



A Republican Congress Awaits – But First the Lame Duck Session

**Andrew H. Friedman
The Washington Update**

Destiny became reality in the midterm elections as the Republicans gained a majority of the Senate and widened their lead in the House to historic proportions. The Republicans now must decide the mix of confrontation and collaboration that will define their leadership. Due to variations in beliefs and campaigning strategies, the rank-and-file members of the two chambers might see this ideal mix differently.

House. As I discussed in my earlier updates, the redrawing of Congressional districts in the wake of the 2010 census tended to make most House seats safe for incumbents. As a result, House incumbents typically were not concerned about winning the general election. Instead, Republican (and some Democrat) incumbents had to be concerned about winning their primaries. Republican incumbents who were viewed as too moderate or too willing to compromise could find themselves facing a successful primary challenge from a more ideological conservative candidate. (A poignant example of this phenomenon was Eric Cantor's primary loss to an untested political candidate supported by the Tea Party.) Given this background, the typical House member is more likely to identify with the conservative wing of the Republican Party, either because he or she is a conservative incumbent or because he or she won a primary against a more moderate incumbent.

Senate. Senate candidates have to appeal to voters throughout a state, not just in their home districts. Thus they typically must reach out to Independent voters, who now compose 42% of the electorate and who tend to be more moderate, supporting compromise in Washington. In 2012, the Republican candidates who emerged from the Senate primaries were more ideological and less willing to moderate their views. Not surprisingly, those candidates failed to attract Independent votes and Republicans lost seats in the Senate. This time the Republican candidates for Senate were more moderate, exhibiting willingness to compromise. Those moderate Republican candidates attracted Independent voters and claimed their seats in the Senate.

Given this background, Republicans in the House are likely to be more conservative and ideological, with less of a desire to compromise. With certain notable exceptions (such as Ted Cruz), Republicans in the Senate are likely to be more moderate and willing to compromise. Where the Senate leadership might seek incremental progress through limited bipartisan legislative efforts, the House leadership might prefer to stake out positions for 2016 by sending Obama legislation he is likely to veto. The party leadership will have to figure out a mix of strategies that satisfies the members of both chambers.

One thing is clear: The Republicans are no longer simply the opposition party. They now “own” Congress, and will receive the credit or the blame based on what Congress accomplishes over the next two years.

Of course, it takes two to compromise, and President Obama has his own decisions to make. If he acknowledges this election as a repudiation of his policies, he too should be more willing to compromise with the new Republican leadership. But if he continues to view Republicans in Congress as an impediment to his legacy, then he will veto unwanted legislation and continue to use his executive power as broadly as possible to implement his social agenda, likely angering the new Congressional leadership and thwarting opportunities for bipartisan progress. Split government is alive and well.

In January I will consider all of these dynamics more thoroughly and discuss in detail the legislation that is likely to emerge – or not emerge – from the new Congress.

In the meantime, Congress still has a number of items to address in the lame duck session to take place in December. (Remember, the lame duck Congress is the existing Congress, with Democrats in the majority in the Senate.) Among those items are:

1. *Government Funding:* A budget compromise reached in the wake of the 2013 government shutdown set the overall spending limits for the federal government through September 2015. However, Congress must apportion that spending among the various government agencies. Although failure to do so theoretically could result in another shutdown, in reality Congress should be able to address this relatively ministerial task without incident.
2. *Tax Extenders:* A group of tax provisions expired at year-end 2013. Expired provisions include items like bonus depreciation and the ability of an IRA holder over age 70-1/2 to donate up to \$100,000 from his or her IRA to charity without tax. Congress is likely to extend these provisions retroactively back to January 1, 2014, and forward through 2015 or 2016.
3. *Attorney General Confirmation:* The Senate is responsible for confirming the President’s appointments of cabinet officials, federal judges, and other federal officials. Until last year, Senate rules required sixty votes to approve a presidential appointee. Last year the Democrats, upset with what they viewed as Republican obstructionism, unilaterally changed the rule so that now only fifty-one votes are required to confirm a presidential

appointee. The President is almost certain to seek confirmation of the new attorney general in the lame duck session, where he is assured of 51 party votes.

4. *Internet Tax Moratorium*: Existing legislation that prevents the imposition of sales taxes on purchases made through the internet is slated to expire. Congress likely will extend that legislation into next year.
5. *Military Operations*: Congress must decide whether to reauthorize military operations in Syria.

Andrew H. Friedman is the principal of The Washington Update LLC and a former senior partner in a Washington, D.C. law firm. He speaks regularly on legislative and regulatory developments and trends affecting investment, insurance, and retirement products. He may be reached at www.TheWashingtonUpdate.com.

Neither the author of this paper, nor any law firm with which the author may be associated, is providing legal or tax advice as to the matters discussed herein. The discussion herein is general in nature and is provided for informational purposes only. There is no guarantee as to its accuracy or completeness. It is not intended as legal or tax advice and individuals may not rely upon it (including for purposes of avoiding tax penalties imposed by the IRS or state and local tax authorities). Individuals should consult their own legal and tax counsel as to matters discussed herein and before entering into any estate planning, trust, investment, retirement, or insurance arrangement.

Copyright Andrew H. Friedman 2014. Reprinted by permission. All rights reserved.