

## Cozen Currents: The State of the States



Howard Schweitzer

CEO, Cozen  
O'Connor  
Public  
Strategies

hschweitzer@cozen.com  
Phone: (202) 912-4855  
Fax: (202) 640-5932

### Related Practice Areas

- Government Relations - Cozen O'Connor Public Strategies

### The Cozen Lens

- America's federalist system has often left state governments overshadowed by what happens at the federal level. But states today are a potent force for influencing the national agenda and policymaking in their own right.
- In states where Democrats hold unified control of government, they are charging ahead on issues including labor and climate where they can go farther than their federal counterparts.
- Red states may not be the economic powerhouses that blue states are, but their politics still have a significant influence on policy discussions at the federal level.

### The Federal-State Dynamic

**The States Get Their Dues.** While there is plenty of gridlock at the national level, state governments are more united, popular, and flush with cash.

- The country and Congress are evenly divided. The states, not so much. There are 22 states with Republican unified control, 17 states with Democratic unified control, and just 11 states where there is divided government. No state has a filibuster either.
- Everyone hates DC and national politicians, but voters love their local politicians. According to a *Morning Consult* tracker, not a single current governor has a net negative approval rating. Some of the most popular governors are Republicans in blue states (Vermont) and Democrats in red states (Kentucky).
- More federal and national resources are going towards state governments and politics. States received over \$800 billion in pandemic aid from Congress, with the Infrastructure Investment and Jobs Act opening up the coffers for state infrastructure investments. Meanwhile, out-of-state donations are flooding state-level campaigns.

**The Laboratories of Democracy.** Supreme Court Justice Louis Brandeis called states the "laboratories of democracy" for their role in advancing policies that can later gain national prominence. Blue and red states alike are moving the needle on policies that impact the entire country.

- States aren't waiting for the federal government to take action. On issues like data privacy, ESG investing, labor, and cannabis, blue and red states are active.
- Federal representatives from these states can then push to ensure state-level laws are not preempted by any future federal legislation.
- Blue states and localities are home to the bulk of US economic activity. In 2020, counties that voted for President Biden accounted for 71 percent of national GDP, while former President Trump-supporting counties were responsible for 29 percent. State initiatives can become a de facto standard other states adopt. With the state of California alone set to be the fourth largest economy in the world, Democrats in other states are tying legislation they pass (e.g. vehicle emission standards) with California's laws and standards.
- Referendums remain a potent policy tool at the state level. In the last midterms, voters in 38 states decided 140 statewide ballot measures, of which 69 percent passed.

**The States Face National Headwinds.** States are far from immune from the national political climate and competition from other states. In many ways, they are exacerbating the red-blue divide in the country.

- All politics is not local, as national culture wars matter at the state level. Some of the biggest organizing around the "anti-woke" movement is being driven by local governments and

schools.

- State-level politicians often don't get blamed on issues like foreign policy or the broader economy. But national issues like crime, which has a localized element, remain a challenge for local leaders.
- Dissatisfied voters at the state level can "vote with their feet." Greater affordability and lower taxes are pushing migration away from blue states like California, Illinois, and New York, and towards red states like Florida and Texas.

### The Blue State Dynamic

**Blue States After the 2022 Elections.** Democrats expanded power on the state level in last year's elections, defying expectations.

- Democrats achieved more state government trifectas after the 2022 midterms than at any point since 2009. Though Democrats lost a trifecta in Nevada, they gained full control of the governments of Michigan, Minnesota, Massachusetts, and Maryland, and flipped the governorship of Arizona.
- According to Ballotpedia, a slight plurality of Americans live in states with Democratic trifectas: 41.7 percent compared to the 39.6 percent who live in states with Republican trifectas.

**Labor Policy.** The 60-vote threshold to defeat a Senate filibuster impeded pro-labor legislation even when Democrats held unified control of Congress, but state lawmakers are picking up President Biden's mantle.

- Michigan Democrats have indicated that they intend to use their new legislative majorities to reverse labor laws passed by Republicans when they held a trifecta between 2011 and 2019 and boost unions. Lawmakers have proposed a bill to repeal the Wolverine State's right-to-work law, which blocks contracts from mandating union membership or payment of union fees as a condition of employment. A Detroit news station reported that if Democrats succeed, Michigan would be the first state to repeal right-to-work in 60 years. Democrats have also introduced legislation to restore Michigan's prevailing wage law, repealed by Republicans in 2018, which had directed state contractors to offer union wages and benefits for state construction projects. Governor Gretchen Whitmer (D) in 2021 took executive action on prevailing wage requirements.
- In New Jersey, a state Assembly committee last month voted to approve a bill to regulate the use of automated decision-making systems in hiring decisions. This legislation could foreshadow other state efforts to enact rules on the use of artificial intelligence (AI) in employment or other areas. It's similar to the approach of the Equal Employment Opportunity Commission under Biden, which highlighted AI in a recent draft enforcement plan.

**Environmental Policy.** California Democrats are taking the lead on climate as divided government means that environmental legislation has no path to passing Congress.

- Late last month, California lawmakers proposed legislation that would require greenhouse gas disclosures for companies doing business in the Golden State with over \$1 billion in revenue.
- The California proposal is broader than a similar rulemaking in progress at the Securities and Exchange Commission (SEC). Unlike the SEC rule, the California bill would apply to both public and private companies. It would also mandate that all companies share information about emissions resulting from their operations, energy use and supply chains (known as Scope 3 emissions) beginning in 2026. The California attorney general would be able to enforce the measure via civil suits. If enacted as-is, the California bill could ultimately have a wider impact than the SEC's rule.
- A version of the bill passed the state Senate last year but failed to pass the state Assembly. State Senator Scott Weiner (D), one of the bill's sponsors, sounded an optimistic tone about the bill's chances this year. "I can look around and see some districts that are now represented by Democrats instead of Republicans," he noted to Politico. "Some districts where there are members who did not support it, or I look at the new members who are very strong on climate."

- In addition to the emissions disclosures, California Democrats have also introduced a bill that would direct public pension funds to divest from fossil fuel companies and a bill that would mandate climate risk disclosures for companies with revenue of \$500 million or greater.

### **The Red State Dynamic**

**GOP Still Dominates State Governments.** Republicans were expected to have a strong performance in the 2022 midterm elections that would see them expand their control at the state level, but ultimately fell short of that goal.

- Despite underachieving this past November though, the 22 states with a Republican trifecta still make up a plurality of the country. The GOP is also in a strong position in several of the split states controlling six legislatures under Democratic governors and having governors in four of the other states.
- A notable positive trend in these states is the way that many have recovered faster economically from Covid than their Democratic counterparts. This has been heavily driven by pandemic-induced migration that saw people moving from cities to the middle of the country and Florida.

**Culture Wars Dominate Red State Headlines.** Among the policy priorities in the red states for 2023, right near the top of the list is everything that is wrapped up in the “culture wars.”

- Arguably, the biggest policy flashpoint in these culture wars is perceived “woke” actions by companies. This has been a point of emphasis from Republican leaders at both the state and federal levels and inevitably will continue to be in the run-up to the 2024 election.
- The trouble for businesses with this GOP priority is that it leaves the companies stuck between pleasing Republicans’ demands and meeting Democrats’ calls for costly reforms. Firms are often left to choose which party to please based on the politics of where they are located, a more complicated decision for those stretching across states with different politics.
- One of the other prominent focuses in these battles has been education and school curricula. The GOP’s aim is to appeal to parents and to tap into primal concerns about what their children are learning in school. The success of this argument is particularly apparent in Republican states, though it has also found resonance in purple states, such as Virginia, as well.

**Even States Care About China.** While foreign policy is not traditionally a state-level concern, Republicans in the states have made being tough on China a policy priority.

- One of the most prominent examples of this has been the spread of bans on TikTok and other Chinese apps from government-issued devices and state-issued internet networks. This has been picked up in some Democratic states too, but has been pushed most aggressively by the GOP.
  - Another angle on which red states have sought to flex their muscle with respect to China is by pulling pension investments from China-related investment strategies. These decisions have been in part driven by market factors, but the escalating US-China tensions has had an influence as well.
-