

# Analysis of the 2012 Elections

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The Presidential, Senate and House Elections  
*Results and Policy Implications*

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# Results

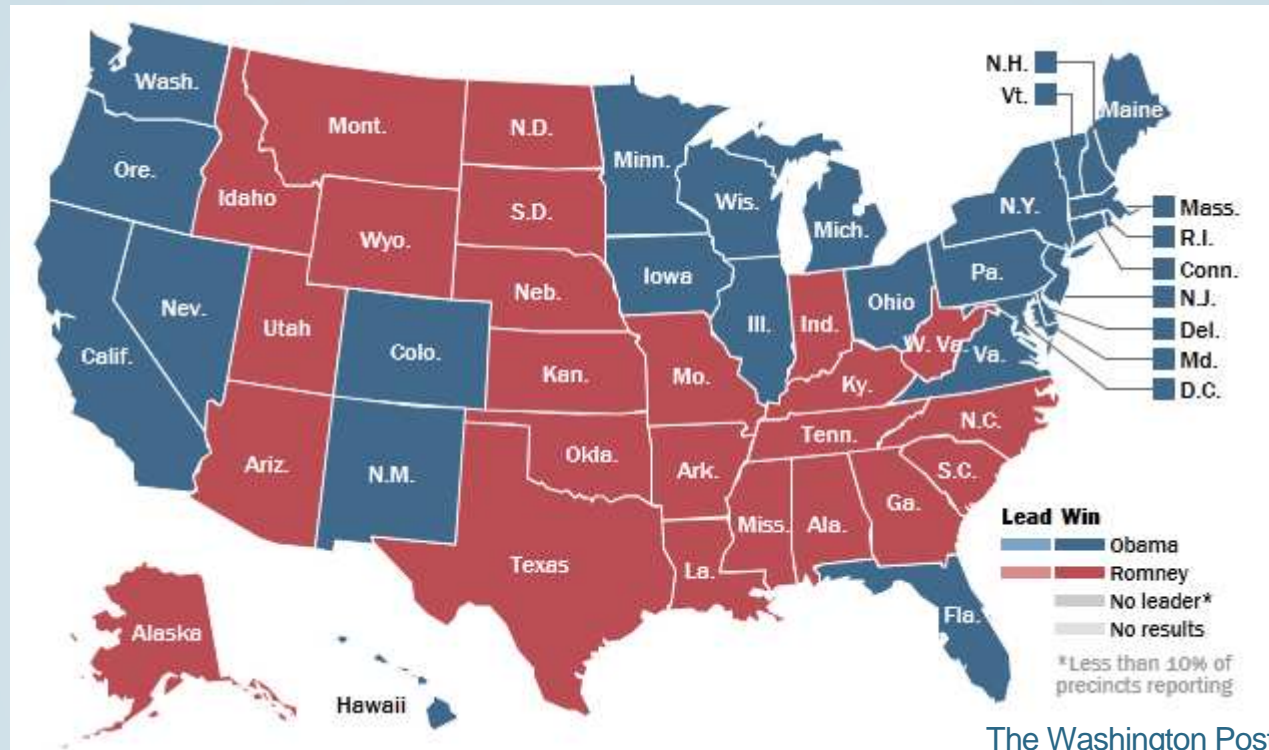
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# 2012 Election Results

## A Status Quo Election

- **President Barack Obama Wins Re-Election**
  - He won 332 electoral college votes – compared to 365 in 2008
  - He won the popular vote 50.4% to 48.0% - down from his 53% total in 2008
- **Democrats Maintain Their Majority the United States Senate**
  - 53 Democrats (a pick up of two seats)
    - 2 Independents who currently/are expected to caucus with the Democrats
  - 45 Republicans
- **Republicans Hold the U.S. House of Representatives**
  - 234 Republicans
  - 198 Democrats
  - 2 races too close to call and 1 run-off in December
- **Republicans Pick-Up 1 State Governorship**

# 2012 Electoral Map



332 Obama

206 Romney

- President Obama becomes the first president ever who failed to win an additional state in his successful reelection bid that he did not win in his initial victory (he lost North Carolina and Indiana)
- Ohioans selected the winner in their 13<sup>th</sup> straight presidential election
- Presidents Clinton, Bush and Obama all two-term presidents – the only other three consecutive presidents to win re-election were Jefferson, Madison and Monroe

# Battleground States

- President Obama had “small but durable” leads in a majority of battleground states in the week leading up to the election

<u>STATE</u>	<u>WINNER</u>	<u>RCP AVERAGE</u> as of 10/25/12	<u>2008 RESULT</u>	<u>2004 RESULT</u>
Florida (29)	OBAMA +0.8	Romney +1.8	Obama +2.8	Bush +5.0
Pennsylvania (20)	OBAMA +5.2	Obama +4.8	Obama +10.3	Kerry +2.5
Ohio (18)	OBAMA +1.8	Obama +2.1	Obama +4.6	Bush +2.1
Michigan (16)	OBAMA +8.5	Obama +4.0	Obama +16.4	Kerry +3.4
North Carolina (15)	ROMNEY +2.2	Romney +5.6	Obama +0.3	Bush +12.4
Virginia (13)	OBAMA +3.0	EVEN	Obama +6.3	Bush +8.2
Wisconsin (10)	OBAMA +6.7	Obama +2.7	Obama +13.9	Kerry +0.4
Colorado (9)	OBAMA +4.7	Romney +0.2	Obama +9.0	Bush +4.7
Iowa (6)	OBAMA +5.6	Obama +2.0	Obama +9.5	Bush +0.7
Nevada (6)	OBAMA +6.6	Obama +2.7	Obama +12.5	Bush +2.6
New Hampshire (4)	OBAMA +5.8	Obama +0.8	Obama +9.6	Kerry +1.3

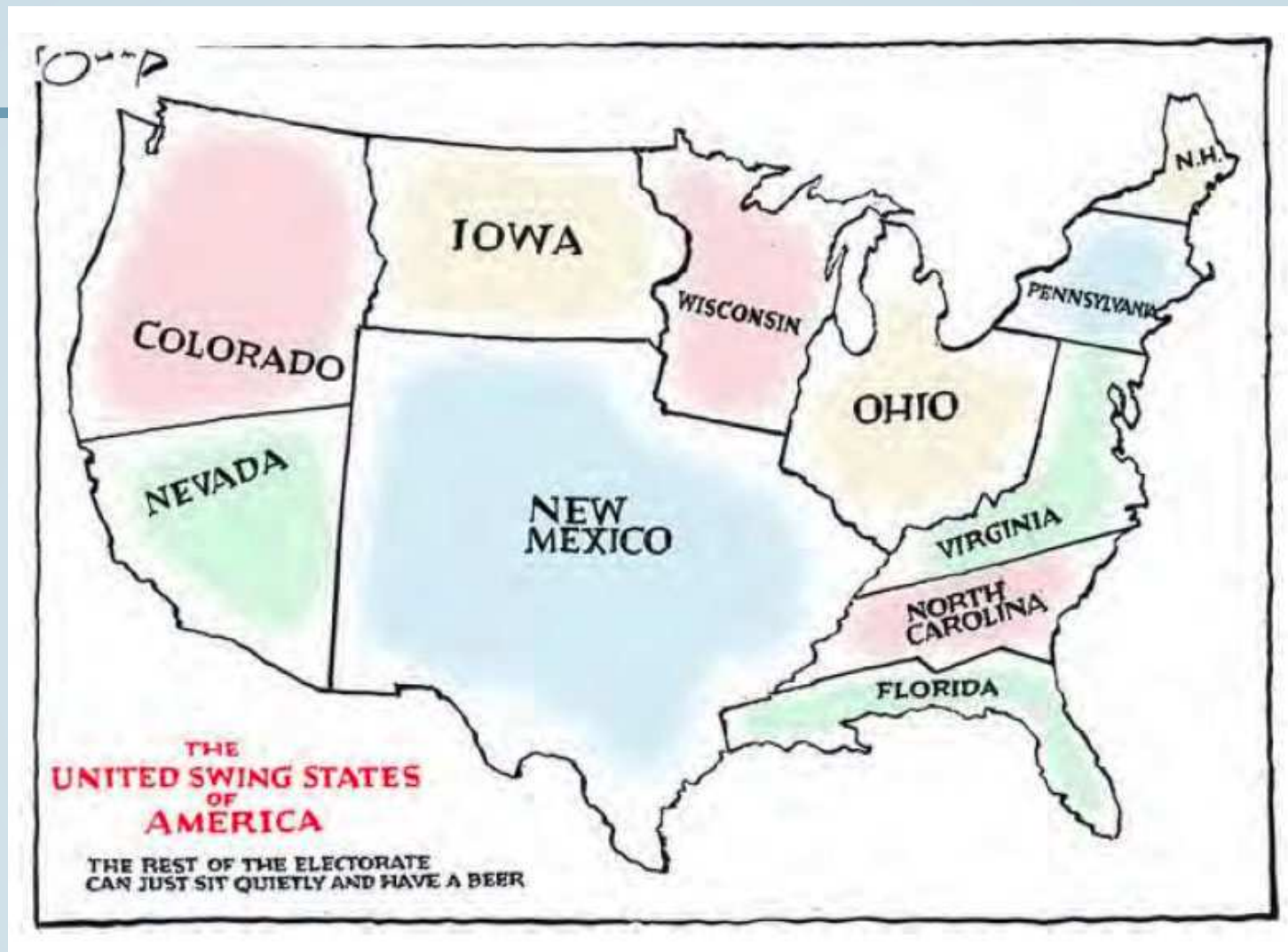


Illustration by Jack Ohman, the Oregonian



# Exit Polling: Demographics

- Gender
  - The proportion of women voting has exceeded the proportion of men voting in every election since 1980 – this year, females comprised 53 percent of the electorate
    - Women supported President Obama by 11 points (55%-44%), while men went for Gov. Romney by 7 points (52-45%)
- Age
  - Once again, young people supported President Obama by large margins, while older voters overwhelmingly favored Gov. Romney
    - 18-29 year olds (19% of the electorate): Obama won 60-37 percent
    - 30-44 year olds (27%): Obama won 52-45 percent
    - 45-64 (38%): Romney won 51-47 percent
    - 65+ (16%): Romney won 56-44 percent
- Race
  - White voters comprised 72% of the electorate (a 2-point drop from 2008) – Gov. Romney won them by 20 points
  - Obama, however, carried Black, Hispanic, and Asian voters by huge margins – 87 points, 44 points, and 47 points
  - No doubt a shifting electorate...

# Exit Polling: Demographics, cont'd

- Income
  - Voters with annual household income under \$50,000 supported President Obama by over 20 points (60-38%) – they comprise 41 percent of the electorate
  - Those making between \$50,000-\$100,000 supported Gov. Romney by 6 points (52-46%)
  - Those making over \$100,000 supported Gov. Romney by 10 points (54-44%)
- Independents vs. Moderates?
  - Gov. Romney carried self-identified “independents” 50-45 percent
  - President Obama, however, carried self-identified “moderates” (comprising 41% of the electorate) by a 15 point margin (56-41 percent)
- Religion
  - Those attending church service weekly (or more often) favored Gov. Romney 59-39 percent
  - While Protestants favored Gov. Romney 57-42 percent, Catholics were almost evenly-divided (favoring President Obama 50-48 percent), and Jewish voters overwhelming supported the President (69-30 percent)

# Exit Polling: Key Issues

- For the second presidential election in a row, the economy was far and away the single most important issue
  - 59% of voters rated the economy as the number one issue
    - Those voters broke for Gov. Romney by 4 points (51-47 percent)
    - Of the 40% of voters who felt the economy was improving, however, President Obama won by almost 90%
    - Voters were evenly divided on which candidate would be better at handling the economy
    - Additionally, about half of voters blame former President Bush more than President Barack Obama for the country's economic problems
  - 15% felt the budget deficit was the most important issue – they too broke for the challenger, by a wide margin (66-32 percent)
  - Since the Great Depression, President Obama is the first incumbent president to be re-elected with an unemployment rate higher than 7.2% (it stood at 7.9% on Election Day)
  - In key states like Ohio, Pennsylvania and Michigan, the auto bailout proved crucial to President Obama's support
    - In Ohio, 60% of voters favored the auto bailout – and those voters overwhelming (approximately 75 percent) supported the President

# Exit Polling: Key Issues, cont'd

- Other issues driving voters
  - According to exit polls, 18% of voters indicated health care was the most important issue in their vote
    - The President carried those voters 75-24 percent
- And the President's job approval?
  - While President Obama struggled to get above 50 percent approval for much of this election year, exit polls show his job approval rate at 54 percent
  - Did President Obama's initial handling of Hurricane Sandy help?
    - A pre-election NBC News/WSJ poll found 68 percent of voters approved of the President's handling of the storm
    - Exit polls found 42% of voters cited the storm as an important factor in their vote – with 15% saying it was the most important factor

# Key Factors that Drove the Electorate

- Enthusiasm / GOTV
  - While Republicans improved their ground game from 2008, President Obama's still proved superior in getting out the base
    - 38% of the electorate identified as Democratic, while 32% identified as Republican – in 2008, those numbers were nearly identical (39%-32%)
    - President Obama won early voting, though not nearly to the extent he won the early vote four years ago
      - Early voting was an option in 34 states and D.C. – before the polls even opened, more than 32 million people had voted (either by mail or in-person)
- The role of technology – transformational in 2008 – has once again proven important to reaching voters, particularly via social media
  - According to the Pew Research Center, one out of 5 registered voters was expected to share how they voted online – and nearly a third had been encouraged to vote by contacts on Twitter and Facebook
  - The 2012 Election was the most tweeted election of all time – and the election generated 327,000 tweets per minute
  - Polls – and poll aggregators like FiveThirtyEight's Nate Silver and Real Clear Politics – proved largely accurate ... they were either heralded or vilified in the weeks heading into the election

# Key Factors that Drove the Electorate, cont'd

- Money
  - On the heels of the Supreme Court's 2010 *Citizens United* decision, Super PACs and other outside groups spent more than \$1 billion in corporate, personal and labor organization monies on advertising in federal races through Election Day
  - According to the Center for Public Integrity, 10 organizations accounted for more than half the total spending; major groups and their spending, according to the New York Times (through Election Day):
    - Restore Our Future (Republican) spent \$142.6M – 33% of all Republican spending
    - American Crossroads (Republican) spent \$91.1M – 21% of all Republican spending
    - Priorities USA Action (Democratic) spent \$66.5M – 77% of all Democratic spending
  - What will response to spending be?
    - Will citizen or institutional stockholders revolt at diversion of corporate resources toward unsuccessful campaign spending?
      - Does significant level of spending with no apparent success stymie corporate spending in 2014 Congressional mid-term elections? What about spending by wealthy individuals?
  - Will labor organizations be emboldened by their success?
  - Despite being outspent by Super PACs supporting Republicans, President Obama was re-elected and House and Senate Democrats make gains
    - Does this Democratic success undermine arguments for campaign finance reform?

# President Obama's Second Term: Cabinet

- President Obama had a remarkably stable cabinet during his first-term, with changes only at the Departments of Defense and Commerce
- While many current secretaries have hinted they will not stay on for a second term, the timing of their departures – and potential replacements – remain unclear
  - The exhaustive confirmation process may require a more staggered appointment process
- A sampling of potential changes:
  - **State:** Sec. Clinton has indicated she will not serve a second term; current speculation focused on Sen. Kerry (D-MA) (which would open up another Senate seat in Massachusetts) or U.N. Ambassador Susan Rice
  - **Treasury:** Sec. Geithner is expected to leave; rumors that current White House chief of staff Jack Lew and Erskine Bowles, President Clinton's former chief of staff are the top picks
  - **DOE:** Sec. Chu has signaled he may not return; former Sen. Dorgan (D-ND) has been mentioned as a potential replacement
  - **EPA:** If Administrator Jackson leaves, current EPA officials Bob Perciasepe and Gina McCarthy may be good bets, as they've already survived the Senate confirmation process
  - **Transportation:** Sec. LaHood may also not return; speculation includes former PA Governor Rendell and current Los Angeles Mayor Villaraigosa
  - **Commerce:** Since Sec. Bryson's resignation earlier this year due to health issues, the post remains vacant; current USTR Kirk is on a short list
  - **Defense:** Sec. Panetta is expected to leave and could be replaced by his current deputy Ash Carter or former Defense undersecretary Michele Flournoy; could we see former Sen. Hagel (R-NE)?
- Other key nominations... Federal Reserve Chairman Bernanke's term expires at the end of 2014 and we could also see some Supreme Court vacancies over the next four years



# President Obama's Second Term: Priorities

- Over the past year, President Obama has implemented or pushed for smaller-scale initiatives, often targeted at individual demographic groups: pressing Congress to address student loan interest rates, endorsing gay marriage, and issuing an executive order on immigration; he has only outlined his 2nd term priorities in broad strokes
- General recognition that the economy and fiscal issues will continue to dominate the early part of a 2<sup>nd</sup> term—particularly given the likelihood of Congress “punting” action on tax cuts and the sequester into 2013
  - The President has proposed a series of tax policy changes that signal what he would bring to the bargaining table: extension of the Bush-era tax cuts for all but the “wealthy” (individuals making \$200K/year, couples making \$250K/year); implementation of the “Buffett Rule”; corporate tax reform (with an emphasis on domestic manufacturing)
  - Addressing the lingering housing crisis remains a priority, but effective policies that could garner bipartisan support remain elusive
  - President Obama has outlined ambitious infrastructure investments—viewing such investments as benefiting the nation in the long-term, but also providing a more immediate “jobs” boost
- Early next year, the prospects for cooperation with Congressional Republicans to reach a “Grand Bargain” (spending cuts, entitlement reform, and tax reform, including potential new revenue) are a bit higher – but any agreement would require major concessions from both sides
  - Could we see breakthroughs similar to comprehensive tax reform under President Reagan’s second term in 1986, or President’s Clinton’s budget deal with Republicans?



# President Obama's Second Term: Priorities, cont'd

- What issues would President Obama focus on beyond the economy?
  - Efforts to overhaul the immigration system may receive more bipartisan support once election-year politics have subsided – particularly with changing demographics of the country
  - Education reform also remains a priority
  - While climate change is something he wants to address, political realities will likely prevent any substantive action – though an Obama EPA would continue to implement its climate programs
    - Do Hurricane Sandy and recent weather patterns increase interest/pressure
    - President Obama will also likely continue to push for renewable energy, a clean energy standard, and energy efficiency measures
  - On foreign policy, we have already heard about the Administration's efforts to "pivot" from the Middle East to the Asian Pacific – does that remain realistic?
  - On the trade front, the Trans-Pacific Partnership (TPP) is likely to be a priority
- As is the case with all 2<sup>nd</sup> term presidents, he will be concerned about his legacy
  - Likely to be focused on solidifying some of his first-term domestic initiatives – namely the health care overhaul and Wall Street reform
    - With a GOP-controlled House and a closely-divided Senate, he may also need to play defense
- Now that his last election has been won, will he favor ideological convictions or move to the middle to find consensus with a divided Congress?

# 2012 Election Analysis: U.S. Senate

- Democrats Increase Their Slim Majority
  - 53 Democrats
    - An additional 2 Independents who will caucus with the Democrats
  - 45 Republicans

<u>PARTY</u>	<u>TOTAL</u>	<u>GAIN/LOSS</u>
Democrats	55*	+2
Republicans	45	-2

*\*Independent Senator Bernie Sanders (VT) and Senator-Elect Angus King (ME) will caucus with the Democrats*

- Key ticket-splitting
  - Democrats in Missouri, Montana and North Dakota won their Senate races despite Gov. Romney carrying their states by comfortable margins
  - On the flip-side, Nevada Republican Senator Dean Heller held onto his seat despite President Obama carrying the state
- The incoming Senate will include a record 20 female Senators

# Results of Key Senate Races

- The only Senate incumbent to lose re-election was Sen. Scott Brown (R-MA) – he will be replaced by Democrat Elizabeth Warren
  - Additionally, Senator Lugar (R-IN) lost his primary election earlier this year – that seat was won by Democrat Joe Donnelly
- Several Democratic incumbents prevailed in tough re-election campaigns

<u>STATE</u>	<u>INCUMBENT</u>	<u>CHALLENGER</u>	<u>MARGIN OF VICTORY</u>
Florida	Bill Nelson (D)	Connie Mack (R)	Nelson +12.8
Missouri	Claire McCaskill (D)	Todd Akin (R)	McCaskill +15.5
Montana	Jon Tester (D)	Denny Rehberg (R)	Tester +3.9
Nevada	Dean Heller (R)	Shelley Berkley (D)	Heller +1.2
Ohio	Sherrod Brown (D)	Josh Mandel (R)	Brown +5.2
Pennsylvania	Bob Casey (D)	Tom Smith (R)	Casey +8.9

- Sen. Tester (D-MT) was likely helped by Libertarian candidate Dan Cox, who received 6.5% of the vote
- Also of note, 4.5% of Nevada voters marked their ballots for no candidate

# Results of Key Senate Races, cont'd

- Open Senate Seats

<u>STATE</u>	<u>INCUMBENT</u>	<u>RESULT</u>	<u>MARGIN</u>
Arizona	OPEN — Kyl (R)	Jeff Flake (R) over Richard Carmona (D)	Flake +4.8
Connecticut	OPEN — Lieberman (I)	Chris Murphy (D) over Linda McMahon (R)	Murphy +11.9
Hawaii	OPEN — Akaka (D)	Mazie Hirono (D) over Linda Lingle (R)	Hirono +25.2
Indiana*	OPEN — Lugar (R)	Joe Donnelly (D) over Richard Mourdock (R)	Donnelly +5.5
Maine*	OPEN — Snowe (R)	Angus King (I) over Charlie Summers (R)	King +22.3
New Mexico	OPEN — Bingaman (D)	Martin Heinrich (D) over Heather Wilson (R)	Heinrich +5.6
Nebraska*	OPEN — Nelson (D)	Deb Fischer (R) over Bob Kerrey (D)	Fischer +16.4
North Dakota	OPEN — Conrad (D)	Heidi Heitkamp (D) over Rick Berg (R)	Heitkamp +1.0
Texas	OPEN — Hutchison (R)	Ted Cruz (R) over Paul Sadler (D)	Cruz +16.1
Virginia	OPEN — Webb (D)	Tim Kaine (D) over George Allen (R)	Kaine +4.8
Wisconsin	OPEN — Kohl (D)	Tammy Baldwin (D) over Tommy Thompson (R)	Baldwin +5.6

\*Indicates change of party control

# Incoming Senators

<b>AZ</b>	Jeff Flake (R) replaces retiring Senator Jon Kyl (R). He is a six-term Member of the House of Representatives where he serves on the Appropriations Committee. He previously served as Executive Director of the Goldwater Institute.
<b>CT</b>	Chris Murphy (D) replaces retiring Senator Joe Lieberman (I). He is currently serving his third term in Congress, where he serves on the Foreign Affairs Committee and the Oversight and Government Reform Committee. Previously, he served in the Connecticut General Assembly.
<b>HI</b>	Mazie Hirono (D) replaces retiring Senator Daniel Akaka (D). She is a three-term Member of the House of Representatives, where she serves on the Committees on Transportation & Infrastructure and Education & Workforce. Prior to her term in Congress, she served in Hawaii's State House of Representatives and as the state's Lieutenant Governor.
<b>IN*</b>	Joe Donnelly (D) replaces Senator Richard Lugar (R), who was defeated in the Republican primary earlier this year. Donnelly is currently serving his third-term in the House, where he serves on the Financial Services and Veterans' Affairs Committees. Prior to his time in Congress, he operated a small business in Mishawaka, IN.
<b>MA*</b>	Elizabeth Warren (D) defeated incumbent Scott Brown (R). The Harvard Law School professor previously served as chair of the Congressional Oversight Panel for the Troubled Asset Relief Program (TARP) and also as Assistant to the President and Special Advisor to the Treasury Secretary for the Consumer Financial Protection Bureau.
<b>ME*</b>	Angus King (I) replaces retiring Senator Olympia Snowe (R). King served as Maine's Governor from 1995-2003. He is a former legislative assistant to Democratic Senator William Hathaway. In 1989 King founded Northeast Energy Management, Inc., which developed/operated large-scale electrical energy conservation projects at commercial and industrial facilities.

# Incoming Senators, cont'd

<b>ND</b>	Heidi Heitkamp (D) replaces retiring Senator Kent Conrad (D). Heitkamp was North Dakota's Attorney General from 1993-2001. Previously, she served as the state's Tax Commissioner and, earlier in her career, served as an attorney for the EPA. She has since served as a Director for the Dakota Gasification Company.
<b>NE*</b>	Deb Fischer (R) replaces retiring Senator Ben Nelson (D). Fischer has served in the Nebraska Legislature since 2005. She previously helped run the Fischer family ranch. She will be the state's first female Senator since 1954.
<b>NM</b>	Martin Heinrich (D) replaces retiring Senator Jeff Bingaman (D). Heinrich is currently serving his 2 <sup>nd</sup> term in the House of Representatives, where he serves on the Natural Resources and Armed Services Committees. Prior to his time in Congress, he served as Natural Resources Trustee for the State of New Mexico.
<b>TX</b>	Ted Cruz (R) replaces retiring Senator Kay Bailey Hutchison (R). From 2003-2008, he served as the Solicitor General of Texas. Previously, he served as the Director of the Office of Policy Planning at the Federal Trade Commission, as an Associate Deputy Attorney General at the U.S. Department of Justice, and as Domestic Policy Advisor on the 2000 Bush-Cheney campaign. He also clerked for Chief Justice William Rehnquist on the U.S. Supreme Court. He is currently in private practice.
<b>VA</b>	Tim Kaine (D) replaces retiring Senator Jim Webb (D). Kaine served as Virginia's Governor from 2006-2010 and chaired the DNC from 2009-2011. Previously, he served as Virginia's Lieutenant Governor and as the Mayor of Richmond.
<b>WI</b>	Tammy Baldwin (D) replaces retiring Senator Herb Kohl (D). Baldwin is currently serving her 7 <sup>th</sup> term in the House of Representatives, where she serves on the Energy & Commerce Committee. Prior to her time in the House, she served three terms as a State Representative.



# 2012 Election Results: House

- Republicans maintain control of the House
  - Democrats failed to pick up the 25 seats they needed to flip the chamber
  - Net gain/loss remains unclear with 2 races too close to call – additionally, a Louisiana race between Republican incumbents Boustany and Landry is headed a December run-off

<u>PARTY</u>	<u>TOTAL</u>
Republicans	234
Democrats	198

**2 races too close to call / 1 run-off**

- The next House will welcome at least 83 new Members
  - Well over 50% of the incoming House will have been elected since 2006
- We will also see fewer moderates – the conservative Democratic “Blue Dogs” saw their ranks cut in half after the 2010 midterms and will lose at least ten more due to retirements and defeats (primary or general)
- Redistricting, by and large, favored Republicans, who across the country shored up many seats they won in 2010
  - The number of strongly Democratic districts decreased from 144 to 136, while the number of strongly Republican districts increased from 175 to 183
  - Republicans saw big gains in North Carolina and also picked up seats in Ohio, Pennsylvania and Iowa; Democrats fared considerably better in Illinois and made slight gains in Florida and New York
  - In California, the state’s new “top-two” primary system proved costly to several incumbents on both sides of the aisle

# 2012 Election Results: House

- Due to redistricting following the 2010 Census, this year saw several Member vs. Member matchups in the general election
  - OH-16: Jim Renacci (R) defeated Betty Sutton (D)
  - IA-03: Tom Latham (R) defeated Leonard Boswell (D)
  - CA-30: Brad Sherman (D) defeated Howard Berman (D) – *new top-two primary system*
  - CA-44: Janice Hahn (D) defeated Laura Richardson (D) – *new top-two primary system*
  - LA-03: Charles Boustany (R) and Jeff Landry (R) will face each other in a December run-off
- Over a dozen Members were also defeated in primary elections earlier this year:

*Members defeated in primaries by other Members – with the exception of Rep. Critz all primary winners went on to win their general election races*

<u>SEAT</u>	<u>PRIMARY MATCH-UP</u> WINNER BOLDED
AZ-06	Ben Quayle (R) v. <b>David Schweikert (R)</b>
FL-07	Sandy Adams (R) v. <b>John Mica (R)</b>
IL-16	Don Manzullo (R) v. <b>Adam Kinzinger (R)</b>
MI-14	Hansen Clarke (D) v. <b>Gary Peters (D)</b>
MO-01	Russ Carnahan (D) v. <b>Lacy Clay (D)</b>
NJ-09	Steve Rothman (D) v. <b>Bill Pascrell (D)</b>
OH-09	Dennis Kucinich (D) v. <b>Marcy Kaptur (D)</b>
PA-12	Jason Altmire (D) v. <b>Mark Critz (D)*</b>

*Members defeated in primaries by challengers – all primary winners went on to win their general election races*

<u>SEAT</u>	<u>PRIMARY MATCH-UP</u> WINNER BOLDED
TX-16	Silvestre Reyes (D) v. <b>Beto O'Rourke (D)</b>
OH-2	Jean Schmidt (R) v. <b>Brad Wenstrup (R)</b>
PA-17	Tim Holden (D) v. <b>Matt Cartwright (D)</b>
FL-03	Cliff Stearns (R) v. <b>Ted Yoho (R)</b>
OK-01	John Sullivan (R) v. <b>Jim Bridenstine (R)</b>



# 2012 Election Results: House Changes

## Alabama

**6 R / 1 D**

No change

## Alaska

**1 R / 0 D**

No change

## Arizona

**4 R / 5 D**

AZ-01 Kirkpatrick [new member]  
AZ-05 Salmon (R) [new member]  
AZ-09 Sinema (D) [new seat]

Retirements: Flake (R) [elected to Senate]

## Arkansas

**4 R / 0 D**

AR-04 Cotton (R) replaces retiring *Ross (D)*

Retirements: Ross (D)

## California

**15 R / 38 D**

CA-01 La Malfa (R) [new member]  
CA-02 Huffman (D) [new member]  
CA-07 Bera (D) defeated *Lungren (R)*  
CA-08 Cook (R) [new member]  
CA-15 Swalwell (D) defeated *Stark (D)*  
CA-21 Valadao (R) [new member]  
CA-26 Brownley (D) [new member]  
CA-29 Cardenas (D) [new member]

## California, cont'd

CA-30 *Sherman (D)* defeated *Berman (D)*  
CA-35 McLeod (D) defeated *Baca (D)*  
CA-36 Ruiz (D) defeated *Bono Mack (R)*  
CA-41 Takano (D) [new member]  
CA-47 Lowenthal (D) [new member]  
CA-51 Vargas (D) [new member]  
CA-52 Peters (D) defeated *Bilbray (R)*

Retirements: Cardoza (D), Dreier (R),  
Filner (D), Gallegly (R), Herger (R), Lewis (R),  
Woolsey (D)

## Colorado

**4 R / 3 D**

No change

## Connecticut

**0 R / 5 D**

CT-05 Esty (D) replaces Senator-elect *Murphy (D)*

Retirements: Murphy (D) [elected to Senate]

## Delaware

**0 R / 1 D**

No change

## Florida

**17 R / 9 D**

**1 too close to call:**

FL-18 *West (R)* / Murphy (D)

## Florida, cont'd

FL-03 Yoho (R) previously defeated *Stearns (R)*  
in primary  
FL-06 DeSantis (R) [new member]  
FL-09 Grayson (D) returns  
FL-19 Radel (R) [new member]  
FL-22 Frankel (D) [new member]  
FL-26 Garcia (D) defeated *Rivera (R)*

Retirements: Mack (R) [defeated in Senate run]

## Georgia

**9 R / 5 D**

GA-09 Collins (R) [new member]

## Hawaii

**0 R / 2 D**

HI-02 Gabbard (D) replaces Senator-elect  
*Hirono (D)*

Retirements: Hirono (D) [elected to Senate]

## Idaho

**2 R / 0 D**

No change

## Illinois

**6 R / 12 D**

IL-08 Duckworth (D) defeated *Walsh (R)*  
IL-10 Schneider (D) defeated *Dold (R)*  
IL-11 Foster (D) defeated *Biggert (R)*

CONT'D...

# 2012 Election Results: House Changes, cont'd

## Illinois, cont'd

IL-12 Enyart (D) replaces retiring *Costello (D)*  
 IL-13 Davis (R) replaces retiring *Johnson (R)*  
 IL-17 Bustos (D) defeated *Schilling (R)*

Retirements: Costello (D), Johnson (R)

## Indiana

**7 R / 2 D**

IN-02 Walorski (R) replaces Senator-elect *Donnelly (D)*  
 IN-05 Brooks (R) replaces retiring *Burton (R)*  
 IN-06 Messer (R) replaces Governor-elect *Pence (R)*

Retirements: Burton (R), Donnelly (D) [elected to Senate], Pence (R) [elected Governor]

## Iowa

**2 R / 2 D**

IA-03 *Latham (R)* defeated *Boswell (D)*

## Kansas

**4 R / 0 D**

No change

## Kentucky

**5 R / 1 D**

KY-04 Massie (R) replaces retiring *Davis (R)*  
 KY-06 Barr (R) defeated *Chandler (D)*

Retirements: Davis (R)

## Louisiana

**5 R / 1 D**

LA-03 *Boustany (R)* and *Landry (R)* in December run-off

## Maine

**0 R / 2 D**

No change

## Maryland

**1 R / 7 D**

MD-06 Delaney (D) defeated *Bartlett (R)*

## Massachusetts

**0 R / 9 D**

MA-04 Kennedy (D) replaces retiring *Frank (D)*

Retirements: Frank (D), Olver (D)

## Michigan

**9 R / 5 D**

MI-11 Bentivolio (R) replaces retiring *McCotter (R)*

Retirements: McCotter (R)

## Minnesota

**3 R / 5 D**

MI-08 Nolan (D) defeated *Cravaack (R)*

## Mississippi

**3 R / 1 D**

No change

## Missouri

**6 R / 2 D**

MO-02 Wagner (R) replaces retiring *Akin (R)*

Retirements: Akin (R) [defeated in Senate run]

## Montana

**1 R / 0 D**

MT-AL Daines (R) replaces retiring *Rehberg (R)*

Retirements: Rehberg (R) [defeated in Senate run]

## Nebraska

**3 R / 0 D**

No change

## Nevada

**2 R / 2 D**

NV-01 Titus (D) returns to replace retiring *Berkley (D)*  
 NV-04 Horsford (D) [new seat]

Retirements: Berkley (D) [defeated in Senate run]

## New Hampshire

**0 R / 2 D**

NH-01 Shea-Porter (D) defeated *Guinta (R)*  
 NH-02 Kuster (D) defeated *Bass (R)*

# 2012 Election Results: House Changes, cont'd

## New Jersey

**6 R / 6 D**

NJ-10 Payne Jr. (D) replaces late father

## New Mexico

**1 R / 2 D**

NM-01 Lujan-Grisham (D) replaces Senator-elect *Heinrich* (D)

Retirements: Heinrich (D) [elected to Senate]

## New York

**6 R / 21 D**

NY-06 Meng (D) [new member]

NY-08 Jeffries (D) [new member]

NY-18 Maloney (D) defeated *Hayworth* (R)

NY-24 Maffei (D) defeated *Buerkle* (R)

NY-27 Collins (R) defeated *Hochul* (D)

Retirements: Ackerman (D), Hinchey (D), Towns (D), Turner (R)

## North Carolina

**9 R / 3 D**

**1 race too close to call:**

NC-07 *McIntyre* (D) / Rouzer (R)

NC-08 Hudson (R) defeated *Kissell* (D)

NC-09 Pittenger (R) replaces retiring *Myrick* (R)

NC-11 Meadows (R) replaces retiring *Shuler* (D)

NC-13 Holding (R) replaces retiring *Miller* (D)

Retirements: Miller (D), Myrick (R), Shuler (D)

## North Dakota

**1 R / 0 D**

ND-AL Cramer (R) replaces retiring *Berg* (R)

Retirements: Berg (R) [defeated in Senate race]

## Ohio

**12 R / 4 D**

OH-02 Wenstrup (R) defeated *Schmidt* (R) in primary

OH-03 Beatty (D) [new member]

OH-14 Joyce (R) replaces retiring *LaTourette* (R)

OH-16 *Renacci* (R) defeated *Sutton* (D)

Retirements: Austria (R), LaTourette (R)

## Oklahoma

**5 R / 0 D**

OK-01 Bridenstine (R) defeated *Sullivan* (R) in primary

OK-02 Mullin (R) replaces retiring *Boren* (D)

Retirements: Boren (D)

## Oregon

**1 R / 4 D**

No change

## Pennsylvania

**13 R / 5 D**

PA-04 Perry (R) replaces retiring *Platts* (R)

PA-12 Rothfus (R) defeated *Critz* (D)

## Pennsylvania, cont'd

PA-17 Cartwright (D) defeated *Holden* (D) in primary

Retirements: Platts (R-PA)

## Rhode Island

**0 R / 2 D**

No change

## South Carolina

**6 R / 1 D**

SC-07 Rice (R) [new seat]

## South Dakota

**1 R / 2 D**

No change

## Tennessee

**7 R / 2 D**

No change

## Texas

**24 R / 12 D**

TX-14 Weber (R) [new member]

TX-16 O'Rourke (D) defeated *Reyes* (D) in primary

TX-20 Castro (D)

TX-23 Gallego (D) defeated *Canseco* (R)

TX-25 Williams (D) [new member]

TX-33 Veasey (D) [new member]

CONT'D...

# 2012 Election Results: House Changes, cont'd

## Texas, cont'd

TX-34 Vela (D) [new member]

TX-36 Stockman (R) [new member]

Retirements: Gonzalez (D), Paul (R)

## Utah

**3 R / 1 D**

UT-02 Stewart (R) [new member]

## Vermont

**0 R / 1 D**

No change

## Virginia

**8 R / 3 D**

No change

## Washington

**4 R / 6 D**

WA-01 DelBene (D) replaces *Inslee (D)* who ran for governor

WA-06 Kilmer (D) replaces retiring *Dicks (D)*

WA-10 Heck (D) [new member]

Retirements: Dicks (D), Inslee (D)

## West Virginia

**2 R / 1 D**

No change

## Wisconsin

**5 R / 3 D**

WI-02 Pocan (D) replaces Senator-elect *Baldwin (D)*

Retirements: Baldwin (D) [elected to Senate]

## Wyoming

**1 R / 0 D**

No change

# 2012 Election Results: Gubernatorial

- Republicans pick-up one Governorship
  - 30 Republicans, 20 Democrats
- 7 Incumbents Re-Elected

DE: Jack Markell (D)	MO: Jay Nixon (D)
ND: Jack Dalrymple (R)	UT: Gary Herbert (R)
VT: Peter Shumlin (D)	WV: Earl Ray Tomblin (D)

- Open Seat Races

<u>STATE</u>	<u>EXITING GOVERNOR</u>	<u>INCOMING GOVERNOR</u>
Indiana	Mitchel Daniels (R)	Mike Pence (R)
Montana	Brian Schweitzer (D)	Steve Bullock (D)
New Hampshire	John Lynch (D)	Maggie Hassan (D)
North Carolina*	Beverly Perdue (D)	Pat McCrory (R)
Washington	Chris Gregoire (D)	Jay Inslee (D)

\*indicates change of party control

# The 112<sup>th</sup> Congress

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# 112<sup>th</sup> Congress: Accomplishments

- Major Accomplishments in the 2<sup>nd</sup> Session of the 112<sup>th</sup> Congress
  - Surface transportation bill (signed July 6<sup>th</sup>)
    - The same package also reauthorized the National Flood Insurance Program and froze interest rates on student loans
  - Payroll tax cut / unemployment insurance / “Doc Fix” (signed February 22<sup>nd</sup>)
  - FAA reauthorization (signed February 14<sup>th</sup>)
  - Export-Import Bank reauthorization (signed May 30<sup>th</sup>)
  - FDA user fee reauthorization (signed July 9<sup>th</sup>)
  - The Stop Congressional Trading on Congressional Knowledge (STOCK) Act (signed April 4<sup>th</sup>)
  - A “Continuing Resolution” to fund the government through March 27<sup>th</sup>, 2013 (signed September 28<sup>th</sup>)
  - Iran Sanctions legislation (signed August 10<sup>th</sup>)
- Also, the first session saw a number of major accomplishments:
  - Approval of Colombia, Panama, and South Korea Free Trade Agreements and Trade Adjustment Assistance (TAA) renewal
  - Patent reform
  - Budget Control Act
  - Pipeline safety legislation

# 112<sup>th</sup> Congress: Left Undone

- Left Undone
  - Legislation addressing the “Fiscal Cliff”
  - FY13 defense authorization bill
  - Long-term farm bill reauthorization
  - Postal reform legislation
  - Cybersecurity legislation
  - Violence Against Women Act reauthorization
  - All individual FY13 appropriations bills
- Congress returns November 13<sup>th</sup> for a post-election lame duck session ... what can we expect?
  - Efforts to avert going over the “Fiscal Cliff” and potentially addressing the debt ceiling
  - An FY13 defense authorization bill – if one isn’t completed, it will be the first time in 51 years
  - Action on other stalled measures (e.g., Russia PNTR) and perhaps some smaller “off-the-shelf” legislation, particularly if it is important to an outgoing Member
  - Majority Leader Reid has pledged to revive a stalled cybersecurity bill, but passage is far from certain
  - And will there be a need for an emergency supplemental appropriations bill to deal with the aftermath of Hurricane Sandy?
  - Senate leadership may push for ratification of the U.N. Convention on the Law of the Sea and the U.N. Convention on the Rights of Persons with Disabilities – ratification would be an uphill battle given the need for 67 votes



# Key Dates

- **Lame Duck**
  - Tuesday, November 13<sup>th</sup> through December ???
- **Leadership Elections**
  - House Republicans: Week of November 13<sup>th</sup>
  - House Democrats: November 29<sup>th</sup>
  - Senate Republicans: November 14<sup>th</sup>
  - Senate Democrats: November 14<sup>th</sup>
- **Swearing-in for the 113<sup>th</sup> Congress**
  - January 3<sup>rd</sup>, 2013
- **Inauguration**
  - Private Swearing-in: Sunday, January 20<sup>th</sup>, 2013
  - Public Ceremony: Monday, January 21<sup>st</sup>, 2013

# The Incoming 113<sup>th</sup> Congress

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# 113<sup>th</sup> Congress: House Leadership

<u>POSITION</u>	<u>112<sup>th</sup> CONGRESS</u>	<u>113<sup>TH</sup> CONGRESS (LIKELY)</u>
Speaker	John Boehner (R-OH)	John Boehner (R-OH)
Majority Leader	Eric Cantor (R-VA)	Eric Cantor (R-VA)
Majority Whip	Kevin McCarthy (R-CA)	Kevin McCarthy (R-CA)
Chief Deputy Majority Whip	Peter Roskam (R-IL)	Peter Roskam (R-IL)
Republican Conference Chair	Jeb Hensarling (R-TX)	Cathy McMorris Rogers (R-WA)
Republican Conference Vice-Chair	Cathy McMorris Rogers (R-WA)	Lynn Jenkins (R-KS)
Republican Conference Secretary	John Carter (R-TX)	Virginia Foxx (R-NC)
Republican Policy Committee Chair	Tom Price (R-GA)	James Lankford (R-OK)
NRCC Chair	Pete Sessions (R-TX)	Greg Walden (R-OR)
Minority Leader	Nancy Pelosi (D-CA)	Nancy Pelosi (D-CA)
Minority Whip	Steny Hoyer (D-MD)	Steny Hoyer (D-MD)
Assistant Minority Leader	Jim Clyburn (D-SC)	Jim Clyburn (D-SC)
Democratic Caucus Chair	John Larson (D-CT)	Xavier Becerra (D-CA)
Democratic Caucus Vice-Chair	Xavier Becerra (D-CA)	Joe Crowley (D-NY), Barbara Lee (D-CA)
DCCC Chair	Steve Israel (D-NY)	Will Steve Israel (D-NY) stay at the helm? Allyson Schwartz (D-PA), Jared Polis (D-CO)

# 113<sup>th</sup> Congress: House Committee Leadership

COMMITTEE	LIKELY CHAIR	LIKELY RANKING MEMBER
Agriculture	Frank Lucas (R-OK)	Colin Peterson (D-MN)
Appropriations	Hal Rogers (R-KY)	Marcy Kaptur (D-OH), Lowey (D-NY) <i>Current Ranking Member Dicks (D-WA) is retiring</i>
Armed Services	Buck McKeon (R-CA)	Adam Smith (D-WA)
Budget	Current Chairman Paul Ryan (R-WI) is term-limited, but could receive a coveted waiver... <i>Scott Garrett (R-NJ), John Campbell (R-CA), Tom Price (R-GA) interested if Ryan doesn't receive waiver</i>	Chris Van Hollen (D-MD)
Education & Workforce	John Kline (R-MN)	George Miller (D-CA)
Energy & Commerce	Fred Upton (R-MI)	Henry Waxman (D-CA)
Financial Services	Jeb Hensarling (R-TX) <i>Current Chairman Bachus (R-AL) is term-limited</i>	Maxine Waters (D-CA) <i>Current Ranking Member Frank (D-MA) is retiring</i>
Foreign Affairs	Ed Royce (R-CA) presumed; Chris Smith (R-NJ) interested <i>Current Chairman Ros-Lehtinen (R-FL) is term-limited</i>	Brad Sherman (D-CA) next in line; Eliot Engel (D-NY) may challenge <i>Howard Berman (D-CA) lost his re-election bid</i>
Homeland Security	Candice Miller (R-MI), Mike Rogers (R-AL), Michael McCaul (R-TX) <i>Current Chairman King (R-NY) is term-limited</i>	Bennie Thompson (D-MS)
Judiciary	Bob Goodlatte (R-VA) <i>Current Chairman Smith (R-TX) is term-limited</i>	John Conyers (D-MI)
Intelligence	Mike Rogers (R-MI)	Dutch Ruppersberger (D-MD)

# 113<sup>th</sup> Congress: House Committee Leadership

<u>COMMITTEE</u>	<u>LIKELY CHAIR</u>	<u>LIKELY RANKING MEMBER</u>
Natural Resources	Doc Hastings (R-WA)	Ed Markey (D-MA)
Oversight & Government Reform	Darrell Issa (R-CA)	Elijah Cummings (D-MD)
Rules	Pete Sessions (R-TX) <i>Current Chairman Dreier (R-CA) is retiring</i>	Louise Slaughter (D-NY)
Science, Space & Technology	Lamar Smith (R-TX) presumed; Jim Sensenbrenner (R-WI), Dana Rohrabacher (R-CA) interested <i>Current Chairman Hall (R-TX) is term-limited</i>	Eddie Bernice Johnson (D-TX)
Small Business	Sam Graves (R-MO)	Nydia Velazquez (D-NY)
Transportation & Infrastructure	Bill Shuster (R-PA) <i>Current Chairman Mica (R-FL) is term-limited, but may seek waiver to remain at helm</i>	Nick Rahall (D-WV)
Veterans Affairs	Jeff Miller (R-FL)	Corrine Brown (D-FL) <i>Current Ranking Member Filner (D-CA) running for other office</i>
Ways & Means	Dave Camp (R-MI)	Sander Levin (D-MI)

# 113<sup>th</sup> Congress: House Committee Leadership

- Despite few Chair and Ranking Member changes at the full Committee level, expect key Committees to look quite different
  - Appropriations
    - On the Republican-side, Reps. Lewis (R-CA), Rehberg (R-MT), LaTourette (R-OH), Flake (R-AZ), and Austria (R-OH) did not seek re-election – Rep. Rehberg's departure opens up the Labor/HHS Subcommittee Chair
    - On the Democratic side, departing Committee Chairman Dicks (D-WA) also vacates the top slot on the Defense Subcommittee; Rep. Olver's (D-MA) retirement opens up the ranking member slot on the Transportation/HUD Subcommittee
      - Committee Members Hinchey (D-NY) and Rothman (D-NJ) are also not returning
  - Energy & Commerce
    - Rep. Stearns (R-FL) lost a primary battle, thus opening up the top spot on the Oversight & Investigations Subcommittee; Commerce, Manufacturing & Trade Subcommittee Chair Bono Mack (R-CA) lost her re-election bid... may see a game of musical chairs for the Subcommittee posts
    - Rank and File: Rep. Myrick (R-NC) did not seek re-election and Rep. Sullivan (R-OK) lost a primary race, potentially opening up new GOP slots on the Committee; Reps. Bass (R-NH) and Bilbray (R-CA) lost their re-election bids
    - On the Democratic side, Reps. Towns (D-NY), Gonzalez (D-TX), Baldwin (D-WI), and Ross (D-AR) chose not to seek re-election to the House
  - Ways & Means
    - Reps. Herger (R-CA) and Davis (R-KY) did not seek re-election, opening up the top slots on the Subcommittees on Health and Human Resources, respectively – and Health Subcommittee Ranking Member Stark (D-CA) lost his re-election bid
    - Rep. Berg's (R-ND) departure also likely to open up a coveted spot on the Committee, depending on Committee ratios
    - On the Democratic side, Rep. Berkley (D-NV) did not seek re-election, opening up another Dem spot

# 113<sup>th</sup> Congress: Committee Ratios

**Incoming House:**  
234 Rs, 198 Ds  
2 races too close to call;  
1 run-off pending

- Depending upon how the outstanding races are called, the Republican majority could grow or shrink by a few seats, which could affect Committee ratios; an historic perspective...

CONGRESS	SPLIT	APPROPRIATIONS	ENERGY & COMMERCE	WAYS & MEANS
<b>102<sup>nd</sup></b> (1991-1992)	267 Democrats 167 Republicans 1 Independent <i>100 seat majority</i>	37 Democrats 22 Republicans  <i>15 seat advantage</i>	<i>27 Democrats</i> <i>16 Republicans</i>  <i>11 seat advantage</i>	<i>23 Democrats</i> <i>13 Republicans</i>  <i>10 seat advantage</i>
<b>103<sup>rd</sup></b> (1993-1994)	258 Democrats 176 Republicans 1 Independent <i>82 seat majority</i>	37 Democrats 23 Republicans  <i>14 seat advantage</i>	27 Democrats 17 Republicans  <i>10 seat advantage</i>	24 Democrats 14 Republicans  <i>10 seat advantage</i>
<b>104<sup>th</sup></b> (1995-1996)	230 Republicans 204 Democrats 1 Independent <i>26 seat majority</i>	33 Republicans 25 Democrats  <i>8 seat advantage</i>	27 Republicans 22 Democrats  <i>5 seat advantage</i>	23 Republicans 16 Democrats  <i>7 seat advantage</i>
<b>110<sup>th</sup></b> (2007-2008)	236 Democrats 199 Republicans <i>36 seat majority</i>	25 Democrats 21 Republicans <i>4 seat advantage</i>	31 Democrats 26 Republicans <i>5 seat advantage</i>	24 Democrats 17 Republicans <i>7 seat advantage</i>
<b>111<sup>th</sup></b> (2009-2010)	255 Democrats 178 Republicans <i>77 seat majority</i>	37 Democrats 23 Republicans <i>14 seat advantage</i>	36 Democrats 23 Republicans <i>13 seat advantage</i>	26 Democrats 15 Republicans <i>11 seat advantage</i>
<b>112<sup>th</sup></b> (2011-2012) As of the beginning of the Congress...	242 Republicans 193 Democrats <i>49 seat majority</i>	29 Republicans 21 Democrats <i>8 seat advantage</i>	31 Republicans 22 Democrats <i>9 seat advantage</i>	21 Republicans 15 Democrats <i>6 seat advantage</i>

# 113<sup>th</sup> Congress: Senate Leadership

- With Democrats holding their slim majority, few major leadership changes are expected

<u>POSITION</u>	<u>112<sup>th</sup> CONGRESS</u>	<u>113<sup>TH</sup> CONGRESS (LIKELY)</u>
Majority Leader and Democratic Conference Chair	Harry Reid (D-NV)	Harry Reid (D-NV)
Majority Whip / Assistant Majority Leader	Dick Durbin (D-IL)	Dick Durbin (D-IL)
Democratic Conference Vice Chair and Democratic Policy Committee Chair	Chuck Schumer (D-NY)	Chuck Schumer (D-NY)
Democratic Policy Committee Vice Chair	Debbie Stabenow (D-MI)	Debbie Stabenow (D-MI)
Democratic Conference Secretary	Patty Murray (D-WA)	Patty Murray (D-WA)
Democratic Steering and Outreach Committee	Mark Begich (D-AK)	Mark Begich (D-AK)
DSCC Chair	Patty Murray (D-WA)	TBD – Michael Bennet (D-CO) has been offered the post
Minority Leader	Mitch McConnell (R-KY)	Mitch McConnell (R-KY)
Minority Whip	Jon Kyl (R-AZ), retiring	John Cornyn (R-TX)
Republican Conference Chair	John Thune (R-SD)	John Thune (R-SD)
Republican Policy Committee Chair	John Barrasso (R-WY)	John Barrasso (R-WY)
Republican Conference Vice-Chair	Roy Blunt (R-MO)	Roy Blunt (R-MO)
NRSC Chair	John Cornyn (R-TX)	Jerry Moran (R-KS)



# 113<sup>th</sup> Congress: Senate Committee Leadership

- A handful of retirements on the Democrat side will result in some changes atop Senate Committees
- Additionally, under their party's conference rules, Senate Republicans have 6-year term limits at both the Chairman and Ranking Member position (time served as Ranking Member does not count as time served as Chairman) – with Democrats maintaining control of the Chamber in the next Congress, several current Republican Ranking Members will see their 6 years exhausted
- And look for some changes to Committee ratios given the Democratic pick-up

<u>COMMITTEE</u>	<u>LIKELY CHAIR</u>	<u>LIKELY RANKING MEMBER</u>
Agriculture	Debbie Stabenow (D-MI)	Pat Roberts (R-KS)
Appropriations	Daniel Inouye (D-HI)	Richard Shelby (R-AL) <i>Current Ranking Member Thad Cochran (R-MS) is term-limited</i>
Armed Services	Carl Levin (D-MI)	Jim Inhofe (R-OK) <i>Current Ranking Member McCain (R-AZ) is term-limited</i>
Banking	Tim Johnson (D-SD)	Mike Crapo (R-ID) <i>Current Ranking Member Shelby (R-AL) is term-limited</i>
Budget	Patty Murray (D-WA) <i>Current Chairman Conrad (D-ND) is retiring</i>	Jeff Sessions (R-AL)
Commerce	Jay Rockefeller (D-WV)	Jim DeMint (R-SC) <i>Current Ranking Member Hutchison (R-TX) is retiring</i>
Energy & Natural Resources	Ron Wyden (D-OR) <i>Current Chairman Bingaman (D-NM) is retiring</i>	Lisa Murkowski (R-AK)
Environment & Public Works	Barbara Boxer (D-CA)	David Vitter (R-LA) <i>Current Ranking Member Inhofe (R-OK) is term-limited</i>
Finance	Max Baucus (D-MT)	Orrin Hatch (R-UT)

# 113<sup>th</sup> Congress: Senate Committee Leadership

COMMITTEE	LIKELY CHAIR	LIKELY RANKING MEMBER
Foreign Relations	John Kerry (D-MA)	Bob Corker (R-TN) <i>Current Ranking Member Lugar (R-IN) lost his primary</i>
Health, Education, Labor & Pensions (HELP)	Tom Harkin (D-IA)	Lamar Alexander (R-TN) <i>Current Ranking Member Enzi (R-WY) is term-limited</i>
Homeland Security & Governmental Affairs	Tom Carper (D-DE) <i>Current Chairman Lieberman (I-CT) is retiring</i>	Tom Coburn (R-OK) <i>Current Ranking Member Collins (R-ME) is term-limited</i>
Indian Affairs	Maria Cantwell (D-WA) <i>Current Chairman Akaka (D-HI) is retiring</i>	John Barrasso (R-WY)
Intelligence	Dianne Feinstein (D-CA)	Saxby Chambliss (R-GA)
Judiciary	Patrick Leahy (D-VT)	Charles Grassley (R-IA)
Rules & Administration	Charles Schumer (D-NY)	Thad Cochran (R-MS) <i>Current Ranking Member Alexander (R-TN) is term-limited</i>
Small Business & Entrepreneurship	Mary Landrieu (D-LA)	Jim Risch (R-ID) <i>Current Ranking Member Vitter (R-LA) to EPW</i>
Special Committee on Aging	Bill Nelson (D-FL) <i>Current Chairman Kohl (D-WI) is retiring</i>	Susan Collins (R-ME) <i>Current Ranking Member Corker (R-TN) to Foreign Relations</i>
Veterans Affairs	Bernie Sanders (I-VT), Sherrod Brown (D-OH) <i>Current Chairman Murray (D-WA) is expected to take the top Budget Committee post</i>	Richard Burr (R-NC)

- Of note, should Sen. Kerry (D-MA) be picked as President Obama's next Secretary of State, we could see a domino effect if Sen. Boxer (D-CA) chooses to leave her post at EPW for the top Foreign Relations slot

# Key Policy Issues

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# The Fiscal Cliff

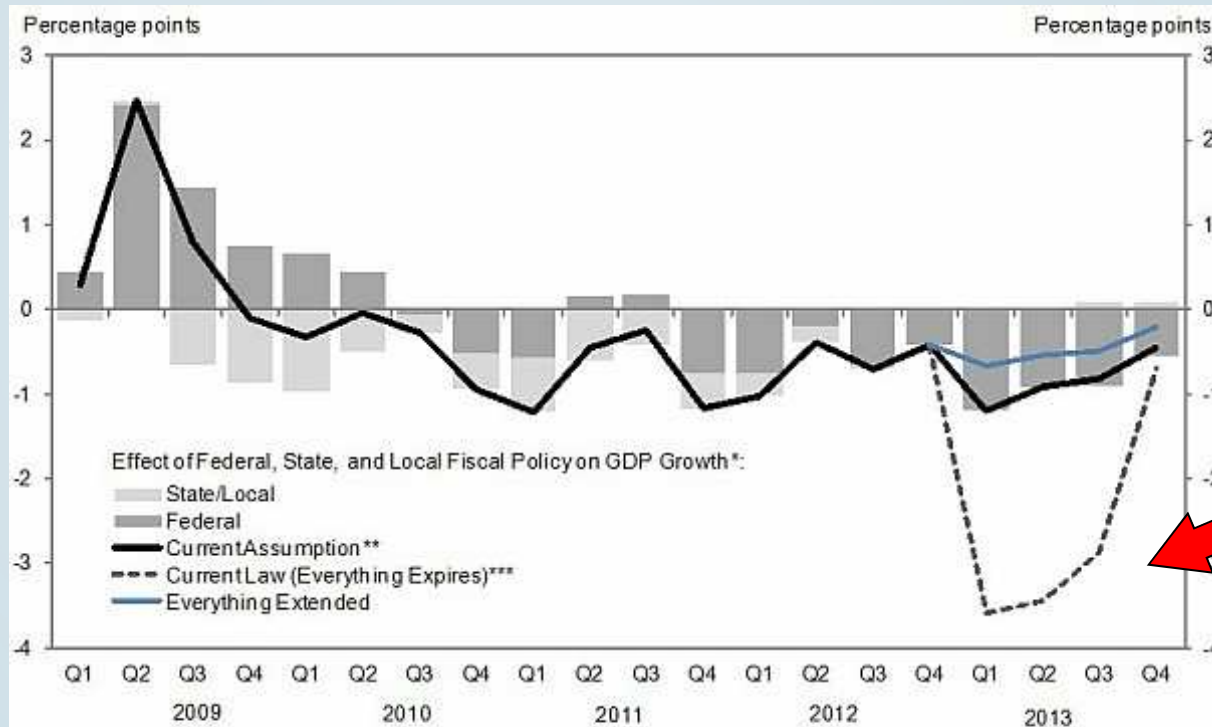
- Underlying all policy decisions for the remainder of this Congress is the roughly \$6 trillion “fiscal cliff” facing the country in January 2013
- “Taxmageddon”
  - Expiration of the Bush tax cuts: marginal rates, capital gains & dividend rates, and other provisions
  - Expiration of Alternative Minimum Tax (AMT) patch—if not extended, approximately 26 million more taxpayers will be subject to AMT
  - Expiration of temporary 2 percentage point payroll tax cut, which dropped an employee’s share of Social Security taxes from 6.2% to 4.2%
  - Expiration of various business tax provisions (“extenders”)
  - Changes to current estate tax
  - *CBO estimates that extending the Bush tax cuts and the AMT patch would reduce revenues by \$4.6 trillion over a 10-year budgetary window (2013-2022)*
- Magnified by...
  - \$1.2T in spending cuts under “sequestration” (with particular concerns over the defense cuts)
  - Expiration of current SGR patch (the “doc fix”)
  - Need for a debt-ceiling increase, likely in early 2013 (which House Speaker Boehner has said he will not support absent additional spending cuts)



Illustration by Tom Toles, the Washington Post

# The Fiscal Cliff

- Letting the tax provisions expire and allowing sequestration to take place would be a big down payment on deficit reduction, but most experts believe a failure to address these provisions in an orderly way would likely push the economy into another recession
- Moody's recently warned it would lower the government's credit rating if a credible plan to stabilize and reduce the national debt is not reached year's end—recall S&P lowered our credit rating during last year's debt ceiling stalemate



\* Annualized; excludes second round effects.

\*\* Current assumption: Payroll tax cut expires after 2012; jobless benefits phased down to a maximum of 59 weeks; income tax cuts extended through 2013; automatic spending cuts do not take effect.

\*\*\* Current Law: Payroll tax cut, 2001/2003 tax cuts, and jobless benefits to expire after 2012, "sequester" spending cuts and the new 3.8% tax on certain passive income take effect January 2013.

Source: GS Global ECS Research.

Impact on  
GDP growth of  
letting  
everything  
expire and  
sequestration  
kicking in



# The Fiscal Cliff: Taxes, cont'd

- On December 31st, the following Bush-era tax cuts will expire:
  - Individual income tax rates will increase to Clinton-era levels
  - Tax rate on long-term capital gains will increase from 15% to 20%
  - Tax rate on dividends will increase from 15% to ordinary income tax rates
  - Limits on itemized deductions (Pease) will be restored (currently no limits)
  - Limits on personal exemptions will be restored
  - Child tax credit will be reduced from \$1000 to \$500 and will be non-refundable for most families (it is currently partially refundable)
  - Deduction for married couples will move from 200% the deduction for singles (i.e., double) to 167%
  - Estate tax: the top exemption amount will fall to \$1 million per decedent (not indexed for inflation) and the top tax rate will rise to 55%
    - After no estate tax in 2010, the estate tax for 2011-2012 was modified: currently, the exemption amount is \$5 million per decedent (indexed for inflation) and the top tax rate is 35%
  - Also set to take effect in 2013 (for high income individuals) as a result of the Affordable Care Act: a 3.8% “Medicare contribution tax” on net investment income and a 0.9% Medicare tax increase on earned income



# The Fiscal Cliff: Taxes, cont'd

- Congress may also deal with a slew of expired or expiring tax provisions known as “extenders” before the end of the year—estimated to cost approximately \$35B
  - There seems to be a bipartisan consensus to do something, but some questions remain, including whether or not they will be paid for and which will be extended
    - Prior to the August recess, the Senate Finance Committee passed a bipartisan “extenders” package, which will help set the stage for potential action in the lame duck – the House Ways and Means Committee has been examining the extenders closely, but action remains uncertain
      - If an agreement can be reached, it is likely that many of the provisions will be extended, with more scrutiny next year in the context of broader tax reform
      - Republicans still have concerns with some of the energy provisions, viewing them as picking “winners and losers”
- An illustrative list of expired or expiring provisions includes:
  - *Individual:* deduction of state and local sales tax; deduction for tuition and related expenses; tax-free distributions from individual retirement plans for charitable purposes; parity for exclusion from income for employer-provided mass transit and parking benefits; refundability of unused AMT credits
  - *Energy:* incentives for biodiesel and renewable diesel; credits for energy efficiency; tax credits for alternative fuels; credits for electric vehicles; cellulosic biofuel producer credit; production tax credit for wind; Section 1603 grants-in-lieu of tax credit
  - *Business:* research credit; new markets tax credit; expensing provisions; exception under Subpart F for active financing income; enhanced charitable deductions for contributions; treatment of certain dividends of regulated investment companies; work opportunity credit

# The Fiscal Cliff: The Sequester

- Meanwhile, many in Congress are also working to head off the looming sequester
  - Under the *Budget Control Act of 2011*, the sequester was established to ensure \$1.2 trillion in deficit reduction in the event the Super Committee failed to reach an agreement—an agreement was not reached and the sequester is set to take effect in January 2013
    - The sequester requires \$984 billion in budget cuts from FY13-FY21, with an assumed reduction in interest payments of \$216 billion—for a total of \$1.2 trillion in savings
      - Under the law, one half of the cuts will come from national defense and the other half will come from both mandatory and discretionary non-defense programs
      - While much of Medicare is exempt from the cuts, payments to providers are not; they are, however, capped at 2 percent
  - While there is a strong desire to “replace” the sequester, particularly the defense cuts, a path forward remains uncertain
    - House Budget Committee Chairman Paul Ryan’s (R-WI) *Sequester Replacement Act* was quickly passed by the House of Representatives in May
      - The bill would “turn off” the FY13 discretionary sequester and the defense mandatory sequester, and the savings would be replaced with a lower FY13 discretionary spending cap and a “reconciliation” bill also passed by the House; the bill *keeps in place* the non-defense sequester for mandatory programs, including Medicare
    - Majority Leader Reid and other Democrats have indicated that any deal to avert the sequester must include some “revenue”

# The Fiscal Cliff: The Sequester, cont'd

- As we inch closer to January 2<sup>nd</sup> and the prospects for resolution remain uncertain, interest groups are increasingly concerned about the impact of the sequester on our national security, the economy, and public health and safety
  - While the defense industry was early in pressuring Congress to avert the sequester, those concerned with the effects on domestic, non-defense programs are increasingly vocal
- In a recent report, OMB estimated the sequester would result in massive spending reductions:
  - Defense: 9.4% cut for discretionary appropriations; 10% cut for direct spending
  - Nondefense: 8.2% cut for discretionary appropriations and 7.6% cut for direct spending
- The Bipartisan Policy Center estimates the sequester would cost the economy over 1 million jobs in 2013 & 2014
- OMB has identified a number of areas of concern, for example:
  - Reductions in the number of FBI and Customs and Border Patrol agents, and federal prosecutors
  - Curtailment of the Department of Agriculture's efforts to inspect food processing plants and prevent foodborne illnesses
  - Massive cuts to the National Institutes of Health's budget (close to \$3 billion in 2013 alone)
- Major questions about how the various government agencies would implement the cuts – would they reduce equipment purchases? Implement hiring and contract delays? Have much flexibility in prioritizing policies and/or reducing programs? And will it impact the pace of regulation?
- If the sequester is not averted before the end of the year, some are speculating that the White House and Executive Branch agencies could mitigate/postpone its effects for a short period of time, perhaps allowing for a deal early next year...

# The Fiscal Cliff: The Options

- When Congress return for a Lame Duck session, it could address the expiring tax provisions in one of five ways, with combinations possible (*look for additional detail on the following slides*):
  - Extend. Extend all Bush tax cuts for a year or more and pass a one year patch for AMT to allow time to work on comprehensive tax reform. This “bridge” scenario is the scenario favored by many Republicans in Congress.
  - Go Over the Cliff. Deadlock on all tax issues and let all current tax provisions expire/taxes rise. Most supporters/accepters of this position foresee a major tax and spending compromise in 2013.
  - Extend All but the Top Rate. This is the scenario that seems to be favored by the Obama administration and many Democrats in Congress. There is some debate whether the top rate would begin at \$250,000; \$500,000; or \$1 million per year.
  - Extend All for a Short Period. Essentially, this “short punt” option would put off decisions on tax policy off until early next year. Could be the outcome under a number of scenarios if Congress and the President simply run out of time.
  - Grand Compromise. There are those in both parties that would like to see a major fiscal deal come together to lower spending and raise taxes. It is certainly a possibility under many election outcomes in 2013, but may be difficult to cobble together in 2012.
- The desire to delay the sequester and raise the debt ceiling will also factor into these negotiations...

# The Fiscal Cliff: *Extend*

- Description: Extend all Bush tax cuts for a year or more, pass a one year patch for AMT, and pass the current package of “tax extenders.” This scenario may or may not include extending the current payroll tax cut; until recently there seemed consensus on eliminating the payroll tax break, but that consensus may be weakening.
- Why it could happen
  - Simple and straight forward
  - Would give Congress time to look at additional tax and spending issues without riling taxpayers and the market
  - Strongly supported by House Republicans who have intimated that without this they would be difficult to work with in a second Obama term
- Why it might not happen
  - Budget Impact. Depending upon the baseline chosen and the length of the extension, this could expand the federal budget deficit by something into the trillions of dollars
  - Democratic Opposition. It is difficult to see a triumphant President Obama and Senate Democrats agreeing to this approach, particularly with their “base” organizing in strong support of increased taxes on the wealthy.

# The Fiscal Cliff: *Go Over*

- Description: Deadlock on all tax issues and let all current tax provisions expire/taxes rise.
- Why it could happen
  - Brinksmanship. After a bitter election, both Republicans and Democrats may find it easier to try to force the other side to blink than to compromise. Nobody blinks.
  - Tax Cuts Easier than Tax Increases. Some observers have suggested that it would be easier to put together a package that restores most of the Bush tax cuts and other provisions if Congress were voting on cuts rather than increases.
  - Given CBO's current position on baselines, this would not change the actual situation under the Budget Act unless there was some rethinking if rates actually went up. But advocates believe it would be a politically easier vote for Members of Congress. In other words, this is a political judgment more than a baseline issue.
  - The Cliff is Good. There are a few who advocate going over the Fiscal Cliff and keeping in place most of the tax increases and spending cuts from sequestration as a way of returning to fiscal discipline.



# The Fiscal Cliff: *Go Over, cont'd*

- Why it might not happen
  - Recession. There is strong evidence (CBO, Federal Reserve) that such a fiscal shock would send the economy back into a recession, resulting in as much as a 0.5 percent contraction. Few economists would argue for such strong fiscal medicine in the midst of a fragile recovery.
  - Business Planning and Markets. It is certainly possible to imagine that businesses would hold up on capital investment during the uncertainty worsening an economic contraction. Market reaction could be strong. Leading CEOs have already issued strong warnings on this issue.
  - Crisis Equals Compromise... Really? Many advocates of going over the cliff for a short time argue that the impending threat of a crisis would lead to a larger political solution – usually one more to their liking. It is certainly true that Congress often acts best facing a deadline, but it is also possible that the political bitterness from a hard-fought election could make compromise less likely.
  - Retroactive? Advocates of going over the cliff also tend to argue that most of the damage would be undone by passing tax changes retroactively. The IRS, however, has a duty to increase tax withholdings in line with federal tax rates. According to press reports, Secretary Geithner studied whether he might be able to suspend new IRS withholding requirements. The press reports indicates that he thought he probably could, but that it was a close legal issue. If the deadlock were to drag on until the April tax deadline, millions of taxpayers that are expecting a refund would actually have to pay a tax bill averaging over \$3000.

# The Fiscal Cliff: *Extend All but the Top*

- Raising the top individual rate has been a consistent message from President Obama and Congressional Democrats throughout the election. Congressional Republicans recently wrote that pressing such a move would poison the well for working with a Republican House in 2013 – the consistency and stridency of this theme might be difficult to ignore so soon after the election.
  - Specifically, this means allowing the Bush era tax rate to expire (thus increasing from 35 to 39.6 percent) for individual taxpayers making more than \$250,000 in taxable income. Senate Democrats have focused more on raising the top rate for taxpayers making over \$1 million per year and there have been some echoes of support from the Obama administration. Some Republicans indicated some receptivity to the \$1 million level and there was speculation of a compromise in early October.
  - Allowing the current rate for taxpayers making more than \$250,000 to expire would raise about \$1 trillion. According to Senate Democrats, the “millionaire tax” would raise close to \$450 billion over ten years.
- Why it could happen
  - The expiration of the Bush cuts provides President Obama and Senate with the leverage he needs to force concessions.
  - It is possible that this could be only the first step in tax reform/deficit control measures for 2013. Many ideas from lowering corporate tax rates in connection with eliminating credits and deductions to eliminating or paring back prized individual tax breaks like the home mortgage interest deduction have been discussed. It is likely the Republicans would want to make any increase in the top individual rate a part of a future budget reduction strategy.
- Why it might not happen
  - Republican hold the House and have consistently argued against raising taxes, particularly given the current economy.



# The Fiscal Cliff: *Short Punt*

- Why it could happen
  - There will be relatively little time to grapple with complex tax issues during the Lame Duck session. One obvious solution would be to extend all the Bush tax cuts and other tax provisions for a short time. This is in keeping with the approach Congress has taken with deadlines before in many cases.
- Why it might not happen
  - Practical Problems. The IRS has argued that it would be complex to change withholding tables in the middle of the tax year. Provisions such as the AMT are also difficult to extend for less than a tax year – particularly for those who file only at the end of the tax years – and could complicate tax planning. These planning problems would be greatly magnified if there was real uncertainty whether the policy would be continued, tax rates would change mid-year, etc..
  - Business Uncertainty. Uncertainty about future tax rates could complicate business planning which would slow recovery from recession.
  - Is it Really Easier? If there is a fundamental political loggerhead between the President and at least one Chamber of Congress, this might not be easier to resolve in February than it would be in the Lame Duck.

# The Fiscal Cliff: *Grand Bargain*

- Why it could happen
  - There are those that lay out the scenario that Congress and the President – temporarily relieved from political concerns during a Lame Duck session – could strike a major agreement on taxes and spending to reduce the budget deficit along the lines of the recommendations of the Simpson-Bowles Commission.
- Why it might not happen
  - Time. Perhaps the greatest weakness with this approach is that Congress would need to fashion this enormously complex package in the seven or eight weeks remaining in the year over the end-of the year holidays – with a Congress filled with many Members who will not return in 2013.
  - Bipartisanship? Will this immediate post-election environment be one of compromise and conciliation or continued stand off?
  - 2013. A major agreement might be more doable in 2013 with more time and cooler heads. There is no certainty that would be the case, but it is difficult to see Congress doing more than perhaps laying out the outlines of a compromise in 2012.

# International Trade

- While leaders atop the Senate Finance and House Ways and Means Committees won't change, we will see several new Members on each Committee – and we could see some changes on the Trade Subcommittees
- In August, Russia officially joined the World Trade Organization (WTO)
  - While Congressional leaders had hoped to extend permanent normal trading relations (PNTR) to Russia prior to its accession date, it has proven a difficult issue for both parties—due in large part to concerns regarding human rights and trade enforcement
  - The Senate Finance Committee and House Ways and Means Committee both passed slightly different versions of Russia PNTR legislation on a bipartisan this summer
    - The Senate bill also included provisions of the Magnitsky bill, which addresses human rights issues, to bolster support; House leaders plan to move the PNTR and Magnitsky bills on dual tracks, eventually coupling both before enactment
  - Congress is expected to take up the legislation during the Lame Duck – House Republicans have indicated they will schedule a vote during the first week Members are back from the election
- Miscellaneous Tariff Bill (MTB) provisions expire at the end of the year—the issue has traditionally been popular and bipartisan, and a legislative engine for enacting many trade provisions; that said, staff continue to work on the bill in an atmosphere of uncertainty due to Senate Republican's opposition to the process, likening it to earmarks
  - The ITC completed its bill reports and Administration feedback has begun to trickle in
    - Staff remains optimistic that it can complete the package in time for Lame Duck consideration; but given the number of bills to vet, that may be unrealistic

# International Trade, cont'd

- Both Chambers have been working on Customs Reauthorization legislation, but action is unlikely this year – at most, we may see bills introduced or moved through committee as placeholders looking ahead to next year
  - Legislation could include provisions of Rep. Boustany's (R-LA) PROTECT Act (trade enforcement) and also duty drawback provisions – Democrats will likely push for inclusion of portions of the ENFORCE Act
    - Of note, the Senate Finance Committee approved a modified version of the ENFORCE Act in July, but further action in that chamber is uncertain
- The Trans-Pacific Partnership's (TPP's) ongoing negotiations are also something Congress is following closely, given its market-opening potential
  - Concluding and passing TPP will likely be one of the most pressing trade issues in President Obama's second term
    - The intention is to finish the agreement by next year (in 2013) – it is unlikely that any big issues (e.g. labor, rules of origin, market access) will be resolved by this year's end.
    - 15th round of negotiations scheduled to take place in Auckland, New Zealand from December 3-12
      - New entrants Mexico and Canada will participate in this round for the first time

# International Trade, cont'd

- Trade Promotion Authority (TPA), also known as “Fast Track”, is an issue that is expected to receive increased attention in the coming year
  - Some type of TPA or fast track authority will be needed for Congressional consideration of TPP if, and when, it is concluded, and the Administration is expected to make a request at the “appropriate time”
  - Obtaining fast track will not be easy – extending this authority will require the establishment of Congressional priorities for negotiating guidelines for future trade pacts, and will likely include discussions on new issues like state-owned enterprises, and whether labor and environment issues beyond the scope the May 10th Agreement of 2007 should be added. The latter issue is likely to face strong Republican opposition.
- China was one of the few trade issues to receive any significant mention during the Presidential campaign, as such, it will likely remain a key issue in the second Obama Administration
  - Legislation to address China’s currency manipulation was passed by the Senate last year – despite 234 co-sponsors on a House bill, GOP leaders in that chamber have yet to allow it to come to a vote this year
  - The Administration, though cautious on currency issues, has been aggressive in challenging China trade disputes at the WTO
    - With increased retaliation from the Chinese in response to U.S. multilateral actions, however, the Administration may need to review and reconsider its strategy for engaging with China

# International Trade, cont'd

- Expect increased activities on two additional Obama Administration trade priorities:
  - Launching of a new trade initiative to deepen trade relations with the U.S. and EU
    - The Administration is very interested in identifying new opportunities for expanding trade with the EU; high-level talks have been ongoing for some time, but questions remain as to the timing and scope of any agreement
  - Pressing ahead with export control reform (both legislative and regulatory)
    - The President, as part of his National Export initiative, set the goal of doubling U.S. exports by the end of 2014 to support job creation
    - Business groups have identified stringent and outdated export control laws as an impediment to exporting certain U.S. products and technology that are not critical to U.S. military and intelligence capabilities
    - Legislative and regulatory efforts to address this issue stalled, in part due to House Republican opposition to the President's plan and in part to the Administration's attention shift toward the election; stakeholder business groups strongly support export control reform and are expected to press the Administration to refocus its efforts



# Environment

- With Sen. Vitter (R-LA) likely to take over the Ranking Member position on the Senate EPW Committee, expect a changed dynamic with Chairwoman Boxer (D-CA)
- Hydraulic fracturing continues to garner a good deal of attention given its ability to unleash the nation's massive natural gas reserves
  - President Obama has seized on the issue, calling for increased natural gas production, coupled with more disclosure
    - In August, EPA issued a final rule setting air pollution standards for natural gas fracking operations
    - The Department of the Interior has proposed draft regulations for fracking on public lands, focusing on: (1) public disclosure; (2) improving well-bore integrity; and (3) water-management plans
    - EPA is conducting a Congressionally-requested study on hydraulic fracturing—portions of the study could be released in the coming year
    - EPA has also released guidance for fracking activities using diesel fluids; the agency has also announced plans to regulate fracking wastewater as soon as 2014
    - The White House has also established an Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources
  - House Republicans are upping oversight efforts related to perceived regulatory overreach on the part of the administration
- The House Energy & Commerce Committee is holding a series of forums to examine the Clean Air Act, with an eye toward possible legislative activity in the next Congress
- Water quality remains a priority for the Obama EPA—including *Clean Water Act* enforcement and restoration/protection of key bodies of water—but funding is increasingly the stumbling block

# Environment, cont'd

- Several major pending rules are not expected until after the election
  - Ozone national ambient air quality standards (NAAQS)
    - EPA's plans to tighten the standards were delayed in 2011 – EPA is now planning to issue a proposed rule by December 2013
  - Particulate Matter (PM) NAAQS
    - EPA has signed a consent decree committing to issue a final decision by December 14
  - Boiler MACT
    - A revised rule is under review by OMB
  - Cross-State Air Pollution Rule
    - The Administration is appealing an August court decision which nullified the rule seeking to curb sulfur dioxide and nitrogen oxide emissions from power plants in the eastern half of the country – the rule was designed to replace the 2005 Clean Air Interstate Rule
  - Utility MACT
    - EPA is reconsidering the rule and plans to complete the rulemaking by March 2013
  - Tier 3 (low-sulfur) standards for gasoline
    - In January, EPA indicated it would issue the proposal by March – it has since stalled
  - Coal ash
    - EPA has proposed two options for regulating coal ash under RCRA, but has not set a date for a final rule



# Environment, cont'd

- Greenhouse gas regulations
  - In June, the U.S. Court of Appeals-D.C. Circuit upheld EPA's finding that carbon dioxide and other GHGs are a threat to public health and the environment (the "endangerment finding"); the Court also upheld EPA regulations issued under the Clean Air Act (CAA) for passenger vehicles and CAA permitting for stationary sources – the court also ruled that petitioners did not have standing to challenge EPA's "tailoring rule"
    - House Republicans may again try to amend the Clean Air Act to exclude GHGs from its purview – but that seems unlikely with President Obama's re-election and a Democratic Senate
  - Hurricane Sandy and other weather events may increase interest/pressure to continue regulatory efforts
  - In 2010 – as part of a settlement agreement – EPA pledged it would develop an NSPS rule for GHG emissions from refineries, to be finalized by November 2012
    - A rule has not yet been proposed
    - Earlier this year, EPA released its new source performance standards for power plants
- With the President's re-election, expect the pace of regulatory activity to pick up after the election
  - Likewise, expect Congressional Republicans to continue their efforts to block or slow-down what they view as burdensome regulations
- May also see increased enforcement in a second Obama term

# Energy

- The Senate Energy & Natural Resources Committee has traditionally been a place for compromise – expect that to continue under incoming Chairman Wyden (D-OR) and Ranking Member Murkowski (R-AK), who spent time in August touring each other's states
- Expect the Republican-controlled House to continue its focus on oversight and messaging
  - Likely to see continued efforts to increase domestic production of traditional energy sources (i.e., oil and natural gas)
    - They have also stressed a market-based approach to energy production, criticizing incentives they say create “winners and losers”
  - House Republicans have also pledged to streamline regulation and increase production of domestic energy – with a focus on oil and gas, as well as new nuclear generating plants
    - Will push to turn permitting on public lands over to the states
    - On the Senate side, Sens. Wyden and Murkowski have signaled room for agreement on a revenue-sharing plan to incentivize states to produce energy (fossil fuels and renewable) on federal lands/waters
  - Linking the energy issue to jobs — with the Keystone pipeline a prime example
    - Some speculation that President Obama will approve the pipeline in the coming months
- President Obama, too, called for an “all-of-the-above” approach to energy, with an increasing focus on natural gas
  - Unlike Congressional Republicans, however, the President is also advocating more tax incentives for alternative energy, as well as a Clean Energy Standard

# Energy, cont'd

- We are seeing increasing scrutiny of the Renewable Fuels Standard (RFS), particularly in light of missed production targets and the continued food vs. fuel debates – the issue took on more prominence with this year's drought
- Under increasing scrutiny from Congressional Republicans, many of the Administration's clean energy technology funding initiatives have stalled
  - The 1705 program – which authorized loan guarantees for U.S.-based projects involving certain renewable energy systems (most notably, Solyndra), electric power transmission systems, and biofuels – expired last year
  - DOE's 1703 loan guarantee program and its Advanced Technology Vehicles Manufacturing (ATVM) loan program have been relatively inactive over the past year or so
  - Expect continued opposition from Congress (particularly given deficit-related concerns) and the curtailment of many clean energy subsidies – even if President Obama and Senate Republicans manage to preserve some of the programs, expect reform
- Legislative progress on energy efficiency – usually an area ripe for bipartisan cooperation – has been lackluster
  - Bipartisan legislation authored by Sens. Shaheen (D-NH) and Portman (R-OH) has stalled in the Senate and despite several proposals on the House side, we've seen little action
    - In part due to the fact that many efficiency initiatives are funded through the tax code and leaders are in the process of charting their path forward on broader tax reform
  - President Obama continues to champion energy efficiency and recently issued an Executive Order to accelerate investments in industrial energy efficiency
  - Also, this fall, the Administration (NHTSA and EPA) finalized its CAFE standards for cars and light trucks – aimed at nearly doubling fuel economy by 2025 (to 54.5 mpg)

# Healthcare

- Some changes atop key Committees of jurisdiction
  - On the House Ways & Means Committee, we will see a new Health Subcommittee Chair and Ranking Member – along with some new rank and file Members
  - While Senator Harkin (D-IA) will remain Chair of the Senate HELP Committee, Ranking Member Enzi (R-WY) is term-limited and likely to be replaced by Sen. Alexander (R-TN)
  - Expect new faces on the Energy & Commerce and Senate Finance Committees, as well
- Look for continued focus on the Affordable Care Act and its implementation
  - In June, the Supreme Court held that the Affordable Care Act's "individual mandate" is a permissible exercise of Congress's power to tax
    - With the President's re-election, expect the pace of regulation to increase at both HHS and Treasury – major provisions yet to be implemented include the individual mandate, the state exchanges (and the subsidies to help people pay for coverage), "essential benefits," and coverage of pre-existing conditions
  - While Republicans remain committed to repealing the law, it is not realistic given President Obama's re-election and the Democratic Senate
    - Look for continued piecemeal efforts from Republicans in the House — repeal and/or defunding of major provisions — though such efforts appear highly unlikely in a more Democratic Senate
      - Major targets include the Independent Payment Advisory Board and the medical device tax, both of which have previously attracted bipartisan opposition
    - Oversight efforts and investigations will likely ramp up in the Republican-controlled House
  - With full-scale repeal off the table, we may also start to see bipartisan support for some improvements or "tweaks" to the law
- The real battles may be at the state level – many states had put off implementation decisions (e.g., the health insurance exchanges and Medicaid expansion) until after the election
  - The Supreme Court's ruling on Medicaid expansion leaves that component of the law in question
- How will employers' coverage decisions and predicted premium increases affect policy decisions going forward? Will we see a renewed focus on cost-containment?



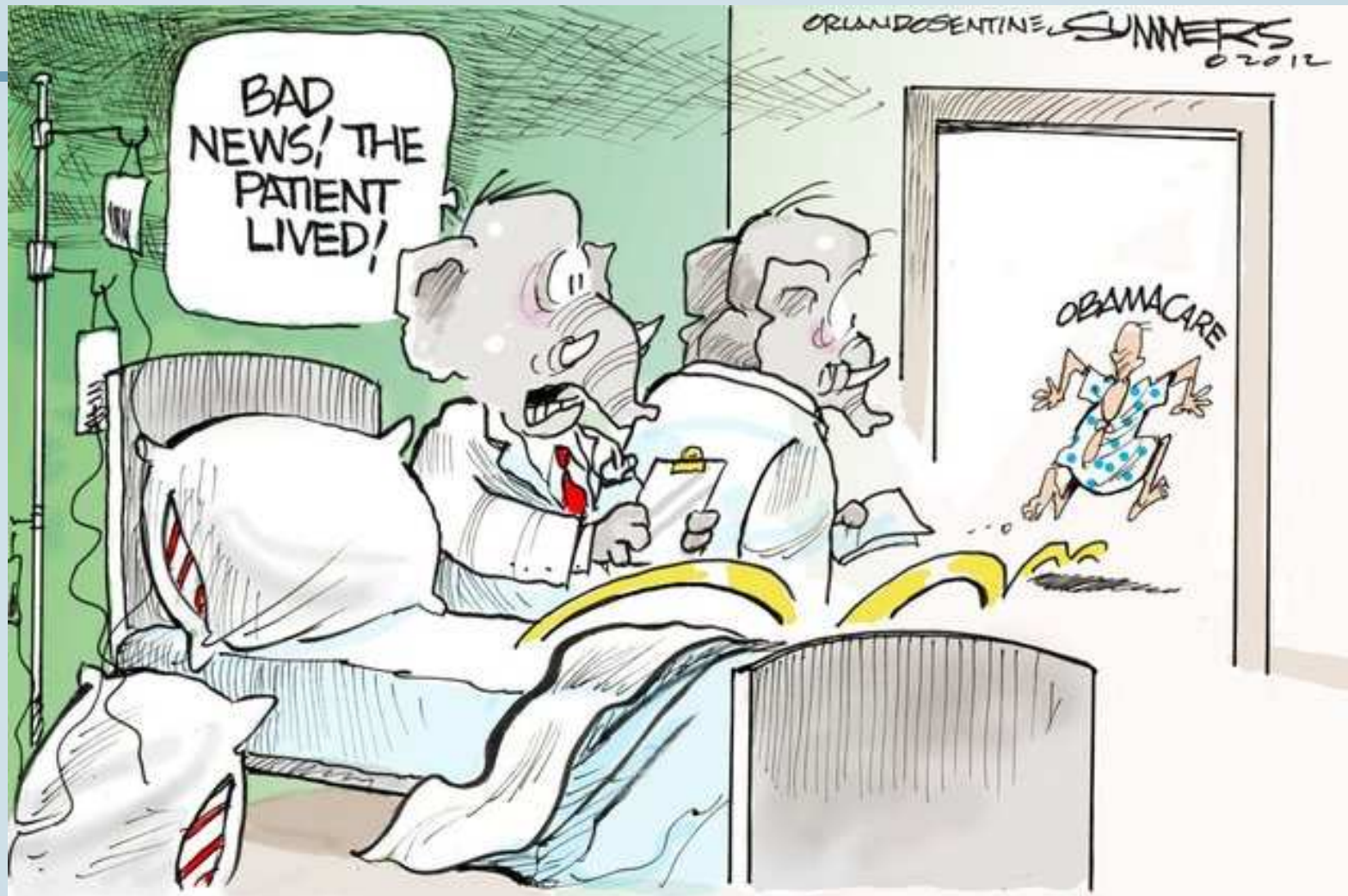


Illustration by Dana Summers, Orlando Sentinel

# Healthcare, cont'd

- While a “track and trace” provision was not included in this year’s FDA user fee reauthorization, bipartisan, bicameral negotiations continue and we could see action in the lame duck
- Also in the coming weeks, key committees plan to examine the meningitis outbreak connected to contaminated steroid injections from the New England Compounding Center
- The current Medicare Sustainable Growth Rate (SGR) patch was enacted at the end of February—the 10-month “doc fix” (which runs through the end of 2012) staved off a 27% cut in physician reimbursements, at a cost of \$18 billion
  - Upon expiration of the current patch, physicians will face another 27% cut—a new year-long patch would cost approximately \$18 billion
  - There is widespread agreement that the SGR is flawed, but less agreement on how to fix it, particularly given the \$300B-plus price tag for a total repeal
    - Several Congressional committees of jurisdiction, as well as individual Members of Congress, have begun efforts to identify solutions
  - Enactment of any meaningful SGR reform in 2012 seems remote, particularly in light of election year politics and larger battles over the debt and deficit – most are expecting enactment of a short-term patch during the lame duck
    - Finding offsets, even for a short-term patch, will remain a challenge
    - Many Medicare providers are concerned they may once again end up on the chopping block – a prospect of greater concern given the potential 2% cut they are facing under sequestration
- Should a grand bargain on deficit reduction start to come together in 2013, look for entitlements – primarily Medicare and Medicaid – to be a major part of the discussion

# Transportation & Infrastructure

- Overarching campaign themes cast long shadow over Congressional transportation and infrastructure agenda
  - President Obama hinted at potential additional round of spending on infrastructure
  - Previous House Budget proposal called for one-third cut to transportation spending
- Congressional achievements on Transportation policy in 112<sup>th</sup> Congress laid the foundation for additional efforts
  - Congress approved a 27-month reauthorization of federal surface transportation programs, in the much-debated “Moving Ahead for Progress in the 21st Century Act” (MAP-21)
  - February 2012 approval of \$15.9 billion reauthorization of Federal Aviation programs runs through fiscal year 2015
  - Despite diminishing returns and significant decline in monies available through Highway Trust Fund, Congress has not been willing to increase the gas tax – at some point, Congress will need to consider additional revenue mechanisms
    - Innovative financing proposals continue to be debated
    - Infrastructure Bank start-up costs proved too costly in 112<sup>th</sup> Congress for it to garner sufficient support among members; others advocating expanded use of Public Private Partnerships / Private Activity Bonds
- Hangover from Hurricane Sandy: 40 NY, NJ and CT Members of Congress calling for \$29 million in emergency supplemental appropriations in wake of disaster

# Transportation & Infrastructure

- Changes to leadership of House Transportation and Infrastructure, Senate Environment and Public Works Committees, and Senate Commerce Committee likely
  - Democratic retention of majority in U.S. Senate ensures Sen. Boxer (D-CA) will retain chairmanship of EPW Committee – current Ranking Member Jim Inhofe (R-OK) is term limited out and likely to be replaced by Sen. David Vitter (R-LA)
  - Sen. Jay Rockefeller (D-WV) likely keeps chair of Commerce panel that oversees rail and ports, retiring current Ranking Member Kay Bailey Hutchinson (R-TX) is likely to be replaced by Senator Jim DeMint
  - Unless he seeks and is granted a waiver, T&I Chairman Jon Mica (R-FL) likely to be replaced by Rep. Bill Shuster (R-PA), joining current Ranking Member Nick Rahall (D-WV) at helm of dais – Shuster's elevation to the Chairmanship would likely open up his Rail Subcommittee
- With surface transportation programs reauthorized for the time being, will Congress turn to water infrastructure funding needs?
  - T&I Water Subcommittee Chairman Bob Gibbs (R-OH) floated new integrated financing measure in 112<sup>th</sup> Congress the Water Infrastructure Finance and Innovation Act (WIFIA)
  - Democratic Members have advocated reauthorization and additional funding for Clean Water and Drinking Water State Revolving Funds such as Rep. Rahall and Bishop (NY) Water Quality Protection and Job Creation Act of 2011 (H.R. 3145)
  - Reauthorization of the Water Resources Development Act (WRDA) is also a priority



# Privacy and Data Security

- During the 112<sup>th</sup> Congress at least 18 bills were introduced that focused on privacy or data security
  - The scope of such bills shifted over time, but key topics included online privacy and behavioral advertising, geolocational information, data security and breach notification, and mobile devices
  - Privacy and data security legislation was initially thought to be an issue that could obtain bipartisan support
    - Many bills created compliance frameworks and consumer protection structures to be overseen by existing regulatory agencies
    - Many regulators were already operating in this space; however, their regulatory efforts were limited to general oversight based on current statutes
    - Direct costs associated with implementing these frameworks and structures were anticipated to be low, due to the existing regulatory structure
  - Ultimately, none of the bills were enacted in the 112<sup>th</sup> Congress
- Executive Branch and Regulatory Agency Initiatives
  - Privacy and data security was also a key area of emphasis for the Executive Branch and regulatory agencies, and we expect these participants to build off of recent policy efforts including:
    - Federal Trade Commission Privacy Report, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (March 2012)
    - White House Privacy Report, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (February 2012)
    - Department of Commerce Green Paper, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework* (December 2010)

# Privacy and Data Security, cont'd

- Privacy and security legislation expected to remain a key issue
  - Regulatory agencies such as the Federal Trade Commission (FTC) are expected to continue requesting additional enforcement authority including specific legal frameworks
    - Likely to include requests for remedies to include civil penalties for violations
  - Potential legislation involving:
    - Comprehensive privacy and data security law
    - Federal data breach notification (46 states and DC have laws that impose varying requirements)
    - Mobile privacy
  - Continued enforcement from the FTC and Federal Communications Commission (FCC)
    - Children's privacy
    - Consumer privacy and data security based on promises made in online privacy policy
    - Creation and use of credit reports
    - Telemarketing
    - Third party liability for businesses/brands based on actions by affiliates/independent contractors/franchisees

# Cybersecurity

- Earlier this year – and again early in the Lame Duck – cybersecurity legislation was unable to garner the 60 votes necessary to pass the Senate
  - Those opposed to the bill were concerned about the sharing of sensitive security information with the government and the imposition of statutory requirements that do not remain current with day-to-day applications and cybersecurity threats
  - Supporters were focused on the need for a consistent cybersecurity approach rather than ad-hoc measures taken by specific industries and participants
- Congressional response post-filibuster has been varied
  - Following the failed Lame Duck cloture vote, Majority Leader Reid (D-NV) indicated the legislation was likely dead until 2013
  - Sen. Lieberman (I-CT) has indicated a willingness to return to negotiation – with his pending retirement, however, the task may be handed to incoming Homeland Security Committee Chairman Carper (D-DE)
  - After a Senate staff meeting with representatives from the Obama Administration, Sen. Grassley (R-IA) released a public statement stating that “cybersecurity is a complex topic that should be addressed by the legislative process, rather than by administrative fiat via an Executive Order. The executive branch does not have the legal authority to implement a comprehensive cybersecurity policy. Consequently, an Executive Order could potentially result in intrusive regulation, confusion, gaps in coverage, and uneven application of policy, thus causing more harm than good.”
  - In response to the failure to pass legislation over the summer, Senate Commerce Committee Chairman Rockefeller (D-WV) sent letters to CEOs at every Fortune 500 company asking them to identify their cybersecurity practices and efforts to protect critical information
- A draft Executive Order on cybersecurity has been circulated and a top aide to Sen. Lieberman has indicated that the Obama Administration will move forward with the Executive Order
- Previously, cybersecurity was viewed as an agnostic issue, focused more on national security than partisan policy – the issue is not likely to go away, particularly given the growing threat
  - If there are not actionable efforts to revive the cybersecurity legislation during the Lame Duck session, the Obama Administration is likely to issue the Executive Order; the E.O. could work hand-in-hand with legislation, offering both a carrot and stick approach, as many of the incentives for participation that could be included in legislation are not obtainable under E.O.

# Telecommunications

- Senate Commerce Committee Chairman Rockefeller (D-WV) will remain at the helm, but Sen. DeMint (R-SC) will takeover the Ranking Member slot – meaning his Communications Subcommittee slot will open up
- No changes expected atop the House Energy & Commerce Committee's Communications & Technology Subcommittee – though we will see new rank and file Members
- Likely to see exercise of new authority by FCC to hold "Incentive Auctions"
  - In February 2012, Congress authorized the FCC to conduct incentive auctions and directed the agency to use this innovative tool for an incentive auction of broadcast television spectrum
    - Incentive auctions are a voluntary, market-based means of repurposing spectrum by encouraging licensees to voluntarily relinquish spectrum usage rights in exchange for a share of the proceeds from an auction of new licenses to use the repurposed spectrum
  - Based on these new auctions, potential spectrum for wireless broadband is anticipated if broadcasters cede their current allocations
- Likely to see FCC follow-on (i.e., regulatory) actions in a number of areas:
  - Intercarrier Compensation Reform
  - Broadband Universal Service (Connect America Fund) Funding
  - Lifeline Funding
  - Universal Service Contributions
- Implementation of NTIA "First Net" (Public Safety Broadband Network)
- Likely to see FCC action on PSTN Sunset and IP Interconnection
- Congress likely to review video programming issues – could also address the 1992 Cable Act
- Expect court appeals of FCC Net Neutrality Order (may need a legislative response) and Connect America Fund Order

# Looking Ahead: Senate Races in 2014

- Once again, Democrats will be defending more seats than Republicans – but will go into the elections with a 5 seat cushion

## Democrats (20 seats)

Max Baucus, Montana  
Mark Begich, Alaska  
Chris Coons, Delaware  
Richard Durbin, Illinois  
Al Franken, Minnesota  
Kay Hagan, North Carolina  
Tom Harkin, Iowa  
Tim Johnson, South Dakota  
John Kerry, Massachusetts  
Mary Landrieu, Louisiana  
Frank Lautenberg, New Jersey  
Carl Levin, Michigan  
Jeff Merkley, Oregon

Mark Pryor, Arkansas  
Jack Reed, Rhode Island  
Jay Rockefeller, West Virginia  
Jeanne Shaheen, New Hampshire  
Mark Udall, Colorado  
Tom Udall, New Mexico  
Mark Warner, Virginia

## Republicans (13 seats)

Lamar Alexander, Tennessee  
Saxby Chambliss, Georgia  
Thad Cochran, Mississippi  
Susan Collins, Maine  
John Cornyn, Texas  
Michael Enzi, Wyoming  
Lindsey Graham, South Carolina  
Jim Inhofe, Oklahoma  
Mike Johanns, Nebraska  
Mitch McConnell, Kentucky  
Jim Risch, Idaho  
Pat Roberts, Kansas  
Jeff Sessions, Alabama

- How will the current political climate affect policy stances over the next two years? Will we see Republicans challenged from the right... or Democrats challenged from the left? What retirements can we expect?
- Dare we say... when will talk of 2016 enter the policy debate? What contenders will emerge?

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