



PUBLIC POLICY & LAW UPDATE

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Midterm Election Report

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For the last several months, I have been talking with my friends and colleagues in Washington and across the country about what the outcome of the 2010 midterm elections may mean, particularly if as predicted, Republicans increased their numbers in Congress. Words like, “hurricane,” “wave,” “tsunami,” and “landslide,” were used over and over again by many of the same cable news pundits who have interviewed me numerous times in recent weeks. As we now know, Republicans gained significant seats in the U.S. Senate and gained control of the U.S. House of Representatives. However, while these gains are important for Republicans and will greatly alter the Congressional landscape, this election was not a mandate. There is no doubt that we have seen extreme enthusiasm from the Right during this election, as evidenced by the success of the grass-roots Tea Party movement. While Tea Party candidates may have been more successful in the primary cycle than in the general election, the movement has been able to verbalize and highlight the American electorate’s ever-increasing concern with the state of the economy, jobs, and what many regard as out-of-control federal spending. Those themes of uneasiness about the economy were universally affirmed at the polls, and all Members of Congress—Republicans and Democrats alike—must take notice that the American people are anxious about the future and are looking to Congress to be a catalyst for change.

In taking majority control of the House, John Boehner of Ohio will assume the Speaker’s gavel from Nancy Pelosi with Republican gains of anywhere from sixty to sixty-nine seats, depending on how the final nine undecided races are determined. Eric Cantor of Virginia will take on the role of Majority Leader and Kevin McCarthy from California, although he has only served two terms in Congress, will likely take over the third spot in Republican leadership serving as Majority Whip. While it is still too early to tell how Speaker-elect Boehner will manage the House and keep control of the very large and diverse freshman class, I know from my personal experience as Speaker that Republican leaders will need to reassure voters they too believe the economy is the biggest issue affecting the American people. Initially, the new Republican leadership has indicated that earmarks will become even more difficult in the next Congress, the budget and appropriations process will receive greater scrutiny at the committee level, and Republicans intend to consider at least one piece of legislation per week on the House floor aimed at cutting federal spending. In addition, while Mr. Boehner has not said so publicly, there is a general assumption that the new Republican House will use its subpoena power to investigate the Administration’s dealings on issues such as the financial bailout, health care reform, and the Gulf oil spill. Finally, multiple committees are expected to hold a series of oversight hearings on the Environmental

Protection Agency's proposed regulations dealing with greenhouses gases and other environmental issues.

In addition to facing significant losses throughout the country, House Democrats also are faced with the new reality that a variety of senior ranking Democrats will not be returning to Washington in January. John Spratt, Chairman of the House Budget Committee; Jim Oberstar, Chairman of the Transportation and Infrastructure Committee; and Rick Boucher, a Subcommittee Chairman of the Energy and Commerce Committee, are just a few of the senior House Democrats who did not survive the night. In addition, *Roll Call*, a Capitol Hill newspaper, quipped that the "Blue Dogs," the Congressional caucus of conservative Democrats in the House, have been placed on the "endangered species list" because this election cut their membership in half. With the loss of so many conservative Democrats in the House, it will be interesting to see if Democrats will be able to maintain a more unified message. In 2006 and 2008, Democrats made significant gains in formerly Republican districts, largely based on the success of conservative Democrats. However, of the fifty-two seats that flipped from Republican to Democrat in 2006 and 2008, thirty-three of those slots (twelve of which were held by Blue Dogs) were won back by Republicans last night. With the loss of such a significant number of conservatives within the Democratic caucus, it is uncertain if it will be easier for Democrats to maintain cohesive messaging points as the minority party. Further, it is unclear who will be responsible for delivering such a unified Democratic message. As I write this report, Speaker Pelosi has not yet determined if she will step down as the Democratic leader. Therefore, all Democratic leadership positions remain in limbo.

Although Republicans were unable to take control of the Senate or overtake Majority Leader Harry Reid in one of the most closely watched races of the night, Republicans picked up six seats, which could rise to as many as eight depending on the undecided outcomes in Colorado and Washington. Without the sixty votes needed to overtake a filibuster, Senate Democrats remain in the position of having to work with Republicans to pass legislation on the Senate floor. Even President Obama acknowledged that compromises would need to be made. In his hour-long press conference this afternoon, the President offered to work with Republicans on issues of earmark reform and argued that tax cut extensions during the lame duck are a must. On the issue of health care reform, the President warned that Congress would be misreading the election results if Members thought the election showed support for the government to "re-litigate" issues from the past two years. However he did recognize that some health care provisions are too burdensome for small businesses, and he is willing to work with Congress to review such issues.

Congress will return to Washington the week of November 15 with a top priority of extending tax cuts enacted by President Bush. No deal has been made yet, but how the Administration chooses to negotiate this issue will be a good indicator of how the President and the new 112th Congress will work together during the next two years. In addition, the appropriations process will signal how Democrats and Republicans are capable of working with each other. While appropriations staff have been continuously working throughout the election cycle on an omnibus appropriations bill to finalize all of the spending measures for this year, it remains to be seen whether Democratic leadership will pursue such a move or even a smaller "securitybus" piece, including military-related funding measures such as defense and homeland security spending. Republicans may be unwilling to agree to either. Until Republicans gain control of the House and address the spending cuts promised on the campaign trail, they may opt to approve a continuing resolution to fund the federal government through early 2011 at lower-than-current levels. Finally, based on the sheer number of incumbent losses, it will take some time to fully work out

Committee chairmanships and assignments, and a great deal of the lame duck session will have members jockeying for positions within their respective conferences.

While lawmakers prepare for a lame duck session and the transition to the 112th Congress, the American people expect both parties to immediately address issues of job creation, fiscal responsibility, and excessive federal spending. My friends in Congress face significant challenges, but both parties understand the business community will be largely responsible for creating new jobs and jumpstarting the economy. I encourage businesses across all sectors—large and small—to seek opportunities to provide Congress and the Administration with guidance that will help shape policies to create jobs and strengthen the economy. My colleagues and I will be monitoring these events as they unfold during the lame duck session and the 112th Congress, and we will keep you informed as developments progress.

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