Insights: Publications

# Election 2022 and Beyond: Ride a Truly National Strategy to Navigate Shifting Political Tides at Federal and State Levels

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The next presidential election may not be until 2024, but thinking of this year's election cycle as just a “midterm” is a mistake. When *all* the votes are tallied across America, the policy ramifications of Election Day 2022 may be every bit as consequential for your business or industry than in a presidential cycle. Developing a cohesive national government affairs strategy can help you navigate whatever political tide crashes to shore and shift it in your favor.

24/7 national news coverage has conditioned us to focus on issues through a federal—rather than federalist—lens. Federal policies provide a national stage, so it stands to reason that much of the oxygen leading into next week is being consumed by how many seats the Republicans may flip in the U.S. House of Representatives and which handful of states will decide the balance of power in the United States Senate.

A divided government will slow or block certain policy priorities for the Administration, from rulemakings to legislation. New leadership in Congress provides opportunities to reshape the federal narrative and scope of rulemakings through strategic engagement and congressional oversight, as well as to advance limited bipartisan policy outcomes that may allow both parties to claim wins for Main Street businesses and consumers ahead of 2024. But divided government and what comes with it at the federal level are not particularly new.

So, why is discounting Election Day 2022 as just a midterm a mistake? What else will this election cycle mean?

Election Day 2022 will underscore the impact politics and policymaking in our 50 states have not only locally but have come to have nationally. Our founders envisioned a nation where the states operate as laboratories of democracy. And now, perhaps more than ever, the states are carrying that banner on significant evolving issues—including promoting and regulating fintech, cybersecurity and data privacy, the environment, and corporate citizenship.

The presidency may not be on the ballot this year, but **36** states are holding gubernatorial elections; **30** states have attorney general seats on the ballot; and **88 of the country's 99** state legislative chambers have seats up for grabs. In other words:

• 36 states will elect a chief executive responsible for implementing state laws, including ramping up or tailoring climate initiatives.

• 30 states will elect an attorney general empowered to interpret and enforce state laws, including ones that require balancing the promise of innovation with concerns for consumer protection.

• Nearly every state will elect legislators who write state laws, including revisions to the tax code that impact your bottom line and your employees' take-home pay.

This means—in a year when the most likely outcome of the federal midterm election is gridlock arising out of divided government, with Republicans gaining control of at least one chamber of Congress—the biggest policy risks and opportunities in the next few years could very well arise from election results at the state level.

One reason states are becoming important proving grounds for timely issues with interstate implications is that individual states often can move faster than the federal apparatus. Another is that many of these states have governors, attorneys general, or legislators with aspirations for higher office who recognize the potential value in taking credit for what may serve as a model approach for the entire country. Yet another is that by challenging the federal status quo, these state leaders have become adept at leveraging the very same national news and social mediums that had conditioned Americans to focus principally on politics through a federal lens.

None of this is to say what happens at the federal level will be any less important than what happens in the states. It is to recognize that what happens at both levels of government increasingly informs what happens at the other and overlooking this give-and-take could expose your business to policy and regulatory risks and missed opportunities.

Take, for example, ESG—environmental, social, and governance—investing: Republican-controlled congressional committees will conduct aggressive oversight of the Securities and Exchange Commission's draft plan for climate risk disclosure requirements and enforcement activities regarding sustainability statements. They also may demand documents and answers from certain financial institutions who have led the industry's activism on what Republicans often label “woke” capitalism. Democratic members, including the Senate Banking Committee (if Democrats hold the Senate), will try to provide some form of cover. If Republicans are successful, the SEC will be slowed, if not blocked, from advancing Chairman Gensler's ESG priorities.

As this federal activity unfolds, significant related activity will play out in the states that may present equal or greater risk and opportunity. Governors and state legislators are interested in how state pensions are investing funds and what kinds of economic incentives certain companies are receiving. State attorneys general, empowered to conduct investigations and enforce the law, are picking up the banner when it comes to greenwashing on one hand to the fulfillment of fiduciary responsibilities on the other. Through these actions as well as their own direct engagement with federal policymakers, state leaders will continue to use their positions to influence the national narrative and record.

Such federal and state policy ping pong applies to a number of timely national issues related to a swath of industries. To maximize your investment in government affairs as a vehicle to manage risk and enhance business results, arm yourself with a cohesive national strategy that is not federal in one silo and state in the next. Ensure your strategy is designed to anticipate and assess how the trends at one level are informing actions of the other and that your team can respond accordingly. Doing so will enhance your company's ability to adapt to political shifts at any level of government to identify policy risks and seize winnable opportunities.

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If you have any questions regarding how to enhance your government affairs approach, the KTS Strategies team is here to help. This alert was prepared by **Fritz Vaughan**, a Managing Director at KTS Strategies who brings more than 15 years of experience in law and politics to help clients achieve policy and business objectives at the national, federal, and state levels. You can reach out to Fritz directly at fvaughan@ktsstrategies.com.

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