Post Election Landscape: The Midterm Elections Overview

November 2022

About this Week:

Only in America does election day last for.... a month. But the full outcome and importance of the 2022 election cycle is not over with the Georgia runoff and with a number of other races yet to be called. However, there are some clear trends and themes coming out of last night:

1. Our country remains deeply and closely divided – Last night reminds us that we are a country where no party has a mandate or clear ownership of the agenda. A host of issues impacted electoral outcomes including inflation, the Dobbs decision, public safety, the defense of the electoral process, and border security. What was clear is that there was no singular angle played that nationalized the debate or took over the narrative. Race by race, these issues played out – and the best campaigns were the ones that stitched this set of issues together in the most relevant and compelling way based on the voters it needed to win.
2. Candidates (still) matter – We say this every campaign, but it's true. Good candidates with good campaigns carried the day. Candidates who pursued extremely partisan paths to victory generally did not fare well. Majorities are generally built on the middle, not on the edges.
3. You take a seat, I'll take a seat – Regardless of the final tale of the tape, neither party has a mandate, and we still have divided government, so expect gridlock.
4. The pollsters and pundits were wrong.... again – By in large, the polling was off again. Mid-summer saw a large move toward Democrats, but as we came into this fall, the polls swung wildly back to the Republicans with a sense, in the last few weeks, that a wave was building. Meanwhile, the chattering cable news class breathlessly predicted that the Dobbs decision and the nationalization of former President Trump's hold on the Republican party meant the Democrats would hold Congress. That same chattering class said no, absolutely not, this election is about kitchen table issues. The net results so far show all politics are (still) local, and candidates (still) matter.
5. Companies and industries need to know their North Star – America is polarized, politically-divided and facing headwinds. This environment necessitates clear-eyed and intentional decision-making. If you are going to weigh in on an issue, you need to understand the landscape, pressure test your messaging and rationale, and connect them to your mission. That's not a reason to be timid, but it is critical in today's marketplace of ideas.

What to Expect from a Republican-Led House

When John Boehner was elected Speaker of the House in 2010, he rode in on a wave of 63 seats, the largest shift in seats since the 1948 elections. That wave gave him a healthy margin for floor votes, having 242 and only needing 218. House Republican Leader Kevin McCarthy will not have the same size conference, which will make things a lot trickier on tough votes like the debt ceiling.

Given the results of the election, it appears that Leader McCarthy will have closer to a majority in the low-220s. So, expect the new House majority to focus on --

1. Oversight – The incoming Republican majority will focus heavily on oversight, both on the Biden Administration and spending bills like the American Rescue Plan, Inflation Reduction Act, and others.
2. Spending/Debt – There are already rumblings that some of the new Republican conference members are opposed to increasing the debt-ceiling. That position could precipitate a government shutdown. In addition, many Republicans have expressed concerns about the overall impact of the Democrats' spending on inflation and fiscal health, which could reopen the fight for spending cuts or a reduction in the overall budget baseline (remember VP Biden talks with Majority Leader Cantor around taxes and spending… here we go again?).
3. Investigations – Hunter Biden, Afghanistan withdrawal, the origins of COVID in China, Biden border policies, FBI Mar-a-Lago raid… this list could get long and with a tight majority this will be a place to give hard right members a place to focus that hopefully makes them more inclined to whip "yes" on must pass votes like debt ceiling.
4. Immigration and the Border – A ray of bipartisan hope might be found here if both parties agree that our asylum system must be resourced to handle the influx of people surrendering themselves to law enforcement.
5. Crime – Police reform including funding levels, fentanyl deaths, and public safety.

House Democratic Leadership Changes

Democrats' overperformance in the midterm has raised new questions over whether the top three leaders – Pelosi, Hoyer and Clyburn – will step down. A single-digit GOP majority gives the long-time trio a compelling argument to the Democratic Caucus that their leadership over the past two years was a crucial element in House Democrats overperforming expectations. It's still slightly more likely that the three step down to pave the way for the next generation, and the closer than expected election results would allow them to leave on a higher-than-expected note. No one will make announcements until the House has been officially called, and no one will get ahead of Speaker Pelosi, who won't announce her intentions until after she returns from COP27.

If there is a leadership race, discussions around the next leader will center on Leader Steny Hoyer, Whip Jim Clyburn, Caucus Chair Hakeem Jeffries, and Intelligence Committee Chairman Adam Schiff. While Hoyer and Clyburn did not make the same pledge that Pelosi made to step down at the end of 2022, it seems unlikely that she will allow either to outlast her. While Hoyer and Clyburn remain well-respected and liked across the Caucus, they may decline to run to prevent a generational fight at a time when House Democrats will want to show a united front. They may be offered an "emeritus" type position that keeps them in the leadership room, where they can advise and help develop the next generation while letting them take the reins. If they both take a pass on remaining in leadership, Rep. Jeffries appears to be the

candidate to beat for Leader. Since his election to the Caucus Chair post in 2018, he has used that post to build relationships across the Caucus, and he's respected for his message discipline. The other widely discussed candidate, Rep. Schiff, probably began his campaign too late to have a strong chance. And while his colleagues respect his knowledge and media presence, he doesn't have the depth of relationships that Jeffries does.

For the additional leadership posts, Rep. Katherine Clark is likely the next Democratic Whip. Rep. Pete Aguilar may run for the Assistant Leader position, the fourth position in Democratic leadership, or for the Caucus Chair role. Rep. Joe Neguse is currently the only other candidate running for Caucus Chair. The Vice Chair position is where the most Members will run, with Reps. Debbie Dingell, Ted Lieu, Madeleine Dean, and Joyce Beatty all eyeing the race.

Similar to the past several election cycles, it's expected that House Democrats will hold their leadership elections the week after Thanksgiving. Simultaneous with leadership elections will be a discussion of the Caucus rules. The most significant change to watch out for is the possibility of term limits for committee chairs. This idea has grown in popularity each year; if it's going to happen, making that change as a new leadership team comes in would be the time to do it.

How House Democrats Will Respond in the Minority

In the 118th Congress, House Democrats' first task will be remaining united against the House Republican agenda. Leader McCarthy will have a tough time reaching 218 on must-pass bills like keeping government open and preventing a default; he'll have to find votes among his far-right Members or from Democrats. There will be enormous pressure on Democrats to not let McCarthy off the hook, so to speak, and to either put the burden of governing solely on Republicans or to extract concessions if their votes are needed.

House Democrats will look to their Ranking Members – particularly on Oversight & Reform and Judiciary – to mount a vigorous defense of President Biden and his Administration in the face of zealous GOP investigations and hearings. The Oversight ranking member race remains a three-way race between Reps. Stephen Lynch, Gerry Connolly, and Jamie Raskin. Chairman Jerrod Nadler is expected to remain the top Democrat on the Judiciary Committee.

Democrats will also be focused on returning to the majority in 2024. While their message will be driven by the top of the ticket, you can expect a lot of navel-gazing on crafting a forward-looking economic message that responds to Americans being hammered by inflation and a possible recession, as well as offering a sharp contrast to the chaos that will define a narrow House GOP majority.

Biden Dealing with a Partial or Full Republican Majority

A Republican majority in the House of Representatives coupled with a potential Republican majority in the Senate will limit any future effort by President Biden to solve problems through large government

spending initiatives. Republicans will strongly oppose funding COVID-19 efforts and will push back hard against President Biden's FY '24 Budget next year. Expect an intense and year-long budget showdown with big differences over spending priorities and policies. In the scenario of divided government, the prospects for a potential government shutdown get much higher as both sides seek to leverage a potential budget fiasco for maximum policy gains. Congressional Democrats and the Biden Administration might even welcome the showdown as a way to clearly show the American people that Republicans cannot be trusted with the responsibility of passing appropriations bills to fund essential government services – and that they are willing to punish the American people by shutting down the government to achieve radical budget cuts and policy goals. Republicans, on the other hand, will push the idea of fiscal responsibility and the notion that the American people voted them into the majority in both Houses of Congress to stop President Biden's and the Democrats' runaway spending that caused historic rates of inflation and serious economic pain to average American families. At the end of the day, we expect Senate Leadership and President Biden to reach agreement on these very serious budget and spending issues. But the resolution of these issues will not come without significant political drama, economic pain, and disruption.

President Biden has already telegraphed to the likely Republican-led House and potential Republican-led Senate that he will fight efforts to enact a federal ban on abortion. He has also reiterated his intent to try and ban assault weapons. Without the ability to move a legislative agenda in a Republican-controlled Congress, President Biden will tout the Bipartisan Infrastructure Act and infrastructure projects to build and repair roads, expand broadband access, and expand EV charging stations across the country. He also will champion investments in climate initiatives and clean energy projects. President Biden's desire to appoint more federal judges to the bench most certainly will be blocked by Republicans, as will any appointment President Biden tries to make to the Supreme Court in the event a vacancy arises in the next two years.

A Republican Senate will force President Biden to focus primarily on foreign policy challenges, especially Russia's ongoing aggression in Ukraine, China, Iran, and North Korea – and the enormous risks they pose to global stability, democracy, and freedom. And he also will need to address emerging threats and concerns such as strained relations with Saudi Arabia and potential state and non-state actors that could perpetrate terrorism or cybersecurity attacks causing significant damage to the United States.

Senate Democrats Emboldened

After Tuesday's election, it's clear that Senate Democrats have come away in a stronger position, with Democrats possibly retaining the Senate majority after flipping Pennsylvania and holding off challenges in New Hampshire and Colorado. With Nevada and Arizona too close to call, and with Georgia headed to a December 6th runoff, control of the Senate could land in either Democratic or Republican hands with another 50/50 or 51/49 result.

If the Republicans are able to eke out a 51-seat majority by taking Nevada and the Georgia runoff, Senate

Democrats will operate as a hardened minority and replicate the tactics that they encountered from Republicans during the last two years in their 50/50 majority. With a slim Republican majority, the Senate remains just as problematic as ever. The magic number in the Senate remains 60 for purposes of moving legislation without the potential roadblock of a filibuster. Neither side was close to achieving the margin necessary to aggressively pursue an agenda. So, expect to see Democrats unite in opposition to Republican efforts to slow down and stop the Biden agenda.

Legislative action is expected in the upcoming Lame Duck session now that neither side can claim a major political mandate leading into 2023. Expect deals to be cut to enable the passage of the NDAA and an Omnibus spending bill before December 16th, giving retiring Senators Leahy and Shelby their "legacy victory" as they leave the Senate. The involvement of Elon Musk and Twitter in the election, concerns about disinformation and election interference, and the power of corporate interests will renew the push by Democrats for legislation to punish Big Tech, reform Section 230, protect privacy and increase scrutiny of mergers and acquisitions. Senate Democrats will boldly push their top domestic priorities in the runup to the 2024 Presidential election. Major issues that resonated with the Democratic base in the midterms included abortion rights, marriage equality, voting rights, protecting democracy, and climate. Other issues Democrats are likely to tout in the face of Republican-led Senate are support for the middle class, and the need to protect Medicare and Social Security from Republican budget cuts or privatization schemes.

Regardless of whether they are in the majority or minority, there will be no changes in the Senate Democratic Leadership team with Leader Chuck Schumer, and Senators Richard Durbin, Patty Murray and Debbie Stabenow all remaining in place. Confidence in Leader Schumer remains high – especially given the close margins in the Senate and overperformance of Democratic candidates – and no one is looking to challenge him or other members of his team.

For key Committee leadership positions, the biggest change will be on Appropriations with Sen. Murray taking over the lead Democratic role for retiring chairman Pat Leahy. Murray will work with incoming chair or ranking member Susan Collins, and together they will be the first women to hold those titles on the Senate Appropriations Committee. Unlike most committee dynamics, the Appropriations Committee generally functions effectively despite partisan disagreements. And Murray and Collins are likely to work well together across party lines. The big challenge will be how aggressive Republicans will be in trying to cut domestic discretionary spending, especially in areas Democrats consider sacrosanct — entitlements such as Medicare and Medicaid, and healthcare policy including the Affordable Care Act and the government's authority to negotiate lower prices on prescription drugs. Other difficulties that could befall the normal process for Appropriations will be the fight over raising the debt limit and the possibility of a government shutdown if a consensus cannot be reached.

If Senator Dick Durbin retains his role as chair of the Judiciary Committee, he will push aggressively to confirm as many federal judges as possible in 2023. The House has no role in this responsibility, and

President Biden and the Democrats view this as job number one to address many of the concerns they have about the conservative makeup of the judicial branch.

Senator Manchin will renew his push for permitting reform in the Lame Duck, and if he is unsuccessful, expect him to continue that push in 2023. Manchin's position as a centrist in a 50/50 Senate will allow him to continue to exercise outsized influence on all bills in the Senate. With a slim Republican majority in the House unlikely to move many bills with Democratic support, Manchin will likely pursue a deal on energy legislation that focuses on independence and all of the above strategy – especially as Russia and OPEC continue to roil markets and limit oil and gas supplies.

The Armed Services Committee will get a new Republican chairman or ranking member in Sen. Roger Wicker, and former chairman Jack Reed will lead Democrats. Like the Appropriations Committee, the Armed Services Committee could be an area where consensus is formed on major national security issues where there's bipartisan agreement. Defense spending, U.S. assistance for Ukraine, and emerging threats from Russia, China and North Korea could produce cooperation. But an early test will be the willingness of Republicans to continue supporting President Biden's requests to provide military assistance to Ukraine, and whether the aid will be saddled with conditions or reduced from the amount requested.

If Republicans win the Senate majority, the Homeland Security and Governmental Affairs Committee could be chaired by Rand Paul or James Lankford after Rob Portman's retirement, and Ranking Democrat Gary Peters would fight criticism of the Biden Administration's protection of the southern border and U.S. immigration policy. Ted Cruz will take the Republican lead at the Commerce, Science and Transportation Committee. Maria Cantwell will clash with Cruz over tech policy and Republican claims of anti-conservative bias by tech platforms, and there will be a significant push to repeal or reform Section 230. Shelly Moore Capito would take over at the Environment and Public Works Committee and Senator Tom Carper would lead in defending the Democrats' passage of clean energy and climate legislation in the Inflation Reduction Act. Senator Ron Wyden and the lead Republican of the Finance Committee Jim Risch could find consensus on taxes and incentives to spur economic growth. But there will be huge differences of opinion on the merits of tax bills and the pay-fors they are likely to contain targeting Democratic domestic priorities.

Manchin and Sinema Remain Centrist Power Brokers

The one big wildcard in the Senate is Joe Manchin and whether he will work cooperatively with Republicans to forge a bipartisan consensus on issues such as energy independence, permitting reform, taxes and other measures to fight inflation. Expect Senator Manchin to push hard in the Lame Duck session for legislation on permitting reform as part of the agreement he forged with the White House prior to the August Recess. But it is also important to keep in mind that Senator Manchin is up for re-election in 2024 in West Virginia – a Red state with that voted overwhelmingly for Donald Trump in 2020. Some pundits have speculated that Senator Manchin might consider switching parties to retain his perch as

Energy and Natural Resources Committee chairman to carry out his priorities and deliver more for West Virginia. But it's likely that Senator Manchin will remain in the Democratic Caucus. Arizona Senator Kyrsten Sinema also faces a tough re-election battle in 2024. Like Senator Manchin, Sinema plays an outsized role in shaping legislative outcomes as a centrist Democrat. She will likely continue her role in the center as powerbroker on key issues, especially on tax legislation.

Senate Republicans on the Cusp of a Majority

Returning Majority Leader Mitch McConnell (R-KY) is tantalizingly close to the victory he sought ever since the Senate majority was lost in a torrent of miscalculations in the 2021 Georgia runoffs. This effort came via a flood of political money run through the McConnell-directed Senate Majority Fund and despite questionable candidate recruiting in several swing states.

The possible failure of Senate Republicans to seize control of the Senate in a very promising cycle will lead to major tactical recriminations, including candidate recruitment and the inability of campaigns to thread the needle between distance from and endorsements from President Trump. The failure to win winnable races in Arizona, Colorado, Pennsylvania and maybe Georgia and Nevada will hurt for the entire six-year cycle until these seats are up again. Professional campaign operatives will point towards the narrow loss of Dave McCormack in Pennsylvania who much more easily could have capitalized on John Fetterman's stumbles and the decision to go with a flawed candidate in Georgia as the two Monday-morning quarterback assessments.

If it happens, the majority will not come without some pain, however, as the incoming Republicans are far more likely to challenge McConnell's quiet and tactical moves in public and to throw sand in gears of compromise McConnell might wish to find on large budget and appropriations issues with the Biden Administration. Thinking generally about the demeanor and priorities of the departing Senate Republicans (Sens. Ron Portman (R-OH), Roy Blunt (R-MO), Richard Burr (R-NC), Richard Shelby (R-AL) and Pat Toomey (R-PA)) versus the incoming class (including J.D. Vance (R-OH) and Ted Budd (R-NC)) – it's clear that running a majority with 51 seats would challenge even McConnell's political skills.

If in the majority, McConnell and his leadership team will be focused on slowing or stopping Biden judicial nominees and drawing blood from controversial executive branch nominations. Should there be a Supreme Court vacancy (likely only due to sudden health issues), the power of a small number of moderate Republicans (Sen. Mitt Romney (R-UT), Sen. Lisa Murkowski (R-AK), and Sen. Susan Collins (R-ME)) will be immense, but would McConnell reverse the 50-vote threshold used to confirm the past four justices to filibuster a Biden nominee?

If former President Trump signals a real campaign, some possible Presidential candidates may follow the lead of Sen. Tom Cotton (R-AR) and defer a run until 2028 – think Sens. Ted Cruz (R-TX) and Sen. Josh Hawley (R-MOI). Having Trump on the trail may complicate McConnell's legislative efforts anyway, as he

seems likely to criticize any efforts to work with the Administration or return to traditional Republican positions on trade or entitlements. Keep an eye on Sen. Rick Scott (R-FL) who may mount a symbolic challenge to McConnell as leader, not really with an eye towards winning, but as a message that there is a sizable bloc of colleagues who are ready to side with the House in all-out war with the left.

Had 2022 been more successful, it would not be too soon to begin to look to the 2024 cycle where Republicans have a very favorable map to creep towards 60 seats should the presidential race be won or close. But that goal is probably a pipe dream after the 2022 results.

Republican 2024 Presidential Outlook

As bitter and nasty as the 2022 midterms were, the outlook for the 2024 Republican Presidential nomination portends to be much worse. So long as former President Trump is a candidate or potential candidate, the party will be consumed by his machinations. Ratings-chasing media outlets will no doubt cover every last move by President Trump and play up every actual or perceived fights between him and other candidates. To try to think about the race in the long-term, it may be helpful to group the potential candidates into groups:

- President Trump – If he actually runs through the tape to the convention, he is a strong candidate to win despite the immense political, legal and moral baggage his campaign would endure. Most polls have him running at least 20 points ahead of any competitor and around 50% in total. After eight years of remarks and actions that may have sunk any other politician, his Teflon status with enough Republican primary voters is hard to mount an intellectual argument against.

- FL Governor Ron DeSantis – His triad of strengths (large swing state Governor with an impressive 2022 victory, willingness to tweak the left, and national ID) make him the obvious frontrunner if Trump is not running for some reason. The main question is whether DeSantis, unlike nearly every other Republican politician, can maintain base popularity even in the face of Trump attacks – some goofy nickname like DeSanctimonious, perceived inauthenticity around 2020 vote 'fraud' or other tricks that have worked for Trump. History says he may not be able to do so, but his position is far stronger than just a few weeks ago.

- Running But Not Running to Win – Rep. Liz Cheney and MD Gov. Larry Hogan could run, but only as foils to Trump being in the race. UT Sen. Mitt Romney would now fall into this camp in the unlikely event he makes another bid.

- Would Like to Run But Not Likely to Take on Trump – SC Sen. Tim Scott, VA Gov. Glenn Youngkin, GA Gov. Brian Kemp, and former SC Gov. Nikki Haley would be strong candidates in a Trump-less field and appear very likely to keep their options open in case that development arises. Media star Tucker Carlson has a microphone but no infrastructure to run on.

- If You Want Trump without the Man – Former Secretary of State Mike Pompeo, Former Vice President Mike Pence, TX Sen. Ted Cruz, and MO Sen. Josh Hawley could be in the race, essentially arguing they could execute an America first agenda without the chaos. In a Trump-less world, all are credible, with Pompeo seemingly having the least political baggage to overcome. However, the pressure to coalesce around DeSantis may dampen their enthusiasm to mount a formal run.

- Keep An Eye On – FL Sen. Marco Rubio and AR Gov. Asa Hutchinson would run as cheerful, ethical conservatives. Rubio could choose to wait until a Trump exit stage left but this would be the last shot for Hutchinson who appears likely to roll the dice.