



THE SMALL BUSINESS LEGISLATIVE COUNCIL REPORT

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With less than two months until November 8, it is no secret that most of the nation's political attention and energy is focused on the upcoming elections.

As we have previously reported, the political dynamics of the coming two years will be shaped significantly by which party emerges from the elections with control of the Senate (the House is expected to stay in Republican control). The fact that both parties' presidential candidates boast historically high disapproval ratings has made the outcome of many of the down ballot races, including those for the Senate, all the more uncertain.

At present the breakdown of the 2016 Senate elections can be summarized as follows:

- The Senate is currently comprised of 54 Republicans, 44 Democrats and two Independents both of whom caucus with the Democrats. To take control of the Senate, the Democrats either need to pick up five Senate seats or pick up four Senate seats and hold the White House (with the Vice President casting the tie breaking vote in the Senate).
- There are 34 Senate seats up for election in 2016. Ten of these seats are currently held by Democrats and 24 are currently held by Republicans. Even if the Democrats win control of the Senate this year, they will be facing tough odds in 2018 with 25 Democratic seats up for election and only eight Republican Seats.
- Now that Senator Rubio has changed his mind about running, just five of the 34 seats up for election are open while the remaining 29 have incumbent candidates. Of the five open seats, three

are presently held by Democrats (CA, NV, MD) and two are held by Republicans (LA, IN).

- Of the ten Democratic seats up for election this year, nine of them, including two of the three seats open seats, are (at this time) considered safe seats for the Democrats (CA, CO, CT, MD, NY, HI, OR, VT, WA). This number has increased since our last election alert as Colorado went from being one of the Democrat's biggest defensive challenges to being a near sure thing for incumbent Senator Michael Bennet. After a number of the Republican establishment's top choices declined to run, El Paso County Commissioner Darryl Glenn won what the Denver Post referred to as a "bizarre primary that featured a menagerie of chaos" and has since been trailing Senator Bennet by double digits in the polls.
- Of the 24 Republican seats up for election in 2016, 15 of them are (at this time) considered safe seats for the Republicans (AL, AK, AR, AZ, GA, IA, ID, KS, KY, LA, OK, ND, SC, SD, UT). This list has changed since our last election alert due to a number of developments. First, as discussed further below, former Senator Evan Bayh's late decision to run has thrust Indiana into play for the Democrats. Additionally, Senator John McCain survived a primary challenge from the right and is now leading by double digits. Finally, while the Republicans are still favored to carry Missouri, the polling margin between Republican Senator Roy Blunt and his Democratic challenger, Missouri Secretary of State Jason Kander, is now less than five percent, casting Missouri as less of a sure thing for Republicans than was previously expected.

- Senate candidates from both sides are facing challenges created by their parties' presidential candidates. In recent years, straight ticket party voting has increased significantly with 84 Senators currently being members of the same party that carried their state in the 2012 Presidential election. For Republicans this raises concerns as Hillary Clinton maintains a solid lead against Donald Trump in a number of states with competitive Senate races including Illinois, Pennsylvania, New Hampshire and Wisconsin. On the Democratic side, the Clinton campaign's efforts to appeal to disillusioned Republicans by casting Donald Trump as an outlier from the party has made it more difficult for Democratic Senate candidates to try to link Republican Senate candidates to Donald Trump.

As a bottom line – there are now nine seats that are expected to be very competitive and on which the control of the Senate will most likely hinge.

With Colorado essentially off the table, the biggest chance for the Republicans to pick up a seat is in **Nevada** where Minority Leader Harry Reid is retiring. At present, polls are showing the race between Democratic former Attorney General Catherine Mastro and Republican Representative Joe Heck to be the closest Senate race in the country. Moreover, Donald Trump and Hillary Clinton are polling very close in the state, making it unclear how the presidential race could sway the Senate outcome.

Now that Senator Rubio is running, seven of the eight Republican seats expected to be highly competitive have incumbents running.

- The Republican Senator that appears to have the greatest risk losing is **Illinois** Senator Mark Kirk who won President Obama's former Senate seat in 2010. In 2010, a year that was very favorable overall for Republican candidates, Senator Kirk only beat his Democratic opponent by a close vote of 48% to 46.4%. Senator Kirk is being challenged by Democratic Representative and Iraq war veteran,

Tammy Duckworth, who has been consistently leading in the polls.

- Also amongst the group of most at risk Republican Senators is Senator Ron Johnson in **Wisconsin**. Senator Johnson is facing former Senator Russ Feingold in a rematch of the 2010 election in which Senator Johnson unseated Senator Feingold by a vote of 52% to 47%. Senator Feingold has maintained a solid lead over Senator Johnson in the polls and some commentators have observed that Senator Johnson's campaign strategy has looked more like that of a challenger than of an incumbent.
- One of the elections that is expected to be most significantly impacted by the top of ticket dynamics is the **Pennsylvania** Senate race where Senator Pat Toomey is trying to defend the seat he won in 2010 by a margin of just 2%. Senator Toomey is running against former state and federal environmental policy official Katie McGinty. Recent polls have been split as to which candidate they show to be leading the race, however, the polls have shown Hillary Clinton to be maintaining a consistent lead over Donald Trump which could hurt Senator Toomey's chances if the party-line voting trend of prior years continues.
- In **New Hampshire**, Senator Kelly Ayotte, who was also elected during the 2010 Republican wave, is expected to face Democratic Governor Maggie Hassan in her bid for re-election. In 2010, Senator Ayotte won the seat previously held by Republican Senator Judd Gregg by solid margin of 60.1% to 36.8%. Governor Hassan was first elected in 2012 and won re-election in 2014 by a vote of 52.6% to 47.4%. The two women have been polling very close to one another and, at present, this race appears to be a toss-up.
- Senator Marco Rubio's late June decision to run for another term in the Senate significantly lessened (though did not

completely eliminate) the Democrat's chances of finding a gain in **Florida**. Senator Rubio has been polling consistently ahead of his challenger Democratic Congressman Patrick Murphy in a state where the presidential candidates are neck in neck.

- While still close enough to qualify as an at-risk seat, Republicans have been pleased to see a strong campaign showing by **Ohio** Senator Rob Portman paying off. The last three major polls have shown Senator Portman as having a double digit lead over his challenger former governor Ted Strickland. The Democratic Senatorial Campaign Committee (DSCC) has scaled back its advertising in the state and there have been suggestions that the DSCC may pull out from the state all together.
- On the other hand, one race that was not expected to be particularly close but that has now fallen into the at-risk column is the **North Carolina** senate race. Senator Richard Burr is seeking a third term and facing a challenge from former state representative Deborah Ross. The polls have shown Senator Burr to be maintaining a slight lead, though a recent CBS poll showed Ross with a one point lead. As the presidential candidates have been polling very close to one another in North Carolina, this could prove to be another state where the outcome of a close Senate election may be driven largely by the top of the ticket.

The remaining seat at risk for Republicans is the seat in **Indiana** being vacated by Senator Dan Coats. From the outset, this seat in a relatively strong Republican state was considered safe for the Republicans and their candidate Representative Todd Young. However, in mid-July, former Senator Evan Bayh announced that he would run again for the seat that he gave up when he retired from the Senate in 2010. Senator Bayh, who served two terms as senator and two terms as governor and is the son of long serving Indiana Senator Birch Bayh, brings with him significant name recognition and nine million dollars in campaign funds that had remained untouched since 2010. Senator Bayh has been polling ahead of

Representative Young despite the fact that polls show Hillary Clinton trailing Donald Trump significantly in the state.

As can be ascertained from the above, the unique presidential election appears to be impacting certain senate races more than others. Interestingly, apparently in an effort to appeal to Republican voters who do not support Donald Trump, some of the Republican Senate candidates have been trying to garner support by arguing that a Republican Senate will be necessary to check Hillary Clinton if she becomes president.

At this point, the odds of one party having control of both chambers of Congress and the White House after November are not high, though possible. Rather it appears likely that we are looking at a split of control and the potential for continued partisan discord. On the other hand, and somewhat counter intuitive, small business often does well with split control in that both parties tend to try to court us more.

We will continue to monitor and report on the upcoming elections as the landscape continues to develop.