

Special Edition Election Newsletter



Health Policy Briefing

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Midterm elections almost always see the party out of power pick up seats in Congress. In this cycle, Republicans needed a net gain of just five seats in the House of Representatives, and only one seat in the evenly divided Senate to retake the majority.

House - What We Know: Results from the House races show the Republican party has fallen well short of the “red wave” type of election night they had predicted. As of Sunday, November 20th, Republicans will control the House of Representatives having won the minimum 218 seats necessary. Two House races remain undecided.

Senate - What We Know: Of the 35 Senate seats on the ballot this year, there were a handful on the watch list to determine party control: Arizona, Georgia, New Hampshire, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin. Of those eight seats, four were held by Democrats (Arizona, Georgia, New Hampshire, Nevada), and four were held by Republicans (North Carolina, Ohio, Pennsylvania, Wisconsin). Majority control of the Senate would come down to each party holding its respective seats and the Republicans needing to flip one seat to take the majority.

Of the races decided, all of them are holds for the incumbent party, with the exception of Pennsylvania, where Lt. Governor John Fetterman defeated Dr. Mehmet Oz resulting in a pickup for the Democrats. This means the Democrats have already secured a majority for the 118th Congress and will await the results of the runoff election in Georgia on December 6 to see if their majority can be increased. Currently, the incumbent Democrat Senator Raphael Warnock has 49.4% of the vote and challenger Herschel Walker has 48.5%.

Should the Democrats hold Georgia, this would give them an outright majority of 51-49. This would mean a number of the power-sharing agreements currently in place for a 50-50 Senate would be revised, including committee ratios, budget and staff allocations, and the rules governing tie votes in committee. Those revisions would be made at the beginning of the 118th Congress.

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State Ballot Initiatives

Health-related state ballot initiatives focused on Medicaid expansion, medical debt, health care as a right, abortion, tobacco, and marijuana.

South Dakota became the seventh state in the nation to **expand its Medicaid program** via passage of a ballot measure. A simple majority of voters was necessary to adopt the state's Medicaid constitutional amendment. More than 40,000 people will now become eligible to enroll in the state's Medicaid program come July 1, 2023. The state legislature unsuccessfully attempted to seek a supermajority requirement for constitutional changes in opposition to the effort to expand Medicaid. Gov. Kristi Noem (R) is also opposed to the Medicaid expansion but pledged to implement it if the constitutional amendment passed. The Affordable Care Act (ACA) permitted states to expand their Medicaid programs to individuals with incomes up to 138% of the federal poverty level; states that choose to do so receive additional federal funding. Medicaid expansion has been adopted by 38 states and D.C.

Arizona voters approved a measure to reduce the amount of interest that can be charged for **medical debt** from 10% to 3%, to increase the protected value of a debtor's home from \$250,000 to \$400,000, and to decrease the portion of weekly disposable income subject to debt collection from 25% to 10%.

An **Oregon** ballot initiative would make "cost-effective, clinically appropriate and affordable health care" a human right under the state's constitution. At time of writing, votes are still being counted in the state.

Both **California** and **Vermont** passed ballot measures to affirmatively include **abortion** services amongst the individual rights guaranteed by their states' constitutions. **Michigan** voters also decided to place abortion rights in the state's constitution, rather than keep in place a near-total ban on abortion dating to the 1930s. In **Kentucky**, voters rejected a ballot measure that would have prohibited state courts from ruling that their state constitution provides a right to abortion. Voters also rejected a ballot initiative in **Montana** that would have made it illegal – and punishable by up to 20 years in prison and a \$50,000 fine – for health care workers to not try to save the life of an infant born at any stage of development.

Voters in **California** also approved a measure to **ban flavored tobacco**.

Marijuana legalization measures were approved in **Maryland** and **Missouri**, while voters in **Arkansas**, **North Dakota**, and **South Dakota** voted against legalization.

Health Professionals in the 118th Congress

The following health care providers will not be returning to the 118th Congress:

- Rep. Karen Bass, PA, MSW (D-CA) - Los Angeles Mayor-Elect
- Rep. Eddie Bernice Johnson, RN (D-TX) - retiring
- Rep. Alan Lowenthal, PhD (D-CA) - retiring
- Rep. Kurt Schrader, DVM (D-OR) - defeated in primary

In the new year, the below health care providers will be sworn in for their first term at the beginning of the 118th Congress:

- Rep.-Elect Jen Kiggans, RN, AGNP (R-VA) - geriatric nurse practitioner
- Rep.-Elect Rich McCormick, M.D. (R-GA) - emergency physician
- Rep.-Elect Yadira Caraveo, M.D. (D-CO) - pediatrician

Election Deniers in the 118th Congress

There were 291 Republican candidates – in 48 of 50 states – seeking congressional or state office on Tuesday who have denied or questioned the outcome of the 2020 presidential election, according to an analysis by the Washington Post. More than 170 election deniers were running in districts or states the GOP was favored to win. Notably, no election deniers in battleground states that ran for state offices where they would have authority over the electoral process have been successful. The Republican nominees for Arizona Governor and Secretary of State - both of which denied the legitimacy of the 2020 Presidential elections - lost their races.

Committee Leadership and Membership Changes

The results of the November midterm elections, alongside the wave of retirements and primary defeats, will impact the makeup of congressional committees, membership seniority, and panel leadership. With the majority/minority party change in the House, the size of the respective majority will impact the ratio of Republican and Democratic members on each committee. Democrats will have far fewer seats on committees and Republicans will increase their slots. In the Senate, any change from the current 50/50 split will impact the ratio of slots on committees.

Senate Health, Education, Labor, and Pensions (HELP) Committee

In the 117th Congress, the Senate HELP Committee was comprised of 22 members, split evenly between Democrats and Republicans. As the parties organize for the 118th Congress, the size of the committee and ratio of Democrats to Republicans will be revisited.

HELP Committee leadership will change with the new Congress. Sen. Richard Burr (R-NC), the committee's ranking Republican, retires at the end of the current congress. Sens. Rand Paul (R-KY) and Bill Cassidy (R-LA), both physicians, were in line for the position. Rand Paul – known for his frequent clashes with Anthony Fauci, vaccine skepticism, and outspoken criticism of the nation's pandemic response and masking requirements – retained his Senate seat and was in line to be the most senior Republican on HELP. Paul, an ophthalmologist, had already pledged to launch an investigation into Fauci's "unprecedented coverup" of the NIH's funding of research in Wuhan, China. He opted to instead serve as the top Republican on the Homeland Security and Governmental Affairs Committee (HSGAC), a role currently filled by retiring Sen. Rob Portman (R-OH). The HSGAC chair has the authority to issue subpoenas unilaterally, providing notice to the ranking member but not requiring approval. The next most senior Republican on HSGAC, Ron Johnson (R-WI), has already exhausted his six-year term limit as committee chair. With Paul taking the HSGAC role, Bill Cassidy, a gastroenterologist/hepatologist, is next in line for HELP Republican leadership due to Sen. Susan Collins' (R-ME) expected leadership role on the Appropriations Committee. HELP leadership will have a pivotal role to play in the reauthorization of pandemic preparedness programs set to expire at the end of FY 2023.

Current chair Patty Murray (D-WA), who was re-elected, will leave her HELP leadership post to become the Chair of the Appropriations Committee, leaving an opening for Bernie Sanders (I-VT) as new Chair of HELP.

Other committee members who were in-cycle this election include: Maggie Hassan (D-NH), Tim Scott (R-SC), Lisa Murkowski (R-AK), and Jerry Moran (R-KS), who were all reelected.

Senate Finance Committee

In the 117th Congress, the Senate Finance Committee is comprised of 28 members, split evenly between the parties. Although the chair and ranking member of the committee both faced reelection, neither was in a very competitive race and both handily defeated their challengers. However, there will still be several new additions to committee membership, mostly due to retirements.

Retiring are Sens. Rob Portman (R-OH), Ben Sasse (R-NE), and Pat Toomey (R-PA). Additionally, many Senate Finance Committee members were up for reelection, but this did not impact the committee. The two incumbents facing the most competitive challenges heading into election day were Sens. Catherine Cortez Masto (D-NV) and Maggie Hassan (D-

NH), but both were re-elected. Therefore, the new members in the 118th Congress will likely be the result solely of the Republican retirements listed above.

When it comes to health care policy, the Finance Committee will focus on issues of Medicare payment, some of which – like the Physician Fee Schedule – are substantive policy topics that do not lend themselves easily to partisanship. Additionally, Chairman Wyden (D-OR) could increase his currently ongoing oversight efforts related to Medicare Advantage plans, which may also yield bipartisan support or even policy reform ideas. Given continued Democratic control of the Committee, the Chairman may also want to leverage committee hearings to focus on highlighting successes from implementation of the Inflation Reduction Act, such as reduced drug prices or lowered out-of-pocket costs for patients. Of course, such hearings would afford the Minority an opportunity to focus on the reverse and bring to light any implementation challenges or potential negative impacts on innovation. Already in September, Ranking Member Crapo (R-ID) led a letter from 25 Republican senators to the Department of Health and Human Services, expressing concerns about IRA implementation. Additionally, Senator Lankford (R-OK) – a returning Committee member – has introduced legislation to roll back some of the drug-related provisions of the IRA. Such efforts will only increase as major IRA provisions are rolled out in the next few years, which makes this topic ripe for partisan wrangling among Committee members.

Senate Appropriations Committee

The Senate Committee on Appropriations is currently comprised of thirty members in the 117th Congress—15 Democrats and 15 Republicans.

Chairman Patrick Leahy (D-VT) will retire at the end of his term, which sets up Sen. Patty Murray (D-WA) - current Chair of the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies (LHHS) - to take over as the Chair of the full committee. Sen. Murray is ranked sixth in terms of seniority in the Senate and currently serves as the chair of the Senate Committee on Health, Education, Labor, and Pensions (HELP).

Republicans will also see a shifting of leadership. Ranking Member Richard Shelby (R-AL) will retire at the end of his term, which will allow Sen. Susan Collins (R-ME) - current Republican leader of the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (THUD) - to assume the position of top Republican on the committee.

The Senate Appropriations Committee is divided into twelve subcommittees—including LHHS and the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies (Ag/FDA). With Sen. Murray taking over as the top Democrat on the full committee, Sens. Richard Durbin (D-IL) and Jack Reed (D-RI) are next in line to take over subcommittee leadership. Sen. Roy Blunt (R-MO) currently serves as Ranking Member of the LHHS subcommittee and will retire at the end of his term, which leaves a vacancy for the top GOP spot on the subcommittee. Sens. Jerry Moran (R-KS), Shelley Moore Capito (R-WV), or Mike Braun (R-IN) are the most likely members to assume the LHHS leadership position. Further, it is expected that Sen. Tammy Baldwin (D-WI), who serves as Chair of the Senate Ag/FDA Subcommittee, and Sen. John Hoeven (R-ND), who serves as the subcommittee's Ranking Member, will maintain their leadership positions on the subcommittee.

House Energy and Commerce Committee

The House Energy and Commerce Committee was destined to see big changes even before Election Day, given the departures of seven Democrats and five Republicans due to planned retirements and primary election losses. While both Reps. Frank Pallone (D-NJ) and Cathy McMorris Rogers (R-WA) are expected to hold on to their respective leadership roles, the loss of 12 incumbent committee members means a shift in makeup and experience to one of the most powerful committees in the House. This shift also results in the elevations of Reps. Anna Eshoo (D-CA) and Mike Burgess, MD (R-TX) to the number two slots in seniority on the committee. Both Eshoo and Burgess previously made unsuccessful bids for committee leadership.

Notable departures from Energy and Commerce include Bobby Rush (D-IL), Mike Doyle (D-PA), G.K. Butterfield (D-

NC), Jerry McNerney (D-CA), Peter Welch (D-VT), Kurt Schrader (D-OR), Kathleen Rice (D-NY), Fred Upton (R-MI), David McKinley (R-WV), Adam Kinzinger (R-IL), Billy Long (R-MO), and Markwayne Mullin (R-OK).

Incumbent committee member Tom O'Halleran (D-AZ) was defeated for reelection.

House Ways and Means Committee

In the 117th Congress, the House Ways and Means Committee is comprised of 25 Democrats and 17 Republicans. For the 118th Congress, the size and ratio of the committee will depend on the final number of seats gained by Republicans, who are poised to take control of the chamber based on initial election results.

Although Democrats did not hold onto the House majority, there will be no change in committee leadership on their side of the aisle as Richard Neal (MA) is expected to remain the top Democrat on the panel.

On the Republican side, it remains unclear who will succeed retiring Ranking Member Kevin Brady (R-TX) to become the new chairman of the panel. Vern Buchanan (R-FL) has the most seniority on the panel, but Adrian Smith (R-NE) and Jason Smith (R-MO) are also running to be the top Republican on Ways and Means. The outcome may impact leadership of the Health Subcommittee, where Buchanan serves as the senior-most Republican. Lloyd Doggett (D-TX) is the senior-most Democrat on the Health subcommittee.

Notable departures include retirements from full committee Ranking Member Kevin Brady (R-TX), Ron Kind (D-WI), and Stephanie Murphy (D-FL). Tom Suozzi (D-NY) announced his intent to run for the Democratic nomination for Governor of New York, but failed to prevail in the primary. Tom Rice (R-SC) was defeated in his primary, which was widely attributed to his vote to impeach former President Donald Trump. Jackie Walorski (R-IN) died in a car crash alongside two of her congressional staff in Aug. 2022. Following Walorski's death, the vacancy was filled by Rep. David Kustoff (R-TN).

House Appropriations Committee

The House Committee on Appropriations is currently comprised of 59 members—33 Democrats and 26 Republicans. At the end of the 117th Congress, nine committee members will be retiring, including Reps. Charlie Crist (D-FL), Ann Kirkpatrick (D-AZ), David Price (D-NC), Lucille Roybal-Allard (D-CA), Tim Ryan (D-OH), Cheri Bustos (D-IL), Brenda Lawrence (D-MI), Jaime Herrera Beutler (R-WA-03), and Steven Palazzo (R-MS).

Rep. Rosa DeLauro (D-CT) currently chairs the Committee and Rep. Kay Granger (R-TX) serves as the ranking member. With Republicans winning the Majority in the 118th Congress, Rep. Granger is expected to chair the committee.

Like the Senate, the House Appropriations Committee is divided into twelve subcommittees—including Labor/Health and Human Services (LHHS) and Agriculture/Food and Drug Administration (Ag/FDA). Rep. Sanford Bishop (D-GA) chairs the Ag/FDA Subcommittee and Rep. Andy Harris (R-MD) serves as acting ranking member. Full Committee Chair DeLauro also serves as chair of the LHHS Subcommittee, and Rep. Tom Cole (R-OK) serves as Ranking Member.

Notable departures from the committee include Rep. David Price (D-NC), who is retiring, and Rep. Tim Ryan (D-OH) who ran for the Senate.

Key Dates

Congress has returned for a lame-duck session. Key dates follow:

- **Nov. 14** – House and Senate reconvene
- **Nov. 15** – House Republican leadership elections
- **Nov. 16** – House Republican Conference votes on internal rules
- **Nov. 21** – House and Senate recess
- **Nov. 28** – Senate reconvenes
- **Nov. 29** – House reconvenes
- **Nov. 30** – House Democratic leadership elections
- **Dec. 15** – House target adjournment
- **Dec. 16** – Continuing resolution (CR) expires
- **Dec. 21** – Senate target adjournment

House Republicans held their closed-door leadership elections on **Nov. 15**:

Speaker: Current Minority Leader Kevin McCarthy (CA)

Majority Leader: Current Minority Whip Steve Scalise (LA)

Majority Whip: National Republican Congressional Committee Chair Tom Emmer (MN)

Conference Chair: Current Chair Elise Stefanik (NY)

National Republican Congressional Committee Chair: Richard Hudson (NC)

House Democratic leadership elections are expected to take place on **Nov. 30**. With Democrats finding themselves in the minority, their caucus will be down one leadership position, so they will need to decide whether or not to fully or partially replace the leadership team that has essentially been in place for twenty years. Speaker Nancy Pelosi (CA) and Majority Leader Steny Hoyer (MD) will step aside from leadership in the 118th Congress. Notably, the current DCCC Chairman, Rep. Sean Patrick Maloney (NY) lost his reelection bid.

Democratic (Minority) Leader: Pelosi (current); Jeffries (NY)/Schiff (CA)

Democratic Whip: Hoyer/Clyburn (current); Clark (MA)

Asst. Democratic Leader: Clark (MA) (current); Aguilar (CA)

Dem. Caucus Chair: Jeffries (NY); Neguse (CO)

DCCC Chair: Sean P. Maloney (NY); Beatty (OH)/Lieu (CA)/Cardenas (CA)/Bera (CA)

What to Expect in the Lame Duck

Congress returns to session on November 14, and lawmakers' priority will be passage of fiscal year (FY) 2023 spending legislation to avoid a federal government shutdown before the current continuing resolution (CR) expires on December 16. Congressional appropriators and leadership must first reach an agreement on topline defense and nondefense spending levels for the 12-bill omnibus appropriations package, as well as decide what riders will be attached to the must-pass package. Between the omnibus appropriations package and possible year-end tax extender legislation, Democrats are expected to push for the inclusion of COVID-19 and monkeypox response funding (the White House has requested \$27 billion) and the restoration of the enhanced Child Tax Credit, while Republicans support inclusion of an R&D tax credit to allow businesses to immediately write off their research expenses. Other policies expected to be considered include:

- Increased FMAP for Puerto Rico and the Child and Family Service Programs
- Overhaul of FDA diagnostics, dietary supplements, and cosmetics regulations
- Reforms to the FDA's accelerated approval pathway
- Measures to increase clinical trial diversity
- Medicare physician reimbursement fix (to avert 4.47% Medicare conversion factor cut and 4% PAYGO cut)
- Extension of 5% Alternative Payment Models (APM) incentive payment
- Expansion of telehealth access beyond the public health emergency
- **PREVENT Pandemics Act** (S. 3799), favorably reported out of the Senate HELP Committee
- Mental health reforms - Senate Finance Committee proposed bipartisan legislation and House passed **Restoring Hope for Mental Health and Well-Being Act of 2022** (H.R. 7666)
- Temporary Assistance for Needy Families (TANF) funding extension

Consideration of the **National Defense Authorization Act** (NDAA) is also at the top of lawmakers' to-do list, and Democrats are considering combining the must-pass omnibus spending bill and the defense authorization bill into a single package. The Senate must first pass its own version of the NDAA, which the chamber plans to do quickly in the coming weeks. Negotiations with the House will then commence on a final version of the defense legislation and the riders that will accompany it. The House-passed H.R. 7900 included measures related to cannabis banking, public lands, and drug sentencing, while the Senate is weighing inclusion of provisions on the counting of electoral college votes and reforms to energy project permitting.

Senate Budget Committee Chair Bernie Sanders (I-VT) has also proposed that Democrats **raise the nation's debt limit** during the lame-duck session if the GOP wins control of the House or Senate. Republicans plan to use the deadline for increasing or suspending the debt limit next year as leverage to enact spending cuts. With the support of the entire caucus, Senate Democrats could use the budget reconciliation process during the remainder of the 117th Congress to raise the debt limit on their own without the threat of a Republican filibuster. Democrats could also attempt to garner the support of 10 Senate Republicans to include a debt limit increase as a part of must-pass government funding legislation before the current stop-gap spending bill expires on Dec. 16.

What to Expect From the 118th Congress

The Biden administration will spend the last half of the President's first term in office with the House controlled by Republicans. Democratic leadership successfully used the budget reconciliation process to pass partisan bills this year, but without control of the Congress, it will be impossible to pass major legislation without bipartisan support. Senate Democrats' agenda will be largely limited to the confirmation of federal court judges, which cannot be filibustered by Republicans.

Even with GOP control of the House, the party will still lack the ability to enact much of its legislative agenda. Instead, Republicans are expected to assert their authority through long-planned investigatory actions. The majority party has subpoena power to compel testimony and obtain documents, and many Republican oversight priorities are health care related. Republican leader of the House **Oversight and Reform** Committee James Comer (KY) has said that he plans to investigate:

- The origins of the COVID pandemic and federal funds supporting research at the Wuhan Institute of Virology;
- **COVID relief waste, fraud, and abuse;**
- The CDC's coronavirus data gaps and guidance;
- **Pharmacy benefit managers (PBMs);** and
- The actions of nursing homes in response to COVID-19.

Republicans on the House **Energy and Commerce** Committee are expected to continue their focus on the origins of COVID-19 in addition to:

- Federal agency **biosafety practices;**
- The impact of COVID shutdowns, especially on school-aged children;
- Fentanyl-related deaths;
- Implementation of the **Inflation Reduction Act's drug pricing policies;** and
- **Hospital pricing transparency.**

Sen. Rick Scott (R-FL), Chair of the National Republican Senatorial Committee, has proposed requiring Congress to reauthorize Social Security and Medicare every five years. Under current law, these entitlement programs are not subject to reauthorization and are financed through dedicated taxes and direct draw on general revenue dollars. While Republican Leader Mitch McConnell (R-KY) has characterized the idea as a non-starter, many Republicans have expressed an interest in **curbing the nation's safety net** as a part of a deal to increase or suspend the debt limit in 2023 (the deadline to do so is likely to fall in the third quarter of the CY). This could include changes to Social Security and/or Medicare eligibility, spending caps, and work requirements. The four Republicans looking to serve as House Budget Committee Chair next Congress – Reps. Jodey Arrington (R-TX), Buddy Carter (R-GA), Lloyd Smucker (R-PA), and current Ranking Member Jason Smith (R-MO) – have all voiced their support for using the debt ceiling as leverage to enact fiscally conservative legislation that addresses nondiscretionary/entitlement spending.

Here's what else to expect if the GOP wins a majority in the House:

- **Drop Jan. 6 Committee** – Congressional Republicans did not cooperate with the work of the committee investigating the Jan. 6, 2021, attack on the Capitol, and have expressed an interest in launching an investigation into the panel members and those telecom companies that cooperated with the committee themselves.
- **Hunter Biden Probe** – The GOP is expected to elevate probes into a number of narratives related to President Biden's son and his business activities, including how he has profited from his name and family connections and whether he committed tax fraud and lied to pass a gun purchase background check.
- **Other Investigations** – The withdrawal of U.S. troops from Afghanistan, the FBI's search of Mar-a-Lago and the alleged politicization of the Justice Department, the administration's U.S.-Mexico border policy, and claims of election fraud are all likely targets of GOP-directed hearings and requests for information.
- **Block Biden's Agenda** – Republicans will be even less incentivized to cooperate with the administration on bipartisan issues - like pandemic aid, climate change, government funding – with only two years remaining before the next presidential election.