

Investors Are Among Those Closely Watching Midterm Elections

With bipartisan politics virtually nonexistent, the upcoming midterm elections could have an outsized impact on federal policy, not only for the hot-button issues that have dominated the headlines since President Trump took office, but also in areas like investor protection.

Whether or not that happens depends on whether Republicans maintain control of both the House of Representatives and the Senate, or cede one or both of their majorities to the Democrats. All 435 members of the House are subject to elections, as they are every two years. For the Democrats to take back the House, they would need to add 25 new seats to their current 193. For the 100-member Senate to change hands, the Democrats would have to pick up two of the 35 seats up for election to gain a majority (if they win only one seat, the Senate would be tied 50-50, with Vice President Pence breaking any deadlock). To secure additional seats, Democrats are keenly focused on potential pick-up opportunities in Arizona, Nevada and Tennessee, while the Republicans are looking to flip seats in Florida, Missouri, Montana, North Dakota and Indiana.

As of October 1, the *Realclearpolitics.com* "poll of polls" gives Democrats a 7.4% advantage in the generic Congressional ballot, which along with historical trends would indicate the Democrats have a good chance of winning control of the House. On September 27, Kyle Kondik, Managing Editor of *Larry J. Sabato's Crystal Ball* of the University of Virginia's Center for Politics said, "Our best guess right now is a Democratic House gain of somewhere in the low-to-mid 30s. But there are enough very close races that something like a 30-seat gain could turn into more like a 20-seat gain and leave the Democrats short of a majority. Back in July, we said the Democrats were 'soft favorites' to win the House. Their odds have likely gotten better since then, or at the very least have not gotten worse, but the GOP still has an opportunity to retain the House with some breaks."

As for the Senate, most pundits think it will likely stay within a vote or two on either side, especially given the particular seats up for election, with Democrats needing to defend 26, including some in states where President Trump is very popular, and Republicans defending only nine, all but a handful considered relatively safe. Charlie Cook, Founder of *The Cook Political Report*, said on September 23 that: "What we are dealing with this year is actually very simple: there is a blue wave and a red sea wall. This election all turns on whether the blue wave rises above the Republican sea wall." From Cook's perspective, the sea wall has been created by the Republican institutional advantages from the 2010 redistricting effort and the fact Republican voters are more evenly spread out, whereas Democratic voters are clustered generally on the coasts and specifically in large cities.

Under any scenario, party control will have a decided impact on issues polls indicate are important to Americans such as health



BY DAVID M. MASER

267.479.5700

dmaser@cohenmilstein.com

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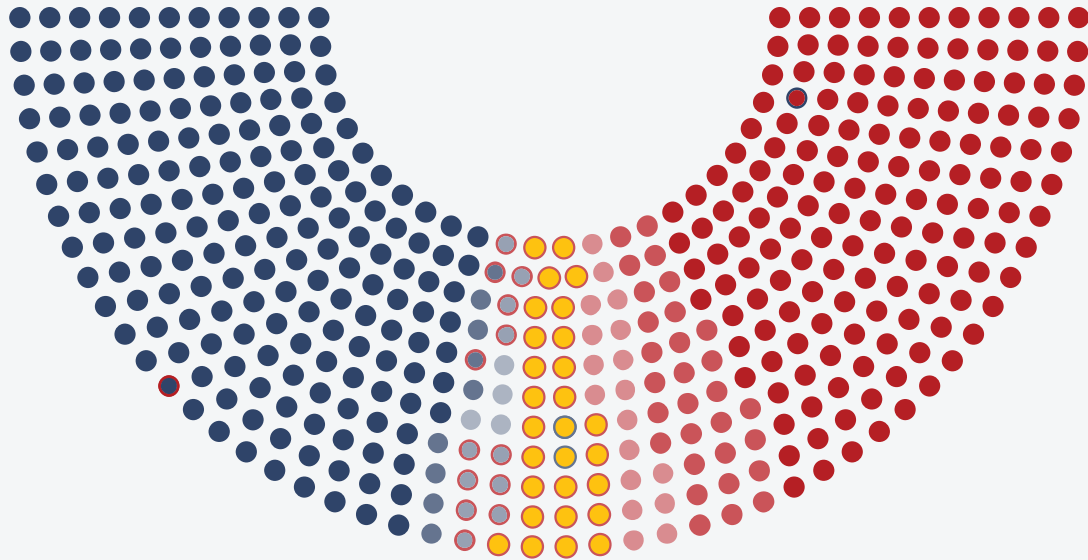
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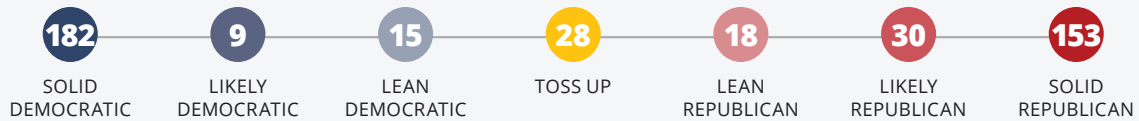
**CHARLIE COOK,
FOUNDER OF THE
COOK POLITICAL
REPORT**

KEY RACES: HOUSE

Current balance: 193 Democrats, 235 Republicans, 7 Vacancies

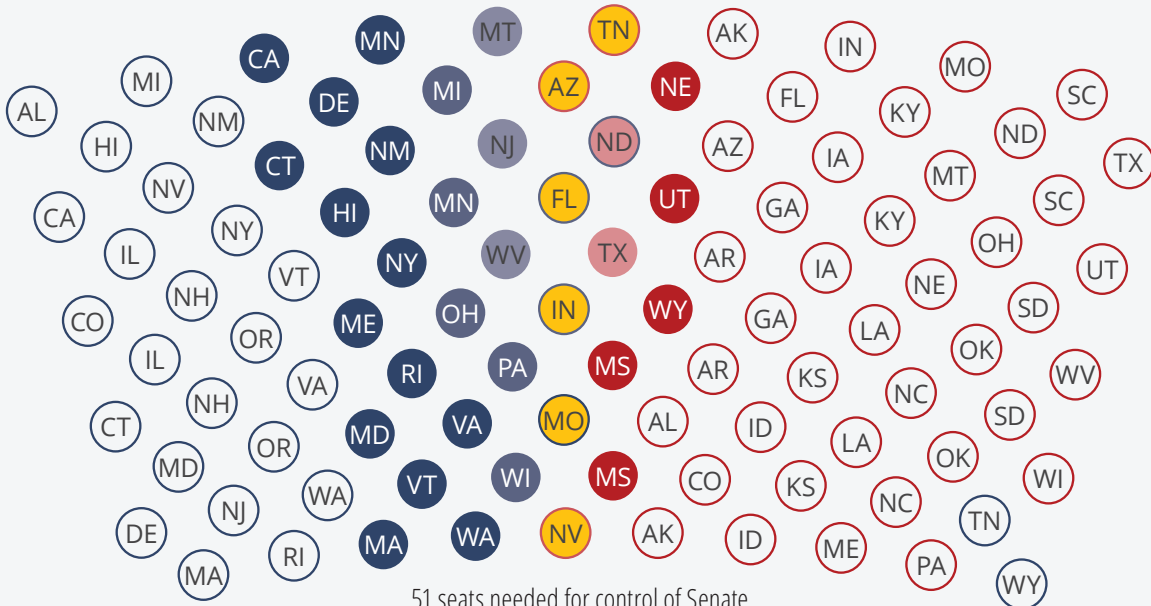


218 seats needed for control of House



KEY RACES: SENATE

Current balance: 49 Democrats, 51 Republicans



51 seats needed for control of Senate



Cohen Milstein graphics based on CNN's 2018 Race Ratings.

**EVERY VOTE AND
EVERY ELECTION
WILL MATTER.**

care (including prescription drug pricing, universal/single-payer coverage, Medicare and Medicaid funding), political corruption, immigration, gun policy, the Supreme Court and, of course, the economy and job creation.

Likewise, which party controls Congress will have an impact on investor protections. If Republicans keep control of both the House and Senate, they will likely push hard to further limit future securities litigation through legislation, and to appoint as many conservative judges as possible to the federal bench. H.R. 5037, also known as “The Securities Fraud Act of 2018,” for example, seeks to provide exclusive federal jurisdiction over civil securities fraud actions. Republicans in the House would likely reintroduce H.R. 5037. This time around it would gain momentum, unlike during the last Congress when this bill was sidelined while the Republican controlled House focused on repealing Obamacare and tax cuts. Pro-investor organizations like the North American Securities Administrators Association are sounding the alarm about their opposition to the bill to the U.S. House Committee on Financial Services. The passage of this bill alone would have a tremendous impact on securities litigation going forward because it would bar states from regulating securities fraud and would remove an additional layer of protection currently available to investors by prohibiting them from bringing certain federal securities claims in state court.

The next possibility is if the Republicans keep the Senate but lose the House. Under this scenario, there would likely be no meaningful change to current securities litigation through legislation. A Democratic House would be able to keep any meaningful restrictions to securities litigation from emerging from committee, let alone coming to the floor for a vote. There would, however, still be more conservative judges appointed, who could then in turn push the judiciary further against securities litigation in general.

The final scenario, under which the Democrats take both chambers of Congress, would likely keep the current state of affairs in place through the 2020 presidential elections. It would also likely slow, if not stop, the appointment of conservative federal judges.

The next few weeks will determine whether we change course, or maintain the status quo. Every vote and every election will matter. ■

David M. Maser is Of Counsel to the firm and a member of the Securities Litigation & Investor Protection practice group. Mr. Maser interviewed Mr. Kondik and Mr. Cook for this article.



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KYLE KONDIK, MANAGING EDITOR OF LARRY J. SABATO'S CRYSTAL BALL OF THE UNIVERSITY OF VIRGINIA'S CENTER FOR POLITICS