

November 5, 2015 (11:00am)

To: NOSORH
From: Capitol Associates
Re: Election results and Implications

Although not all returns have been tabulated as of the writing of this memo, sufficient information is available to allow us to make certain observations about what we expect from the Congress moving forward.

Yesterday, Republicans scored an historic victory by increasing their majority in the House of Representatives; retaking the majority in the Senate; and, expanding the number of Governor's mansions and state Houses under GOP control.

House of Representatives

It appears that the GOP will control no fewer than 245 seats, up from the 230 they had going into the election. If that number holds (most of the unresolved seats are seats currently held by Democrats), then the GOP will enjoy their largest House majority since Harry Truman was President.

Technically, nothing will change in the House in terms of the GOPs ability to control the House agenda. Despite the increase in their majority, House Republicans will not have enough votes to overcome Presidential vetoes should the President choose to use his Veto pen during the last two years of his term in office.

House Speaker John Boehner (R-OH) is expected to seek another term as Speaker of the House of Representatives and despite rumblings from some of the party's most conservative members, he should be re-elected without problem.

Earlier this year, then House Majority Leader Eric Cantor (R-VA) was defeated in the GOP primary and he subsequently resigned his seat in Congress. This lead to the election of Kevin McCarthy (R-CA) as the GOP Majority Leader. McCarthy will surely run again and he, too, is expected to be elected easily to the Majority Leader position.

At this time, there are no indications of any changes in the House Democratic Leadership team.

But changes in the House are coming, just not necessarily due to the outcome of Tuesday's election.

Ways and Means Committee

The Ways and Means Committee is considered one of the most powerful Committees in the House of Representatives. The Committee is the place where all legislation dealing with taxes must originate and the Committee also has jurisdiction over the Medicare and Social Security programs.

Prior to the election, the Chairman of the Ways and Means Committee, Dave Camp (D-MI) announced his retirement. Two members of the Committee, Kevin Brady (D-TX) and Paul Ryan (R-WI) have already announced their intention to seek the Chairmanship. Brady is currently the Chairman of the Ways and Means Health Subcommittee and Ryan is completing a six year run as Chairman of the House Budget Committee.

Chairmanship elections are notoriously difficult to predict and this one is no different. Each comes with their own strengths and weaknesses.

Although Brady and Ryan would pursue similar agendas as Ways and Means Committee Chair, Ryan is considered the more seasoned Member by virtue of his Chairmanship of the Budget Committee and his time on the campaign trail as Mitt Romney's running mate in 2012. Should Brady succeed in his quest for the full committee chairmanship, his spot as Health Subcommittee Chair would be open. Several Members are expected to vie for that plum position should it become available.

Little change is expected to occur on the Democratic side of the Committee dais. Representative Sander Levin (D-MI) will continue as the Ranking Democrat on the full Committee and Representative Jim McDermott (D-WA) will continue as the ranking Democrat on the Health Subcommittee.

House Energy and Commerce Committee

Some Members consider the Energy and Commerce Committee to be the second most important Committee in the House after the Ways and Means Committee because of the Committee's broad jurisdiction. Energy policy, health policy (Medicare Part B, Medicaid and Public Health) and telecommunications policy are just some of the issues that fall within this key Committee's purview.

Tuesday's election will not have a major impact on this Committee on the GOP side, but retirements and the election results will affect the Democratic leadership on this Committee.

Ranking Minority Member Henry Waxman (D-CA) and former Ranking Member John Dingell (D-MI) had both announced their retirements and did not run for re-election this year. This means there will be a battle for the top Democratic position on this Committee. The two leading candidates are Frank Pallone (D-NJ) and Anna Eshoo (D-CA) with Representative Bobby Rush (D-IL) being a third possibility .

Pallone currently serves as the Ranking Democrat on the Health Subcommittee and should he succeed in his desire to move up to be Ranking on the Full Committee, there will be a battle to succeed him as Ranking on the Subcommittee. Similarly, Eshoo is the Ranking Democrat on the Communications and Technology Subcommittee and her ascension to the Ranking spot on the full Committee would set in motion a scramble to succeed her on the Subcommittee.

Pallone and Eshoo share similar political values but that is of little consequence when you are the Ranking minority member of a House Committee. But the position is important in terms of articulating the minority party's position on legislation before the Committee and trying to negotiate with the majority. For these reasons, personality can sometimes be more important than ideology when it comes to selecting the individual who will serve as the Committee's ranking minority member.

The old saying, "The rules of the House are that the Majority rules" is just as true under GOP leadership as it was under Democratic leadership.

Senate

Not surprisingly, the Senate and the Senate Committees are where we will see the most visible signs of the impact of the GOP wins yesterday. Based upon known outcomes, the GOP will control at least 52 seats during the 114th Congress, up from 45 during the current Congress.

Senator Mitch McConnell (R-KY) is poised to become the next Majority Leader in the United States Senate. How McConnell will govern remains to be seen. Like most of his predecessors, his initial comments have been sprinkled with compliments for his opponents and suggestions that he will be different in his leadership style, offering a more open and inclusive environment in the United States Senate.

Certainly McConnell has chafed under the leadership style of Senator Harry Reid (D-NV) which was to exercise tight control over the Senate's floor agenda, often using parliamentary procedures to prevent Members of both parties from offering amendments. Reid argued that he had to exercise such control in order to get the few things passed that they did. He maintained that the constant threat of GOP filibusters forced him to be more autocratic.

Will McConnell follow Reid's lead and use the rules of the Senate to prevent the type of open and free-flowing debate that characterized the Senate in the last century? Or, will McConnell "turn back the clock" to a time when Senators sought more collegial debates and had the ability to offer non-germane amendments, even if the leadership deemed them frivolous?

McConnell has stated publicly that he wants to lead more in the style of legendary Senator Majority Leader Mike Mansfield (D-MT) and less like what has been the norm under Senator Reid. Whether he delivers on that promise remains to be seen.

Where are we now?

Three seats currently held by Democratic Senators remain unresolved at the time this memo was being written:

Alaska – Although 100% of precincts have reported, and the GOP Candidate, Dan Sullivan is leading incumbent Mark Begich (D-AK) by approximately 8,000 votes, some outlying villages have not sent in their results and there are apparently a large number of absentee ballots yet to be counted. State officials are saying it could be next week before the final outcome is known.

Louisiana – Louisiana has a unique electoral system where all candidates, regardless of party, can run in the general election. However, in order for a candidate to be declared the winner, he/she must garner at least 50% + 1 of the votes. If no candidate achieves that threshold, then there is a run-off between the top two vote getters in a second election, again, regardless of party.

On election night, incumbent Senator Mary Landrieu (D-LA) received the highest number of votes, securing approximately 42% of the vote. Coming in a close second was Representative Bill Cassidy (R-LA) who received about 41% of the vote. Several other candidates received the remainder of the vote but significantly, the bulk of that (13%) were votes cast for Rob Maness, a second Republican candidate.

When looked at by party voting, the GOP candidates received 55% of the vote and the Democratic candidate received 42% of the vote. The expectation is that when the second vote occurs in early December, the GOP vote will coalesce around Cassidy making him the favorite to win round two.

Virginia – In a surprising turn of events, challenger Ed Gillespie ran much stronger than the polls suggested leading up to election night and as of Wednesday morning, a winner had not been declared. With all precincts reporting, incumbent Senator Mark Warner (D-VA) held a lead of approximately 4,000 votes out of more than 2 Million ballots cast. Because the margin separating the two candidates is less than 1% of the vote, a mandatory recount appears likely.

Depending upon the outcome of the three remaining races, the GOP majority could go as high as 55 due to the election results which would represent a net gain of 10 seats. A more likely outcome, however, appears to be a gain of 8 or 9 Senate seats giving the GOP a majority of 53 – 47 or 54 – 46.

Party Switches?

There has been some speculation that some Senators not up for re-election yesterday could reevaluate their political affiliation as a result of the election outcome.

There are currently two “Independent” Senators, Bernie Sanders (I-VT) and Angus King (I-ME), who do not officially belong to either party; although both “caucus” with the Democrats. As a result, their Committee assignments and seniority are determined by the Democratic Caucus. Although it is highly unlikely that Sanders would consider switching Caucuses, King made some noises in the days leading up to the election that he might consider making a switch if he felt it would benefit the people of Maine.

Were the GOP majority slimmer and King’s vote necessary to obtain an outright majority the GOP leadership might be incentivized to court King. However, given that the GOP appears to have a comfortable majority, offering King inducements (i.e. plum committee assignments) to join their caucus seems less likely, despite what King may want.

Similarly, some moderate/conservative Democratic Senators could look at the election results and conclude that their personal political fortunes might fare better in the future if they were Republicans rather than Democrats. This is not without precedent. After previous “wave” elections some Senators and Representatives have switched parties to more closely align their political affiliation with that of the people they represent.

West Virginia Senator Joe Manchin (D-WV), a self-described moderate Democrat, has often been mentioned in this category. Although Manchin has never publically given any indication that he would contemplate a party switch, recent electoral outcomes in West Virginia could cause him to consider such an option. Again, were the GOP majority smaller, the Republican leadership might feel a greater need to court Democrats they might deem “disaffected?”

Senate Committee Changes

The GOP Senate victories will result in all Senate Committees going from Democratic control to Republican control. Republican Senators will replace Democratic Senators as Committee chairs and the all Committees will see an increase in the number of Republicans serving on those Committee.

Committee ratios will not be determined until the final Senate numbers are in but it is likely that the current majority-minority ratios on the Committees will be the same during the 114th Congress as they were in the 113th Congress. It is possible that some Democrats will lose their Committee assignments due to the smaller number of Democrats in the Senate.

Senate Finance Committee

Currently chaired by Ron Wyden (R-OR), the Committee leadership will shift over to Senator Orrin Hatch (R-UT). Wyden’s tenure as Chair of this important Committee was relatively short but during his time at the helm, he and Senator Hatch appeared to get along well personally. We expect that the cordial relationship we saw emerging in 2014 will continue when Senator Hatch takes over the gavel.

Although the Finance Committee technically has a Health Subcommittee, historically, all substantive work has been done at the full Committee level. We see nothing to suggest this will change. The Healthcare Subcommittee, Chaired by Senator Rockefeller (D-WV), will likely be Chaired by Senator Pat Roberts (R-KS) during the 114th Congress.

Senate Health, Education, Labor and Pensions (HELP) Committee

Senator Tom Harkin has chaired this Committee during the 113th Congress and his decision to retire at the end of this Congress ensured that the Committee would be under new leadership in the 114th Congress. It was only a question of which party would run the Committee.

With Republicans taking the majority, there are two possible options for leading this Committee: Senator Lamar Alexander (R-TN) or Senator Mike Enzi (R-WY). Although Senator Alexander has been the Ranking Republican on the HELP Committee during the past two years, his ascension to that position was due to the Republican caucus rule which prohibits a Senator from serving as either Ranking Republican or Committee Chair for more than six years.

Although Senator Enzi outranks Senator Alexander, Enzi used up his six years as Ranking Minority member of the HELP Committee and had to give up that position in favor of Alexander at the beginning of the 113th Congress. However, Enzi has not used up all of the six years he is permitted as Chair of this Committee. Therefore, it is possible (likely?) that Senator Enzi rather than Senator Alexander will become Chair of the HELP Committee.

Lame Duck

Because Congress did not complete work on a variety of issues prior to adjourning in September, a “lame duck” session has been scheduled.

Because of the GOP victories yesterday, it is highly unlikely that the lame duck session will accomplish anything other than a continuation or extension of appropriations bills or certain expiring tax provisions.

For example, prior to adjourning, Congress failed to take action on any of the 12 appropriations bill necessary to keep the federal government open and running. Consequently, Congress adopted a Continuing Resolution (CR) that effectively extended the federal fiscal year from its original end date – September 30, 2014 – until December 11, 2014.

Between now and December 11th, the current Congress will have to decide what to do with the appropriations bills. The most likely scenario is that the Congress adopts another CR (or omnibus) appropriations bill that avoids making substantive decisions on spending for the 2015 Fiscal Year.

It is also possible that the lame duck session will address certain expiring tax provisions that need to be extended.

SGR

Although many Member of Congress have been urging the Congressional Leadership to put a permanent SGR fix on the agenda for consideration during the lame duck, we think it is highly unlikely this will occur.

The consensus for enactment of a permanent SGR fix remains largely intact but it is important to remember that that consensus was ONLY for what should replace the SGR, NOT for how to pay for the SGR fix. The “pay for” remains as elusive today as it was 9 months ago when Congress adopted the current patch.

Because the temporary SGR fix does not expire until the end of March, there is time during the early months of the new Congress to deal with this issue. We see no evidence that the new Congress will be any more willing to cut physician fee schedule payments by 21% than the current Congress has been.

Once the new Congress gets settled in and the leadership/committee chairmanship races have been decided, we expect the 114th Congress will work in earnest to find a permanent fix.

Healthcare Reform

Despite the loud and persistent calls from GOP candidates for repealing the Affordable Care Act (ACA) we see little evidence that legislative efforts to repeal the ACA will be any more successful in 2015 than they were in 2014 or 2013.

It is entirely possible (even likely) that the GOP controlled Congress will pass legislation repealing most or all of the ACA in the early part of 2015. But the President has threatened – and we take him at his word – that he will veto any legislation repealing the ACA. And despite their gains, the GOP does not have a veto proof majority.

It is possible that the GOP could force some changes to the ACA. There are various legislative tools and ways to package legislation that would make it difficult for the President to veto certain bills. Also, many Democrats have expressed concerns about certain provisions of the ACA so it is conceivable that the GOP could get some Democratic support for votes overriding a Presidential veto.

Repealing the Medical device tax, modification of the employer mandates and language expanding insurance options and patient provider options are all proposals that have generated some bi-partisan support. It is conceivable that legislative reforms encompassing these types of changes could obtain support with sufficient numbers to override a possible Presidential veto.

