## Washington

BY DOUG KANTOR, PARTNER, AND MICHAELA CAMPBELL, LEGISLATIVE ASSISTANT, STEPTOE \& JOHNSON
Red vs. Blue: Who Will Win the 2018 Midterm Elections?


As 2018 flies by, November 6-and the midterm electionsdraw ever closer. Political jockeying continues on both sides of the aisle as Democrats and Republicans compete to see who will control the House and Senate for the next two years.

On the one hand, dissatisfaction with President Trump has led to talk of a potential "blue wave" that could carry Democrats to victory. This is supported by the fact that in a midterm election, the party that does not control the presidency typically gains seats. However, while it seems clear that Democrats will be able to win some seats, it remains to be seen whether they can win enough to control one or both chambers of Congress.

## Democrats May Flip the House

On the House side, Democrats need to keep all of their seats and win 23 additional seats to take control of the chamber. Projections show that there about 10 Republican seats that are expected to
turn Democratic, while only one Democratic seat is expected to turn Republican. More important for determining which party will ultimately be victorious, however, are the approximately 35 "toss up" seats, whose races are considered the most competitive. Most of these seats - with the exception of two Democratic seats-are currently held by Republicans, so Democrats would need to win 14 of these seats to win the House (this is assuming Democrats have already won all 10 Republican seats expected to turn and lost the one Democratic seat).

## Can Democrats Emerge Victorious? The short answer is: maybe.

The first possible indicator of success is the fact that there are 25 Republican seats in districts that were won by Hillary Clinton in 2016. Of those 25 seats, 17 are considered toss ups, while six others are likely to come down on the Democrat side. Only two of the 25 seats are currently projected to stay Republican.

Assuming Democrats keep all their seats, win the 15 toss ups, and then win the other six seats they are projected to win, they would just come out on top in the House. However, not all of those seats may be flipped, and Democrats also have to defend 13 seats in districts that Donald Trump won in 2016.

A second factor is that Republicans are retiring in larger numbers than Democrats; there are 39 Republicans retiring and only 18 Democrats. Of these open seats, eight that were held by Republicans are likely to be picked up by Democrats and an additional four are too close to call. Why could this matter? It might matter because incumbents-sitting representatives who are running for reelection - usually have the advantage in an election. When two new candidates are running, that incumbent advantage is lost.

Third, Democrats have been polling well. The generic congressional ballot, which tracks the party people say they will support in an election, has had Democrats up by between 3 and 13 points over the past year. Republicans were within just a few points of Democrats on the generic ballot in early June, but Democrats have increased their lead since then. It should be noted, however, that Democrats' lead eroded by a couple of points as this article was going to press. It is uncertain how this will track as it gets closer to the election.

Democrats have also been performing well in elections so far. In races for state legislative offices, Democrats have taken about 40 seats since the Trump presidency began. Republicans, however, feel that they have strong candidates running for Congress, as well as a strong economy to campaign on, which could help them.

Finally, Democratic voters have been turning out for recent primary and special election votes in higher numbers than past elections. Turnout has been a challenge for Democrats in recent years and might be again. But primary turnout, often viewed as a good measure of each party's "enthusiasm" for the election, is typically a good gauge for success in November.

Overall, Democrats seem to have the energy and the potential to flip the House - but most voters don't actually start paying attention to an election until after Labor Day so it is unclear if Democrats will ultimately have the numbers.

## The Senate is Expected to Stay Republican

On the Senate side, Democrats need to keep all their contested seats and win two more to take control of the chamber. Why do they need 51 seats instead of 50 ? Because the Vice President casts the tie-breaking vote in the Senate. With Republican Mike Pence serving as Vice President, a $50-50$ tie would allow Republicans to maintain control of the Senate.

Despite only needing two seats to hit 51 , it is very unlikely that Democrats will be able to flip the Senate. Why? It comes down to the numbers: Democrats have to defend 26 seats, while Republicans only have to defend nine. And of those 26 seats, 11 are in Republican-leaning states, including nine seats in states won by Trump in 2016.

Democrats are expected to hold on to at least 22 of those 26 seats, but they will have to defend four seats in tight toss up races. Republicans, meanwhile, are expected to keep six seats fairly easily, but will have to defend three toss up seats. Overall, projections currently show 48 seats leaning Republican and 45 seats leaning Democrat, with 7 toss ups. It is very unlikely that Democrats will be able to hold all 45 seats and win 6 of the 7 toss ups, though the momentum the party has makes it possible.


## So What's the Verdict?

Based on current projections, Democrats seem to be making a solid play for the House, though any margin of victory is likely to be slim. The Senate, however, is likely to remain Republican, but also by a slim majority.

Douglas Kantor is a partner and Michaela Campbell is a legislative assistant in Steptoe \& Johnson LLP's Washington D.C. office.

Steptoe \& Johnson LLP is counsel to the Society of Independent Gasoline Marketers of America.

