

# ALCALDE & FAY

## GOVERNMENT & PUBLIC AFFAIRS FIRM



## 2022 MIDTERM ELECTIONS: RESULTS AND ANALYSIS

While public polling and historical trends both pointed towards Democrats suffering significant losses in both the House and Senate as a result of last week's midterm elections, Democrats largely outperformed expectations and appear to have prevented the type of "red wave" midterm election similar to 2010 that many were expecting. Despite Democrats' better than expected showing last week, including in the Senate where they will retain control and could possibly add a seat depending on the results of next month's Georgia runoff, Republicans are currently projected to secure the minimum 218 seats needed for majority control of the House, with many projecting that number to increase to 220 or greater. At this time, they have won 217 seats and are currently ahead in several of the remaining 13 uncalled races, although several are expected to be called as soon as this week.

In addition to the House and Senate races discussed further below, gubernatorial elections were held in 36 states. With only Alaska remaining to be called, Democrats have so far flipped 3 seats (Arizona, Maryland and Massachusetts), while Republicans flipped Nevada. Both parties also had several incumbents secure resounding reelections, despite being heavily targeted by the opposing party. For Democrats, this included victories in Michigan, where Democrat Gretchen Whitmer won reelection by nearly 11 points; in Wisconsin, where Democrat Tony Evers won reelection by 4 points; in Oregon, where Tina Kotek won by 4 points; and in Pennsylvania, where Josh Shapiro won by a nearly 15-point margin. Republicans secured key victories in Georgia, where Brian Kemp was reelected despite facing strong opposition from former President Donald Trump, as well as in Florida, where incumbent Ron DeSantis cruised to a nearly 20-point victory. The impressive showing almost certainly cements DeSantis as a leading contender for the 2024 Republican Presidential nomination while putting him at immediate odds with former President Donald Trump, who later today will announce his intention to run for President in 2024.

### U.S. SENATE

With races in Arizona and Nevada called in their favor over the weekend, Democrats have secured a sufficient number of victories in the midterms to hold a minimum of 50 seats in the 118th Congress, thereby ensuring they will keep their majority control (*this total includes two independent senators, Bernie Sanders of Vermont and Angus King of Maine, who both caucus with Senate Democrats*).

Despite polling that consistently indicated Republicans were poised to flip several Democratic-held Senate seats in Arizona, Georgia, Nevada and New Hampshire, as well as win open seats in Ohio and Pennsylvania, Democrats were able to win enough of these races to hold their narrow majority, with the possibility of expanding it by one seat if incumbent Senator Rev. Raphael Warnock wins reelection in the Georgia runoff election on December 6. In New Hampshire, incumbent Democrat Maggie Hassan soundly defeated Republican challenger Don Bolduc by nearly 10 points. In Pennsylvania, Democratic Lt. Governor John Fetterman defeated Republican Dr. Mehmet Oz by 5 points. In Arizona, incumbent Mark Kelly (whose race was called over the weekend) defeated Republican challenger Blake Masters by nearly 5 points. Republicans did secure a key win in Ohio, where Republican JD Vance defeated Congressman Tim Ryan (D-OH-17) by nearly 7 points to win the open seat vacated

by retiring Senator Rob Portman (R). Republicans also secured victories in Florida, where incumbent Marco Rubio won a landslide victory over Congresswoman Val Demings (D-10) by more than 16 points, and in North Carolina, where Congressman Ted Budd (R-NC-13) defeated Democrat Cheri Beasley by nearly 3 points.

The Senate seat in Georgia will once again come down to a runoff election, with neither incumbent Democrat Raphael Warnock or Republican challenger Herschel Walker securing the necessary 50 percent of the vote needed to win outright (*Warnock 49.4%, Walker 48.5%*). Although Democrats have already secured the 50 seats necessary for majority control of the Senate, both parties are still expected to invest significant resources in the runoff. Democrats in particular are hoping to pad their margin by another seat to avoid the types of delays that occasionally occurred during the 117th Congress when a single Democratic Senator’s absence threatened their ability to move bills through Committee. Senate Democrats are also hoping an extra seat will help their odds in the incredibly difficult election landscape they face in 2024 when they will have to defend 23 of the 33 seats up for reelection, including several in traditional or trending red states (Montana, Ohio and West Virginia) and traditional swing states (Arizona, Pennsylvania, Maine and Wisconsin). Republicans, on the other hand, will have only two Senate seats up for reelection from states Joe Biden lost by single digits in 2020 (Florida and Texas) and none where he won, making any Democratic flips in 2024 highly unlikely.

Party	Current # of Seats	Projected # of Seats in the 118th Congress <i>(pending Georgia runoff)</i>	Projected Net Gain/Loss <i>(pending runoffs)</i>
Democrats	50*	50*	0
Republicans	50	50	-1

*\*Includes two Independents who caucus with the Democrats.*

While Senate Democrats are expected to largely retain their current leadership structure, a small group of Senate Republicans including Rick Scott (R-FL), Marco Rubio (R-FL) Josh Hawley (R-MO), Ron Johnson (R-WI), Mike Lee (R-UT) and Ted Cruz (R-TX) are seeking a postponement of Wednesday’s leadership elections. At first in tweets, and later in a letter being circulated by members of the group, these members call for a postponement so the party can fully evaluate the midterms and determine what changes need to be made to better position them for the 2024 elections. While not specifically naming him, the criticism appears directed at Minority Leader Mitch McConnell (R-KY), who many in the group have long criticized for cutting deals with Democrats, in particular on annual spending bills, and most recently in August when he questioned the quality of some of the Republican candidates and suggested that could be a major factor in why they might not retake the Senate. On Tuesday during a closed-door caucus meeting, Senator Rick Scott (R-FL) announced he would challenge McConnell for the GOP leader role. In a press conference following the meeting McConnell reiterated his confidence that he still had the votes to hold his position, although it was unclear if tomorrow’s internal leadership election would be postponed.

## **U.S. HOUSE OF REPRESENTATIVES**

With 13 races still uncalled, Republicans are only one win away from reaching the 218 seats needed to retake control of the House in the 118<sup>th</sup> Congress. They are widely expected to reach the threshold in the coming days, thereby giving them what could be a historically slim majority when the new Congress convenes next year. Democrats were able to defend several key seats that had been top targets for Republicans, including several swing districts in Virginia, Nevada and California, while Republicans were able to secure victories in districts targeted by Democrats, including narrow victories of only a few thousand votes in Iowa, Arizona, and Michigan. While Democrats have so far managed to flip seven Republican seats, Republicans have flipped 18 seats and appear likely to add to that total in the coming days. Republicans also benefited from strong showings in New York, where they were able to flip four seats, and in Florida, where favorable redistricting helped the party to secure wins in three redrawn districts previously held by Democrats.

Party	Current # of Seats*	Projected # of Seats in the 118th Congress <i>(results pending in 13 races)</i>	Projected Net Gain/Loss <i>(pending final counts)</i>
Democrats	220	205	-15
Republicans	212	217	5

*\*there are currently three House vacancies: Jackie Walorski (R-IN) died 08/03/2022, Charlie Crist (D-FL) resigned 9/02/2022, and Ted Deutch (D-FL) resigned 09/30/2022*

At this time, the House Democratic Leadership for the 118th Congress is somewhat unclear, and could be poised for a transition to a new batch of leaders. Since last week, Speaker Pelosi has said she will wait until all election results are finalized and majority control is certain before announcing whether she will seek another term as the top House Democrat. Despite indicating after the 2018 midterm elections that she would limit her leadership in the House to only four more years, Pelosi has recently said that members of her caucus have asked her to stay on in her leadership role during the 118th Congress. Were Pelosi to step down, it may not be as simple as Majority Leader Steny Hoyer (D-MD) or Majority Whip James Clyburn (D-SC) moving into the top spot. Many within the House Democratic Caucus have been pushing for a new generation of leadership, with Congressmen Hakeem Jeffries (D-NY) and Adam Schiff (D-CA) the likely frontrunners.

While Republicans were able to secure enough victories in the midterms to ensure they retake control of the House next year, their narrow margin and the perception among many within their caucus of a relatively weak performance (despite party leadership's projections) has already led many members to call for a change in leadership and/or postponement of this week's leadership elections. House Minority Leader Kevin McCarthy (R-CA) had long been seen as Republicans' choice for Speaker should they retake the House. But while he has made inroads with several of the newer and more conservative members of his caucus, many are still pushing for a different voice to take over. Even if elected as Speaker, McCarthy and the rest of the House Republican leadership team will need to rely on the various factions within the caucus to cooperate in order to pass legislation, and will be able to afford only a few defections without needing Democratic votes. While somewhat similar to the circumstances Speaker Pelosi has faced as she balanced the moderate and progressive wings of her caucus, it remains to be seen if McCarthy and incoming Republican leadership can successfully walk that line as the emboldened conservative wing is already pursuing changes to House rules that, in addition to giving rank-and-file members increased power to shape debate and legislation, would also make it easier for them to oust McCarthy if they see fit. While his bid for Speaker cleared the simple majority vote needed during leadership elections earlier today, with only 188 votes in his favor McCarthy will need to garner additional support within his caucus before January's floor vote when he will need at least 218.

## EXPECTED COMMITTEE CHAIRS & RANKING MEMBERS

As most of the current Committee Chairs and Ranking Members in both chambers survived last week's elections, term limits and retirements will serve as the predominant sources of changes to Committee leadership. Below is a preliminary outlook for the anticipated Chairs and Ranking Members for Committees of particular importance. We will update you as these positions are confirmed and the parties finalize committee membership, including Subcommittee leadership in the coming weeks.

### EXPECTED SENATE LEADERSHIP OF KEY COMMITTEES

#### Appropriations

- *Chairman:* With the retirement of current Chairman Patrick Leahy (D-VT), Senator Patty Murray (D-WA) is expected to become Chair.

- *Ranking Member:* With the retirement of current Ranking Member Richard Shelby (R-AL), Senator Susan Collins (R-ME) is expected to become Ranking Member.

#### **Budget**

- *Chairman:* Senator Bernie Sanders (I-VT) is expected to remain as Chair.
- *Ranking Member:* Senator Lindsey Graham (R-SC) is expected to remain as Ranking Member.

#### **Commerce**

- *Chairman:* Senator Maria Cantwell (D-WA) is expected to remain as Chair.
- *Ranking Member:* Senator Ted Cruz (R-TX) is expected to become Ranking Member, as current Ranking Member Roger Wicker (R-MS) is expected to serve as Ranking Member of the Armed Services Committee, whose current Ranking Member, Jim Inhofe (R-OK), is retiring.

#### **Environment and Public Works (EPW)**

- *Chairman:* Senator Tom Carper (D-DE) is expected to remain as Chair.
- *Ranking Member:* Senator Shelley Moore Capito (R-WV) is expected to remain as Ranking Member.

#### **Finance**

- *Chairman:* Senator Ron Wyden (D-OR) is expected to remain as Chair.
- *Ranking Member:* Senator Mike Crapo (R-ID) is expected to remain as Ranking Member.

#### **Health, Education, Labor, and Pensions (HELP)**

- *Chairman:* With current Chair Patty Murray (D-WA) expected to succeed retiring Senator Patrick Leahy (R-VT) as Chair of the Appropriations Committee, Bernie Sanders (I-VT) is in position to Chair the HELP Committee. However, Senator Sanders may choose to retain his top position on the Budget Committee, which would likely result in Bob Casey (D-PA) serving as Chair of the HELP Committee.
- *Ranking Member:* With current Ranking Member Richard Burr (R-NC) retiring, Senator Rand Paul (R-KY) will be next in line to become Ranking Member. However, Senator Paul is reportedly considering serving as the Ranking Member on the Homeland Security and Governmental Affairs Committee, which would likely open up the HELP Ranking Member seat for Senator Bill Cassidy (R-LA).

#### **Homeland Security and Governmental Affairs**

- *Chairman:* Senator Gary Peters (D-MI) is expected to remain as Chair.
- *Ranking Member:* With current Ranking Member Rob Portman (R-OH) retiring, and Ron Johnson (R-WI) term-limited from serving as ranking member, Senator Rand Paul (R-KY) would be next in line to be the top Republican on the Committee. However, if Senator Paul decides to serve as the top Republican on the HELP Committee, Senator James Lankford (R-OK) would be next in line to serve as Ranking Member.

#### **Veterans Affairs:**

- *Chairman:* Senator Jon Tester (D-MT) is expected to remain as Chair.
- *Ranking Member:* Senator Jerry Moran (R-KS) is expected to remain as Ranking Member.

#### **EXPECTED HOUSE LEADERSHIP OF KEY COMMITTEES**

##### **Appropriations**

- *Chairman:* Current Ranking Member Kay Granger (R-TX) is expected to become Chair.
- *Ranking Member:* Current Chair Rosa DeLauro (D-CT) is expected to become Ranking Member.

## **Budget**

- *Chairman:* Current Ranking Member Jason Smith (R-MO) is seeking to Chair the Ways & Means Committee. If he does not get the top spot on Ways & Means, Smith said he would seek to retain his leadership role on Budget, although several Republicans have already announced bids to lead the Committee, including Jodey Arrington (R-TX) and Buddy Carter (R-GA), as well as Lloyd Smucker (R-PA) who has said he would not challenge Smith if he were to stay.
- *Ranking Member:* With current Chair John Yarmuth (D-KY) retiring, Committee members Brendan Boyle (D-PA), Brian Higgins (D-NY) and Hakeem Jeffries (D-NY) are the likely candidates, although Jeffries is expected to forego that position to potentially succeed Nancy Pelosi (D-CA) if she were to step down from her leadership role.

## **Education and Labor**

- *Chairman:* Current Ranking Member Virginia Foxx (R-NC) is expected to become Chair.
- *Ranking Member:* Current Chair Bobby Scott (D-VA) is expected to become Ranking Member.

## **Energy and Commerce**

- *Chairman:* Current Ranking Member Cathy McMorris Rodgers (R-WA) is expected to become Chair.
- *Ranking Member:* Current Chair Frank Pallone, Jr. (D-NJ) is expected to become the Ranking Member.

## **Homeland Security**

- *Chairman:* With the retirement of current Ranking Member John Katko (R-NY), several members have expressed interest in becoming Chairman of the House Committee on Homeland Security, including Clay Higgins (R-LA), Scott Perry (R-PA), Dan Bishop (R-NC), Mark Green (R-TN), and Michael Guest (R-MS).
- *Ranking Member:* Current Chair Bennie Thompson (D-MS) is expected to become Ranking Member.

## **Transportation and Infrastructure**

- *Chairman:* Current Ranking Member Sam Graves (R-MO) is expected to become Chair.
- *Ranking Member:* With current Chair Peter DeFazio (D-OR) retiring, both Eleanor Norton Holmes (D-DC) and Rick Larsen (D-WA) have announced bids to serve as the Committee's top Democrat.

## **Veterans Affairs**

- *Chairman:* Current Ranking Member Mike Bost (R-IL) is expected to become Chair.
- *Ranking Member:* Current Chair Mark Takano (D-CA) is expected to become Ranking Member.

## **Ways and Means**

- *Chairman:* With the retirement of Ranking Member Kevin Brady (R-TX), three Committee members have announced bids to serve as Chair: Vern Buchanan (R-FL), who follows Chairman Brady in seniority on the Committee; Jason Smith (R-MO), who currently serves as Ranking Member of the Budget Committee, and Adrian Smith (R-NE).
- *Ranking Member:* Current Chair Richard Neal (D-MA) is expected to become Ranking Member.

## **LAME-DUCK CONGRESSIONAL FORECAST**

The House and Senate return to Washington this week to begin the final weeks of the 117<sup>th</sup> Congress. In addition to determining party and committee leadership for the 118th Congress, the House and Senate have several key funding and policy priorities that are expected to be addressed before the end of the year.

Of particular note, Congress will have only a few short weeks to finish work on the Fiscal Year (FY) 2023 spending bills in order to avoid a government shutdown when the current Continuing Resolution (CR) expires on December 16th. As previously reported, the House only passed 6 of its 12 spending bills (via two minibus



spending packages), and the appropriations process stalled in the Senate at the Committee level, making it more than likely that Congress will once again rely on a massive catch-all Omnibus spending bill (or several smaller minibus packages in which spending bills are strategically grouped to ensure passage). Also of note, while fiscal conservatives in September had pushed for a longer CR into early next year (believing they would have greater leverage given the expectation they would have a significant Majority in the House), the much narrower majority that Republicans are now expected to hold in the 118<sup>th</sup> Congress makes it unlikely any similar effort would be successful in the coming weeks.

Democrats may also seek to address the debt ceiling during the lame duck in hopes of avoiding contentious negotiations with Republicans next year when the federal government is expected to reach its debt limit. Several Congressional Republicans (including House Leadership) in recent weeks have called for using their leverage in the upcoming negotiations over the debt ceiling to seek spending cuts, and Democratic Leadership has said they are concerned Republicans would seek changes/cuts to certain entitlement programs including Social Security and Medicare.

Congress will likely consider a massive Hurricane Ian recovery/relief package in the coming weeks, although the precise scope and size of the package has yet to be determined. At this time, FEMA is still coordinating with local officials and residents to finalize damage assessments in order to provide a complete and accurate estimate of the remaining need, at which point the Administration would likely submit a supplemental spending request to Congress. Ahead of this process, Senator Marco Rubio (R-FL) outlined a \$33 billion supplemental spending package (summary [here](#)) in mid-October; however, with damage assessments still underway, that bill was largely seen as a placeholder. The supplemental spending package could be incorporated into the catch-all Omnibus bill likely moving during the lame duck, although FEMA reportedly has sufficient immediate funding available in its Disaster Relief Fund, and therefore consideration of the supplemental relief package could be pushed into the 118<sup>th</sup> Congress.

Congress is also expected to complete work on the FY 2023 National Defense Authorization Act (NDAA). The House approved its version (H.R. 7900, bill text [here](#), summary [here](#)), on July 14<sup>th</sup> by a vote of 329-101, and while the Senate was expected to consider its own version (S. 4543, bill text [here](#), summary [here](#)) in the coming days, Congressional leadership may opt to simply bring a final House-Senate negotiated version straight to the floor to preserve floor time given the already crowded schedule.

Senator Joe Manchin's (D-WV) permitting reform bill, the *Energy Independence and Security Act of 2022* (bill text [e](#), summary [here](#)), might also be taken up during the lame duck period. Originally attached to the CR introduced in late September, the bill was ultimately removed from the CR prior to consideration due to its lack of support sufficient support among both Republicans and Democrats. As previously reported, the bill includes several policies/reforms to modernize permitting laws and accelerate agency reviews, including the streamlining of provisions that authorize and review energy and natural resource projects. Senator Manchin recently expressed his desire to attach his bill to the aforementioned FY 2023 NDAA bill; however, given the bipartisan opposition it faced in September when it was stripped from the CR, passage during the lame-duck remains a heavy lift.

The Senate will move forward this week with consideration of its own version of bipartisan legislation to codify same-sex marriage protections that differs slightly from the House-passed version (*Respect for Marriage Act*, H.R. 8404), which passed in a bipartisan vote of 267-157 on July 19<sup>th</sup>, 2022. The Senate's *Respect for Marriage Act*, unveiled late Monday (one-page summary [here](#) and full text is available [here](#)), was negotiated in recent months by a bipartisan group of Senators that had been working to draft a compromise bill that adequately protects same-sex marriage, but also address some of the legal concerns raised by several Senate Republicans. Majority Leader Schumer had postponed a vote in September on the House-passed version to provide the group additional time to draft a final version, and also to avoid forcing members to vote on what they may have seen as a politically thorny bill a month before the election. The bipartisan group has indicated they have the support of at least 10

Senate Republicans, along with the full Democratic Caucus, and therefore can clear the 60-vote threshold. In addition to repealing the Defense of Marriage Act (DOMA), the bill notably requires states to recognize same-sex marriages that were established in states where it was legal to do so.

We also expect Congress to complete work on a bipartisan Water Resources Development Act (WRDA) reauthorization, the biennial legislation authorizing Army Corps of Engineers and water infrastructure projects related to navigation, flood damage reduction, shoreline protection, and ecosystem restoration. The House passed its WRDA bill on June 8<sup>th</sup> with a strong bipartisan vote of 384-37, and the Senate approved its own version on July 28<sup>th</sup> with an overwhelming vote of 93-1. Given the bipartisan support, we expect House and Senate negotiators to reach a compromise between their respective bills and advance a final version before the end of the current Congress.