



TTAA Legislative Update

September 26, 2022



Midterm Election Update

The fall of an election year is always an interesting – though not typically legislatively productive – time in Washington. The House currently has less than a week of legislative days left in their schedule. The Senate is also working with limited time, though they are expected to reconvene for two weeks in October in large part to try to address a backlog of judicial nominations.

Before either chamber can fully turn their attention to the elections, there remains the fact that the federal fiscal year ends at the end of this month and Congress still hasn't passed a 2023 budget or a continuing resolution (CR) to fund the government beyond September 30. At present, the biggest sticking point standing in the way of a CR is a request by President Biden for an additional \$50 billion in funding to be added to the CR. Approximately a quarter of this would go to Ukraine – and generally has bi-partisan support. Where the parties are split is over the additional funds that the President is seeking to continue to address COVID-19 and Monkeypox. Ultimately, a government shutdown is unlikely and a CR funding the government until after the election is expected. However, the work to get this done will take up much of the remaining political energy and session time before the midterm break.

Though the outcome of the elections is far from certain (more on that below), the odds of the Democrats retaining majorities in both the House and Senate seems very slim. The lame duck session is therefore expected to be the Democrats' last best chance to get priority items passed before 2024. As any CR that is agreed to would likely expire in late November or early to mid-December (the latest proposal would have the CR expiring on Dec. 16), things on the Hill definitely won't be slowing down post-elections.

Turning to the elections themselves, one thing that we know for certain is that Congress will look quite different come next year. All seven of the Senators who are retiring this term (six Republicans and one Democrat) hold top committee leadership positions. No matter which party has control of the Senate in 2023, there will be a big shuffle and some new faces at the top of key committees – including the Appropriations Committee where both the Chairman, Sen. Patrick Leahy (D-VT), and the Ranking Member, Sen. Richard Shelby (R-AL), are both retiring. Similar shake ups are also expected in the House.

As the pundits are always quick to note – historically a president's party will lose seats in their first midterm. The general consensus is that, at least as far as the House is concerned, the 2022 mid-terms will follow this trend and that the Republicans will win control of the House in November. Given the factors discussed below, it is looking like this won't be quite as big a blow out as was being predicted earlier this year. Come January,

Republican leadership may find themselves in a position that has become all too familiar to the Democrats – working with a narrow majority and trying to balance the ideological spectrum of their members.

The big question for November is whether the Democrats will be able to retain their hold on the Senate. There are a few critical factors coming into play here that have improved the Democrats' chances, making a split Congress (with Republicans taking the House and Democrats holding the Senate) more likely than originally anticipated. In particular:

Context –

President Biden's approval ratings are up (to their highest point since last October) and the recent passage of the Inflation Reduction Act together with the 2021 infrastructure bill has given Democrats a strong platform to run on. In the meantime, former President Trump's approval ratings are down to some of their lowest levels of his post-presidency period (to 34%). These shifting party preferences have also been reflected in the generic ballot (which looks at voters' preference by party rather than individual candidate) where the two parties are running neck in neck.

The Republican Party platform has been focused on the economy, crime and border security, while Democrats are running on their recent legislative accomplishments and health care (including abortion rights). While inflation remains a big focus, abortion has been the biggest wildcard of this election year. NBC News' latest polling found that 61% of respondents are opposed to the Supreme Court's decision to overturn *Roe v. Wade*. Much to the chagrin of many Republicans, Senator Lindsay Graham (R-SC) introduced legislation to create a nationwide ban on most abortions after 15 weeks of pregnancy (with a proviso that if a state has a more restrictive policy it can keep it) – further casting abortion as a key issue this November. It remains to be seen how much the issue of abortion will drive turnout and voter preferences in key races and whether abortion will be able to surpass the economy as the critical issue for swing voters. An additional factor mixing things up this election season will be the impact of the January 6 commission – with a growing number of polls showing that Americans are concerned about, and focused on, preserving the basic principles of democracy and the peaceful transfer of power.

Contests –

The Republicans' efforts to retake the Senate are also hindered by the simple math and map of this year's elections. There will be thirty-five Senate seats up for election this year – twenty-one (or 60%) of which are held by Republicans. As noted above, there are seven incumbents who are not running for reelection – six of whom are Republicans.

Of the thirty-five races – the number of seats truly in contest remain in the single digits. Of course with the Senate split 50/50 and Vice President Harris casting the tie breaking vote, the Republicans only need a net pick up of one seat to take the majority.

At this point, the Republicans' best chance of picking up a seat is in Nevada where first term incumbent Senator Catherine Cortez Masto (D-NV) is running in a dead heat with her challenger, former Nevada Attorney General Adam Laxalt (R). (For those of you who are not familiar with Nevada politics, the Laxalt family name is just about as powerful

there as the Bush name in Texas.) Arizona and Georgia are also two seats held by Democrats that remain in the toss-up category. However, as noted below, candidates in both of these races have somewhat diminished Republican hopes of unseating Senators Mark Kelly (D-AZ) and Raphael Warnock (D-GA), who were both first elected to the Senate in special elections in 2020. While, at the beginning of the cycle, the Republicans also had their sights set on Colorado (Sen. Michael Bennet) and New Hampshire (Sen. Maggie Hassan) the Democrat incumbents in these races have been maintaining solid leads against their Republican challengers and it would take a level of red wave that is not anticipated at this point to flip these seats.

For their part, the Democrats' hopes of defending and/or adding to their majority are pinned largely on Wisconsin and Pennsylvania. In Wisconsin, two term Senator Ron Johnson (WI-R) is in one of the tightest races of the year against his challenger Wisconsin Lieutenant Governor Mandela Barnes (D). In Pennsylvania, Democratic nominee John Fetterman is maintaining a slight lead over Republican nominee Mehmet Oz in the race for the seat being vacated by retiring Senator Pat Toomey (R-PA). In addition to Pennsylvania, there are also two other open seats being vacated by Republicans – in Ohio and North Carolina – that may still be within striking distance for the Democrats. In both those races, the Republican nominees are maintaining low single digit leads against their Democrat opponents but, in light of their improving poll numbers nationwide, Democrats are optimistic that these seats might still be in play. The same is true in Florida where Democrats are hoping that Representative Val Demings (D-FL) still has an opportunity to close the relatively small lead held by incumbent Senator Marco Rulio (R-FL).

Either way, whichever party holds the Senate next year, it will be by narrow margins.

Candidates –

One of the biggest challenges for Republican prospects in the Senate races highlighted above is the individual candidates themselves. In particular, in Arizona (Blake Masters), Pennsylvania (Mehmet Oz) and Georgia (Herschel Walker) the Republican primaries produced nominees with some challenging histories, personalities and positions that may not align with the moderate makeup of the general election voters in those states.

On the Democrat side, in Pennsylvania John Fetterman is still working to make up ground and assuage concerns about his long term health after suffering a stroke in May. The fact that Fetterman is up against Dr. Oz has helped him out considerably with much of the narrative in the campaign still being about whether Dr. Oz is more closely aligned with New Jersey than Pennsylvania and if he is out of touch with the “regular” folks in PA.

Of course there is plenty of time for an October surprise that could upend one or all of these races. We will be continuing to monitor the electoral landscape and to prepare for the flurry of activity that may occur during lame duck.

