

VOTERS HAVE SPOKEN: Impacts of the 2022 Midterm Elections

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CHANGES ON THE HORIZON

The 2022 midterm elections took place on Tuesday 9 November. Following a turbulent campaign season, Republicans are positioned to regain control of the House by a slimmer margin than originally anticipated. However, the election is not yet over, as several races in key battleground states remain too close to call - to help keep track of each race, K&L Gates has prepared a Midterm Election Guide, which will be periodically updated and is available [here](#). Additionally, the Senate race in Georgia will require a runoff election since neither candidate received 50 percent of the vote. The runoff will take place on 6 December. If Democrats hold onto control of the Senate, we expect there to be gridlock punctuated by bouts of compromise on certain issues in which bills may come together rapidly. If Republicans win control of both chambers, the Senate's 60-vote cloture requirement—to say nothing of the President's veto—will ultimately require bipartisanship to pass any legislation. Additionally, the Biden administration is likely to rely heavily on regulatory action and executive orders in order to continue advancing its policy priorities independent of Congress.

OUTLOOK FOR THE HOUSE OF REPRESENTATIVES

Republicans are expected to take back the House by a much slimmer margin than originally anticipated, though many House races remain too close to call at this juncture. Once vote counts are finalized, it is expected that Minority Leader Kevin McCarthy (R-CA) will become the next Speaker of the House, likely clearing the way for Rep. Steve Scalise (R-LA) to become the next House Majority Leader. The race for Majority Whip is still up in the air between Rep. Tom Emmer (R-MN), Rep. Jim

Banks (R-IN), and Rep. Drew Ferguson (R-GA). The Republican Conference is set to hold secret-ballot leadership elections behind closed doors on 15 November, followed by a vote on internal procedural rules on 16 November. Finally, Republicans will hold Steering and Policy Committee regional elections on 18 November. This will help pave the way for eventual committee leadership elections.

House Democrats are expected to hold their leadership elections on 30 November. We have heard that the exact schedule for the elections is still being determined, though it may last several days. It remains unclear at this time whether or not current House Democratic leadership, including Speaker Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), and Majority Whip Jim Clyburn (D-SC), will seek to retain their positions or if they will step down to make way for a new generation of Democratic leadership.

Under Republican leadership, the House is expected to orient its policy agenda around its recently-released GOP Commitment to America. This plan has four primary tenets, including an economy that's strong; a nation that's safe; a future that's built on freedom; and a government that's accountable. As such, key areas of focus within the House will likely include inflation reduction, border security, national defense, individual freedom and states' rights, and congressional investigations into the Biden administration. Additionally, we expect the establishment of a bipartisan Select Committee on China to address a wide array of issues and challenges related to China's growing economic and military clout.

Top Republican lawmakers have already indicated that congressional investigations into the Biden Administration and the private sector will be a top priority once they regain control of the House. The first investigative priority will be oversight of the federal government, primarily including President Biden and the Biden family, federal law enforcement leaders, a counter-investigation of the Select Committee to Investigate the January 6th Attack on the United States Capitol, border policy, and the 2021 military withdrawal from Afghanistan. Secondly, Republican House leaders will likely focus investigations on areas such as private sector Environmental, Social, and Governance (ESG) initiatives, allegations of anti-conservative biases on tech platforms and in universities, green technology and economy actors with administration ties, and labor unions and other progressive advocacy organizations. Impeachment proceedings also cannot be ruled out. A narrow majority should still be able to garner the procedural votes necessary to issue subpoenas in support of its investigations, and committee chairs will still set the committee agendas; however, the smaller-than-expected majority may cast a harsh light on the party when looking ahead to the 2024 elections.

OUTLOOK FOR THE SENATE

Several key battleground states have not yet officially called their races. Additionally, because Georgia state law requires that one candidate must receive more than 50 percent of the vote and neither candidate reached that threshold, the race in Georgia between Senator Raphael Warnock (D-GA) and Republican challenger Herschel Walker will go to a runoff election taking place on 6 December. Depending upon the outcomes of the other incomplete tallies, the Georgia runoff could very well decide which party will control the Senate in the 118th Congress.

While the runoff election could spur momentum for either side, the race thus far has leaned in favor of Senator Warnock, who received 49.4% of the vote in the initial tally compared to Herschel Walker's 48.5%. As such, it is reasonable to expect that it will be a close race with a slight Democratic advantage. If Senator Warnock prevails in the runoff, one could expect the Democratic policy agenda

in the Senate to remain much the same as in the 117th Congress (e.g., centered on social justice initiatives, climate change, reproductive rights, corporate accountability, and education, among others). However, Democrats would have a difficult time enacting legislation with such a slim majority in the Senate and with Republicans in control of the House.

If Herschel Walker were to defeat Senator Warnock, we expect current Majority Leader Chuck Schumer (D-NY) and Minority Leader Mitch McConnell (R-KY) to trade positions and remain in charge of their respective conferences. We understand that Senate Republicans intend to hold leadership elections on 16 November, though Senate Democrats have not yet made an official announcement of when their leadership elections would take place. Up to this point, Senate Republican leadership has refrained from explicitly outlining a policy agenda roadmap; however, we expect Republicans to focus on reducing inflation and spending, securing the southern border, countering China, and more. As noted above, the 60-vote margin would require Republican legislation to have Democratic support in order to pass the Senate.

We expect Republican oversight and investigations in the Senate to focus on many of the same issues as in the House, including the 2021 military withdrawal from Afghanistan, private sector ESG initiatives, alleged anti-conservative biases, and other culture war issues. Additionally, the Republican-controlled Senate is likely to block many judicial and other agency nominees who have not yet been confirmed. However, Senate leadership will likely continue to strategize and refine their top policy priorities over the coming weeks and months before the 118th Congress is sworn in.

LOOKING AHEAD

In light of the House likely, and the Senate potentially, flipping to Republican control, it is still unclear whether or not the lame duck session, which begins on 28 November, will bear any legislative fruits. However, a few must-pass items remain on the ticket before the end of the year, including passing either another continuing resolution (CR) or an omnibus appropriations package before current government funding expires on 16 December. Additionally, Congress will need to pass the FY2023 National Defense Authorization Act (NDAA) before the end of the year. Recently, the possibility has been discussed that the NDAA could be combined with the omnibus appropriations package to create one large legislative package. This option could be favorable for Democrats who want to accomplish any unfinished business on their way out, as well as Republican leadership, who have expressed interest in getting these items done before the end of the year so as to have a “clean slate” when they reconvene in January with control of the House and potentially the Senate.

These packages, whether they move separately or are combined, may serve as vehicles for various other legislative priorities, such as energy permitting legislation spearheaded by Sen. Joe Manchin (D-WV) and Sen. Shelley Moore Capito (R-WV), legislation to codify the right to same-sex marriage, bipartisan election reform legislation, disaster relief, tax and healthcare extenders, retirement reform 2.0, COVID-19 and monkeypox funding, additional aid to Ukraine, potential legislation to raise the debt limit, and more. The status of a year-end package generally remains in flux until the last minute, though we hope to know more following the final election vote counts and the House Republican leadership elections next week.

Looking beyond the end of the year, we expect that the 118th Congress will address the Fiscal Year 2024 appropriations bills and NDAA, as well as major legislation that will expire in the coming year, such as the Farm Bill. Beyond these priorities, we expect that the new Congress will respond to external factors such as the economy, geopolitical issues, and Supreme Court cases. In particular, we will be watching for activity related to ESG, energy and infrastructure security regulations, national

security, cybersecurity, international engagement and sanctions, and congressional oversight and investigations. As the cycle for the 2024 Presidential election will already begin shortly after the midterm elections, both parties will be looking to advance their policy agendas.

Lauren E. Hamma also contributed to this article.

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