansas (REPUBLICAN HOLD)
Incumbent Derek Schmidt (R) secured a third term in office, defeating Sarah Swain (D). As attorney general, Schmidt served as president of the National Association of Attorneys General (NAAG) and has focused on elder fraud and related issues. It is significant to note that this solidly Republican state elected a Democrat as governor.

Maine (DEMOCRATIC HOLD, OPEN SEAT)
The Maine legislature will select the next attorney general by secret ballot to fill the vacancy created by incumbent Janet Mills (D), who won the governorship, becoming the state's first woman governor. As both the Senate and House will be controlled by Democrats, the next attorney general will almost certainly be a Democrat as well.

Maryland (DEMOCRATIC HOLD)
Incumbent Brian Frosh (D) secured a second term, defeating Craig Wolf (R). Frosh, a former state legislator, has focused on consumer protection issues, particularly seeking and obtaining first-in-the-nation generic drug price controls and also by attacking the Trump administration on key issues.

Massachusetts (DEMOCRATIC HOLD)
Maura Healey (D) was elected to a second term, defeating Jay McMahon (R). Prior to her election as attorney general, Healey served in several senior positions in the office she now heads. She is active in the DAGA and many multistate investigations, and together with the Washington State attorney general, she has been very active in opposing the Trump administration's initiatives in a variety of areas, including immigration, the environment, climate change, energy issues, civil rights, and education, among others.

Michigan (OPEN SEAT, TURNOVER REPUBLICAN TO DEMOCRAT)
Dana Nessel (D) was elected, defeating Tom Leonard (R) to fill the vacancy created by Bill Schuette (R), who lost the general election for governor. Nessel has a background as a local prosecutor, defense attorney, foundation executive, and civil rights advocate.

Minnesota (OPEN SEAT, DEMOCRATIC HOLD)
Keith Ellison (D) defeated Doug Wardlow (R) in a surprisingly hotly contested race to fill the vacancy created by incumbent Lori Swanson (D), who failed to secure the Democratic nomination for governor and did not seek reelection as attorney general. Ellison is a former member of Congress and vice chair of the Democratic National Committee. He is expected to focus on opioid and drug-pricing issues and, while in Congress, has made negative comments regarding large platform technology companies.

Missouri (NO AG ELECTION)
Governor Mike Parson (R) will appoint an acting attorney general to fill the vacancy to be created by incumbent Josh Hawley (R), when Hawley resigns midterm to take his Senate seat. The new attorney general will serve through the next election in 2020.

Nevada (TURNOVER REPUBLICAN TO DEMOCRAT, OPEN SEAT)
Aaron Ford (D) defeated Wes Duncan (R) to succeed the vacancy created by incumbent Adam Paul Laxalt (R), who lost the governor's race. Ford is the majority leader of the state senate and is expected to focus on opioid, labor, and financial services consumer protection issues.

New Mexico (DEMOCRATIC HOLD)
Incumbent Hector Balderas (D) secured a second term, defeating Michael Hendricks (R). Balderas is the former state auditor, where he distinguished himself on anti-corruption matters. As attorney general, he has filed numerous consumer protection actions using trial lawyers.

New York (DEMOCRATIC HOLD, OPEN SEAT)
Letitia "Tish" James (D) defeated Keith Wolford (R) to fill a vacancy created by the scandal-tainted resignation of Eric Schneiderman (D) and the decision of his legislatively appointed successor Barbara Underwood (D) not to stand for election. James will become New York's first statewide woman-of-color official. James, who serves as the public advocate and had the strong support of Governor Andrew Cuomo (D), is expected to focus on consumer protection issues as she has done in her past position. The strong career prosecutorial staff in the office appears ready to maintain the state's preeminent position on cutting-edge litigation.

North Dakota (REPUBLICAN HOLD)
Incumbent Wayne Stenjehm (R) was elected to a fifth term, soundly defeating David Clark Thompson (D). Stenjehm is the longest serving Republican attorney general in the country.

Northern Mariana Islands
Incumbent Edward Manibusan (D) was elected, unopposed, to a second full term.

Ohio (OPEN SEAT, REPUBLICAN HOLD)
David Yost (R) defeated Steve Dettelbach (D) to fill a vacancy created by Mike DeWine (R), who successfully sought the state's governorship. Yost is the current state auditor and has formerly held county auditor and prosecutor positions.

Oklahoma (REPUBLICAN HOLD)
Incumbent Mike Hunter (R) was elected to his first full term, having been appointed to fill the vacancy created by the resignation of Scott Pruitt (R) to serve as administrator of EPA. He defeated Mark Myles (D).

Rhode Island (DEMOCRATIC HOLD, OPEN SEAT)
Peter Neronha (D) was unopposed in this race. He was formerly the US Attorney for the District of Rhode Island. Although there was really no general election campaign, Neronha publicly focused on traditional issues handled by an attorney general, including gun safety, environment, public integrity, crime, and consumer protection.

South Carolina (REPUBLICAN HOLD)
Incumbent Alan Wilson (R) won a third term, defeating Constance Anastopoulo. Although pro-business in many ways, Wilson has followed the lead of his predecessors by using trial lawyers for large cases, particularly those against pharmaceutical companies.

South Dakota (REPUBLICAN HOLD, OPEN SEAT)
Jason Ravensborg (R) defeated former Obama administration US Attorney Randy Seiler (D) to fill the vacancy created by incumbent Marty Jackley (R), who unsuccessfully sought the Republican nomination for governor and was termed out. Ravensborg is in private practice but previously served as a local prosecutor. Ravensborg is also a lieutenant colonel in the US Army Reserve. In 2014, he lost the Republican Senator nomination to Senator Mike Rounds (R).

Texas (REPUBLICAN HOLD)
Incumbent Ken Paxton (R) defeat his democratic challenger Justin Nelson (D). Paxton has been under indictment since July 2015 on three criminal security-related charges, and the trial has not yet taken place. Paxton's office actively participates in many national multistate investigations, and he was a leader in the Republican attorney general effort to litigate against the Obama administration for regulatory overreach and other matters.

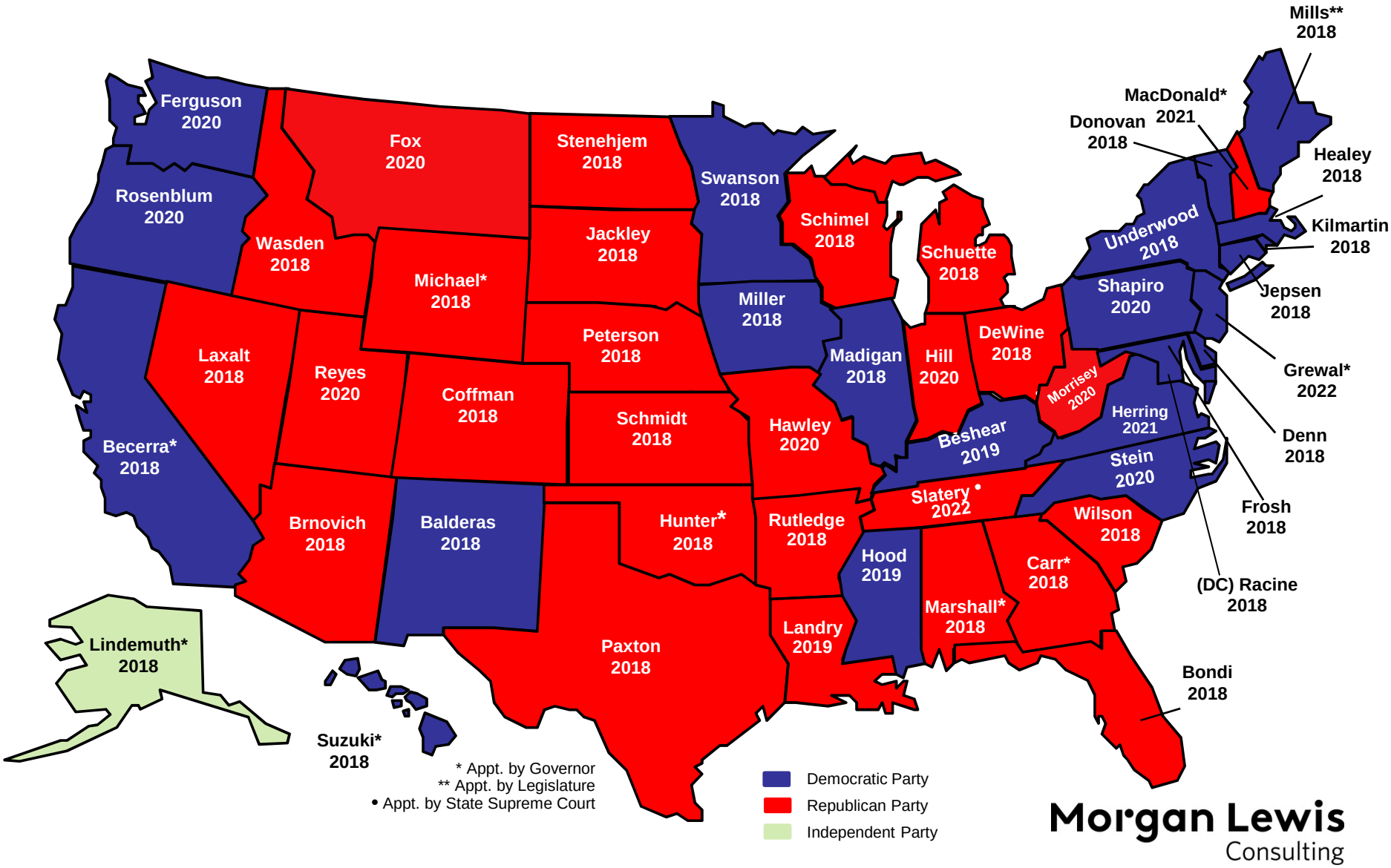
Vermont (DEMOCRATIC HOLD)
Incumbent TJ Donovan (D) was elected to a second two-year term, defeating Janssen Willhoit (R). Donovan listed combatting the opioid crisis as one of his top priorities as attorney general.

Virgin Islands
The attorney general will be appointed by the incoming governor. That race will not be decided until a runoff election on November 20.

Wisconsin (TURNOVER REPUBLICAN TO DEMOCRAT, INCUMBENT LOSS)
With 100% of precincts reporting, Josh Kaul (D) appears to have defeated incumbent Brad Schimmel (R) in a rare attorney general rejection of an incumbent. However, Schimmel has not conceded. Kaul, a former federal prosecutor, US Supreme Court clerk, and elections lawyer, is expected to focus on financial services consumer protection matters, opioid manufacturing concerns, and drug-pricing matters. He is the son of the late Peg Lautenschlager (D), the last state attorney general to unsuccessfully seek reelection.

Wyoming (REPUBLICAN HOLD, OPEN SEAT)
The attorney general will be appointed by incoming Governor Mark Throne (R).

Pre-Election Attorneys General
November 6, 2018



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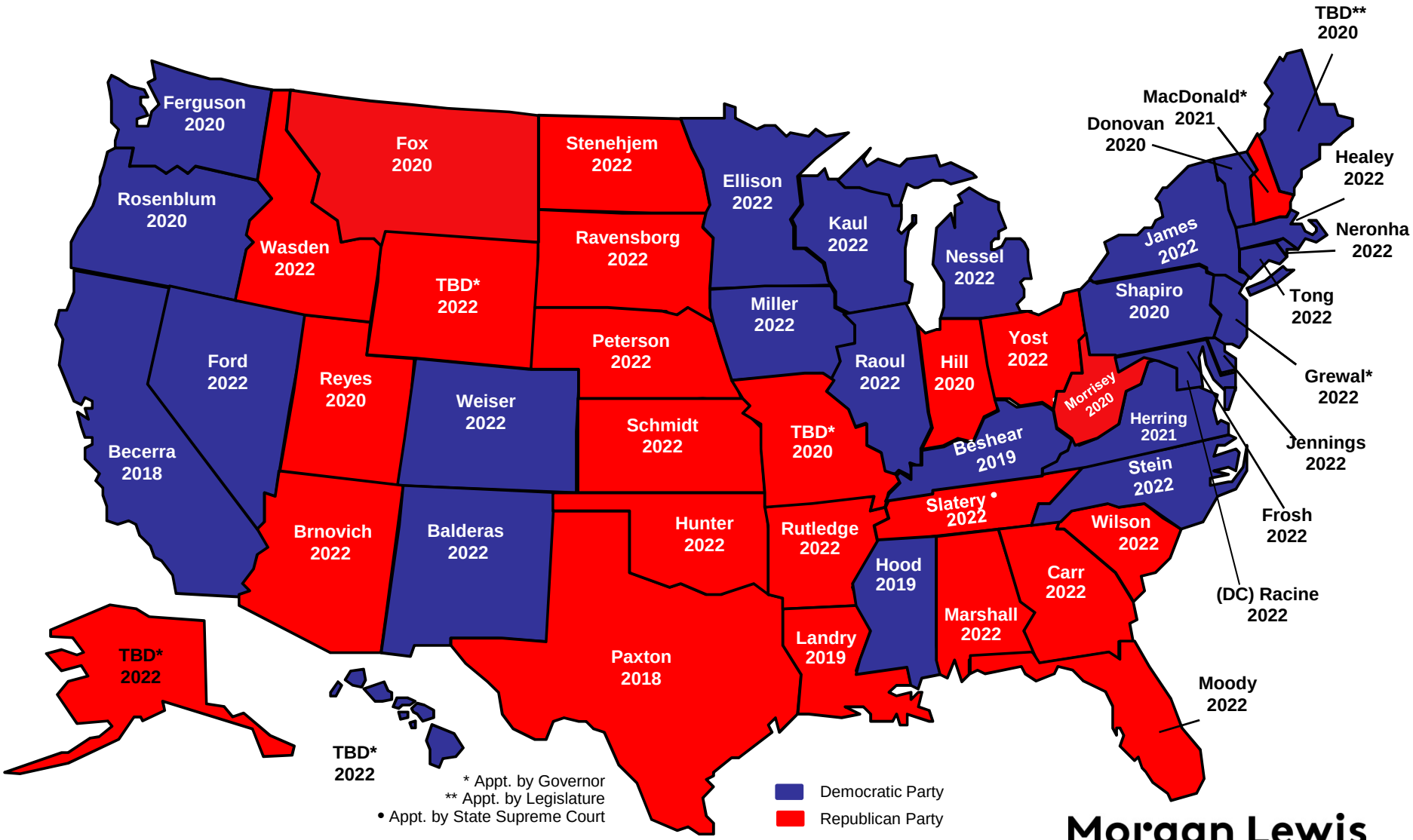

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