

MEMORANDUM

To: Clients and Friends

From: Powers Legislative Practice Group

Date: November 9, 2018; 4:15 p.m., Eastern Time

Re: 2018 Election Summary and Analysis from a Healthcare Perspective

I. Executive Summary

The 2018 midterm elections resulted in a return to divided government as the Democratic Party gained enough seats to take control of the United States House of Representatives, while the Republican Party maintained and added to their margin in controlling the United States Senate. In the House, Democrats are expected to control at least 229 seats,¹ which would constitute an overall gain of more than 30 representatives. Senate Republicans increased their majority, picking up several seats in states previously held by Democrats. Republicans now hold the Senate by at least a 51 to 46 margin over Democrats and Independents, with votes still being counted in several tight races favoring Republicans. Democrats are now in control of the House for the first time since the 111th Congress (2009-2010), during the first term of Barack Obama’s presidency.

This memorandum provides an overview of the midterm election results and subsequent Congressional implications, offers a brief glimpse of what to expect in the upcoming lame duck session of the 115th Congress, and provides a preview of the 116th Congress’s health care agenda.

II. Election 2018: Overview of Midterm Election Results

While Republicans maintained majority control of the Senate, Democrats gained the majority in the House. Democrats also gained control of an additional seven governor’s seats. A more detailed analysis of the election dynamics follows.

Confirmed Net Changes in the 2018 Congressional & Governors Races

	Senate	House	Governors
Republicans	51 (+2)	197 (-30)	26 (-7)
Democrats	44 (- 2)	225 (+30)	23 (+7)
Independents	2 (same)	0	0

¹ As of this writing, results in some House races are not final. This final total should be viewed as a best estimate sourced from Associated Press pool reporting.

Results are still pending as a result of recounts, runoffs, and absentee ballots still to be counted in some races. Information presented in the tables is subject to change. Three states are entering runoffs or recounts for the Senate race (Florida, Arizona, and Mississippi). Thirteen (13) House races remain too close to call. Georgia will be entering a recount in its gubernatorial race. If Republicans win both Senate seats that remain too close to call and the Mississippi Senate runoff, they would have a total majority of 54 to 46 (44 Democrats and 2 Independents with both Sens. Angus King (I-ME) and Bernie Sanders (I-VT), caucusing with the Democrats).

House of Representatives

The composition of the House stands at 225 Democrats to 197 Republicans, with many races still not finalized. Projections from the Associated Press indicate that Democrats will likely end up with a majority of about 229 members to 206 Republicans. Democrats gained a net of at least 30 seats over their total of 193 members in the 115th Congress. The midterm election featured a significant number of results where districts in the next Congress will be held by the other major party, either due to challengers beating incumbents, or through contests for vacant seats. Democrats in particular were successful in “flipping” districts, as the chart below displays:

House of Representatives – Notable Districts That Changed Party

State and District	Elected	Defeated
Arizona 2	Ann Kirkpatrick (D)	Lea Marquez Peterson (R)
Colorado 6	Jason Crow (D)	Mike Coffman (R)*
Florida 26	Debbie Mucarsel-Powell (D)	Carlos Curbelo (R)*
Florida 27	Donna Shalala (D)	Maria Elvira Salazar
Iowa 1	Abby Finkenauer (D)	Rod Blum (R)*
Iowa 3	Cindy Axne (D)	David Young (R)*
Illinois 6	Sean Casten (D)	Peter Roskam (R)*
Illinois 14	Lauren Underwood (D)	Randy Hultgren (R)*
Kansas 3	Sharice Davids (D)	Kevin Yoder (R)*
Michigan 8	Elissa Slotkin (D)	Mike Bishop (R)*
Michigan 11	Haley Stevens (D)	Lena Epstein (R)
Minnesota 2	Angie Craig (D)	Jason Lewis (R)*
Minnesota 3	Dean Phillips (D)	Erik Paulsen (R)*
Minnesota 8	Pete Stauber (R)	Joe Radinovich (D)
New Jersey 2	Jeff Van Drew (D)	Seth Grossman (R)
New Jersey 7	Tom Malinowski (D)	Leonard Lance (R)*
New Jersey 11	Mike Sherrill (D)	Jay Webber (R)
New York 11	Max Rose (D)	Dan Donovan (R)*
New York 19	Antonio Delgado (D)	John Faso (R)*
Oklahoma 5	Kendra Horn (D)	Steve Russell (R)*
Pennsylvania 5	Mary Gay Scanlon (D)	Pearl Kim (R)
Pennsylvania 6	Chrissy Houlahan (D)	Greg McCauley (R)
Pennsylvania 7	Susan Wild (D)	Marty Nothstein (R)
Pennsylvania 14	Guy Reschenthaler (R)	Bibiana Boerio (D)

Pennsylvania 17	Conor Lamb (D)*	Keith Rothfus (R)*
South Carolina 1	Joe Cunningham (D)	Katie Arrington (R)
Texas 7	Lizzie Pannill Fletcher (D)	John Culberson (R)*
Texas 32	Collin Allred (D)	Pete Sessions (R)*
Virginia 2	Elaine Luria (D)	Scott Taylor (R)*
Virginia 7	Abigail Spanberger (D)	Dave Brat (R)*
Virginia 10	Jennifer Wexton (D)	Barbara Comstock (R)*

Additional districts may be added as results are finalized.

Notable Results in the House Races

There were a number of notable results in the House races:

- **Rep. Chris Collins** (R-NY-27) won his race despite being indicted for insider trading earlier this year. Rep. Collins was a member of the House Energy & Commerce Committee prior to his indictment.
- **Rep. Erik Paulsen** (R-MN-3), a member of the House Ways & Means Committee, lost to Dean Phillips, a Democrat, by more than 40,000 votes in a suburban Minneapolis district.
- **Rep. Leonard Lance** (R-NJ-7), a member of the House Energy & Commerce Committee, lost his close race by 3 points to **Congressman-elect Tom Malinowski** (D).
- **Abigail Spanberger** (D) beat **Rep. Dave Brat** (R-VA-7) in a close race. Rep. Brat had previously unseated former House Majority Leader Eric Cantor (R-VA) in 2014.
- **Rep. Pete Sessions** (R-TX-32) lost to **Colin Allred** (D), a former Obama Administration official. Rep. Sessions is the current Chairman of the House Rules Committee.
- **Rep. Brian Mast** (R) has been re-elected to a second term. Rep. Mast is an Army veteran who lost both legs while deployed in Afghanistan.

Senate

Republicans retained control of the Senate, gaining three seats previously held by Democrats while losing one (Nevada) held by a Republican. As of this writing, several states are still too close to call, with Arizona and Florida still being counted/recounted. Republicans will increase their majority from its current 51-49 total in the 115th Congress, with current projections estimating Republicans holding at least a 53 seat majority in the 116th. The midterm election featured 35 Senate seats up for reelection, with 26 of those seats defended by Democrats. Ten of those 26 Democratically-held seats were in states that voted for President Trump in the 2016 presidential election, leading many analysts to speculate prior to the election that Republicans had significant opportunities to gain seats in those states. The following table highlights a number of states where Senate contests were considered battlegrounds.

Battleground Senate Races

State	Elected	Defeated
Arizona**	Martha McSally (R)	Krysten Sinema (D)
Florida**	Rick Scott (R)	Bill Nelson (D)*

Indiana	Mike Braun (R)	Joe Donnelly (D)*
Minnesota	Tina Smith (D)*	Karin Housley (R)
Mississippi	<i>Cindy Hyde-Smith (R)</i>	<i>Mike Espy (D)</i>
Missouri	Josh Hawley (R)	Claire McCaskill (D)*
Montana	Jon Tester (D)*	Matt Rosendale (R)
Nevada	Jacky Rosen (D)	Dean Heller (R)*
New Jersey	Robert Menendez (D)*	Bob Hugin (R)
North Dakota	Kevin Cramer (R)	Heidi Heitkamp (D)*
Tennessee	Marsha Blackburn (R)	Phil Bredesen (D)
Texas	Ted Cruz (R)*	Beto O'Rourke (D)
West Virginia	Joe Manchin (D)*	Patrick Morrisey (R)
Wisconsin	Tammy Baldwin (D)*	Leah Vukmir (R)

Results are still pending as a result of recounts, runoffs, and absentee ballots still to be counted. Information presented in the table is subject to change.

*Indicates Incumbent

**Indicates Recount/too close to call

Italics indicate a runoff

Bold indicates a seat flip

Notable Results in the Senate Races

The Senate will retain most of its incumbents in the 116th Congress, as the chamber will welcome at least 7 new members to its freshman class. A number of notable results emerged from the battleground races, including:

- **Representatives Jacky Rosen (D-NV), Marsha Blackburn (R-TN), and Kevin Cramer (R-ND)** move from the House to the Senate.
- **Rep. Rosen** beat GOP **Sen. Dean Heller (R-NV)**, giving her party its lone Senate pickup. Nevada also elected a Democratic governor.
- Missouri **State Attorney General Josh Hawley (R)** defeated Democratic **Sen. Claire McCaskill (D-MO)**, flipping the seat to the GOP.
- **Sen. Ted Cruz (R-TX)** defeated **Rep. Beto O'Rourke (D-TX)**, shutting down Democrats' most aggressive attempt in decades to win a statewide office in Texas. Sen. Cruz won his second term in the Senate.
- **Mike Braun (R)**, a businessman from Indiana, defeated Democratic **Sen. Joe Donnelly (D-IN)**, flipping a Senate seat that Senator Donnelly had held for one term.
- **Sen. Jon Tester (D-MT)** won reelection in Montana, narrowly turning back a challenge from **Matt Rosendale (R)**.
- Mississippi will be holding a runoff election for the seat previously held by **Senator Thad Cochran (R-MS)**, who retired in April. **Senator Cindy Hyde-Smith (R-MS)**, who was appointed to fill the seat through the midterm election, and **Mike Espy (D)**, the two top vote-getters in the special election for Senator Cochran's seat, will face off on November 27th.

- Former Presidential candidate and Massachusetts governor **Mitt Romney** (R-UT) won election to the seat of retiring **Senator Orrin Hatch** (R-UT).
- **Senator Elizabeth Warren** (D-MA) handily won her race, winning a second term and fueling speculation of a possible 2020 presidential run.
- **Senator Bernie Sanders** (I-VT) beat Republican challenger Lawrence Zupan for another term serving Vermont.
- **Senator Tim Kaine** (D-VA) won a second term in Virginia.

Gubernatorial Races

Of the 36 gubernatorial races that took place, the most competitive occurred in Florida, Georgia, Wisconsin, and Maine. Florida, Wisconsin, and Maine were all won by narrow margins with an approximate gap of 50,000 votes or less. As of this writing, it appears that Florida may now also go to a recount for its governor's race. While it appears that Republican Brian Kemp will take Georgia, votes in the remaining races have been deemed too close to call and a runoff election and recounts are underway. Republicans were elected to 19 governorships during the midterm and Democrats were elected to 16. Democrats were elected in seven states which were previously led by Republican governors, beating out the incumbent in two of these states. No states changed from Democratic to Republican governors, although Republicans did gain one seat from Independents in Alaska. During the 2018 midterm elections, seven Democratic and seven Republican governors were not up for reelection. The following table highlights a number of the states considered to be battlegrounds.

Notable Gubernatorial Races

State	Elected	Defeated
Florida**	Ron DeSantis (R)	Andrew Gillum (D)
Georgia**	Brian Kemp (R)	Stacey Abrams (D)
Illinois	J.B. Pritzker (D)	Bruce Rauner (R)*
Kansas	Laura Kelly (D)	Kris Kobach (R)
Maine	Janet Mills (D)	Shawn Moody (R)
Michigan	Gretchen Whitmer (D)	Bill Schuette (R)
Nevada	Steve Sisolak (D)	Adam Laxalt (R)
New Mexico	Michelle Lujan Grisham (D)	Steve Pearce (R)
Wisconsin	Tony Evans (D)	Scott Walker (R)*

*Incumbent

**Too close to call

Bold indicates gubernatorial flips

There were several particularly notable gubernatorial races. In Wisconsin, Democrat Tony Evers defeated Republican Gov. Scott Walker, denying Walker, a former Republican presidential candidate, a third term. In Florida, Republican Ron DeSantis defeated Democrat Andrew Gillum to become Florida's first new governor since 2010, in what was seen as a controversial campaign.

Finally, in Georgia, Democratic candidate for governor, Stacey Abrams, refused to concede, and asked for a recount in one of the more highly watched races in the country.

III. Key Changes to Health Care Congressional Committees

In the House, several key Committees will face changes. The following tables provide an overview of the electoral changes in the House Energy & Commerce Committee and the House Ways & Means Committee.

House Committee on Energy & Commerce Changes

State and District	Representative	Replaced By/Defeated By
Mississippi 3	Greg Harper (R)	Michael Guest (R)
New Jersey 7	Leonard Lance (R)	Tom Malinowski (D)
North Dakota	<i>Kevin Cramer (R)</i>	Kelly Armstrong (R)
Pennsylvania 6	Ryan Costello (R)	Chrissy Houlahan (D)
Tennessee 7	Marsha Blackburn (R)*	Mark Green (R)
Texas 29	Gene Green (D)	Sylvia R. Garcia (D)
Texas 6	Joe Barton (R)	Ron Wright (R)

Bold indicates retired

**Elected to Senate in Tennessee*

Defeated

Italics indicate Elected to Senate

Four members of the House Energy and Commerce Committee retired this year. All were replaced by candidates from the same party in their districts except for Rep. Ryan Costello, who was replaced by Democrat Chrissy Houlahan. Rep. Leonard Lance's district flipped when he lost to Tom Malinowski. Rep. Kevin Cramer will no longer serve in the House due to his election in the Senate.

House Committee on Ways & Means Changes

State and District	Representative	Defeated By
Florida 26	Carlos Curbelo (R)	Debbie Mucarsel-Powell (D)
Illinois 6	Peter Roskam (R)	Sean Casten (D)
Kansas 2	Lynn Jenkins (R)	Steve Watkins (R)
Michigan 8	Mike Bishop (R)	Elissa Slotkin (D)
Michigan 9	Sandy Levin (D)	Andy Levin (D)
Minnesota 3	Erik Paulsen (R)	Dean Phillips (D)
New York 14	Joe Crowley (D)	<i>Alexandria Ocasio-Cortez (D)</i>
Ohio 16	Jim Renacci (R)*	Anthony Gonzalez (R)
South Dakota 1	Kristi Noem (R)*	Dusty Johnson (R)
Tennessee 6	Diane Black (R)	John Rose (R)
Texas 3	Sam Johnson (R)	Van Taylor (R)
Washington 8	Dave Reichert (R)	<i>Kim Schrier (D)</i>

**Sought other office*

Bold indicates retired

Italics indicates pending result

Defeated

A number of significant changes occurred on the House Ways and Means Committee. Democrats won election over a number of members, including Reps. Roskam, Curbelo, Bishop, and Paulsen. A number of retirements will also impact the makeup of the Committee. Notably, Peter Roskam is the current Chair of the House Ways and Means Health Subcommittee and was defeated in the election.

In the Senate, while many members of the two key health care committees, the Senate Health Education, Labor, and Pensions (HELP) Committee and the Senate Finance Committee, were facing reelection, losses were minimal. Only a handful of changes occurred. The Committee's composition should remain largely the same, except for the retirement of Senate Finance Committee Chairman Orrin Hatch (R-UT). Seven of the Democratic Committee members were up for reelection, whereas none of the Republican Committee members faced reelection this cycle.

Senate HELP Committee Changes

State	Senator	Status on Committee
Connecticut	Chris Murphy (D)*	Re-elected
Massachusetts	Elizabeth Warren (D)*	Re-elected
Pennsylvania	Bob Casey (D)*	Re-elected
Rhode Island	Sheldon Whitehouse (D)*	Re-elected
Utah	Orrin Hatch (R)	Retired
Virginia	Tim Kaine (D)*	Re-elected
Vermont	Bernie Sanders (D)*	Re-elected
Wisconsin	Tammy Baldwin (D)*	Re-elected

**Reelected*

Bold indicates retired

The majority of the Senate HELP Committee members up for reelection were Democrats during the 2018 midterms. All were reelected to their seats. However, Sen. Orrin Hatch (R-UT) is retiring. It remains unclear which Senator will take Senator Hatch's seat on the HELP or Finance Committees.

Senate Finance Committee Member Reelections and Replacements

State	Senator	Status on Committee
Delaware	Thomas Carper (D)*	Re-elected
Florida	Bill Nelson (D)**	Election is in a recount
Maryland	Ben Cardin (D)*	Re-elected
Michigan	Debbie Stabenow (D)*	Re-elected

Missouri	Claire McCaskill (D)	Defeated
Nevada	Dean Heller (R)	Defeated
New Jersey	Robert Menendez (D)*	Re-elected
Ohio	Sherrod Brown (D)*	Re-elected
Pennsylvania	Bob Casey (D)*	Re-elected
Rhode Island	Sheldon Whitehouse (D)*	Re-elected
Utah	Orrin Hatch (R)	Retired
Washington	Maria Cantwell (D)*	Re-elected

Defeated

**Reelected*

***Election has gone to a recount.*

The majority of the Senate Finance Committee members up for reelection were Democrats during the 2018 midterms. Most were reelected to their seats. However, Democrat Claire McCaskill was defeated by Republican Josh Hawley and Republican Dean Heller was defeated by Democrat Jacky Rosen. It is unclear whether Republican Rick Scott of Florida will prevail in his recount against Democratic incumbent Bill Nelson. The Finance Committee will have a new Chairman in the 116th Congress as a result of Sen. Hatch's retirement. Senator Chuck Grassley (R-IA) has seniority to move into the Chairmanship, however, there is a possibility that he will retain his Chairmanship of the Judiciary Committee and Senator Mike Crapo (R-ID) will occupy the Finance Chairman's seat instead.

IV. Ballot Issues and Referenda

Many states included ballot questions and referenda on their official ballots, notable here because several of the questions impact health care. Specifically, several state ballots gave voters the opportunity to decide whether to expand Medicaid eligibility in their states. Others included questions on the legalization of marijuana and other health related questions, such as a nurse staffing-ratios ballot question in Massachusetts and a cap on profits for End Stage Renal Disease facilities in California. The following offers a brief summary of some of the more notable results:

- Medicaid Expansion: Three states passed ballot initiatives to expand Medicaid. Idaho, Utah, and Nebraska all passed their initiatives, bringing the total number of states that have adopted Medicaid expansion under the Affordable Care Act (ACA) to 37 in total. A similar ballot initiative in Montana appears to have failed.
- Massachusetts voters rejected a ballot question that would have required the state to implement nurse-to-patient staffing ratios at hospitals in the state. The ballot initiative was opposed by many of the major hospital organizations in MA.
- Abortion questions were on some ballots, as voters in Alabama and West Virginia approved measures that will allow their states to cease to recognize and protect abortion rights in the state; Oregon voters rejected a measure that would have banned public funding of abortion.

- Florida passed Amendment 4, which will allow an estimated 1.4 to 1.5 million former felons to regain voting rights.
- Legalization of marijuana made the ballot in several states. Michigan fully legalized marijuana, Utah and Missouri legalized medical marijuana, and North Dakota rejected a measure to legalize marijuana.
- California voters rejected a ballot measure that would have capped dialysis clinics' profits in what was one of the most expensive initiatives in ballot history. Dialysis companies contributed more than \$111 million in opposition to the measure.

V. Analysis

House Democrats are expected to actively engage in oversight of the Trump Administration in 2019, but the main elements of their health care agenda have yet to solidify. Increased voter turnout demonstrated the accuracy of pre-election polling that indicated enthusiasm for the election. While the election did not ultimately result in a uniform “Blue Wave” across the country that some analysts had predicted, Democrats were able to make significant gains, especially in urban and suburban districts, where college-educated women were credited with driving the election results. Republicans were able to defend key Senate seats and Governorships. Voters propelled historically high numbers of women into Congress, with over 115 women winning election to federal office.

For Democrats, health care, with a focus on pre-existing conditions and Medicaid expansion, was repeatedly cited as one of the most salient issues for voters in the lead-up to the midterms. The election also showed the staying power of President Trump’s constituency, as Republicans were able to pick up a number of Democratically-held Senate seats in states that the President won in the 2016 election, including Indiana, Missouri, and North Dakota. Several additional victories for Republicans are currently pending. Some analysts credit the President’s campaign rhetoric, recently focused on issues such as illegal immigration, along with the strong performance of the economy, as the driving forces behind Republican Senate gains. What was initially pitched as an election that could be a referendum on the President ultimately offered a mixed review.

Lame Duck Preview

In the remaining weeks of the 115th Congress, several priorities remain. Chief among them is continued federal funding for several key parts of the government, including the departments of State, Homeland Security, Commerce, Agriculture, Transportation, Interior, Justice, Housing and Urban Development, as well as agencies like the Internal Revenue Service and the Environmental Protection Agency, which are all currently operating under a continuing resolution (CR) through December 7, 2018. Congress may choose to simply extend the CR through the new year to allow the new Congress to take up funding of these departments, pass a CR that carries through the rest of the federal fiscal year that ends September 30th, pass compromise appropriations legislation, or face a shutdown of the federal government. Key to this debate will be whether President Trump insists on funding a border wall between the U.S. and Mexico.

The Lame Duck session may also include passage of a number of other bills as Congress wraps up its final weeks of the session. Priority legislation for passage this year includes the farm bill and legislation addressing federal flood insurance. A package of bipartisan, noncontroversial health care bills has been rumored, but it remains unclear what such a package would include and on which legislative vehicle it would ride. Given the coming change in leadership in the House, members may be loath to hand the incoming or outgoing party leaders any victories. Finally, many of these key decisions have simply not yet been made. As Congress returns to Washington next week, a clearer strategy for both parties will emerge.

Preview of Congressional Agenda for the 116th Congress

The key question facing the 116th Congress is what tact the Democratically-controlled House will take. Minority Leader Nancy Pelosi (D-CA-12) is running for Speaker of the House, but may face challenges from the Democratic Party's members, some current members, and some younger and newly-elected members in particular. In the hours since the election, Minority Leader Pelosi has asserted herself as Speaker, holding press conferences to lay out the beginning stages of the Democratic agenda and describing her initial leanings in terms of working across the aisle.

Minority Leader Pelosi has confirmed that she spoke with President Trump about the possibility of working together on a bipartisan infrastructure package, and Pelosi, President Trump, and Senate Majority Leader Mitch McConnell (R-KY) have all spoken about the need to address prescription drug prices in a bipartisan way. In fact, all of these leaders called for action on prescription drug prices a day after the election. However, Minority Leader Pelosi has also said that House Democrats will fulfill their Constitutional oversight duties of the Administration, confirming widespread speculation that Democrats will likely conduct significant oversight investigations into the Trump Administration's activities.

Current House Majority Leader Kevin McCarthy (R-CA-23) has launched his bid for Minority Leader in the 116th Congress. Rep. McCarthy faces a challenge from House Freedom Caucus co-founder Rep. Jim Jordan (R-OH-4). Some analysts predict that McCarthy is likely to win the post, which requires only half the caucus' support. In the Senate, Majority Leader McConnell and Minority Leader Schumer are not expected to face significant challenges for their leadership posts.

At the Committee level, in the House, the Energy and Commerce Committee is expected to consider ways to shore up the Affordable Care Act (ACA) and address the high cost of prescription drugs. Ranking Member and expected Chairman Frank Pallone (D-NJ-6) has indicated he wants the panel to conduct oversight of the Department of Health and Human Services (HHS) around its activities that he asserts have contributed to increases in health care costs and decreased health insurance coverage. House Ways and Means Committee Ranking Member and expected Chairman Richard Neal (D-MA-1) has also expressed an interest in protecting and strengthening the ACA, but may focus much of the Committee's attention on the Republican-led tax overhaul passed in late 2017.

In the Senate, Senate Majority Leader McConnell has indicated his number one priority remains confirming judicial nominees, an act that can be completed without the confirmation of the House. While comprehensive entitlement reform and repeal of the ACA are now likely off the table, Leader McConnell could force Democrats to take a number of difficult votes in advance of the 2020 presidential election, in which a number of current Democratic senators are expected to run for President. Of note, Leader McConnell's deputy, Majority Whip John Cornyn (R-TX), is term-limited and will have to step down from his leadership position. It is widely expected that Sen. John Thune (R-SD), the current Conference Chairman, will succeed him. The changes due to Senator Hatch's retirement, as well as the defeat of a number of incumbent Democrats, will result in the reshuffling of some Committee posts throughout the chamber.

We will continue to keep you informed as important developments occur.