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A Republican Mandate?

Results and Consequences of the U.S. Congressional Elections

Michael Kolkmann

The U.S. Congressional Elections brought about an important victory for the Republican party, increasing its majority in both the U.S. Senate and the U.S. House of Representatives. This, however, does not automatically lead to enhanced cooperation between the White House and Capitol Hill. Just the opposite seems likely: we could see new conflicts between both sides on various issues, ranging from judicial nominations to tax policy. Accordingly, the success of the second Bush-Administration will depend on its ability to win support for its policies in Congress.

Following his reelection on November 2, 2004, President Bush announced in his first post-election press conference that the voters had given him new political capital and that he intended to spend it as fast as possible in order to implement his political agenda. In this context he mentioned his party's increased majorities in both houses of the U.S. Congress. Why were the Republicans able to increase their seats in Congress? What political profile do these new majorities have? And what do they mean for the work of the 109th Congress, scheduled to convene in January 2005, and for the interaction of the President and Congress in Bush's second term?

The House after the election

Since the beginning of the 2004 electoral campaign, it seemed almost impossible for the Republicans to lose their narrow major-

ity in the House. However, political observers presumed that the Democrats could at least manage to cut the size of that majority since they had managed to do so in every election since the Republicans gained control of Congress in 1994, sending Democrats to the opposition bench after forty years as majority party. This time, however, the Democrats failed to even reach this goal. Even worse, they lost several seats to their Republican counterparts. All in all, the Republicans won four additional seats, giving them a majority of 233 to 201 seats. 218 votes are necessary to pass a bill. One seat is still being held by Independent Bernie Sanders of Vermont.

Limited Competitiveness

Only 35 of the 435 House districts were competitive in the 2004 electoral season, meaning that both parties had a good

chance to win the district. In an additional 29 districts the incumbent was heavily favored, leaving 371 districts in which the incumbents weren't threatened at all. The Democrats had only one chance to win the majority in the House: to win all competitive seats and defend their own vulnerable incumbents. This scenario didn't materialize. The 2004 election saw a continuation of a trend which started several electoral cycles ago. In 2000 there were 50 competitive seats, in 1992 100. But in 2004, the representatives in only twelve districts won with a majority of less than 10 per cent of the votes. Because of the increasingly homogeneity of most districts, today the real selection happens in the primaries, not in the general election. This leads to a more prominent standing of the rather leftist candidates in the Democratic party and the more right-wing candidates in the Republican party, because candidates have to succeed in getting the nomination from their party's base. Once the primary is won, the winning candidates can be pretty sure to win the general election as well.

Incumbents' advantages

The relatively high reelection rates in the House of Representatives are based on two elements: the advantages of being an incumbent and a nationwide, regularly scheduled redistricting of the district lines.

(1) Compared to their challengers, incumbents enjoy important advantages: they have a greater visibility in their districts and can lay a hand on important financial resources for district offices, free mailings and federal subsidies for projects in their districts. On the one hand, this year 47 incumbents raised more than \$1 million for their race. On the other hand, the challengers in 21 districts had less than \$10,000 for the last four weeks of the campaign.

(2) Even more important than the advantages of being an incumbent is the process of redistricting. Based on the results of the general census, every ten years the lines of the districts are being redrawn in order to

ensure an equal number of voters in every district. It turned out that the redistricting process in Texas resulted in grave consequence for the 2004 election results. Its state legislature, controlled by the Republican party, used a plan set up by House Majority Leader Tom DeLay to redraw the lines to the Republicans' benefit since Democratic incumbents were given more heavily Republican districts. Of the five Democratic incumbents that suffered defeat in the 2004 election, four lost their seats in Texas. This newly drawn plan of House districts in Texas and its compatibility with constitutional norms is currently being revised by the U.S. Supreme Court in Washington.

Partisan Politics

During the 2004 campaign, the Republicans stressed almost exclusively the political priorities of the Bush administration, particularly the tax cuts enacted during the first term of President Bush, the Medicare bill passed in December 2003 and the 'Leave no child behind-law', which was President Bush's number one priority in education policy. According to House Majority Leader Tom DeLay the election of 2004 was a "confirmation and expansion of the Republican agenda. With a bigger mandate, we can do even more exciting things." His colleague Mike Pence from Indiana interpreted the result as "mandate for national conservative leadership." The strict parliamentary rules in the House of Representatives will allow the conservative and hierarchical organized leadership team of the Republican party to continue the political course of the last four years.

The Senate after the 2004 election

At the beginning of the 2004 electoral season, the situation of the GOP in the Senate looked comfortable. Out of the 34 seats that were up for reelection in 2004, the Democrats had to defend 19 seats, the Republicans only 15. Five Democratic Senators had

already announced that they would not seek reelection this year. These five open seats were all in Southern states, a region that has grown to be dominantly Republican over the past few decades. While the electoral campaign was underway, it became obvious that the Democratic candidates in a number of Senate races proved to be stronger than expected, so that a 50:50-Senate or even a Democratic majority suddenly didn't look out of reach anymore. In Illinois, for example, state Senator Barack Obama managed to win the seat formerly held by a Republican by a decisive margin. Obama gained a nationwide reputation earlier this year by giving an impressive speech at the Democratic National Convention. He is only the third black Senator in Senate history. In Colorado, Democrat Ken Salazar won the election only by a margin, beating beer magnate Peter Coors by 51 to 49 percent. Salazar is the first Hispanic member in the Senate in 25 years.

To gain a majority of seats in the Senate, Democrats had to do well in eight close races. But the Republicans managed to win all eight races: Alaska, Florida, Georgia, Kentucky, North Carolina, Oklahoma, South Carolina and South Dakota. In these states, President Bush won the presidential election by 17 points on average, providing strong coattails for Republican candidates down the ballot running for Senate and House seats. In several states, for example in South Dakota, these coattails were enough to put the Republican challenger on top.

In the new Senate, which is due to take office in early January, the Republicans control a majority of 55 seats. The Democrats have 44 seats, plus the seat held by Vermont Senator Jim Jeffords, who left the Republican party in the spring of 2001 to become officially an Independent and usually votes in line with his Democratic colleagues.

The Democratic party was particularly upset by the loss of their Minority Leader Tom Daschle in his race against former

Representative John Thune. Just two years ago, Thune had lost a first Senate bid against the other South Dakotan Senator, Tim Johnson, by 524 votes. This time, Thune won by a margin of 51 to 49 percent. Daschle is the first Senate leader who lost a reelection bid in 52 years, when Barry Goldwater upset Democratic Senator and Majority Leader Ernest William McFarland in 1952.

Similar to their colleagues in the House, Senators enjoy a huge financial advantage compared to their challengers. The Republican Senator from Ohio, George Voinovich, for example had \$4.2 million to spend in his campaign; his Democratic counterpart collected just \$93,000. Democratic Senator Harry Reid from Nevada had \$3.3 million in the bank; his Republican challenger was with just \$15,000 far from being competitive. In addition to the expenditures by the respective Senators, the two political parties spend \$70 million for the 34 races. Combined with the expenditures by the various interest groups, the Senate campaigns ate up \$600 million this year.

The leadership teams in the Senate

While the Republican leadership remained largely unchanged following the 2004 election, the Democratic side saw—due to Minority Leader Daschle's defeat—several changes. Harry Reid from Nebraska was elected new Minority Leader by his colleagues. Richard Durbin from Illinois was selected as new Minority Whip.

On the Republican side, Bill Frist from Tennessee remains in his position as Majority Leader. He will be supported by Mitch McConnell from Kentucky as Majority Whip, as he was in previous years. In two years, however, the Republican leadership will undergo several changes, as Majority Leader Frist will retire following the congressional election in November 2006. Rumor has it that he intends to run for President in 2008. During the next two years, possible successors may position themselves in order to take the position

of Majority Leader following Frist's departure. This development will diminish the bipartisan cooperation even further as it has done so in the past.

An important part will be played by the chairman of the Judiciary committee when it comes down to judicial nominations and other critical questions like abortion and same-sex marriages. Arlen Specter from Pennsylvania is the leading contender for this post, because the current chairman, Orrin Hatch from Utah, is not allowed to carry on as chairman due to a six-year term limits for their chairman implemented by the Republicans back in the 1990s. After some debate about Specter's role in possible judicial nomination cases, once he becomes chairman, he seems unopposed for now. Following the election, Specter said that under his chairmanship, there will not be any litmus tests for possible contenders on the issue of abortion. This aroused broad criticism by colleagues and particularly groups affiliated with the Christian Right. James Dobson for example, president of Focus on the Family, one of the most influential groups on the right, declared publicly that Specter's nomination as Judiciary chairman would pose "a problem" and must therefore be prevented. Only after Specter redefined his position and affirmed that he will support all candidates that President Bush sends to Capitol Hill for a nomination, did his colleagues in the Judiciary Committee support his elevation the committee's chairmanship. This episode could be an early indication to what extent conservative groups will try to push through their political agenda in the coming years, after claiming to have played a critical role in President Bush's successful reelection. This raises the question of how much influence moderate Senators will be able to exert in the 109th Congress and how large their maneuvering room will be compared to the White House and its ally in the Senate, the Republican leadership.

Political profile of the new Senate

The congressional election has changed the Republican caucus in the Senate both in terms of quantity and quality. Not only did the Republicans manage to increase the size of their majority, but a look at the voting records of the newly elected Senate members shows that this majority became at the same time more conservative. While being members of the House, Tom Coburn (Oklahoma), Johnny Isakson (Georgia), John Thune (South Dakota) and John DeMint (South Carolina) received conservative rankings between 70 and 100 percent on the Liberal/Conservative ranking scale compiled by the National Journal. Moreover, they received rankings of partly 100 percent on major legislation scorecards compiled by conservative groups like the American Conservative Union (ACU). Richard Burr, winner of the North Carolina Senate race against former Clinton White House Chief of Staff Erskine Bowles, voted during his tenure in the House in 96 percent of all decisions with President Bush's priorities. His colleague David Vitter, who is the first Republican to win a Senate seat from Louisiana since reconstruction, voted in 99 percent of all decisions with his party. The newly elected Senator from Florida, Cuban-born Mel Martinez, will be an important ally for President Bush as well, since Martinez served in Bush's cabinet during his first term. This newly assembled group of freshman Senators will complicate the parliamentary process in the Senate, since they will hinder too far-reaching compromise building. In critical decisions, they will probably prefer to vote along ideological lines instead of calculations based on partisan and tactical considerations. They will also work to further diminish the influence of moderate Republican Senators, for example from East Coast states. 55 seats hand the Republican leadership such an overriding majority that, in important decisions, it can risk losing centrist and more middle-of-the-road votes like by John Chafee from Rhode Island or John McCain from Arizona.

On the Democratic side, the new caucus tends to be more leftist than in recent years. Centrist Democrats lost important representatives with John Breaux of Louisiana and Fritz Hollings from South Carolina who decided not to seek another term.

Taken together, this implies that the partisan poles in the Senate will be strengthened by the election results, the vital political center, however, will be weakened. The common ground of centrists in both parties, Democrats and Republicans alike, who generally work together to enhance a common sense agenda, seems to have disappeared. If there is any cooperation at all between the two sides in the upcoming years, it will be limited to specific policy areas and, even more, to specific legislative bills.

Advantages of the majority party

The majority party in the Senate has quite a number of tools available in order to implement its majority status. Following an agreement of both political parties, the majority party enjoys financial and personal resources that are about thirty percent larger than those for the minority party. Committee chairmanships will not be distributed proportionally according to the strengths of the respective parties, as it is done for example in the German Bundestag; instead, the majority party gets all chairmanships. This is of great importance for the parliamentary process, since it is the chairman who dominates his committee's agenda. It is up to him whether the committee takes up a legislative bill and, if the chairman chooses to do so, how he structures the political process in which the bill is under consideration. He sets the daily agenda, extends invitations to hearings and selects the experts who will give testimony on a specific bill before the committee. He also decides which bills will get a vote, with which recommendations a bill is passed in committee and whether a bill will be forwarded to the full House.

The parliamentary proceedings

Despite their gains, the Republicans have not reached the critical number of votes important for the Senate proceedings: with 60 votes it is possible to end a filibuster. A filibuster is an extremely long speech used primarily to stall the political process in the Senate and thus delay or even derail a specific legislative bill. In most cases it is held by a member of the minority party in the Senate. While a Senator is filibustering, other Senators are trying to hammer out a compromise that would address the filibustering Senator's concerns. A filibuster is based on the, compared to the rules of the House, mostly liberal rules of the Senate which does not provide for a specific limit for any speeches held on the Senate floor. Under Senate rules, the speech does not have to be related to the bill the Senator tries to stop. A filibuster can be stopped by sixty Senators. However, such a vote has to be scheduled days in advance, so that the filibustering Senator can go on with his speech for quite some time.

The number of sixty votes is for the Senate's Republican leadership even further out of reach, as the leadership cannot be sure to have the support of all 55 votes they currently have. Since there is no "party discipline" in the Senate as there is for example in the German Bundestag, Senators are free to vote. Usually, they vote first according to their district's needs and concerns, and only second according to their party leaders' preferences, meaning that usually very moderate or very conservative members of the Republican caucus do not vote with the majority of their colleagues.

So it is not surprising that the Republican leadership is currently considering rewriting the rules governing the Senate's proceedings. Several Senators have already expressed their dismay with the seniority principle, which usually gives a chairmanship to that Senator of the majority party who has the longest uninterrupted tenure in that specific committee. These Senators would like the leadership to distribute the respective committee chairmanships, thus

strengthening the leadership's grip on the Senators, rewarding leadership-friendly behavior by the Senators and possibly sanctioning critical stances that are not shared by members of the leadership. Facing an even bigger majority than they did before the election, some Republicans are pressing to add one Republican seat to each of the Senate committees, therefore reflecting the changed majority situation in the Senate. This would give the leadership as well as the committee chairmen more leeway in passing rather controversial bills. This would prove particularly important in the case of possible judicial nominations in the future. Since Republican members of the Judiciary committee opposed to President Bush's nominations are losing, relatively speaking, influence in the face of a bigger majority on the committee, it will be harder for them to stop controversial choices by the president. Last but not least the Republican leadership is discussing changes in the parliamentary rules of the Senate to be better able to prevent possible filibusters in the future, for example by the Democrats who are opposed to President Bush's judicial nominations or his proposed restructuring of the Social Security system. These modifications of rules currently under consideration will, once they are indeed implemented, change the basic parliamentary process in the Senate and will make the Senate's proceedings more rigid like they are in the House.

Policy areas of the 109th Congress

Shortly after the election of 2004, influential Republican members of Congress have encouraged President Bush to spend his political capital that he gained in his electoral victory to implement his political agenda as far-reaching and as fast as possible. They base their advice on results of the exit polls. These exit polls showed that 20 percent of all voters cast their vote primarily due to "moral values." Out of these 20 percent, 80 percent of the respondents voted for President Bush. It could

prove helpful for President Bush that almost all members of the Republican leadership teams in Congress are very conservative. Senator Rick Santorum from Pennsylvania, for example, encouraged the Democrats to finally realize that they lost their majority status ten years ago and that they don't have the say anymore. The Senate, Santorum continued, swung to the right with the election of 2004, and this was the direction the voters wanted. The increased authority of the President following the election and the bigger Republican majorities in House and Senate could indeed increase the possibility of passing legislative bills more easily. This could prove particularly true for bills that went nowhere in the 108th Congress, for example a controversial energy bill that would allow drilling in the Arctic National Wildlife Refuge in Alaska that didn't get passed due to concerns voiced by Democratic Senators. Another policy area that could see renewed activity is the question of possible financial limits in malpractice cases which was another bill Republicans couldn't muster enough votes to pass.

The reach of this new Republican mandate is not universally shared by all members of the Republican caucuses in Congress. Jon Kyl for example, Republican Senator from Arizona, warned immediately after the election not to over interpret the mandate. President Bush and his party may have a mandate for the war on terrorism and the Iraq war, since these issues played dominantly in the election campaign. To assume, according to Kyl, a farther reaching mandate that could possibly include domestic reforms like Social Security, tax cuts or social issues would be a misinterpretation of the mandate issued by the American voters. Kyl added that he would wish for such a mandate, but Bush and his party just didn't have it.

The domestic agenda set by President Bush for his second term and therefore the agenda for legislative deliberations in Congress consists of a variety of topics that are

even controversial among Republicans themselves:

Social Security. According to President Bush, the reform of the Social Security system tops his domestic agenda for the coming years. According to ideas that are being pitched by the Administration, younger workers should be able to pay part of their income into private Social Security accounts. This proposal is based on recommendations by a bipartisan commission chaired by former New York Senator Patrick Moynihan that was established by President Bush in 2001 to study different reform options. The projected costs for this project amount to \$2 billion spread out over the next ten years. The recommendations by the Moynihan-Commission were harshly criticized by Democrats who see the issue of Social Security due to historical and ideological reasons as part of the Democratic legacy. For President Bush, the reform of Social Security is the first step in establishing what he called during the campaign the Ownership Society. According to this concept, the individual should carry more of the burden imposed by the existing pension and healthcare programs. How this Ownership Society should be specifically organized remained unclear during the course of the 2004 campaign.

Taxes. A second legislative priority for President Bush is the reform of the current tax system in order to make it easier to understand and more effective to use. It remains to be seen whether Bush prefers some kind of a flat tax or a more consumption-oriented tax. During the campaign he limited his ideas on his subject to the statement that he's planning to establish a commission to study different tax policy proposals right after the election.

Judicial nominations. One of the first challenges coming up for the Bush administration in its second term could be the nomination of a new justice for the U.S. Supreme Court. In October 2004, the Court announced that Chief Justice, William H. Rehnquist, was suffering from cancer. Political observers already speculate whether Rehn-

quist will retire in the coming months, leaving open not only a spot for a new justice, but also the position of Chief Justice as well. The question of judicial nominations is one that is closely followed by groups of the Religious right. They demand that any new justices pass a litmus test on abortion-related questions. For Bush, this presents a dilemma: he could either satisfy his political base by nominating a conservative justice or, following his 2000 campaign pledge to act as "a uniter, not a divider," he could try to attract moderate candidates that will also find the support of moderate Republicans and even Democrats. The Supreme Court nomination of a strict abortion foe would in any case arouse grave criticism among the Democratic members of Congress and their allies beyond Capitol Hill. During the first four years of the Bush Administration, the Democrats already filibustered and therefore blocked ten candidates nominated by President Bush for lower Federal Courts.

Moral issues. An issue that already failed once in the last Congress could return to the political agenda, now that the Republicans have bigger majorities than before the election: the question of amending the constitution to ban same-sex marriages. In July 2004, a legislative bill proposing this amendment failed in the Senate when it only garnered support of 48 senators. To pass, the amendment would need a two-thirds majority in both chambers of Congress and a three-fourth majority among the fifty states of the US. With 55 seats in the Senate, Republicans miss the requisite number of votes (67) for such an amendment by far. The public visibility of this issue in the election was promoted when voters in eleven states had to vote in a referendum whether to ban same-sex marriages.

Faith-based initiatives. Bush could also try to reinvigorate a project that belonged to the priorities for his first term until it ran into trouble on Capitol Hill: the question of faith-based initiatives, where religious groups are empowered to take over many

social tasks the government is currently performing. This project failed in the Senate, when Senators voiced concerns about possibly violating the separation of church and state.

In all of the mentioned policy areas it will be important for fiscal conservative Republicans that any new initiatives will not be too expensive, considering that the budget deficit currently stands at \$414 billion and that the public debt amounts to \$7.4 trillion. These concerns are not new: already in the final year of Bush's first term Republicans in the Senate criticized the administration for running up a huge deficit. Instead of promoting some of the above-mentioned domestic and moral priorities, it is feasible that the fiscal conservatives in the Republican party will stress economic and budgetary issues, therefore furthering the intraparty split in the Republican party. This would also mean increased possibilities of conflict with conservative groups outside Congress who claim that it was they who helped President Bush to win a second term.

Conclusion

During the first four years of the Bush administration, the Republican members of Congress saw their role primarily in supporting the President's agenda rather than being independent players within the American political system. It is widely assumed that this is unlikely to change in Bush's second term.

According to the U.S. constitution, in the presidential political system the executive and the legislative stand opposed in an antagonistic partnership that is often described as a system of checks and balances, while in parliamentary systems like Germany's the government is elected by the majority of the parliament and therefore must count on the continued support of its parliamentary majority. But since the American president and Congress are separately elected by the American electorate,

the president can therefore not count *prima facie* on a supporting majority. Instead, he has to try to build legislative coalitions, one bill at a time, on both sides of the aisle.

The current constellation of power distribution let it appear possible that the basic division between the executive and the legislative branches will be blurred. Moreover, in the current situation the Republicans, aided by their bigger majorities in Congress, could exercise far-reaching influence on the third branch of government, the Supreme Court, therefore influencing American politics for a long time to come.

The Democrats will try hard during the next two years to confront the Republicans in Congress as well as the Bush Administration aggressively in order to stress basic differences in their respective political programs and to offer voters a sharp contrast between the two parties. However, this course has been also widely criticized among the Democrats in recent months and, as some critics argue, has led to the electoral defeat of their Minority Leader Tom Daschle. In the eyes of many voters, according to these critics, Daschle obstructed too many policy proposals offered by President Bush and hindered the implementation of Bush's political agenda. The most important questions for the Democrats therefore are whether, how and when to present their own proposals and to fight for them and when to compromise with their Republican counterparts and the administration.

For President Bush the window of opportunity for implementing his agenda is closing fast. Starting in early 2006, members of Congress will start preparing for their reelection campaigns for the midterm elections in November 2006. Starting with these midterm elections, quite a number of Senators will begin to organize their respective presidential campaigns for the elections in 2008. Therefore it is safe to assume that the most important decisions in President Bush's second term will be made in the upcoming year 2005.

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