

2008 Election Overview

Results and Policy Implications

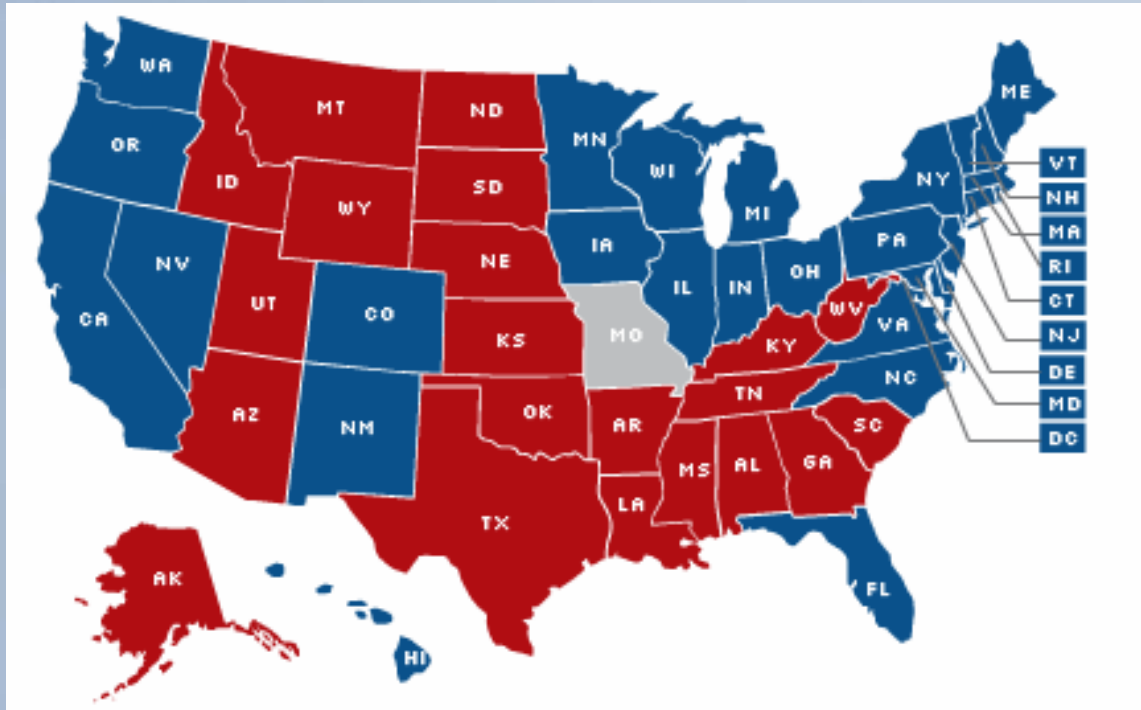
**Prepared by Kelley Drye's Government Relations &
Public Policy Practice Group**

<http://www.kelleydrye.com>

2008 Election Results

- **Barack Obama is the 44th President of the United States**
 - He is the first African-American President
 - He is the first sitting Member of Congress elected president since Sen. John F. Kennedy of Massachusetts won in 1960
 - He won 364 electoral college votes (with 11 still undeclared)
 - He won 53% of the popular vote
 - Highest for a Democrat since Lyndon Johnson in 1964
- **United States Senate**
 - 55 Democrats (a pick-up of at least 6 seats)
 - An additional 2 Independents who currently caucus with the Democrats
 - 40 Republicans
 - 3 races still too close to call
- **U.S. House of Representatives**
 - 254 Democrats (a pick-up of at least 19 House seats)
 - 174 Republicans
 - 7 races still undecided
- First time since the 103rd Congress (1992-1993) that Democrats will control the Presidency and both Chambers of Congress

2008 Electoral Map



364 Obama

162 McCain

11 Undeclared

- Obama's presidential campaign expanded the Democratic electoral map
 - Indiana and Virginia voted for the Democratic presidential candidate for the first time since 1964 and North Carolina has not supported a Democratic nominee since 1976
 - Ohioans selected the winner in their 12th straight presidential election

Battleground States: Changing the Electoral Map

Total Electoral Votes: Obama 364; McCain 162; Undeclared 11

- Obama won every state carried by Senator Kerry, the Democratic nominee in 2004. Outcome in battleground states that were carried by Kerry (with number of Electoral Votes):

MN (10): Obama by 10 points <i>Obama led by 11.3 points one-week out</i>	NH (4): Obama by 10 points <i>Obama led by 7.7 points one-week out</i>
PA (21): Obama by 11 points <i>Obama led by 10.8 points one-week out</i>	WI (10): Obama by 13 points <i>Obama led by 10.6 points one-week out</i>

- Obama won 9 states carried by President Bush in 2004 (1 awaiting final results):

CO (9): Obama by 7 points <i>Obama led by 6.2 points one-week out</i>	VA (13): Obama by 5 points <i>Obama led by 7.3 points one-week out</i>
IA (7): Obama by 9 points <i>Obama led by 11.4 points one-week out</i>	FL (27): Obama by 2 points <i>Obama led by 2.7 points one-week out</i>
IN (11): Obama by 1 point <i>Obama led by 0.3 points one-week out</i>	MO (11): Too close to call <i>Obama led by 0.6 points one-week out</i>
NM (5): Obama by 15 points <i>Obama led by 8.4 points one-week out</i>	NV (5): Obama by 12 points <i>Obama led by 3.5 points one-week out</i>
NC (15): Obama by less than 1 point <i>Obama led by 1.6 points one-week out</i>	OH (20): Obama by 4 points <i>Obama led by 6.0 points one-week out</i>

Exit Polling: Demographics

- Age
 - 2 million more voters aged 18-29 voted in the 2008 election than in the 2004 election
 - Voters aged 18-29 supported Obama by a 2 to 1 margin
 - 53% of voters over the age of 65 voted for McCain while 45% voted for Obama
 - While McCain had an early and significant advantage in this key demographic, the closing weeks of the election saw movement toward Obama, mainly based upon economic issues
- Race
 - African Americans represented about 13% of all voters and overwhelmingly supported Senator Obama with 95% voting for the Democrat
 - Likely played a key role in traditionally Republican states such as Indiana and North Carolina
 - Similarly, Hispanic Americans supported Senator Obama by a 2 to 1 margin
 - In 2004, President Bush was supported by 44% of Hispanics
- Gender
 - Male voters were almost evenly split between Senators McCain and Obama with some exit polls suggesting support for each candidate to be around 49%
 - 56% of female voters, however, supported Senator Obama
- Independents
 - A majority of the ever coveted block of voters known as Independents supported Senator Obama
 - 51% of exit poll respondents said they supported Senator Obama at the polls

Exit Polling: Key Issues

- The Economy: THE single most important issue
 - 62% of voters rated the economy as the number one issue
 - Those voters went for Senator Obama 54% to 44%
 - Not since 1980 has the economy dominated the mindset of the electorate to that extent
 - Senator Obama began to pull ahead in the polls in mid-September, mainly due to his handling of the economic crisis
 - September 7: Government seized control of GSEs Fannie Mac and Freddie Mae
 - September 8: McCain 48.3%, Obama 45.4% (*Real Clear Politics* average)
 - September 15: Senator McCain declared “the fundamentals of our economy are strong”
 - September 16: McCain 46.3%, Obama 45.0%
 - September 24: Senator McCain suspended his campaign to return to Washington to help negotiate a financial rescue package
 - September 25: Obama 47.8%, McCain 44.5%
 - September 29: the House failed in its first attempt to pass an economic rescue package and the stock market lost 7% of its value
 - September 30: Obama 48.8%, McCain 44.0%
 - October 3: Rescue packaged signed into law
 - October 4: Obama 49.3%, McCain 43.3%

Exit Polling: Key Issues, cont'd

- Economy, cont'd
 - 85% of voters said they are worried about economic conditions
 - 81% were either very worried (48%) or somewhat worried (33%) that the economic crisis would hurt their family
- National security
 - Whereas terrorism was tied with the economy as the top issue in 2004, only 9% cited terrorism this year
 - Those voters went for McCain by a 6-1 margin
 - 10% cited the war in Iraq
- Health care
 - Identified as the top issue by 9% of voters, but also linked to economic concerns
 - Two thirds of voters indicated they were worried about not being able to afford healthcare
- Social “values” issues such as gay rights, gun rights, and abortion barely a factor
 - 22% of voters cited moral values as their top issue in 2004
- Experience
 - 1 in 5 voters voted with experience in mind

Key Factors that Influenced the Election

- Unparalleled voter interest
 - Turnout
 - Currently estimated to be about 64%
 - Highest since 1964
 - Early voting
 - Roughly 30% of voters cast their ballots through absentee or early voting prior to election day
 - Registration
 - An estimated 153.1 million Americans registered to vote by Tuesday, representing almost 74% of the eligible population (WSJ, 11/3)
 - The previous high, set in 1964, was 72.1%
 - Since 2004, the number of registered Democrats has increased by 2.9 million (an estimated 1.4 percentage points); Republican registration has declined by almost 1.5 million
 - Primaries
 - Democratic primary records were set in 23 states and Republican records were set in 10 states
 - Overall turnout (30.2% of the electorate) fell just short of the all-time high set in 1972 (30.9%)

Key Factors that Influenced the Election, cont'd

- Dissatisfaction with President Bush
 - President Bush's approval rating stood at 28% on November 3rd
 - Close to 9 in 10 Americans think the country is on the “wrong track”
 - Since WWII, only once has one party maintained control of the presidency for three consecutive terms
 - George H.W. Bush's election in 1988 following President Reagan's two terms
- The Enthusiasm Factor
 - In the last WSJ/NBC poll before the election, almost twice as many respondents (44%) rated their opinion of Obama as “very positive” than they did McCain (24%)
 - Nearly 60% of Obama voters said they were excited about what Senator Obama would do as president
 - Less than 30% of McCain voters expressed similar enthusiasm

Key Factors that Influenced the Election, cont'd

- Resources: Obama's overall money advantage
 - Estimated that Obama raised nearly \$750 million (with the average donation under \$100)
 - McCain opting for public financing, limiting him to \$84 million in the general election
 - The RNC raised \$240 million
 - Obama's fundraising advantage allowed him to make inroads in long-held Republican states, including Florida, Georgia, Indiana, Montana, North Carolina, North Dakota and Virginia
 - Obama spent nearly \$21.5 million on TV ads from October 21-28, while the McCain campaign spent just \$7.5 million in the same period (University of Wisconsin Advertising Project)
 - That figure does not include the \$3-5 million spent on the 30 minute infomercial Obama aired on 7 television networks October 29
 - More than 70% of Obama's advertising spending went to states that voted for President Bush in 2004 (University of Wisconsin)
 - The majority of McCain's funds were spent playing defense, airing advertisements in traditionally Republican states
- The cash advantage also allowed him to capitalize on the ground
 - Democrats opened 770 offices nationwide, again many in traditionally Republican territory, compared to 370 national offices opened by McCain
 - As of mid-October, the Obama campaign employed an estimated 4,500 workers, compared to McCain's 1,100

Key Factors that Influenced the Election, cont'd

- Technology: A Net-Roots Campaign
 - The Obama campaign's grasp of technology allowed it to achieve record levels of interest and support (financial and otherwise)
 - Elevated the interest and participation of younger voters, the anchor of Obama's support in both the primary and general election campaigns
 - Pervasive reach allowed him to be competitive in traditionally Republican markets
 - While this was not the first Presidential campaign to utilize the Internet, Senator Obama revolutionized the interactive use of the Internet in campaigns
 - Recruiting and maintaining unprecedented network of over 3 million contributors
 - Recruiting and organizing volunteers
 - Online phonebanking
 - Interactive sites like Facebook and Twitter facilitated social networking
 - Senator Obama also utilized text messaging to remind supporters to vote in their primary and general elections, to tune into the convention and the debates, and to volunteer their time
 - Senator Obama gave supporters a text message "head's up" when he selected Joe Biden as his running mate
 - The 24-hour news cycle
 - Cable news
 - YouTube, Internet news sites (Drudge, The Politico) and blogs (The Huffington Post, The Atlantic's Marc Ambinder)

The People Behind Obama

- Representative Rahm Emanuel (D-IL) will serve as President Obama's Chief of Staff
- Robert Gibbs will serve as the White House Press Secretary
- President-Elect Obama's Transition Team
 - John Podesta, former White House Chief of Staff to Bill Clinton
 - Will oversee the agency-review process
 - Pete Rouse, Obama's Senate Office Chief of Staff
 - Will help incoming Chief of Staff organize the White House
 - Valerie Jarrett
 - Will act as a conduit to President-Elect Obama
 - Cassandra Q. Butts
 - Will serve as General Counsel
- Other Key Advisors
 - The Two D's
 - Former Senate Majority Leader Tom Daschle (D-SD)
 - Illinois' Senior Senator and Majority Whip Richard Durbin (D-IL)
 - The Power of Illinois
 - Sen. Durbin
 - Rep. Emanuel
 - Senator Obama's Chief Strategist David Axelrod
 - Chicagoans Penny Pritzker and Valerie Jarrett
 - Former Clinton advisors prevalent across policy areas

The People Behind Obama, cont'd

- Governors of Interest

- Gov. Janet Napolitano (D-AZ)
- Gov. Kathleen Sebelius (D-KS)
- Gov. Ed Rendell (D-PA)
- Gov. Bill Richardson (D-NM), former presidential candidate and Clinton's Secretary of Energy and Ambassador to United Nations

- Economic Advisors

- Campaign Advisors Austan Goolsbee and Jason Furman
- Former Clinton Treasury Secretaries Larry Summers and Robert Rubin
- Michael Froman, former Treasury Chief of Staff
- Former Federal Reserve Chairman Paul Volcker
- New York City Fed President Timothy Geithner
- Daniel Tarullo, former Assistant to President Clinton for International Economic Policy
- Lael Brainard, former Clinton White House Deputy National Economic Adviser
- Investor Warren Buffett

The People Behind Obama, cont'd

■ Advisors on Energy and Environment

- Jason Grumet of the Bipartisan Policy Center and the National Commission on Energy Policy
- Julie Anderson, formerly with Clinton administration
- Daniel Kammen, Professor of Energy, Public Policy, and Nuclear Engineering at the University of California (Berkeley)
- Howard Learner, executive director of the Environmental Law and Policy Center (Chicago)
- Frank Loy, environmental consultant
- Heather Zichal, formerly with Sen. Kerry (D-MA)
- Elgie Holstein, who served in Clinton's Commerce and Energy Departments
- Carol Browner, former U.S. EPA Administrator
- Robert Sussman, former U.S. EPA Deputy Administrator
- Mary Nichols, head of the California Air Resources Board
- Bradley Campbell, former Commissioner of the NJ Department of Environmental Protection
- Katie McGinty, Secretary of the Pennsylvania Department of Environmental Protection
- Robert F. Kennedy Jr., Environmental lawyer and son of the late Attorney General

The People Behind Obama, cont'd

■ Advisors on Health Care

- David Cutler, served on Clinton's Council of Economic Advisers and the National Economic Council
- David Blumenthal, Director of the Institute for Health Policy at Massachusetts General Hospital and Harvard professor
- Stuart Altman, Dean of Brandeis University's Heller School for Social Policy and Management

■ Advisors on Technology/Telecommunications

- Former FCC Chairmen Reed Hundt and William Kennard
- Larry Strickling, former FCC Bureau Chief
- Julius Genachowski, co-founder of LaunchBox Digital[®] and former Chief Counsel to FCC Chairman Hundt
- Vint Cerf, Google[®] Vice President

The People Behind Obama, cont'd

- National Security Advisors

- Tony Lake, former Clinton National Security Advisor
- Jim Steinberg, former Clinton Deputy National Security Advisor
- Susan Rice, former Clinton Assistant Secretary of State for African Affairs
- Gregory Craig, former Clinton Special Counsel
- Richard Danzig, Secretary of the Navy under Clinton
- General Anthony Zinni
- Former Senators Sam Nunn and David Boren and Former Rep. Lee Hamilton
- Former Clinton Secretaries of State Madeleine Albright and Warren Christopher

2008 Election Analysis: U.S. Senate

- Increased Democratic Majority
 - 55 Democrats, a pick-up of at least 6 seats
 - Includes 2 Independents who currently caucus with the Democrats
 - 40 Republicans
 - 2 races still too close to call (Alaska and Minnesota) and 1 awaiting a December runoff (Georgia)
- Unclear whether Democrats will reach the 60 seats needed for “filibuster-proof” majority
 - Something no President has enjoyed since Jimmy Carter
 - Democrats held 61 seats in the 95th Congress (1977-1979)

Results of Key Senate Races

* Change in Party Control

STATE	WINNER	PERCENTAGE
Virginia*	Mark Warner (D) <i>OPEN (Warner, R)</i>	Warner 64%; Jim Gilmore (R) 34%
New Mexico*	Tom Udall (D) <i>OPEN (Domenici, R)</i>	Udall 58%; Steve Pearce (R) 41%
Colorado*	Mark Udall (D) <i>OPEN (Allard, R)</i>	Udall 53%; Bob Schaffer (R) 41%
New Hampshire*	Challenger Jeanne Shaheen (D)	Shaheen 52%; John Sununu (R) 44%
North Carolina*	Challenger Kay Hagan (D)	Hagan 52%; Elizabeth Dole (R) 44%
Oregon*	Challenger Jeff Merkley (D)	Merkley 48%; Gordon Smith (R) 46%
Louisiana	Incumbent Mary Landrieu (D)	Landrieu 50%; John Kennedy (R) 46%
Mississippi	Incumbent Roger Wicker (R)	Wicker 55%; Ronnie Musgrove (D) 45%
Kentucky	Incumbent Mitch McConnell (R)	McConnell 52%; Bruce Lunsford (D) 47%

Three races remain too close to call

- Alaska: Incumbent Senator Ted Stevens (R) vs. Anchorage Mayor Mark Begich (D)
- Minnesota: Incumbent Senator Norm Coleman (R) and Al Franken (DFL); automatic recount
- Georgia: Incumbent Senator Saxby Chambliss (R) and Jim Martin (D); December runoff

Incoming Senators

CO	Mark Udall (D) replaces retiring Senator Allard. Udall was first elected in 1998 to represent CO's 2nd district in the U.S. House of Representatives. In the 110 th Congress, Udall served on the House Committees on Armed Services; Natural Resources; and Science & Technology.
ID	Jim Risch (R) replaces retiring Senator Larry Craig. Risch is the current Lieutenant Governor and former Governor of Idaho (finishing Dirk Kempthorne's term after he resigned to become U.S. Secretary of the Interior).
NE	Mike Johanns (R) replaces retiring Senator Chuck Hagel. Johanns is a former Governor of Nebraska and was the 38th U.S. Secretary of Agriculture (appointed in 2005).
NH	Jeanne Shaheen (D) defeated Senator John Sununu. She was the first woman elected Governor of New Hampshire in 1996. In 2005, she was named Director of Harvard University's Institute of Politics at the Kennedy School of Government, leaving the Institute in 2007 to campaign for Senate.
NM	Tom Udall (D) replaces retiring Senator Pete Domenici. Udall is a fifth-term Member of the U.S. House of representatives where he served on the House Appropriations Committee's Subcommittees on the Interior & Environment; Labor, Health & Human Service; and Education.
NC	Kay Hagan (D) defeated Senator Elizabeth Dole. She is a fifth-term member of the NC State Senate (27th District). Formerly, she was a vice president of North Carolina Bank (now Bank of America).
OR	Jeff Merkley (D) defeated Senator Gordon Smith. Merkley is the Speaker of the Oregon House of Representatives (47th district). He was first elected as a state Representative in 1999.
VA	Mark Warner (D) replaces retiring Senator John Warner. Mark Warner is the immediate former Virginia Governor. After a few years on the Hill (former staffer for Sen. Chris Dodd (D-CT)), Warner was involved in telecommunications venture capital.

- Note that the Democratic Governors of Illinois and Delaware will appoint Senators to replace President-Elect Obama and Vice President-Elect Biden

2008 Election Analysis: U.S. House

- Increased Democratic Majority
 - 254 Democrats (a pick-up of at least 19 House seats)
 - Democrats have not held a majority this large since the 103rd Congress (1993-1994), which had 258 Democrats and 176 Republicans
 - Republican losses did not meet prognostications, falling well below estimates of a 30-40 seat Democratic pick-up
 - 174 Republicans
 - 7 races still undecided (including 2 upcoming Louisiana elections)
- Key Races
 - Open seat elections
 - Democrats won at least 10 out of 29 seats held by retiring Republicans
 - Democratic Class of 2006
 - Out of the class of 31 Freshmen Democrats elected in 2006, many of whom won in traditionally Republican districts, only 4 were not re-elected

House Seat Changes

INCUMBENT LOSSES (Republicans)

SEAT	INCUMBENT	NEW MEMBER
CO-04	Marilyn Musgrave	Betsy Markey
CT-04	Chris Shays	Jim Himes
FL-08	Ric Keller	Alan Grayson
FL-24	Tom Feeney	Suzanne Kosmas
ID-01	Bill Sali	Walt Minnick
MI-07	Tim Walberg	Mark Schauer
MI-09	Joe Knollenberg	Gary Peters
NV-03	Jon Porter	Dina Titus
NY-29	Randy Kuhl	Eric Massa
NC-08	Robin Hayes	Larry Kissell
OH-01	Steve Chabot	Steve Driehaus
PA-03	Phil English	Kathy Dahlkemper
VA-02	Thelma Drake	Glenn Nye

INCUMBENT LOSSES (Democrats)

SEAT	INCUMBENT	NEW MEMBER
FL-16	Tim Mahoney	Tom Rooney
KS-02	Nancy Boyda	Lynn Jenkins
LA-06	Don Cazayoux	Bill Cassidy
TX-22	Nick Lampson	Pete Olson

House Seat Changes, cont'd

Open Seat Turnovers: All Democratic Pick-Ups

SEAT	RETIRING MEMBER (R)	NEW MEMBER (D)
AL-02	Terry Everett	Bobby Bright
AZ-01	Rick Renzi	Ann Kirkpatrick
IL-11	Jerry Weller	Deborah Halvorson
NJ-03	Jim Saxton	John Adler
NM-01	Heather Wilson	Martin Heinrich
NM-02	Steve Pearce	Harry Teague
NY-13	Vito Fossella	Mike McMahon
NY-25	Jim Walsh	Dan Maffei
OH-16	Ralph Regula	John Boccieri
VA-11	Tom Davis	Gerry Connolly

House Seat Changes, cont'd

- Races too close to call
 - CA-04: Tom McClintock (R) and Charles Brown (D)
 - Open seat, Rep. Doolittle (R) retiring
 - OH-15: Steve Stivers (R) and Mary Jo Kilroy (D)
 - Open seat, Rep. Pryce (R) retiring
 - MD-01: Andy Harris (R) and Frank Kratovil (D)
 - Open seat, Rep. Gilchrest (R) retiring
 - VA-05: Incumbent Virgil Goode (R) and Tom Perriello (D)
 - WA-08: Incumbent Dave Reichert (R) and Darcy Burner (D)
- General election to be held for Louisiana Districts 2 and 4 on December 6

2008 Election Results: Gubernatorial

- With 11 races, Democrats added one seat to their majority of state Governorships
 - 29 Democratic Governors
 - 21 Republican Governors
- 3 open seat races
 - Switch in party control
 - Missouri: Jay Nixon (D) defeated Representative Kenny Hulshof (R) for the open seat vacated by Governor Matt Blunt (R)
 - No switch in party control
 - Delaware: Jack Markell (D) defeated Bill Lee (R)
 - North Carolina: Bev Perdue (D) defeated Pat McCrory (R)
- 8 Governors won re-election bids
 - Indiana: Mitch Daniels (R)
 - Montana: Brian Schweitzer (D)
 - New Hampshire: John Lynch (D)
 - North Dakota: John Hoeven (R)
 - Utah: Jon Huntsman (R)
 - Vermont: Jim Douglas (R)
 - Washington: Christine Gregoire (D)
 - West Virginia: Joe Manchin (D)

110th Congress: Legislative Accomplishments

■ Major 2nd Session Highlights

- Consolidated Security, Disaster Assistance and Continuing Appropriations Act
 - FY09 funding for Departments of Defense, Homeland Security, and Veterans Affairs
 - CR to fund remaining programs at 2008 levels through March 2009
 - Includes disaster aid, an auto industry loan guarantee program, and allows the ban on off-shore oil and gas drilling to expire
- Iraq/Afghanistan War Supplemental
 - Includes Democratic priorities such as a new GI bill, extended unemployment benefits, and disaster relief
- Department of Defense Authorization Act
- Foreign Intelligence Surveillance Act (FISA) reauthorization
- Consumer Protection Safety Modernization Act
- Farm Bill
- Comprehensive housing reform package
- Economic Stimulus legislation (rebate checks)
- Medicare Improvements for Patients and Providers Act
- Highway technical corrections bill
- Amtrak reauthorization combined with rail safety legislation
- Financial rescue and tax extenders

110th Congress: Left Undone

- Major Legislation Stalled in the 110th
 - 9 out of 12 appropriations bills
 - A second comprehensive energy bill
 - Energy Independence and Security Act of 2007 was signed into law at the end of the first session
 - Trade enforcement legislation
 - Trade Adjustment Assistance (TAA) reauthorization
 - Free Trade Agreements with Colombia, Panama, and South Korea
 - Climate change legislation
 - Patent reform
 - Immigration reform
 - Employee Free Choice Act
 - Federal Trade Commission (FTC) reauthorization
 - Coast Guard reauthorization

110th Congress: Prospects for a Lame Duck

■ Economic Stimulus Package

- In September, the House passed a \$60 billion stimulus bill, but Senate Republicans blocked a similar effort in that Chamber
- Democratic leaders have expressed interest in taking up a bill during a post-election lame duck session and are coordinating with Senator Obama's presidential campaign
 - The package, expected to cost \$60-300 billion, could include:
 - Extended unemployment insurance benefits
 - Increased aid to states for Medicaid and food stamp programs
 - Funding for Low-Income Home Energy Assistance Program (LIHEAP)
 - Billions of dollars infrastructure investment (for near-term projects)
 - Aid for consumers
 - E.g., temporary moratorium on foreclosures, curbs on predatory lending, changes to the bankruptcy code, tax rebates
- Alternatively, Republican leaders have proposed expedited off-shore oil and gas drilling and a number of business-focused tax cuts
- Fed Chairman Bernanke has expressed support for a second stimulus, but stressed that it should be "well-targeted" for quick and maximum economic impact
 - In Congressional testimony, he stressed the need to improve access to credit by consumers, home buyers, and businesses

110th Congress: Prospects for a Lame Duck, cont'd

- Consideration of Colombia, Panama, and South Korea free trade agreements unlikely
 - However, there is speculation that the agreements could be used to gain Administration and GOP support for Trade Adjustment Assistance and the economic stimulus package
- Senate Democratic leadership also hopes to consider an omnibus piece of legislation composed of public lands bills held up by Senator Tom Coburn (R-OK)

Key Dates

- Potential Lame Duck
 - Week of November 17
- New Member Orientation and Possible Leadership Elections
 - Week of November 17
- White House Economic Summit of Global Leaders (G-20)
 - November 15
 - President-Elect Obama invited to participate
- UN Climate Conference in Poznan, Poland
 - December 1-12
- Swearing in for new Members of Congress
 - January 6, 2008
- Inauguration
 - January 20, 2008

Looking Ahead to 2009

Dynamics of Expanded Democratic Leadership

- Congressional Interplay with President Obama
 - The economy will override all other issues for at least the first six months of the new Administration
 - How will the economy affect the implementation of President-Elect Obama's broader policy goals such as health care reform and infrastructure investment?
 - How will pay-as-you-go requirements be handled?
 - The FY2009 deficit already includes a \$700B financial rescue package and a potential economic recovery package could cost as much as \$300B
- House
 - How closely will Speaker Pelosi coordinate with Senate Majority Leader Reid?
 - The loss of moderate Republicans is likely to increase partisanship and regional divides
 - There are now no Republicans representing New England in the House
 - Senator Obama has begun reaching out to centrist Democrats – will those efforts continue?
 - The Conservative Blue Dog Coalition will likely expand its ranks
 - The New Democratic Caucus could also see its role elevated
 - Will the roles of key caucuses like the Congressional Black Caucus and the Hispanic Caucus be expanded?

Dynamics of Expanded Democratic Leadership, cont'd

■ Senate

- With at least 55 Democrats and 2 Independents, what coalitions will achieve 60 votes to block a filibuster?
 - How will the loss of key moderate Republicans affect the partisan divide?
 - What is the role of the remaining moderate Republicans, such as Senators Collins (R-ME), Snowe (R-ME), and Specter (R-PA)? Will there be increased pressure to not “break ranks”?
 - How big of an impact will moderate Democrats like Senators Blanche Lincoln (D-AR), Ben Nelson (D-NE), Mark Pryor (D-AR) and incoming Senator Mark Warner (D-VA) have?
 - Will we continue to see bipartisan working groups, like those on judges, immigration, and energy?
 - What role will Senator Joe Lieberman (I-CT) play?
 - Despite foreign policy differences, his vote will still be valuable to Democrats on key domestic issues
- The curse of the off-year election: 34 Senators up for re-election in 2010
 - 19 Republicans, 15 Democrats
 - How will their looming re-election battles affect their position on key policies?

Senate Committee Leadership: Domino Effect

- Senator Biden's departure opens up the Foreign Relations Committee Chairmanship
 - Senator Chris Dodd (D-CT), who currently chairs the Banking Committee, is next in line but has indicated that he will stay at Banking
 - Sen. John Kerry (D-MA) is next in line
- Senator Ted Kennedy (D-MA) is likely to return to the Senate and his Chairmanship of the Health, Labor, Education and Pensions (HELP) Committee
 - Should that not be the case, Senator Dodd is next in line
 - With Senator Dodd staying at Banking, Iowa's Tom Harkin (D-IA) could take over the HELP Committee

Senate Committee Leadership: Domino Effect, cont'd

- There are rumors that Senator Majority Leader Harry Reid (D-NV) could push for some other leadership changes, as well
 - Senator Joe Lieberman (I-CT), who endorsed Senator McCain for President, could lose his slot atop the Homeland Security and Government Affairs Committee
 - Since Senator Carl Levin (D-MI) is unlikely to give up the Armed Services Committee gavel, the Committee could fall to Sen. Daniel Akaka (D-HI)
 - Sen. Akaka would give up his Chairmanship of the Veterans' Affairs Committee
 - Sen. Jay Rockefeller (D-WV) is next in line, but would probably stay at Intelligence, handing the gavel to Sen. Patty Murray (D-WA)
 - Appropriations Chairman Robert Byrd (D-WV) could step aside, passing control of the panel to Sen. Daniel Inouye (D-HI)
 - Senator Inouye's slot as head of the Commerce Committee could go to Sen. Rockefeller, in turn opening up the Intelligence Committee slot
 - Senator Dianne Feinstein (D-CA), who currently chairs the Rules Committee, is next in line on that panel

Senate Committee Leadership: Domino Effect, cont'd

- Retirements and key incumbent losses could result in a number of leadership changes on the Republican side
 - Retiring Senator Pete Domenici (R-NM) is the Ranking Member of the Energy and Natural Resources Committee and retiring Senator Larry Craig (R-ID) is the 2nd Ranking Republican
 - Senator Lisa Murkowski (R-AK) is next in line for the Ranking slot
 - Senator Kay Bailey Hutchison (R-TX) took over for Senator Ted Stevens (R-AK) as Ranking Member of the Commerce Committee earlier this year
 - Senator Craig (R-ID) is the Ranking Member on the Veterans' Affairs Committee
 - Senator Arlen Specter (R-PA) is unlikely to leave his slot on the Judiciary Committee, so Richard Burr (R-NC) may take over
 - Agriculture Committee Ranking Member Senator Saxby Chambliss (R-GA) faces a December run-off for his seat
- Also of note, 3 Republican Appropriators are retiring
 - Senators Domenici, Craig, and Allard all served as Ranking Members on Appropriations subcommittees
 - Senator Ted Stevens, whose election has not yet been decided, is also in the top Republican slot on an Appropriations subcommittee

House Committee Leadership

- The number of retiring and defeated incumbent Republicans will greatly impact Committee leadership in the next Congress
 - 6 Republican Members of the Ways and Means Committee retired, including Ranking Member Jim McCrery (R-LA)
 - Reps. English (R-PA) and Porter (R-NV) lost their bids for re-election
 - Reps. Dave Camp (D-MI) and Wally Herger (D-CA) are vying to replace Rep. McCrery as Ranking Member
 - 6 Republican Members of the Appropriations Committee retired
 - Rep. Knollenberg (R-MI) lost his bid for re-election and Rep. Goode's (R-VA) race has not yet been called
 - 5 of those Members were Subcommittee Chairmen in the 110th Congress
 - 5 Republicans on the Energy and Commerce Committee retired
- House Committees will not see much in the way of leadership changes
 - Rep. Henry Waxman (D-CA) is challenging Rep John Dingell (D-MI) for chairmanship of the Energy and Commerce Committee
 - Possible that Rep. Markey's (D-MA) Select Committee on Global Warming will not continue

House Committee Ratios

Incoming 111th Congress:
254 Ds, 174 Rs
(7 undecided)
At least a 80 seat majority

- From a historical perspective, Democrats likely to increase numbers on key Committees

Congress	Split	Appropriations	Energy and Commerce	Ways and Means
110 th (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>
102 nd (1991-1992)	267 Democrats 167 Republicans 1 Independent <i>100 seat majority</i>	37 Democrats 22 Republicans <i>15 seat advantage</i>	27 Democrats 16 Republicans <i>11 seat advantage</i>	23 Democrats 13 Republicans <i>10 seat advantage</i>
103 rd (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>
104 th (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>

Early Priorities for the 111th Congress

- A number of bills introduced by the Democratic leadership early in the 110th Congress were not enacted and will be likely priorities early in the 111th Congress
 - Stem Cell Research Enhancement Act (H.R. 3/S. 5), vetoed
 - Medicare Prescription Drug Price Negotiation Act (H.R. 4/S. 3)
 - College Student Relief Act (H.R. 5/S. 7)
 - Comprehensive Immigration Reform Act (S. 9)
 - Additionally, legislation to expand the State Children's Health Insurance Program (SCHIP) was twice vetoed by President Bush and the House was unable to override the veto
 - Without the threat of a Presidential veto over spending levels, the Democratic Congress will also have more leverage as it wraps up work on the remaining FY09 spending bills
- Other broad legislative priorities are likely to include:
 - Economic recovery legislation
 - Comprehensive energy legislation
 - Financial services regulatory reform

On the Issues

- Democrats have floated numerous policy proposals in some key areas:
 - Financial Services
 - Trade
 - Taxes
 - Labor
 - Occupational Health and Safety
 - Climate Change
 - Energy
 - Environment
 - Fisheries
 - Health Care
 - FDA
 - Telecommunications
 - Infrastructure
 - Judiciary
 - Foreign Investment
 - Oversight

On the Issues: Financial Services

- Regulatory restructuring
 - Revamping regulation of the financial services industry is a high priority for Congress and the Obama Administration, but it will take time
 - A starting point will be Treasury's March 2008 report, *"A Blueprint for a Modernized Regulatory Structure"*
 - Congress will also receive recommendations from the Obama Administration pursuant to mandates in the recently enacted Emergency Economic Stabilization Act
 - President-Elect Obama has already called for careful consideration of restructuring the financial regulatory system and laid out six guiding principles:
 - Entities that borrow from the government should be subject to government oversight and supervision
 - There needs to be general reform of the requirements to which all regulated financial institutions are subjected
 - Streamline the current framework of overlapping and competing regulatory agencies
 - Regulate institutions for what they do, not what they are
 - Remain vigilant and crack down on trading activity that crosses the line to market manipulation
 - Develop a process that identifies systemic risks to the financial system and create a financial market oversight commission

On the Issues: Financial Services, cont'd

- Near-term measures for regulatory restructuring
 - Given the complexity and competing interests that will slow consideration of major regulatory restructuring, Congress will likely impose new regulations on heretofore unregulated financial players such as hedge funds and mortgage brokers, and financial products such as credit default swaps and other derivatives
 - Strong consideration will be given to the creation of a Consumer Financial Products Suitability Commission, an optional federal charter for life and possibly multi-line insurance companies, and federal regulation of monoline insurers
 - Credit ratings agencies should expect new regulations that limit conflicts of interest and require greater transparency
- Mortgage issues
 - Addressing problems with residential mortgages will remain a top issue
 - To stem rising foreclosures, Congress may consider several measures including a short-term moratorium on foreclosures, allowing bankruptcy judges to “cram down” the principal of principal home mortgage (a hotly contested issue) and requiring lenders/servicers to mitigate foreclosure risk through loan modifications

On the Issues: Financial Services, cont'd

- Mortgage issues, cont'd
 - Mortgage underwriting reform may come in the shape of new anti-predatory lending legislation to require “ability to repay” standards for all mortgages and imposing assignee liability on loan securitizers
 - Congress must address the future of Fannie Mae and Freddie Mac once they emerge from conservatorship
 - There will be great pressure by congressional Democrats to require a portion of their profits to support affordable housing
- Credit cards and student loans
 - The larger Democratic majority in Congress dramatically increases the prospects for enactment of a “Credit Card Bill of Rights” to strengthen banking regulators’ rules on credit card practices
 - President-Elect Obama has proposed a “five star” rating system to rank the financial safety of credit cards
 - Permitting credit card interchange fees to be negotiated will again be a hot issue fought between retailers and bankers
 - Congress may also address the Federal Family Education Loan Program and/or implement a new system to restore lending for higher education

On the Issues: Trade

- Trade and the global economy
 - How will the Administration's trade policies be shaped by the global financial crisis?
 - Prospects for a new Bretton Woods system
 - Many diplomats and economists are pressing for new global financial rules
 - November 15 meeting of the G-20 could lay the groundwork
- Multilateral and Bilateral Trade Agreements
 - Prospects for completion of the WTO Doha Round are uncertain
 - What are the prospects for outstanding trade agreements with Colombia, Panama, and South Korea?
 - President-Elect Obama voted in favor of the Peru Free Trade Agreement in 2007, but opposes deals with Colombia, Panama, and South Korea
 - Has pledged to push for tougher labor and environmental standards in trade agreements
 - Wants to be a "better bargainer" on behalf of U.S. interests
 - Will work with the governments of Canada and Mexico to fix NAFTA so it "works for all people"
 - A Democratic Congress may renew currently-expired Trade Promotion Authority ("fast-track") now that a Democrat is in the White House
- President-Elect Obama wants to update and extend Trade Adjustment Assistance
 - Renewing and expanding TAA remains a priority for Democratic leadership in both Chambers
 - The House passed a bill in 2007, but the Senate did not follow suit

On the Issues: Trade, cont'd

- Trade enforcement
 - During his campaign, President-Elect Obama advocated pressuring the WTO to enforce trade agreements and end government subsidies to foreign exporters and nontariff barriers on U.S. exports, placing a particular emphasis on China
 - As a Senator, Obama cosponsored legislation to address China's currency manipulation
 - What are the prospects for trade enforcement legislation in the 111th Congress? Will philosophical differences with respect to trade within the Democratic Caucus persist?
 - General trade enforcement legislation introduced in the 110th Congress could lay the groundwork for efforts in the next Congress
 - H.R. 6530 sponsored by House Ways and Means Committee Chairman Rangel and Trade Subcommittee Chairman Levin
 - S. 1919 sponsored by Finance Committee Chairman Baucus and S. 364 sponsor by Senator Rockefeller
 - Will a number of their provisions be achieved without legislation, through a more sympathetic Administration?
- Import safety
 - Following a series of scares related to hazardous imported products, President-Elect Obama has advocated stronger import safety measures
 - Import safety scares were a driving force behind the sweeping Consumer Protection Safety Commission (CPSC) reforms enacted earlier this year
 - More legislation is likely, especially related to food and drug imports
 - Trade reform legislation introduced in the House (H.R. 6530) would make additional improvements to import safety by including penalties on importers who opt-in to a voluntary safety monitoring program

On the Issues: Tax

- President-Elect Obama will seek to institute a more progressive tax policy
 - The top two income tax brackets would return to their 1990's levels of 36% and 39.6%
 - For those making over \$250,000 annually, Obama would create a new top capital gains rate of 20% and would set the top dividends rate at 20%
 - President-Elect Obama would make permanent the Bush Administration's 2001 and 2003 tax cuts for the middle class and has also proposed a number of other tax cuts and credits for lower-income people
 - Would eliminate the income tax for seniors making less than \$50,000/year
 - Would expand the Earned Income Tax Credit and create a \$1,000 "Making Work Pay" Tax Credit
 - Would expand and make permanent the child care tax credit
 - Would create a refundable \$4,000 American Opportunity Tax Credit to cover 100% of the first \$4,000 of qualified tuition expenses
 - Would institute a universal 10% Mortgage Interest Tax Credit
- President-Elect Obama has also proposed a number of tax code changes for businesses
 - Would eliminate capital gains taxes for small businesses and start up firms and lower the corporate tax rate for firms that expand or start operations domestically
 - Would offer a refundable health tax credit on employee premiums paid by small businesses
 - Would make permanent the R&D tax credit and renew the Production Tax Credit (PTC)
 - Would raise tax revenues by closing the "tax gap" and reducing "corporate loopholes"
 - Tax carried interest as ordinary income
 - Reallocate multinational tax deductions
 - Eliminate tax breaks for oil and gas companies
 - Clarify the Economic Substance Doctrine

On the Issues: Tax, cont'd

- While leaders in both Chambers have expressed interest in broad tax reform, the need to address the current economic crisis as well as tax-related components of the Administration's health care proposals may prevent consideration
 - Ways and Means Committee Chairman Charlie Rangel (D-NY) introduced H.R. 3970, a \$1.3 trillion tax overhaul plan in late 2007 and has indicated that the bill will serve as the basis for discussions for comprehensive reform in the next Congress
 - The bill would repeal the AMT, reduce the top corporate marginal tax rate from 35% to 30.5%, increase the child tax credit, and expand the Earned Income Tax Credit, among other things
 - Senate Finance Committee Chairman Max Baucus (D-MT) has indicated the need for comprehensive tax reform in 2009 or 2010 and held a series of hearings on the topic during the 2nd session
- Estate tax reform
 - Under current law, the estate tax will disappear completely in 2010 and return to 2001 levels in 2011
 - President-Elect Obama supports maintaining the estate tax at 2009 levels
 - Would exempt estates valued under \$3.5 million and set the maximum rate at 45%
 - Unclear whether the exemption would be indexed to inflation
- Congress will again need to address the Alternative Minimum Tax through either another temporary patch or full repeal
 - Expect continued differences regarding whether the fix should be offset
 - President-Elect Obama has expressed support for AMT reform

On the Issues: Labor

- President-Elect Obama, who had strong labor backing in the general election, is likely to push for key labor priorities early in his Administration – and larger Democratic majorities in both Chambers may facilitate passage
- The Employee Free Choice Act (“card check”)
 - Would establish stronger penalties for violation of employee rights when workers seek to form a union and during first-contract negotiations
 - Would allow employees to form unions by signing cards authorizing union representation
 - Would allow a federal mediator to impose a contract settlement in cases where a union and management cannot agree on a deal within 120 days
 - Business groups oppose the legislation, arguing that it will cost jobs and further weaken the economy
 - Card check legislation will remain a priority for Democratic leadership, but will Senator leaders may not be able to secure enough votes to prevent a filibuster
 - The House passed the Employee Free Choice Act in 2007 (241-185), but the Senate failed to reach cloture (51-48)
- As a Senator, Obama was an original cosponsor of the Fair Pay Restoration Act, a bill to overturn the Supreme Court's 5-4 decision in *Ledbetter v. Goodyear Tire & Rubber Company*
 - The bill would restore the intent of Congress that workers must have a reasonable time to file a pay discrimination claim after they become victims of discriminatory compensation
 - Again, with House passage likely, prospects in the Senate are less clear
 - The House passed the Lilly Ledbetter Fair Pay Act in 2007 by a margin of 225-199, but the Senate companion did not make it out of Committee
- President-Elect Obama also supports efforts to guarantee paid sick leave
- Assistant USTR for Labor likely to take on increased significance in an Obama Administration

On the Issues: OSHA

- As a Senator, President-Elect Obama challenged the Bush Administration's approach to workplace safety
- A Democratic administration with Congressional backing is likely to reinvigorate OSHA/MSHA, leading to stricter enforcement of workplace health and safety laws
 - Would likely push for new standards for reactive chemicals and cancer causing substances
 - Expect action on diacetyl, since Congress was unable to pass a House bill requiring an emergency rule on this substance
 - Congress failed to pass additional mine safety legislation and this issue will likely be revisited, either as legislation or additional rulemaking called for by the 2006 Mine Improvement and New Emergency Response Act
 - A return to the battle over ergonomics is expected
 - President-Elect Obama has pledged support to OSHA ergonomic regulations that would reinstate and update protections first established during the Clinton Administration but repealed by Bush Administration soon thereafter
 - Focus may be placed on expanding the scope of workers protected by OSHA
 - An Obama Administration is likely to promote more aggressive enforcement of existing regulations and apply stiffer penalties for violations
 - Fiscal considerations aside, all workplace safety organizations are more likely to receive funding required to effectively monitor the workplace

On the Issues: Climate Change

- President-Elect Obama supports a mandatory cap-and-trade system to reduce carbon emissions 80% below 1990 levels by 2050
 - Would auction 100% of the allowances, dedicating the revenue to the development of clean energy technology and investment in energy efficiency
 - Revenue would also be used to help workers and industries adapt to clean technology development and production (a focus on “green jobs”)
- As of July 2008, lawmakers in the 110th Congress had introduced more than 235 climate-related bills, resolutions, and amendments
 - Many will lay the groundwork for legislation in the next Congress
 - In June, the Senate failed (48-36) to invoke cloture on EPW Chairwoman Boxer’s (D-CA) substitute to the Lieberman-Warner climate bill
 - The bill would reduce emissions 71% below 2005 levels by 2050
 - Following consideration of the bill, 10 manufacturing state Senators sent a letter to Majority Leader Reid and Sen. Boxer expressing concerns related to the impact of climate legislation on jobs and consumers, particularly in energy-intensive industries
 - On October 7, House Energy and Commerce Chairman Dingell (D-MI) and Energy and Air Quality Subcommittee Chairman Boucher (D-VA) released a discussion draft
 - Trading scheme designed to reduce emissions 80% below 2005 levels by 2050 and would cover roughly 88% of GHG emissions
 - On October 2, 152 House members wrote to Speaker Pelosi expressing their support for a cap-and-trade system and laying out a set of core principles

On the Issues: Climate Change, cont'd

- Regulatory efforts may also affect the debate
 - Regulation of Greenhouse Gases under the Clean Air Act
 - EPA published an Advanced Notice of Proposed Rulemaking (ANPR) on July 11 which laid out a roadmap for regulation of greenhouse gases under the CAA
 - Response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*
 - Court found that the CAA authorizes EPA to regulate tailpipe GHG emissions if EPA determines they cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare
 - The Obama campaign has indicated that it will regulate greenhouse gases under the Clean Air Act within 18 months if Congress fails to act
 - In 2005, EPA promulgated a rule to reduce air emissions from electric utilities in 28 eastern states and DC (the Bush Administration's most significant CAA initiative)
 - On July 11, 2008, the D.C. Circuit Court of Appeals vacated the CAIR rule in its entirety due to fatal and comprehensive flaws in the rule
 - On October 21, 2008, the D.C. Circuit ordered the parties to brief whether any party is seeking vacatur of CAIR in its entirety and whether the court should stay its mandate pending promulgation of another rule by EPA
 - Congress was unable to enact a legislative fix this year, but one may be likely in the next Congress

On the Issues: Climate Change, cont'd

- Economic concerns may overwhelm the desire to institute an economy-wide cap-and-trade regime in the next Congress making “incremental” legislation more likely
 - Carbon, capture and storage (CCS)
 - Carbon controls for electric utilities
 - Senators Feinstein and Carper introduced legislation to establish a program to regulate the emission of greenhouse gases from electric utilities
 - Sen. Carper has also sponsored “4-pollutant” legislation to reduce SO₂, NO_x, mercury and CO₂ emissions from power plants
- International pressures will also affect climate policy
 - President-Elect Obama could impact the international debate as early as this December, at the UN Climate Conference in Poznan, Poland
 - The Kyoto Protocol expires in 2012
 - Potential for a new international agreement to be negotiated at the November/December 2009 Copenhagen climate change conference
 - July 2009 G-8 Summit (Italy) is a key milestone leading to Copenhagen

On the Issues: Energy

- Driven by economic, national security, and environmental concerns, President-Elect Obama and Members of Congress on both sides of the aisle continue to advocate increased energy independence
 - Any energy policies will be inextricably linked to consideration of climate policy
- Renewable energy
 - President-Elect Obama favors a Renewable Portfolio Standard (RPS) requiring that 25% of electricity consumed in the U.S. be derived from clean, renewable sources by 2025
 - An RPS remains a priority for Democratic leadership, but is a problem for certain regions of the country that are less able to produce renewables such as wind and solar
 - Prior to final passage of broad energy legislation enacted in 2007, an RPS provision passed by the House was dropped and an RPS amendment was ruled non-germane during Senate consideration
 - President-Elect Obama is also an ardent supporter of next generation biofuels
 - Advocates large investments in the development of cellulosic ethanol, an increased Renewable Fuels Standard (RFS), and a national Low Carbon Fuel Standard
 - In Congress, expect continued debate surrounding the RFS and food vs. fuel concerns
- Technology
 - President-Elect Obama has proposes dedicating \$150 billion over 10 years to an energy-technology investment program, including wind, solar, and nuclear power if safe
 - Obama would increase funding for the commercialization and deployment of low-carbon coal technologies (and, potentially, ban new traditional coal facilities)
 - Encouraging research and development of carbon capture and storage technology is a priority for Congress
 - Rep. Boucher's Carbon Capture and Storage Early Deployment Act would create a Carbon Storage Research Corporation

On the Issues: Energy, cont'd

- Oil and gas
 - President-Elect Obama supports a “use it or lose it” approach to oil and gas leases and opposes drilling in ANWR
 - In Congress, expect continued partisan debate over drilling in the face of potential reinstatement of the ban on off-shore oil and gas drilling
 - He has also expressed support for a windfall profits tax on oil companies if price of oil exceeds \$80/barrel
 - Price gouging and NOPEC legislation passed the House by significant margins in the 110th Congress, but faced Presidential veto threats – both could resurface
- Expect continued efforts by bipartisan working groups in both Chambers to find the “right” mix of increased production, conservation and efficiency, and clean-energy solutions; proposals introduced in the 110th Congress could serve as the basis for work next year
 - The Senate’s “Gang of 20” proposal aims to:
 - Transition vehicles to non-petroleum fuels through R&D funding and tax credits
 - Enhance conservation and energy efficiency through R&D funding and tax credits
 - Pursue targeted and responsible domestic production
 - H.R. 6709, the National Conservation, Environment and Energy Independence Act sponsored by Reps. Abercrombie (D-HI) and Peterson (R-PA)
 - Remove restrictions on energy development on the Outer Continental Shelf (OCS)
 - Prohibits leasing within 25 miles of the coastline of a state and allows coastal states to opt-out of production from 25-50 miles offshore
 - Provides tax incentives to promote alternative and synthetic fuels ranging from biomass to oil shale as well as energy efficient technology
 - The bill attracted 121 cosponsors from both sides of the aisle

On the Issues: Environment

- Water quality issues
 - Given his representation of Illinois, President-Elect Obama will place a great deal of emphasis on restoration of the Great Lakes
 - Along with other lawmakers in the region, Obama called for Congressional hearings into the Indiana Department of Environmental Management's decision to allow a BP refinery to release significantly more ammonia, treated solids and mercury into Lake Michigan
 - Will push for passage of the Great Lakes Collaboration Implementation Act to promote comprehensive restoration
 - Last year Congress passed the Great Lakes Legacy Reauthorization Act to fund contamination clean-up and will likely continue to focus on the region
 - President-Elect Obama has expressed support for full funding of the Clean Water State Revolving Fund as well as a new stormwater cleanup program to manage runoff
 - The stimulus package approved by the House in September included \$6.5 billion to fund clean water and drinking water infrastructure improvements
 - In September, Senate EPW approved the Water Infrastructure Financing Act, which would provide \$38.5 million for revolving fund projects and also included a number of provisions related to drinking water regulations
- Reinstatement of Superfund taxes to fund cleanup of Superfund sites likely
 - Senators Clinton, Lautenberg, and Boxer and Reps. Blumenauer and Pallone introduced "polluter pay" legislation in the 110th Congress and President-Elect Obama has expressed support for such an approach
- Environmental justice policies within EPA will be a priority, with a special emphasis on the environmental health of low-income and minority communities
- President-Elect Obama supports stricter monitoring and regulation of large livestock operations (CAFOs), with fines for violations of air and water quality standards
- Look for possible elevation of EPA to cabinet-level status

On the Issues: Environment, cont'd

- Chemicals management

- The 110th Congress saw a number of oversight hearings as well as the introduction of legislation designed to regulate hazardous chemicals in consumer products
 - The CPSC reauthorization enacted in 2008 included a ban on phthalates and lawmakers have held a number of hearings and have introduced legislation to regulate bisphenol A (BPA) (both chemicals are used in the manufacture of plastics)
 - Response to an increasing number of scientific studies demonstrating the potential hazards of certain chemicals
 - Also driven by the EU's implementation of REACH, a comprehensive overhaul of its approach to chemical and product regulation
- Environmentalists and many in Congress have indicated a desire to reform and strengthen the Toxic Substances Control Act (TSCA), enacted in 1976
 - Much like REACH, the Kid Safe Chemical Act introduced by Sen. Lautenberg would establish a safety standard for each chemical on the market and shift the burden of proof from EPA to manufacturers (a "precautionary principle")
 - While TSCA reform remains a priority, it is unclear whether the Committees of jurisdiction will act next year given competing priorities related to food and drug safety
 - Administration may focus on strengthening existing EPA chemicals management programs
- Legislation to extend and modify chemical security regulations likely as provisions expire next year

On the Issues: Maritime and Fisheries

- Reauthorization of the Costal Zone Management Act will be high on the legislative agenda in the 111th Congress
 - Requiring consistency between federal offshore actions and state management plans has significant implications on ocean energy development
- A likely priority of the new Administration will be to push forward with promoting elimination of fisheries subsidies, reducing global overcapitalization of fishing fleets, and combating “IUU” fishing
- The Ballast Water Management Act did not pass the 110th Congress, though it will likely be reintroduced in the new Congress
 - In light of EPA’s passage of Clean Water Act rules regulating shipping discharge, the outlook for ballast water legislation is unclear and several regulatory battles loom
 - International considerations may require executive or Coast Guard action
- Competition over the Arctic Ocean has increased, a matter of great concern to Canada and Russia, as well
 - The new Administration will likely have to respond and build on a joint resolution passed by the 110th Congress urging U.S. leadership on negotiating an international treaty
- Legislation to ease fisheries rebuilding requirements was not successful in the previous Congress, and the path to passage in the 111th is difficult
- The 110th Congress failed to reauthorize the Coast Guard Act
 - Significant disagreement remains over new vessel safety and inspections restrictions

On the Issues: Health Care

- President-Elect Obama made health care one of his highest campaign priorities and is likely to work with the Democratic Congress to tackle several initiatives right out of the gate
 - Expansion of the State Children's Health Insurance Program (SCHIP)
 - Legislation to allow federal funding of stem cell research
- The Democratic Congress, with the support of an Obama Administration, will likely continue to emphasize controlling the cost of health care
 - Health Information Technology (IT)
 - Action stalled in the 110th Congress in part due to privacy concerns
 - Boosting the generic drug industry
 - Renewed consideration of legislation to allow FDA to approve generic versions of biologics
 - Safe importation of drugs
 - Comparative effectiveness to ensure availability of information regarding cost and quality
- Congress may finally attempt a comprehensive overhaul of the Medicare payment system, which is currently dictated by the Sustainable Growth Rate (SGR) formula
 - Looming cuts to the Physician Fee Schedule triggered by the SGR have repeatedly prompted Congressional action to stave them off
 - The most recent temporary fix was enacted in July and expires in January 2010, at which point physicians will be faced with a 20% Medicare payment cut
 - An inability to come to an agreement in terms of how to pay for the spending growth has prevented a long-term fix
 - Cuts to the Medicare Advantage program (private insurance plans) were frequently proposed by Democratic leadership, but opposed by the Bush Administration

On the Issues: Health Care, cont'd

- Expanded health care coverage is a Democratic priority, but sweeping changes may be difficult early in the new Administration, especially given the state of the economy
 - President-Elect Obama advocates a new national health plan for all Americans to obtain affordable health care coverage – with guaranteed eligibility, affordability, and portability
 - Wants universal coverage by 2012
 - Would only mandate health insurance for children
 - Would require employers that don't contribute to the cost of health care for their employees to contribute toward the cost of the national plan (small employers would be exempt)
 - Would provide subsidies to low-income families to buy insurance
 - The Senate Finance Committee held a series of 8 hearings on health care reform and hosted a bipartisan health summit last summer
- The unsustainable growth of entitlement programs (Medicare/Medicaid) is an issue that many are stressing be addressed
- The Democratic Congress will continue its oversight work investigating waste and inefficiencies in the Medicare Part D prescription drug program
 - Congress may overturn the ban on government negotiation of Medicare prescription drug prices, which was one of the new Democratic leadership's top priorities at the beginning of the 110th Congress
- The Supreme Court is now considering whether FDA approval of a prescription drug bars an injured patient from suing the drug maker, an industry position supported by the Bush White House
 - House Oversight and Government Reform Chairman Waxman has taken interest in the issue and recently released documents showing that regulatory staff at FDA objected to the White House position

On the Issues: Food and Drug Safety

- The FDA, and the U.S. Department of Agriculture's Food Safety & Inspection Service (FSIS) will likely introduce ambitious policy reform agendas designed to strengthen public health and consumer protections in several key areas
- Unfinished product safety legislative agenda of the 110th Congress likely to be renewed and advanced with increased momentum
 - Such legislation is likely to expand safety requirements for products regulated by FDA and FSIS
 - Expect expanded requirements for domestic product manufacturers, but major focus will remain on products and ingredients from foreign suppliers
 - Product safety legislation in the 111th Congress will be shaped by the provisions of key bills introduced during the 110th Congress, including:
 - Broad FDA reform
 - The FDA Globalization Act of 2008 (discussion draft) sponsored by Energy and Commerce Committee Chairman Dingell
 - HELP Chairman Kennedy's Drug and Device Accountability Act (S. 3409)
 - Food safety
 - Senator Durbin's FDA Food Safety Modernization Act (S. 3385)
 - Rep. DeLauro's Food Safety Modernization Act of 2007 (H.R. 7143)
 - The Safe Food Enforcement, Assessment, Standards, and Targeting Act (H.R. 5904), sponsored by Reps. Costa and Putnam
 - The Safe and Fair Enforcement and Recall for Meat, Poultry and Food Act of 2007 (H.R. 3484), sponsored by Rep. DeGette

On the Issues: Food and Drug Safety, cont'd

- Role of economic factors
 - Expect heightened Congressional interest in the cost effectiveness of FDA and FSIS administered product safety programs
 - Alternative funding mechanisms for federal regulatory programs (e.g., facility registration fees and other “user fees”) are possible as is a greater interest in the role that fee-for-service third party certification systems (e.g., certification of product safety plans) may play in achieving product safety and supply chain security goals
- Consolidating, reorganizing, and modernizing food and drug regulatory regime likely to reemerge and gain further support in the new administration
 - Creation of a new “single food agency” comprised of federal food regulatory programs administered by FDA, FSIS, and the Department of Commerce
- President-Elect Obama’s goal of achieving significant health care policy reforms is likely to have additional significant implications for both food and drug products regulation
 - Increased focus on prevention of obesity, diabetes, cardiovascular disease, cancer, and other diet-related diseases
 - Legislative and regulatory proposals to expand regulation of nutrition quality of foods and beverages marketed to children and nutrition and health related information in food and beverage labeling, advertising, and other product marketing vehicles are likely to gain momentum
 - Increasing regulatory scrutiny of the costs and benefits of drugs and medical products
 - Regulatory proposals to reform FDA policies to contain or reduce health care costs
 - Proposals to expand regulatory support for OTC drugs and other consumer self-care products
 - Increased availability of generic drugs and biologics
 - Post-market regulatory controls to reduce adverse health effects attributable to FDA-regulated products

On the Issues: Consumer Protection

- Federal Trade Commission
 - The Obama Administration may look to bolster the FTC by increasing its jurisdiction, budget and powers
 - Possible measures include legislation to:
 - Expand FTC jurisdiction to regulate common carriers and non-profit entities
 - Expand the authority of the FTC to include the right to seek civil penalties for violations of FTC Act
 - Permit the FTC to file federal court lawsuits in its own name
 - Expand the FTC's ability to pursue those who assist and facilitate unfair or deceptive acts or practices
- Lender oversight
 - Given the current economic crisis and its roots in the housing market, the Obama Administration may push for consumer protections related to consumer lending
 - May mandate accurate mortgage loan disclosures in form of simplified, standardized borrowing metric
 - Congress and Administration may seek to define “mortgage fraud” and bolster penalties for acts deemed to meet that definition
- New standards for advertising claims
 - FTC will likely update its 15 year old guidance on environmental marketing claims
 - Will likely address new “green” claims related to: “carbon footprint” “renewable” and “biobased”
 - May look to regulate social networking websites and blogs
 - Advertisers claims related to nutrition, health, children, and descriptions of financial services will likely face heightened Commission scrutiny

On the Issues: Technology/Telecommunications

- The new Congress and Administration will encounter a landscape that in recent years has trended towards deregulation
- These leaders may need to address several regulatory issues, including, among others:
 - Whether to roll back the recent deregulatory trend
 - Whether or how to protect consumers from “novel” fees and onerous user requirements
 - How to address consumer privacy concerns
 - How to respond to any consumer complaints that surface in the wake of the February 2008 digital cable conversion
- The most immediate factor impacting policy will be who leads the Congressional Commerce Committees and who is chosen to lead the Federal Communications Commission
- The Obama campaign put forth several positions on communications and telecommunications, that may serve as a guide to how the new leaders will proceed; these included, among others:
 - Supporting the principles of network neutrality and fostering open competition on the internet
 - Strengthening privacy protections and supporting stronger enforcement of privacy rights
 - Updating communications infrastructure including deploying infrastructure to support broadband growth
 - Increase government oversight of merger activity to ensure competitiveness and protect consumer welfare

On the Issues: Infrastructure

- President-Elect Obama has railed against the "lack of investment" in infrastructure and identified "our transportation systems, including our roads and bridges" as a "top priority"
- Infrastructure investment will be a priority in the next Congress, and the definition of "infrastructure" can be far-reaching
 - Roads, tunnels, bridges, airports, waterways and ports, water systems, railways, electric grid
- In 2009, Congress will reauthorize national highway and transit legislation and funding will be a key issue
 - Senate EPW Chair Boxer (D-CA) has named it a top priority and House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) has said that the measure could total as much as \$450 billion
 - In comparison, the last highway bill, passed by Congress in 2005, totaled \$286 billion
 - Revenue will be an issue, especially in light of declining receipts through the federal gas tax
 - Could include an increase in the federal gas tax as well as creative alternative financing solutions
 - President-Elect Obama advocates the creation of a new National Infrastructure Reinvestment Bank to expand and enhance existing federal transportation investments
 - Given increasing scrutiny, "earmarks" could be limited in the bill, which traditionally includes a number of lawmaker's pet projects

On the Issues: Infrastructure, cont'd

- Immediate infrastructure investments to boost the economy
 - In discussions related to economic stimulus legislation, which is likely in an upcoming lame duck session, Congressional leaders often cite infrastructure as a key funding target given the high return on investment
 - Many are advocating the inclusion of targeted infrastructure spending to be included with other stimulus provisions aimed at job creation
 - The FHWA estimates that every \$1B in infrastructure investment yields 47,500 new jobs and \$6.2B in economic activity
 - Advocates of the spending are requesting that Congress approve tens of billions for infrastructure projects that can be undertaken with relative immediacy
 - Advocates are recommending that the infrastructure funding in any stimulus bill be anywhere from \$75 to \$100 billion
 - The House approved \$30 billion in infrastructure projects in a stimulus bill considered in September of this year
 - \$12.8 billion for highways and bridges
 - \$4.6 billion for transit and
 - \$6.5 billion for water projects and other environmental infrastructure
- Federal Aviation Administration (FAA) reauthorization will also be a priority for the next Congress

On the Issues: Infrastructure, cont'd

- Cargo security

- 100% screening of air and sea shipments required in 9/11 implementing legislation but Customs and Border Protection has expressed concerns about feasibility and harm to commerce
 - Air by 2010
 - 50% by 2009 and 100% by 2010
 - Concerns about bottlenecks at airports, costs to shippers to scan, and party responsible for paying under voluntary Certified Cargo Screening Program
 - Sea by 2012
 - Pilot programs at 7 foreign ports, but major feasibility obstacles need to be addressed
 - Congressional support, led by House Homeland Security Chair Bennie Thompson (D-MS), for 100% compliance at all ports
 - Customs and Border Patrol views 100% at 700+ ports impractical

On the Issues: Infrastructure, cont'd

- Cyber security
 - Protection of cyber infrastructure made strides in 2008, but more action is needed
 - DNI issued a comprehensive national cyber security initiative that will require continued attention under the new Administration
 - The main purpose of the initiative is to:
 - Assist federal government with securing its own networks
 - Assist private sector with improving cyber infrastructure
 - Trust issues between government and industry on sharing information on intrusions persist and will need to be addressed, potentially by:
 - Institutionalizing cyber threat reporting
 - Developing public-private model to share information
 - Achieving major R&D advancements on anti-intrusion technology
 - Other initiatives underway or contemplated include:
 - Industry development of global supply chain safeguards (hardware and software)
 - Moving cyber security jurisdiction from DHS to White House
 - Legislating security through a cyber SOX-type regime

On the Issues: Judiciary

■ Patent reform

- Advances were made during the 110th Congress and another attempt at comprehensive reform is expected in the next Congress
 - The House passed legislation, but a Senate bill stalled because of disagreement over damages provisions and competing legislation was introduced
 - In addition to damages, the bills attempt to deal with the proper venue for handling federal patent infringement disputes, fixing the post-grant opposition proceeding, and curbing abuses of the doctrine of inequitable conduct
 - Progress may be hampered by ongoing disagreement between industries due to the conflicting business models of various stakeholders (e.g., pharmaceuticals vs. high tech/financial services)

■ Immigration reform

- Comprehensive legislation (S. 1348) stalled early in the 110th Congress
 - That bill was thought to take a middle-ground approach, but failed to achieve compromise; piecemeal efforts followed
- Comprehensive reform remains a priority, but will be affected by economic conditions
 - Economic downturn and job losses could impact flow of illegal immigrants
 - At the same time, competition for jobs in a suffering economy could bring new focus
- The Obama campaign outlined a plan for immigration, which could serve as a guide to a new run at comprehensive reform; it included:
 - A conditional path to citizenship for illegal immigrants
 - Improvements to the immigration system as outline in S. 1379 (introduced by Senator Obama)
 - Enhanced border security through additional personnel and use of technology
 - Creation of an employment verification system
 - Expedited citizenship process for immigrant soldiers

On the Issues: Foreign Investment

- Economic downturn and scrutiny on financial system may draw public attention to role of foreign direct investment (FDI) in U.S. economy
- Adverse economic conditions could result in foreign investors looking for cheap buys of U.S. companies, or could keep foreign investors away while U.S. businesses and the economy recovers
 - FDI can assist with recovery; could particularly support job growth
 - May also increase national security risks
- The Obama campaign promised to balance the costs and benefits of FDI and remedy alleged Bush administration failures in this area
 - Will work to make the U.S. economy attractive to foreign investors by investing in productivity and attending to fiscal strains, among other things
 - Will build off of progress made in the Foreign Investment & National Security Act of 2007
 - Pledged to strictly enforce relevant laws and communicate with Congress regarding executive branch activities regarding FDI

On the Issues: Oversight

- Focus of Congressional investigations will likely shift from the Executive Branch to the private sector
 - Some residual Executive Branch focus may remain regarding alleged influence of certain industries on the Bush Administration
 - Congress will likely use its oversight powers to highlight issues in specific industries in an effort to advance new legislative and regulatory agendas
- Specific industries and issues that may receive increased attention include:
 - Financial Services
 - Continue review of the use of Troubled Asset Relief Program (TARP) funds and other regulatory actions under the Emergency Economic Stimulus Act
 - Investigate the role of hedge funds, subprime mortgages, and credit default swaps in financial crisis
 - Review related industries including insurance, credit cards, and student loans
 - Generally explore financial services industry regulation to build support for streamlining financial regulatory system
 - Government Contracting
 - Investigate contracting, particularly in the areas of defense and energy, with a view to identifying waste and effecting structural reform

On the Issues: Oversight, cont'd

- Health Care & FDA

- Identify gaps and perceived abuses in health care system to support legislative initiatives
- Study health care costs, including prescription drugs and government health care programs
- Examine food and import safety
- Consider regulation of food and drug industries to build support for modernizing the regulatory framework

- Small Business Programs

- Scrutinize Bush Administration small business policies to force change in approach to and availability of small business loans

The Year Ahead: Key Questions

- A number of key questions yet to be answered may dictate the direction and outcome of key policy initiatives in the year ahead.
 - How will the world respond to President Obama? Will he have a window to lead in key international efforts, such as the economy, climate change, and the war on terror?
 - Will President Obama's electoral success nationwide, across all regions and such broad demographic groups allow him a more centrist approach?
 - With Democrats controlling both Chambers, will President Obama be able to moderate the party and govern from the middle? Will he be pushed by more activists supporters?
 - Will those activist supporters remain committed to helping an Obama Administration advance its agenda? How will they react if their priorities aren't enacted in 18 months?
 - Will Obama use his extensive net-roots political support to help move his policy agenda?
 - How will the Republican party respond to the election? Will they work across the aisle on key policy priorities, appealing to moderates and independents? Or will they attempt to draw greater distinctions with the Democratic party and push for more limited government, appealing to the base?

The Year Ahead: Key Questions, cont'd

- What control will an Obama Administration have over the legislative agenda in Congress? Will there be a “honeymoon” period?
 - Will he spend the first few months working with Congress to pass stalled Democratic priorities, like expanding SCHIP and funding stem cell research?
 - How much will the Administration’s broad policy agenda be overwhelmed by the economic situation?
- Recognizing the focus on economic issues, where do national security issues, including the wars in Iraq and Afghanistan and the war on terror, rank?
- Looking ahead to 2010, will we see a Republican resurgence? Will voters respond if a Democratic Administration and Congress overreach?
- How will the media respond to Democratic control of both Congress and the Administration? What is the role of the “non-mainstream” media (YouTube, blogs, etc.)?
- What roles will Senators John McCain and Hillary Clinton assume following their presidential runs?

Questions?

Contact a member of Kelley Drye's Government Relations & Public Policy Practice



Paul C. Rosenthal

prosenthal@kelleydrye.com

Managing Partner of Kelley Drye's Washington, DC Office and
Chair of the Government Relations & Public Policy Practice
Group



Dana S. Wood

dwood@kelleydrye.com

Director, Government Relations & Public Policy Practice
Group



Thomas W. Cohen

tcohen@kelleydrye.com

Partner



Sarah Roller

sroller@kelleydrye.com

Partner



David E. Frulla

dfrulla@kelleydrye.com

Partner



Lisa S. Andrews

landrews@kelleydrye.com

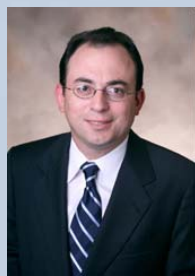
Special Counsel



David A. Hartquist

dhartquist@kelleydrye.com

Partner and Chair of Kelley
Drye's International Trade &
Customs Practice



Robert R. Cohen

rcohen@kelleydrye.com

Special Counsel



Laurence J. Lasoff

llasoff@kelleydrye.com

Partner



Shaun Gehan

sgehan@kelleydrye.com

Associate



Andrew E. Minkiewicz

aminkiewicz@kelleydrye.com

Associate



William J. Klinefelter

wklinefelter@kelleydrye.com

Senior Advisor



Dustin J. Painter

dpainter@kelleydrye.com

Associate



Mark Anderson

manderson@kelleydrye.com

Advisor



Joan Galvin

jgalvin@kelleydrye.com

Senior Advisor



Maggie Clarke

mclarke@kelleydrye.com

Advisor



Margaret E. Hardon

mhardon@kelleydrye.com

Advisor