



COZEN O'CONNOR PUBLIC STRATEGIES

A BI-PARTISAN GOVERNMENT RELATIONS FIRM

2010 MIDTERM ELECTION ANALYSIS

The election of 2010 is history – but was it historic? As with so many events that appear in retrospect to have been pivotal, we will not know the impact of the 2010 midterm elections until we have the opportunity to judge the policy and political consequences of that vote. In the short term, what does the new order in Washington mean for the upcoming lame duck session of Congress? What can we expect to come out of Washington in the next Congress? The most significant long-term consequence will be this election's impact on the 2012 Presidential race. What does history tell us about the meaning of the midterm on the subsequent Presidential election?

FIRST, THE 2010 ELECTION BY THE NUMBERS:

With vote counts on-going in a number of races, the Republicans appear to have gained at least:

- 60 seats in the House, taking control of that chamber by a significant margin;
- 6 seats in the Senate, falling short of the 10 seat swing required to obtain a Senate majority; and
- 9 governorships, giving Republicans a significant advantage in control of the statehouses.

The scope of the Republican victory was impressive. With respect to the Tea Party, for all of the bravado of the movement, the jury is out as to Tea Party's effectiveness, and the Tea Party effort may have cost the GOP control of the U.S. Senate. The policies and politics of the President and his party were repudiated to a degree, at least as compared with the tidal wave of 2008. The Democrats, nonetheless, still control the White House and the United States Senate.

But, what is most clear is that the American electorate that sent Washington an anti-incumbent message in 2006 and 2008 sent another anti-incumbent message in 2010. Two years ago and again yesterday, the country voted for change. This election, in our judgment, represents a continuing

reaction to the last decade which, from 9/11 to two wars to a crippling economic and financial crisis, has been one of the most challenging periods in American history. This time the axe fell most heavily on the Democrats. One thing is clear. The pendulum is swinging back and forth more quickly than ever, and the patience of the American people has worn very thin for both parties.

We now have a truly divided government, and both parties have a stake and a say in governing the country. Posturing will continue, but the American people will hold both parties accountable for the actions of government, and we think that will force at least some compromise.

SO, WHAT COMES NEXT?

First, it is the election after the election. In both the House and the Senate, members have to fill key party leadership posts, committee chairmanships, and ranking member slots. Term limits are going to have a significant impact on House and Senate committee leadership. Under House Republican rules, a member cannot serve more than six years combined as chairman and ranking member of one committee. These term limits, which the Republicans can waive, may have significant implications for the very powerful Appropriations and Energy and Commerce committee posts, among others. On the soon-to-be minority side in the House, several powerful Democrats that held committee chairman positions lost not just their chairmanships, but lost their jobs altogether. So, there will be significant jockeying for ranking member positions. One other major question that looms is whether speaker Nancy Pelosi will seek to become minority leader, and, if so, whether she can garner enough support to be elected to that post. In the Senate, there will be changes in leadership positions as well, with the retirement of key members, including Banking Committee Chairman Chris Dodd, and the defeat of Agriculture Committee Chairman Blanche Lincoln.

WHAT TO EXPECT DURING THE LAME DUCK?

A lot of posturing and a little legislating. As a general rule, controversial legislation doesn't move during a lame duck session of Congress that follows an election in which one or both houses of Congress change control. The Democrats will, nonetheless, introduce many important and controversial pieces of legislation on everything ranging from taxes to energy policy during the lame duck session of Congress to stake out some political ground. One thing we expect to see during the lame duck is the Democrats attempting to pass a budget bill, forcing the Republicans either to compromise on the budget or shut down the United States Government. Remember 1994? Other key items on the agenda include the impending expiration of the Bush tax cuts (we think the Democrats will allow them to expire, punting to 2011), estate taxes, and the Medicare 'doc' fix extension.

The political wildcard as we move toward the end of the year is the work of the President's Deficit Reduction Commission, which is supposed to issue its report by December 1 outlining a path for the country to restore fiscal discipline. Conventional wisdom has the bi-partisan Commission not agreeing on much, but we may be surprised to find that more concrete recommendations emerge from the Commission than expected, putting serious pressure on Congress during the remainder of this term and into the next term to deal with the fiscal issues facing this country.

WHAT'S ON THE HORIZON WHEN THE NEW CONGRESS IS SWORN IN?

Most pundits predict gridlock, and there will no doubt be gridlock on key issues like immigration reform. There will be attempts in the House to repeal parts of the health care reform legislation that passed in 2010. The control of the Senate by the Democrats and the threat of Presidential vetoes will create a firewall during the next session, but could well set the stage for the next election to be a referendum on these policies. On the other hand, taxes, budgets, deficit reduction, and transportation and education policy and funding, among other things, all need to be dealt with in 2011, and we see at least some compromise breaking out. While polls suggest that part of the message of this election is to end partisanship, the irony of the election results themselves found many moderates losing their seats to candidates with more extreme views. Nonetheless, the party that seems to be more reasonable, or at least less obstructionist, will likely emerge with greater public support. That suggests moderating tone and reaching out across the aisle on things that simply need to be dealt with in the next Congress.

WHAT DOES ALL OF THAT MEAN FOR THE 2012 PRESIDENTIAL ELECTION?

Two trends emerge from the tea leaves of midterm elections since World War II:

First, every President since 1948 who lost significant seats in his first midterm has been re-elected two years later:

Clinton: In the 1994 midterm elections, the Democrats lost control of Congress for the first time in forty years. An eight seat swing in the Senate gave the Republicans control. In the House, the Republicans gained 54 seats to take control. Two years later, Clinton won re-election.

Reagan: In 1982, Democrats added to their majority in the Senate and took control of the House. Two years later, Reagan crushed Mondale.

Eisenhower: In 1954, the Republicans lost two seats in the Senate, which gave the Democrats a slim majority. The Republicans also lost 18 seats in the House to give the Democrats a majority there as well. Two years later, Eisenhower won re-election.

Truman: In the 1946 midterm elections, Truman lost control of both the House and the Senate. In the Senate, the Republicans gained 12 seats to give them a 51-45 edge. The Democrats also lost control of the House, as the Republicans picked up 55 seats. Two years later, Truman was re-elected.

Second, of the six Presidents since WWII who ran again and lost, only one earned re-nomination by his party without a primary fight:

1992 Election: President Bush was challenged by Pat Buchanan for the Republican nomination. Buchanan received 37% of the vote in the N.H. primary which forced Bush to adopt a more conservative position to defeat Buchanan and secure the nomination. Bush went on to lose a close election to Bill Clinton.

1980 Election: President Carter faced a tough challenge in the Democratic primaries from Ted Kennedy. Although Carter ended up winning 24 of 34 primaries, Kennedy refused to drop out of the race before the 1980 Democratic National Convention. Carter went on to lose to Reagan in a landslide.

1976 Election: Incumbent President Gerald Ford barely held off Ronald Reagan for the Republican Party's nomination. At the Convention, Ford ended up narrowly winning on the first ballot. Ford lost the general to Carter.

1948 Election: Truman took over for Roosevelt just 82 days into Roosevelt's term. In 1948, he ran for

re-election. Truman won the Democratic nomination over Georgia Senator Richard Russell, Jr. Russell was supported by Southern delegates who opposed the passage of the party's civil rights platform. Truman went on to beat Dewey in the general.

SO WHAT DO THESE MIDTERM TRENDS AUGUR FOR 2012?

The President and his advisors are students of history, and President Obama is said to be carefully studying the Clinton presidency. His task: no less than forcing Republicans to say no on key issues, shoring up his base, and taking centrist compromise positions, all at once.

The President's advisors surely know that the loss of the House has historically presented an opportunity to run against an opponent in power who can be tarred with feathers of obstruction and inaction. We expect the President to push his legislative agenda aggressively despite the improbability of passage, to make the Republicans, especially in the House, say, "No." We expect, for example, an intense effort to move climate control legislation although success is almost certainly not achievable. The President will thus frame the debate for his re-elect and set up his unfinished business for progress in a second term.

The President has studied the damaging consequences of a primary fight. To secure his left flank from challenge in the person of a primary opponent, the President will, we expect, assiduously mend the frayed edges of his standing with the progressive wing of the party. For example, we expect a core accomplishment of the second half of Obama's first term to be the material reduction of American military forces in Afghanistan commencing in July of 2011. We also expect a major push on such stranded policies as Don't Ask, Don't Tell. Similarly we would expect a renewed effort to close Guantanamo. Actions such as these are exemplary of the sort of attention that we anticipate the President will pay to the progressive wing of his party.

While much of the country's political attention is focused on the extremes, polls suggest that the majority of Americans want to be governed from the center. The President is a pragmatist and he knows that to succeed in 2012 he must win back the independent voter. To win back the independent voter, he must move to the center, at least on economic and fiscal issues. With unemployment still hovering near 10%, there is general acknowledgement that last term's stimulus package, which is ending in any event, has not pulled us out of our economic quagmire. The President knows that it is private sector business that has to return the country to prosperity. So both symbolically and because it is necessary, President Obama will work to win back the hearts and minds of the business community.

Notwithstanding our view about the potential for compromise in some key areas, the newly ascendant Republicans have a clear agenda when it comes to 2012. As Mitch McConnell, Senate Minority Leader, recently said in the *National Journal* "The single most important thing we want to achieve is for President Obama to be a one-term President." This single bullet point program will, by its very nature, place some ceiling on bi-partisanship.

CONCLUSION

Looking back, we have seen what a difference two years can make. There is no reason to believe that incumbents will not be thumped again in 2012 if the electorate does not like what it sees over the next two years. There will no doubt be partisanship and political posturing during this period, but the public is demanding results that move the country move forward. As a result, and perhaps out of step with the conventional wisdom, we see at least some bi-partisanship breaking out in Washington.

As always, please call anytime with questions.

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