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After the Midterm Elections: Next Steps in Congress in 2019

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The 2018 midterm elections resulted in Democrats regaining the House, Republicans expanding their Senate majority, and both parties positioning themselves for the 2020 presidential election. These factors will have a major impact on the legislative agenda in 2019. In this analysis, we look ahead to likely priorities for the coming legislative session, including work on appropriations, health care, immigration, infrastructure, and the judiciary.

Impacts of a Democratic House

With House control, Democrats gain the ability to block President Trump's legislative agenda, taking certain items such as Affordable Care Act (ACA) repeal and replace, another round of major tax cuts, and entitlement reforms off the table. Democrats also obtain the power to provide greater scrutiny and conduct investigations of the Trump Administration.

Incoming House Speaker Nancy Pelosi (D-CA) has pledged that in their first month, Democrats will focus on advancing significant changes to campaign and ethics laws to require greater disclosure of political donors, restrict the gerrymandering of congressional districts, and restore key enforcement protections to the Voting Rights Act. In addition, Democrats appear eager to use congressional hearings and their party's subpoena power to highlight perceived obstruction of justice and conflicts of interest within the Trump Administration.

In the near-term, Democrats have also indicated they will pursue bipartisan initiatives to address infrastructure investment and rising prescription drug costs. Democrats consider these two issues to be areas in which they can answer voter demands and challenge President Trump to work together on shared policy priorities.

Longer-term, Democrats are expected to consider several legislative items to cater to their base and to serve as a messaging platform leading up to the 2020 presidential election. Democrats will likely seek to position themselves as defending the ACA and Medicaid from the Trump Administration's regulatory changes and may consider legislation to enact some form of expanded Medicare or Medicaid coverage (e.g., "Medicare-for-All" or Medicare/Medicaid buy-in options). Democrats may introduce proposals to overturn the Trump Administration's weakening of environmental standards and to promote energy efficient infrastructure and clean energy to address climate change concerns. Other Democratic priorities may include increasing the minimum wage; strengthening worker and union rights; enacting gun safety measures; establishing permanent legal status and a path to citizenship for young, undocumented immigrants ("Dreamers"); and extending civil rights legal protections to include sexual orientation and gender identity. Of course, the scope of what Democrats can achieve in the House will be significantly constrained by the Republican Senate.

What's Next in Congress for 2019?

With divided party control in Congress and both parties positioning towards the 2020 presidential election, lawmakers may have a limited appetite in 2019 for heavy legislative lifts. Within that scope, we expect the following key issues to be dominant on the 2019 legislative agenda.

Appropriations and Debt Limit

Lawmakers must strike yet another deal to address defense and domestic spending caps under the 2011 Budget Control Act for 2020 and 2021. President Trump, Republicans, and Democrats will need to work together to remove the budget caps or to increase them, which may prove difficult. Democrats in the House have suggested that they will quickly propose a two-year budget deal that lifts the spending caps for the remaining two years of sequestration. Lawmakers must also address the debt limit, which was suspended through March 1, 2019, under the Bipartisan Budget Act of 2018.

Health Care

Health care issues will remain a central focus throughout 2019, especially after the latest federal court ruling that has created fresh uncertainty regarding the Affordable Care Act's future. While a significant bipartisan breakthrough on insurance coverage or entitlement reform remains unlikely, lawmakers may reach agreement on incremental reforms to address prescription drug pricing, including:

1. Requiring drug manufacturers to disclose list prices in TV advertisements;
2. Mandating greater transparency in drug manufacturer and pharmacy benefit manager relationships;
3. Increasing Medicaid penalties on drug manufacturers that increase list prices above the inflation rate; and
4. Preventing brand drug companies from utilizing Food and Drug safety programs to block cheaper generic drug competition.

Medicaid will likely be the area in health care most impacted by the 2018 midterm elections. Ballot measures to expand Medicaid passed in Idaho, Nebraska, and Utah, which will collectively cover more than 300,000 new beneficiaries. Democrats also gained governorships in Kansas, Maine, and Wisconsin, which may lead to those states considering or adopting the Medicaid expansion as well.

Immigration

President Trump will continue pushing for funding for the border wall and other immigration reforms, ensuring that the issue stays active on the legislative agenda. House Democrats pledge to resist these efforts and focus attention through congressional hearings towards the "Dreamers" and on migrant children affected by the Trump Administration's immigration policies.

Infrastructure

The Democratic House and President Trump may seek to work together on a bipartisan infrastructure investment and reform package as a priority in 2019, though passage remains unlikely unless lawmakers can reach agreement on how to pay for it. Both Republicans and Democrats have shown interest in advancing an infrastructure plan, though there are significant differences over the level of federal funding and types of investment preferred between the two parties.

Judiciary and Cabinet

Given an expanded majority in the Senate, Republicans will continue to confirm federal appeals court judges and lower-court judges at a rapid pace. Senate Majority Leader Mitch McConnell (R-KY) has made appeals court confirmations a key priority for the Senate Republican majority. Republicans will also need to confirm replacements for Attorney General Jeff Sessions, United Nations Ambassador Nikki Haley, Interior Secretary Ryan Zinke, and other cabinet members within the Trump Administration who may depart.

Conclusion

With the 2018 midterm elections in the rearview mirror, both parties are expected to quickly turn towards positioning themselves for the 2020 presidential election. As a result, the potential for resolving ongoing stalemates over health care, entitlement reform, taxes, immigration, and other major issues remains low during the 116th legislative session. However, Republicans and Democrats may be motivated to work together to address certain discrete issues that have a high, practical impact and that generate significant political traction during this timeframe.