ML Strategies Legislative & Regulatory Update

ML Strategies 2018 Election Preview

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Conventional wisdom holds that 2018 will be a wave election year for Democrats. When one party controls both chambers of Congress and the White House, it is typical that the opposition party makes gains in the midterm elections. Beginning with 1994, at least one chamber of Congress has flipped in each midterm election, save 1998. So far, 2018 seems to fit the trend. Democrats have performed well in several recent special elections, even in deep red districts, and the generic congressional ballot currently has Democrats up. Still, Republicans have several structural advantages that Democrats lack. House districts across the country are drawn in a way that benefits Republicans, giving them a disproportionate share of "safe" seats, and Democrats are tasked with defending 26 seats in the Senate compared to the Republican 9. That being said, the most likely scenario two months from Election Day is that Democrats will take the House. The Senate remains a coin flip.

As we approach the 2018 elections, we find ourselves asking many questions:

- *Will the historical trend of wave elections get the Democrats over the 218-vote threshold in the House? If so, will they make it to 230? What about 250?*
- *Will Democrats gain enough Senate seats to flip the chamber?*
- *For Democrats, how will messaging and voter turnout look in a political environment driven in large part by dislike for the President and his party?*
- *Wave elections are typically accompanied by depressed turnout on the other side. Will Republican voters show up?*
- *How will the growing threat of impeachment impact the electoral dynamics?*

We will be looking for answers to these questions over the next two months.

Signs of a "Blue Wave?"

Special Elections: Bellwether Races

Recent special election results seem to have borne out the trend of opposition gains in midterm years:

- **Pennsylvania's 18th District**
  Democrat Connor Lamb outshone Republican Rick Saccone in a traditionally conservative Central Pennsylvania district outside of Pittsburgh.

- **Ohio's 12th District**
  Democrat Danny O'Connor came within hundreds of votes of beating out Republican Troy Balderson for a traditionally "safe" Republican seat.

- **Alabama Senate**
  President Donald Trump's endorsement wasn't enough to save the embattled Republican Roy Moore from being defeated by Democrat Doug Jones in a deep red state.

Polling

Recent polling also indicates Democratic momentum. Democrats have held as much as a double-digit lead on the generic congressional ballot over the past six months, which currently sits at plus 8. However, it is worth noting that Democrats led the generic congressional ballot by two points at this point in 2016, and there is plenty of room for the numbers to fluctuate between now and November.

Contested House Seats

There are 42 Republican open or vacant seats and only 19 Democratic open seats, leaving the Republicans more vulnerable in the House going into November. Recent redistricting in Pennsylvania, which ended in the redrawing of an electoral map that aided Republicans, is another good sign for Democrats. The opening of what were once considered "safe" Republican seats in the state, currently held by Ryan Costello and Charlie Dent, creates opportunities for Democrats to field legitimate candidates with chances to win.

Voter Enthusiasm

Democrats' recent success in red districts stems largely from voter enthusiasm. Many Democratic candidates are outpacing Hillary Clinton's 2016 performance. In 34 races examined by the *Washington Post* that have occurred since the last presidential election, the Democratic candidate performed at least 20 points better in the district than Clinton did. The enthusiasm fueled by opposition to Trump adds to the conventional wisdom of wave elections, which suggests that Democratic voters will turn out in force this November.

Unpredictability Going Forward

If the last 18 months are any indication, anything could happen between now and November. As the party in power, Republicans may bear the brunt of this unpredictability. The developing battle between the United States and other countries over tariffs and trade could hit the Republican base harder than the Administration intended. Higher prices on foreign products needed for American manufacturing, and the resulting job losses, could depress Republican turnout. The fight over Brett Kavanaugh's Supreme Court nomination could boost Democratic enthusiasm. The special counsel investigation also continues, and it is not clear what effect a bombshell before the election might have. While the possibility of impeachment may motivate Democrats, it's plausible that it could animate the Republican base as well. The political landscape is ever changing, a variable most Republicans running for election would rather avoid.

Democratic fundraising advantage as of August 2018:

Democrats:
DCCC: $191 million raised, $73 million cash on hand
DSCC: $93 million raised, $35 million cash on hand, $1.2 million in debt
Republicans:
NRCC: $144 million raised, $68 million cash on hand
NRSCC: $84 million raised, $23 million cash on hand
**SOURCE: OPEN SECRETS

Challenges for Democrats

Despite conventional wisdom, several factors may still present an uphill battle for Democrats. House districts across the country are currently drawn in ways that benefit Republicans. It should not come as any surprise that when Trump won the presidency in 2016, he also won the majority of House districts (230). However, in 2012, Mitt Romney won the majority of House districts (226) and still lost the general election. Republicans are defending 42 open or vacant seats. However, Hillary Clinton won only eight of them in the 2016 election. Thus, despite the historical trend of chambers flipping in midterm elections, the House may not be an easy win for Democrats.

The Senate Map

In the Senate, the playing field is heavily tilted against the Democrats, who are defending 26 seats to the Republicans' 9. Although the Democrats are targeting Nevada, Tennessee, and Arizona, there do not appear to be many opportunities for them beyond those states. There is talk of flipping Texas, and if that happens, it would be an indicator of a wave year spurred by high Democratic turnout. On the other hand, Democrats have to defend multiple states won by President Trump in 2016, such as Florida, Missouri, Indiana, Montana, North Dakota, and West Virginia. The outcome in the Senate will come down to each individual race.

Voter Turnout

Traditional wave elections involve one party suffering depressed voter turnout, which affects the election outcome. Though voter turnout for Democrats is likely to be strong, it is not clear that Republican turnout will drop far from where it was in 2016. Surveys continue to show that Trump is very popular with his base. The President's ability to respond to negative press and drive his supporters suggests that these voters will turn out in November. Democratic attacks on the President may ultimately motivate his base rather than depress it.

Messaging

Generating the support they need for a blue wave will require Democrats to explain their values and positions, beyond just stating their opposition to Trump. Several Democrats running outside Washington have already proven their ability to strike a chord with voters on progressive issues, for example, Alexandria Ocasio-Cortez in New York and Beto O'Rourke in Texas. As the general elections ramp up, Democrats will need to continue to communicate their message effectively and thread their key issues like health care access, immigration, and economic opportunity into their narrative to mobilize voters. The midterm election outcome may ultimately be determined by how a handful of "purple" voters in a handful of "purple" areas vote based on the messaging they discern from the overwhelmingly partisan atmospherics. The challenge for Democrats is to ensure that "purple" voters hear their messages over their dislike for the President. At a time when the majority of Americans live in clearly partisan congressional districts, communicating directly with these moderate voters has become more difficult.

The Next Congress

Despite what pundits say on TV, election results are hard to predict. The best we can do is offer some commentary on the conventional wisdom and the implications that the potential blue wave could have on the next Congress. A chamber controlled by Democrats would perform constant oversight of the Administration, which means that heads of agencies would be called repeatedly to testify in front of Congress. Oversight would be a critical tool in the upcoming presidential cycle, allowing Democrats to make their case for sweeping political change in the 2020 election. If the Republicans cannot maintain the majority in the Senate, the Democrats can, and will, stonewall any nominations for the next two years, meaning there will be a near-zero chance of a future Supreme Court nominee making it to the Senate floor.

Control of the Narrative

The ultimate outcome of the midterm elections and the margins it produces are critical for control of the political narrative. A Democratic majority will have the opportunity to take control of narratives surrounding key policy discussions moving forward, with the chance to put forth legislation on their main issues, such as immigration, gun control, and health care. The margins in both chambers will determine if these proposals get to the President's desk. If Republicans keep the Senate, the divided Congress will favor principled stands above compromises, as members are able to champion policies they know cannot pass. Areas where Republicans have been driving the narrative will be battlegrounds once again. Repealing and replacing the ACA, for example, will be off the table if Democrats come to power, and "Medicare for All" will become the rallying cry. Similarly, repeal of the Trump tax cuts is likely to be a mantra of Democrats in the House, even if it will not be signed into law. It remains to be seen which issues will rise to the top as potential areas of compromise above the partisan fervor.

The Speaker's Race

The election for Paul Ryan's replacement as Speaker of the House will play a role in moving policy forward following November 7. If the Republicans hold their majority in the House, the race to upset heir apparent Majority Leader Kevin McCarthy will heat up as Representative Jim Jordan and Majority Whip Steve Scalise jockey for power. If the Democrats gain the majority, they will face the tough decision of whether to return Nancy Pelosi, the first female Speaker of the House, to the Speakership. Doing so would risk inflaming part of their progressive wing and impeding their agenda as there will be a push to bring in fresh faces that reflect the future of the party. But unseating Pelosi poses its own challenges. There is no clear front-runner to succeed her, and even if a contender arises, Democrats will have to deal with the difficult optics of reinstating a figure unpopular amongst their left flank or ending Pelosi's historic leadership role.

Party and Committee Leadership

The electoral impact on party and committee leadership in Congress will be determined by the final margins. If Democrats flip the House and gain an overwhelming majority, it is possible that progressives will demand a new Speaker, whomever that may be. With a slimmer majority, Pelosi will likely get the gavel. On the committee front, some will necessarily see leadership turnover due to retirements, including Judiciary, Oversight and Government Reform, Appropriations, Financial Services, and Foreign Affairs in the House and Finance, Foreign Relations, and Armed Services in the Senate. Of particular significance will be Chuck Grassley's decision whether or not to return to his former leadership position on the Finance Committee, which will have a domino effect on other members' placement. We will continue to monitor these leadership dynamics and follow up with additional detailed analysis in the coming weeks.

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