



**November 11, 2008**

**Welcome to Womble Carlyle's Capitol Connection e-newsletter, a weekly look at politics on Capitol Hill created by our Federal and State Government Affairs group for our Members and select clients they wish to send it to.**

## **ELECTION OUTCOME**

Illinois Senator Barack Obama was elected the 44th President of the United States. Obama led the popular vote 53% to 46% and led the Electoral College vote 364 to 163 with one state – Missouri (11 votes) – still too close to call. As a result, on entering the White House President Obama will be able to claim a mandate to make changes in government policy like no Democrat since Jimmy Carter, and no President since Ronald Reagan.



Democrats.

Obama's electoral coattails extended down the ballot with the Democrat party picking up at least 20 seats in the House of Representatives for a total of 255 and an 82 seat majority -- with 7 seats still too close to call. Democrats also picked up 6 seats in the Senate for a total of 57 (counting two Independents that caucus with the Democrats) for a 14 seat majority so far with 2 seats still undecided in Minnesota and Georgia. Georgia is officially required to hold a runoff election December 2 since no candidate received 50% of the vote. With Democrat Governors in Illinois and Delaware, both Senators Obama and Biden will be replaced by

These are the largest Democrat majorities in Congress since President Clinton was inaugurated in 1993 when Democrats enjoyed a 14 seat Senate majority (57-43) and an 84 seat House majority (259-176). President Carter in 1977 entered office with a 22 seat Senate majority (61-39) and a 149 seat House majority (292-143). It is also the first time in almost 5 decades -- since President Kennedy -- that voters have sent a sitting member of Congress to the White House.

## **PRESIDENTIAL TRANSITION**

Illinois Rep. Rahm Emmanuel – currently the 4th highest House leader as Chairman of the Democrat Caucus – has accepted the job of White House Chief of Staff. The appointment is a clear indication that President Obama intends to work closely with Congress to enact his public policy agenda. Rep. Emmanuel is highly unlikely to be the only Member of Congress tapped by the President-elect for a senior level position in his administration.

Obama also announced his transition team. The transition planning process has been organized as the Obama-Biden Transition Project, a 501(c)(4) organization, that will be overseen by three co-chairs: John Podesta, Valerie Jarrett, and Pete Rouse. They will work with the Presidential Transition Coordinating Council that President Bush established by Executive Order last month to ensure a smooth transition from one administration to the next by screening and briefing top advisers, vetting Cabinet nominees, and clearing staff for government service.

The co-chairs will be assisted by an advisory board comprised of individuals with significant private and public sector experience: Carol Browner, William Daley, Christopher Edley, Michael Froman, Julius Genachowski, Donald Gips, Governor Janet Napolitano, Federico Peña, Susan Rice, Sonal Shah, Mark Gitenstein, and Ted Kaufman. Gitenstein and Kaufman will serve as co-chairs of VP-elect Biden's transition team.

Supervising transition day-to-day activities will be members of Obama's campaign staff: Ex. Dir. Chris Lu; Com. Dir. Dan Pfeiffer; Chief Spokesperson Stephanie Cutter; Gen. Counsel Cassandra Butts; Personnel Dir. and Assoc. Dir. Jim Messina and Patrick Gaspard; Personnel Counsel Christine Varney; Co-Directors of Agency Review Melody Barnes and Lisa Brown; Dir. Cong. Relations Phil Schiliro; Dir. Public Liaison Michael Strautmanis; Directors of Operations Katy Kale and Brad Kiley. The transition phone number is 202-540-3000.

Obama's team faces a formidable task in lining up hundreds of qualified candidates to fill Executive Branch jobs immediately after the Inauguration on Jan. 20. The task is complicated by Obama's commitment a year ago when he said of lobbyists: "I don't take a dime of their money, and when I am president, they won't find a job in my White House." While he has backed away from that statement, it is not entirely clear what the rules will be. His campaign website stated that no political appointees would be permitted to work on "regulations or contracts directly and substantially related to their prior employer for two years. And no political appointee will be able to lobby the executive branch after leaving government service during the remainder of the administration." These conditions if enforced could dissuade hundreds of qualified and experienced individuals from serving in positions where their experience would be useful in either the transition or the Obama administration itself.

## **CONGRESSIONAL CHANGES**

While there will not be many changes in Leadership among Democrats, there could be some significant changes in Committee Chairmanships in both Houses. New chairmen usually bring in their own top advisers while hiring and replacing some committee staff, which requires everyone to establish new working relationships – ultimately delaying the pace of legislative action.

## **CHANGES IN SENATE**

### **LEADERSHIP**

***Democrats Stay the Same:*** With the big gains, few changes are expected in the Democrat Leadership with Sen. Reid continuing as Majority Leader, Dick Durbin as Asst. Majority Leader, Charles Schumer as Conference Vice-Chair, Byron Dorgan as Policy Committee Chair, and Patty Murray as Conference Secretary. Sen. Schumer is expected to take the Rules Committee Chairmanship and unlikely to remain as Democrat Senatorial Campaign Committee Chair. No candidates have lined up to replace him as yet.

***Republican Changes:*** Sen. McConnell is expected to be retained as the Republican Leader, Jon Kyl as Whip, and Lamar Alexander as the Conference Chairman. However, Sen. John Ensign is expected to replace Sen. Hutchison as head of the Republican Policy Committee, while Sen. Cornyn and Sen. Coleman (assuming he wins his race) are expected to compete to replace Ensign at the National Republican Senatorial Committee. Sen. Thune in turn has announced he will run to replace Sen. Cornyn as the Vice Conference Chairman -- though Senators Burr, Sessions, and Murkowski have been mentioned as possible rivals for the position.

### **COMMITTEES**

***Committee Ratios:*** Democrat gains in the Senate will grant them at least a 2 seat advantage and possibly a 3 seat advantage – depending on the outcome of the 3 undecided seats – on most Senate Committees instead of the 1 seat majorities they currently enjoy on most committees. With a 56-44 majority in the 102nd Congress (1991-1993) and a 57-43 majority in the 103rd (1993-1995) when Bill Clinton won the Presidency, Democrats enjoyed a 2 seat edge on most committees and a 3 seat edge on a handful of more important committees. The bigger majorities will now allow Democrats to move legislation to the Senate floor without having to make major changes to accommodate the Republican minority. Republican losses combined with Democrat gains mean most sitting Republicans on each committee will keep their seats, but since the new ratios also dictate majority vs. minority committee funding levels, Republicans will likely have to make staff cuts.

***Democrat Chairman Changes:*** A complicated game of musical chairs is likely in order on the Democrat side if widely expected events come about. Sen. Biden's elevation to VP opens up the Foreign Relations Committee Chairmanship which together with the rumored ouster of Homeland Security and Government Affairs Chairman Joe Lieberman (for supporting McCain) and the resignation of aging Appropriations Committee Chairman Robert Byrd will have a domino effect on many other committees. Health, Education, Labor and Pensions (HELP) Committee Chairman Kennedy's health is another consideration that could further complicate the chairmanships at any point in the next Congress.

For instance, Commerce Chairman Inouye will replace Sen. Byrd as Appropriations Chair which opens the Commerce spot to Intelligence Committee Chairman Rockefeller. Rockefeller would then be replaced on Intelligence by Rules Committee Chairwoman Feinstein and DSCC Chairman Schumer is in line to replace her as Chair on the Rules Committee. Sen. Kerry is eligible to take the open spot at Foreign Relations left by Sen. Biden since Sen. Dodd announced he plans to stay Banking Chairman in light of the current financial crisis. However, Kerry is lobbying to become Secretary of State which, if successful, would mean that Sen. Feingold would take over Foreign Relations. Agriculture Committee Chairman Harkin is next in line to take the reins at HELP behind Kennedy, which would pass the Agriculture post most likely to Sen. Lincoln – assuming current Budget Chairman Conrad doesn't want it first. If Harkin stays at Agriculture, Sen. Mikulski is next in line to take the gavel at HELP. This assumes that no Senator (other than Kerry) leaves the Senate to join the Obama administration.

***Republican Ranking Member Changes:*** changes on the Republican side will be less extensive and are more the result of Republican retirements than losses at the polls. Sen. Hutchison who took over the Commerce Committee Ranking Member duties from Sen. Stevens earlier this year may retain that spot depending on the ultimate outcome of the situation involving

Sen. Stevens' recent federal conviction, though it appears he has nevertheless won reelection. Sen. Murkowski will take over as Ranking at the Energy Committee.

## **CHANGES IN HOUSE**

### **LEADERSHIP**

**Democrat Changes:** Speaker Pelosi and Majority Leader Hoyer will clearly stay. Majority Whip James Clyburn is mentioned as a candidate for several Cabinet posts and would likely be succeeded by Chief Dep. Majority Whip John Lewis if Clyburn departs. Caucus Chairman Rahm Emanuel is leaving to be White House Chief of Staff and DCCC Chair Chris Van Hollen appears to have been convinced by Speaker Pelosi to stay while Caucus Vice Chair John Larson appears to have Speaker Pelosi's backing to be Emanuel's successor as Caucus Chair. Rep. Xavier Becerra has announced he is running for Larson's Vice Chairman spot while Rep. Joseph Crowley, Rep. Debbie Wasserman Schultz, and Marcy Kaptur are also interested in the Caucus Vice Chairmanship if Larson vacates it.

Overall, the elections appear to have weakened the influence of the more moderate Democrat members who are part of the Blue Dog Coalition, although if teamed with the Republican minority on issues such as federal spending they will still be a force to be reckoned with.

**Republican Changes:** Republican Leader Boehner is expected to remain despite the losses, now that Budget Ranking Republican Paul Ryan publicly declined to run for the position as he had been urged to do by many conservatives. Minority Whip Blunt, however, has announced that he will not seek reelection and instead will focus on his duties in the Energy & Commerce Committee while throwing his support to Chief Deputy Minority Whip Eric Cantor to succeed him. Republican Conference Chairman Adam Putnam also announced that he will not run for reelection with Rep. Mike Pence being backed by Boehner and Jeb Hensarling to succeed him, but Reps. Jack Kingston, Mike Rogers and Devin Nunes may have an interest in the position as well. Rep. Thaddeus McCotter will run again for his spot as Republican Policy Committee Chair. NRCC Chair Tom Cole's plans are unclear, but Rep. Pete Sessions, Kevin McCarthy, and Spencer Bacchus are mentioned as possible challengers or successors.

As a mirror reflection of the elections influence in moving the Democrat Caucus more to the left, the elections have also moved the Republican Caucus as a whole more to the right as more moderate Republicans generally lost reelection. The more conservative members of the Republican Study Committee are now clearly a "majority of the minority" with the power to set overall policy for House Republicans. The continued loss of moderates in both parties could lead to more, rather than less, partisanship in the House.

### **COMMITTEES**

**Committee Ratios:** Democrats' House gains will allow them to go from a 6-7 advantage on most committees to a 11-14 seat advantage on most committees. Since the House majority generally has the power to rule almost by fiat regardless of how big the majority is, the increase in the majority ratio may have a smaller overall effect on the substance of legislation coming out of the committees than in the Senate. The real upshot of the bigger and somewhat more liberal majority in the House is increased fighting WITHIN the Democrat Caucus for influence on policy. A clear indication of that is the public announcement that Oversight and Government Reform Committee Chairman Henry Waxman intends to challenge more moderate Rep. John Dingell – the dean of the House Democrat Caucus – to Chair the Energy and Commerce Committee.

**Chairman Changes:** Waxman's challenge to Dingell may prompt another chairmanship contest to move into Waxman's current Oversight and Government Affairs Chairmanship where he presided over an intense series of oversight hearings looking into the Bush Administration. Many question whether Democrats will feel the need for such aggressive Executive Branch oversight under a Democrat administration. At Ways and Means, Chairman Rangel appears to be safe despite some ethics questions recently raised regarding his personal finances. Rep. Pete Stark, current Chair of the Health Subcommittee, is next in seniority followed by Sander Levin, Jim McDermont and John Lewis should Rangel falter later. On Education and Labor, Chairman George Miller is another member mentioned as a potential Cabinet Secretary in which case his likely successor would be drawn from the ranks of Representatives Dale Kildee, Donald Payne and Robert Andrews.

**Ranking Member Changes:** one of the more closely watched efforts on the Republican side is the race to replace retiring Jim McCrery as Ranking Member on the Ways and Means Committee, an effort which could see current Budget Ranking Member Paul Ryan elevated to the spot with the support of conservatives over Rep. Wally Herger and Rep. Dave Camp who are more senior. With the departure of Tom Davis as Ranking at Oversight and Government Reform and the defeat of Rep. Shays, it is likely that John McHugh or Mark Souder will replace Davis. Some shift in Subcommittee Ranking Members on Energy and Commerce Committee could also occur to open a ranking spot for Minority Whip Blunt, as was done for former Speaker Hastert when he left leadership following the Republicans' loss of the majority in 2006.

Most other committees, including Armed Services, Appropriations, and Financial Services have little to no change in either Chairmanships or Ranking Members. Only the Judiciary Committee has significant change with the Courts, Internet, and Intellectual Property Subcommittee becoming open. Rep. Boucher would likely take that subcommittee with Rep. Jerry Nadler as next in line.

## **ISSUES ON TAP FOR 111TH CONGRESS**

All proposals coming before the next Congress will be considered against the backdrop of a \$1 trillion deficit this year, an overall national debt of \$11 trillion, and a severe economic contraction. Similarly high annual federal budget deficits can be expected in the next couple of years if the economic rescue initiatives proposed, passed by Congress, and/or being implemented by the Treasury Department are fully implemented and the wars in Iraq and Afghanistan continue.

**Energy/Environment:** Climate Change; cap and trade program; regulation of greenhouse gases via the EPA; carbon capture subsidies/mandates at coal plants; increased CAFÉ standards; expand LIHEAP; repeal oil and gas energy tax incentives; alternative energy subsidies; RPS (Renewable Portfolio Standards); increased renewable fuel mandates; offshore drilling moratorium reinstatement; increased MMS offshore drilling royalty rates and recouping of “missed” royalties from Clinton era contracts; increase hard rock mining royalty rates; oil company windfall profits tax; revenue sharing for coastal states

**Finance:** Broad overhaul of financial industry regulation; additions to Emergency Economic Stabilization Act and oversight; Fannie Mae/Freddie Mac changes; new oversight of hedge funds and private equity groups

**Health Care:** Broad Health Care Reform/Universal Coverage/Obama Plan (possibly in Budget Resolution to gain Reconciliation protection); SCHIP Expansion -- mandate coverage for all children and cover uninsured adults paid for with increase in tobacco tax (39 cents to at least 61 cents per pack); Medicare Payment cuts (hospitals); Prescription Drug Re-Importation; Medicare Part D Prescription Drug Pricing; Medicare Advantage Reform; Pay-for-Performance; Medicare Payment Cuts; Health IT Electronic Records; federal FDA preemption of state tort law; 20% cut in Physician Medicare payments at end of 2009 (permanent fix); biologics; FDA Reform; FDA Tobacco bill; Patent Reform; Consumer Product Safety Commission Reform

**Intellectual Property/Telecom:** Patent Reform; Orphan Works; Net Neutrality; DTV Transition fall out; Anti-Counterfeiting Trade Agreement; Music Royalties; Fair Use of Federally Funded Research; expansion of Fair Use Copyright exemption; Satellite Home Viewer Act reauthorization; a la carte cable service; reinstatement of Fairness Doctrine; Broadcast Decency; Universal Service Fund reform; inter-carrier compensation; online privacy and unauthorized internet data collection; media ownership/consolidation reform; new spectrum auctions

**Labor:** Card Check/Employee Free Choice bill; Lilly Ledbetter bill eliminating statute of limitations on pay discrimination claims; ergonomics mandate legislation; abolish state right to work laws; minimum wage increase; increased Trade Adjustment Assistance and expanded eligibility; extension of unemployment benefits; FMLA expansion to include paid leave; ADA expansion; equal pay initiatives; Employment Non-Discrimination Act

**Taxes:** Eliminate Bush tax cuts for top two income tax brackets raising rates from 33 and 35% to 36 and 39.5%; increase cap gains/dividends taxes from 15% to 20%; freeze estate tax at 2009 level (\$3.5 million per person/\$7 million per couple with a 45% top rate); impose 2-4% Social Security payroll tax on income above \$250,000 or eliminate income limit on payment of Social Security taxes; AMT middle class reform; reinstate Superfund tax; carried interest issue; eliminate deferred tax on foreign income; reform corporate inversions, reinsurance and other issues related to tax havens overseas; repeal LIFO accounting method; permanent extension of R&D tax credit; 5 year extension of wind and alternative tax credit; lower overall corporate tax rate (35% to 30.5%); permanent extension of tax extenders package; repeal domestic manufacturing deduction; extension of small business expensing and bonus depreciation; first-time homebuyer's credit; tax free retirement account withdrawals; eliminate income taxes for seniors filing joint or single up to \$50,000; overall tax code reform

**Trade:** Free trade to fair trade proposals; NAFTA renegotiation; rewrites of South Korea and Columbia Free Trade pacts; health & safety restrictions on trade from China; combat Chinese currency manipulation; Fast Track authority renewal

**Transportation/Infrastructure:** Infrastructure Stimulus Bill; bridge and road repair; \$500 billion reauthorization of highway bill (vs. \$284 billion in last bill and likely requiring federal gas tax increase); Highway Trust Fund Solvency; FAA Reauthorization

## **SIGNIFICANT DATES**

- **Monday, November 17th to ????** – Lame Duck Session House and Senate – Congress could consider an “Infrastructure Stimulus” package and other items. Senate Democrats and Republicans hold leadership elections, though Senate Republicans could delay their elections to January depending on the timing and resolution of undecided elections.
- **Wednesday, November 19th** – House Republican Leadership Elections. House Democrats will elect their leaders sometime the week of Nov. 17th, but have not set a date.
- **Monday, January 6th** – 111th Congress convenes, Members Sworn In.
- **Thursday, January 8th** – Electoral votes counted.
- **Tuesday, January 20th** – Inauguration Day.

- **Friday, March 6th** – Continuing Resolution Expires.

## Federal and State Government Affairs Team

Womble Carlyle is an experienced and effective government affairs advocate in Washington, as well as North Carolina and Georgia. Our Government Affairs group includes members from both major political parties who previously held the following positions: four-term North Carolina Governor; former Maryland Governor; Chief Justice of the North Carolina Supreme Court; General Counsel and Deputy General Counsel of the FEC; four-term North Carolina State Senator; Chief of Staff to the Co-Speaker of the N.C. House of Representatives; and two Chiefs of Staff to United States Senators.

The Group lobbies Members of Congress, State Legislators, as well as Federal and State Executive Branches; offers representation in connection with campaign finance, gift, and lobbying laws; assists clients in securing appropriations; tracks legislative activities and assesses proposed legislation for opportunities and impacts on clients; drafts legislative language; builds coalitions and organizes grassroots campaigns; develops and maintains political action committees (including our own Womble PAC); creates and distributes direct mail; and prepares and presents testimony before state and federal regulatory agencies and legislative bodies. Combining our related skills with our proven reputation for successful outcomes, our state and federal lobbying teams address client concerns responsively and cost-effectively.

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