



2018 Midterm Elections & Congressional Lame Duck Session

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2018 Midterm Elections

Outcome

Democrats picked up at least 28 seats in the midterm election to become the majority party in the House of Representatives for the 116th Congress beginning in January. Republicans maintained control of the Senate and will add at least two and up to four seats to their majority¹. As of the distribution of this memo 20 House seats and the Senate races in Arizona and Montana remain too close to call. Additionally, the Mississippi special senate race will go to a runoff on November 27th.

House

While internal Democratic Leadership elections will likely not take place until the end of November, it is generally assumed that the Democrats will by and large vote in caucus to maintain their current leadership structure. Therefore current Democratic Minority Leader Nancy Pelosi will be the Democrats' nominee for Speaker of the House, and Steny Hoyer will be the next Majority Leader. Hoyer's likely ascension to Minority Leader opens up the spot of Majority Whip which will most likely go to Jim Clyburn of South Carolina, currently Assistant Leader. Clyburn moving up to Whip would open up the Assistant Leader role. Cheri Bustos and David Cicilline have already announced their intention to run for this position, but we expect that the more senior New Mexico representative, Ben Ray Lujan, will join the race. If that turns out to be the case, it is almost certain he will have the votes to secure Assistant Leader. Another open race will be for Caucus Chair, as the current Caucus Chair Joe Crowley of New York, was defeated in his primary election. Congresswoman Barbara Lee of California has already made clear her intentions to run for Caucus Chair.

It is worth noting that a significant number of House Democrats and Democratic candidates have stated a range of opposition to Minority Leader Pelosi seeking the position of Speaker. Opposition has ranged from mild criticism to some incumbents and candidates going as far to say they would not vote for Pelosi for Speaker under any circumstances. The election for Speaker does not take place until January, so we expect much of the Lame Duck session of Congress to be consumed with rumors and speculation about whether Pelosi – even if she is nominated by the Democratic caucus – in fact will be able to win the 218 votes necessary to ascend to Speaker of the House. The ultimate size and makeup of the Democratic majority after the final races are called will have a big impact on how this plays out. Given the projected size of the Democratic majority, and assuming Republicans do not cross party lines, a small but determined minority of the Democratic caucus could block Pelosi's rise to the Speakership by nominating another Democratic candidate and forcing multiple ballots with the hope that Pelosi will eventually withdraw her name from nomination. There is also a potential scenario where Pelosi would secure the votes necessary by promising to step down after two years to allow younger, rising Democrats an opportunity at leadership. Whether or not such promises are necessary, we believe the most likely scenario is Pelosi ultimately becomes Speaker, and we believe there will be significant discussions within the Democratic caucus on this subject prior to January.

¹ While Rick Scott is the projected winner of the Florida seat, if the final margin of victory is within .5 percent Florida election law dictates an automatic recount. As of this publication, the Florida Secretary of State has issued no statement ordering a recount, but incumbent Senator Bill Nelson has requested one.



Democrats will also be taking over all of the House chairmanships. We expect the new House chairs to be as follows:

- Collin Peterson, Agriculture Committee
- Nita Lowey, Appropriations Committee
- Adam Smith, Armed Services Committee
- John Yarmuth, Budget Committee
- Bobby Scott, Education and Workforce
- Frank Pallone, Energy and Commerce Committee
- Ted Deutch, Ethics Committee
- Maxine Waters, Financial Services Committee
- Eliot Engel, Foreign Affairs Committee
- Bennie Thompson, Homeland Security Committee
- Zoe Lofgren, House Administration Committee
- Jerry Nadler, Judiciary Committee
- Raúl Grijalva, Natural Resources Committee
- Elijah Cummings, Oversight and Government Reform Committee
- Jim McGovern, Rules Committee
- Eddie Bernice Johnson, Science, Space, and Technology Committee
- Nydia Velázquez, Small Business Committee
- Peter DeFazio, Transportation and Infrastructure Committee
- Mark Takano, Veterans' Affairs Committee
- Richard Neal, Ways and Means Committee
- Adam Schiff, Select Committee on Intelligence

The Republican conference is expected to hold their leadership elections on November 14th. Majority Leader Kevin McCarthy is expected to secure the position of Minority Leader as he will easily receive the support of a majority of the House Republican conference despite some opposition from House conservatives. Current Majority Whip Steve Scalise should be elected as Minority Whip – possibly by acclamation. The only primary leadership post that may be in question is that of Conference Chairwoman Cathy McMorris Rodgers. She has already held the position longer than is customary, but as the only woman in Republican Leadership, members are hesitant to challenge her. While some have speculated about running, Congresswoman Liz Cheney from Wyoming so far is the only announced challenger to McMorris Rodgers and she is a relatively junior member.

Senate

While Democratic Leadership is expected to stay largely the same, there will be some important changes in Republican Leadership. Majority Leader Mitch McConnell will keep his current position, but second-in-command, Senator John Cornyn, will be term-limited out of his position as Majority Whip in the 116th Congress. However, McConnell has said he wants Cornyn to remain in leadership (possibly in an appointed, rather than elected position), and Cornyn himself has indicated he plans to stay in leadership until he can run for Majority or Minority Leader upon McConnell's eventual departure. It is expected that Senators John Thune and Roy Blunt will run against each other for Majority Whip. Many inside the Beltway give Thune the edge in that contest.

Lame Duck Session

This year, several factors could combine to create a productive lame duck session. Funding for a variety of programs as well as many government agencies will be expiring in December. There are a large number of retiring members, including committee chairmen losing gavels, who will want to see priority projects pass so they can go out on a high note.

Funding deadlines

The first key date is November 30th. On this day, the president will sign the new NAFTA agreement and the National Flood Insurance Program will expire. Then, on December 7th, the Continuing Resolution for seven of the twelve appropriation bills expires. This means funding will expire for all



federal Departments except for Defense, Labor, Health and Human Services, and Education. This is the most important deadline looming as ignoring it could result in at least a partial government shutdown. Adding to that pressure, both the House and Senate already announced targeted adjournment dates for the end of the second week of December. This means that after Congress returns to session on November 13th, there will be just 16 legislative days remaining for the House and 19 for the Senate. This gives Congress a fairly limited amount of time to come to an agreement, although there is always a possibility of extending the December session dates. Finally, the parties have been trying to reach a deal on the Farm Bill and the first Farm Bill program expires on December 31st.

Republican Goals

Republicans have stated many of their priorities for the lame duck session, and it is a fairly extensive list. They include a spending bill to fund the government for the rest of Fiscal Year 2019, a Farm Bill, tax extenders, criminal justice reform, reauthorizing the Violence Against Women Act, and passing another jobs bill. President Trump has repeatedly made it clear he wants to see funding for a border wall come out of Congress this year. This could present problems for a funding deal and even lead to the possibility of a government shutdown if Congress doesn't include the border wall in an omnibus spending package.

Tax extenders are a common, year-end push and this year's potential candidates for extension include affordable housing credits and an energy efficiency credit as well as additional technical corrections to the Tax Cuts and Jobs legislation and potentially a repeal of the medical device tax. Criminal justice reform is a priority of President Trump's Senior Advisor, Jared Kushner, but that is likely a subject that will be left to the next Congress. Similarly, both parties regularly express strong interest in passing a significant transportation and infrastructure bill, but a divide remains on how to pay for it – most notably whether, and how high, to raise the federal gas tax. We think it is likely discussions heat up on an infrastructure package during the lame duck but that it is not likely to see any legislative action until 2019. An infrastructure package may be one significant area the parties could muster an agreement on in the next Congress prior to the parties digging in for the 2020 presidential election.

Senate Majority Leader McConnell said his chamber will also continue to confirm executive and judicial branch nominees, including more than thirty federal district court judges.

Finally, we expect many retiring and defeated members to make an effort to pass noncontroversial priorities before they leave Congress.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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