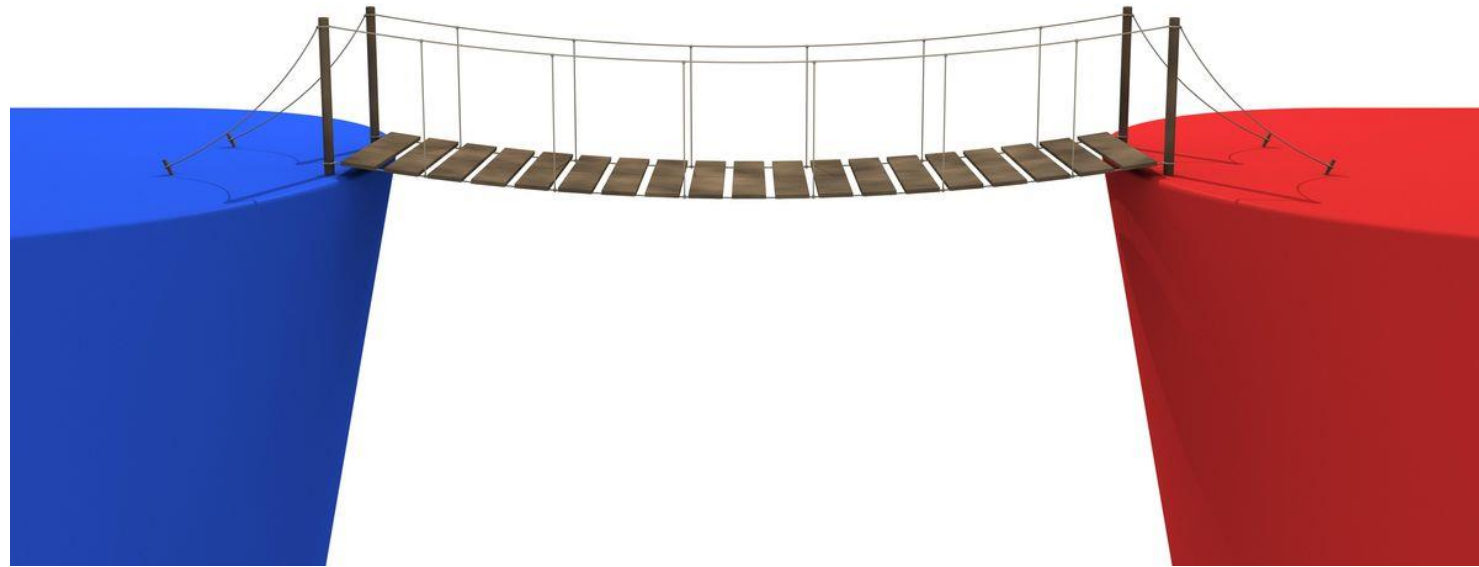


Bridging the Divide: What to Expect from Washington in 2023



Private Club Consultants
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Founder



Private Club Consultants

- PCC was created to provide in-depth legal/operational answers for America's top clubs
- We help club leaders:
 - Resolve legal issues, including those from staff, members and guests
 - Modernize club bylaws, rules and other governance documents
 - Protect their private and tax-exempt status, and
 - Implement new legislative and regulatory mandates
- We are “Your Trusted Source for Answers”



Our Roadmap



Balance of Power
What to Expect from Washington
2024

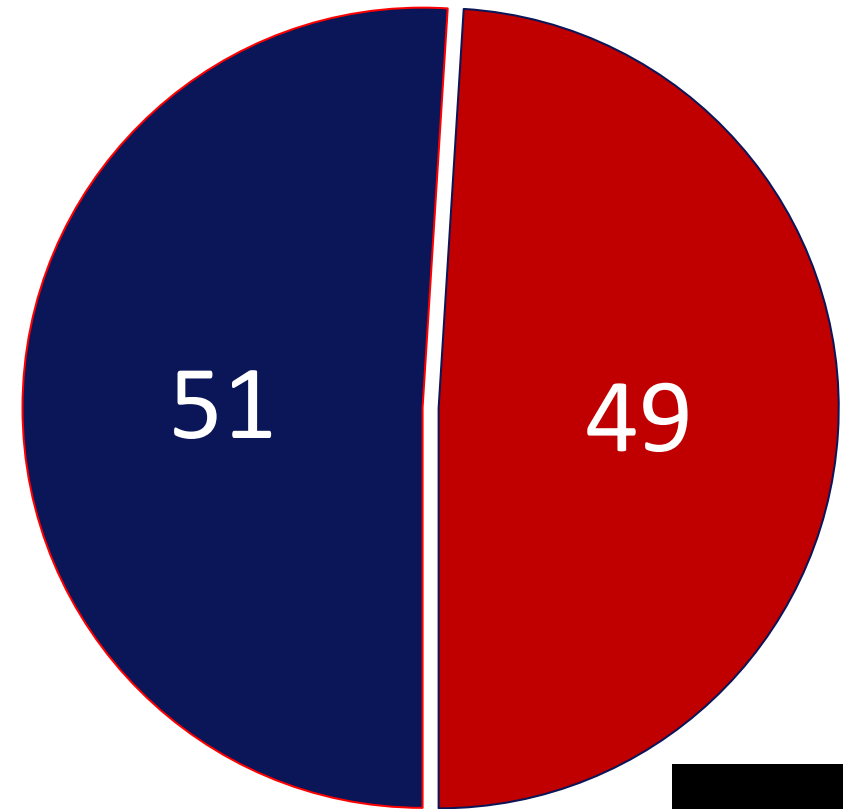


Balance of Power



Senate

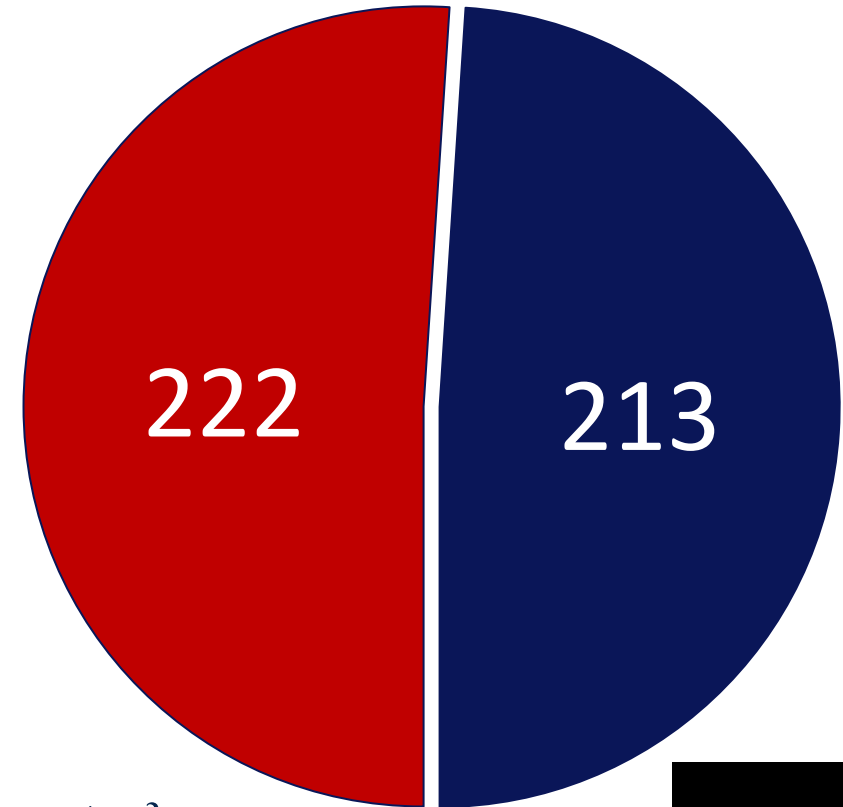
- D maintained majority & picked up 1 seat - PA
 - But still can't pass anything without 60
 - Sen. Sinema's (I-AZ) change won't alter things too much
 - Ds didn't lose anywhere
 - Kept seats in AZ, GA, NV and NH
 - Trump aligned candidates lost in all D toss-up races
 - Rs lost 1 but kept NC, OH and WI
- 2024
 - 23 Democrats/Indep. up with 7 in jeopardy
 - MT, OH, & WV - R states
 - AZ, MI, NV & WI - D/I states but Pres. toss-ups
 - 11 Republicans up with maybe 1 (MO?) in jeopardy

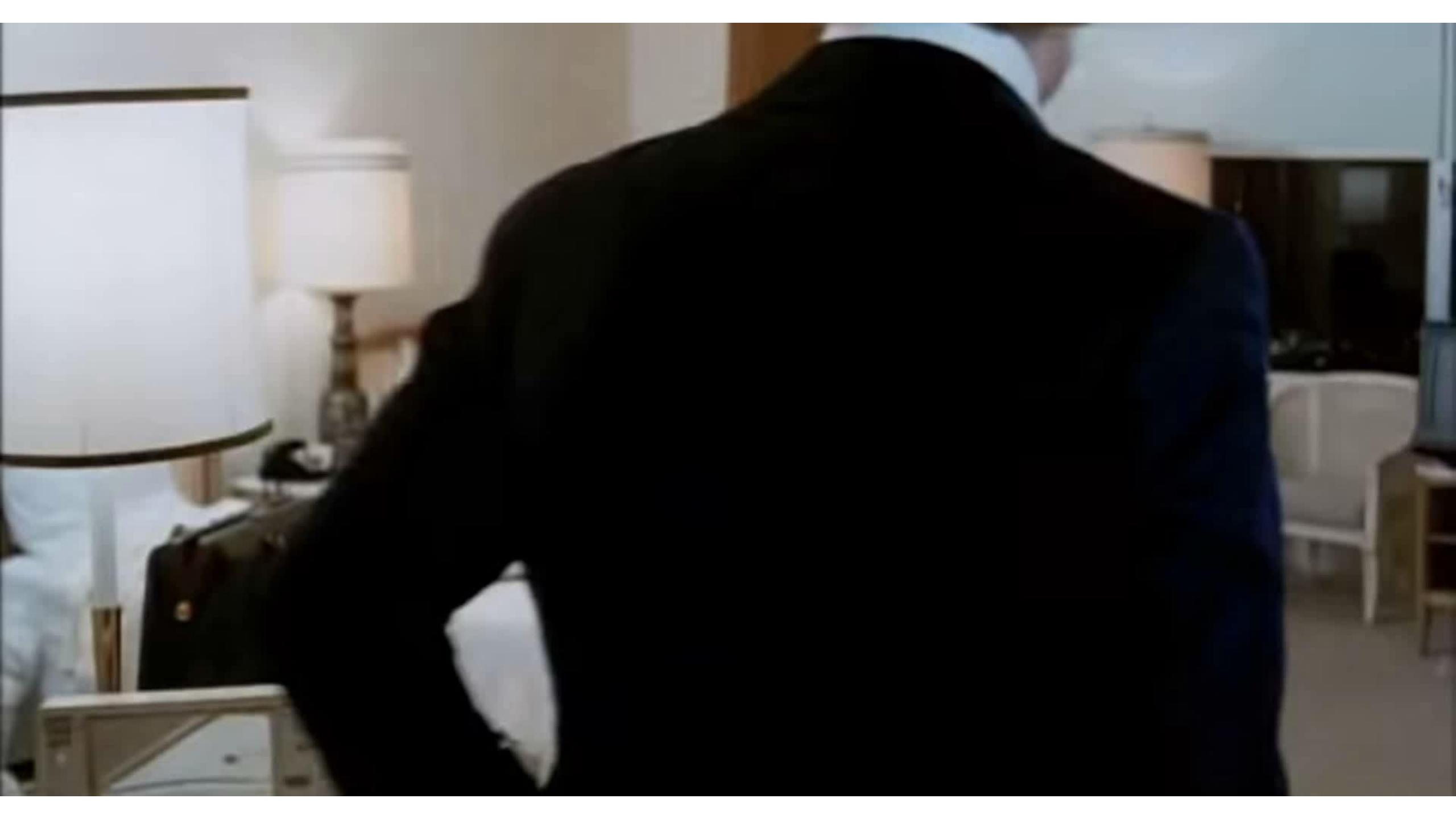




House of Representatives

- Republicans took control – sort of
 - Rs had a net gain of 9 seats
 - They control all 4 Long Island seats – took 4 in NY
 - Took 4 seats in FL
 - Beat NY Rep. Sean Patrick Maloney – DCCC Chair
 - Ds had more wins than expected
 - They control all 6 N.E. states and Alaska (!)
 - Beat OH Rep. Steve Chabot – 26-year member
 - This Speaker isn't Cannon, Rayburn or O'Neill
 - Takes 218 to pass anything so he can't lose > 4 votes
 - It will be the “troublesome 20” vs. establishment Rs – who wins?
- 2024
 - Ds only need to flip 5 seats (4 w/ Rep. Santos) – same as Rs in 2022....





What to Expect from Washington



Legislative Action

- Biden's FY24 tax proposals = \$5T in new taxes
 - A large chunk directly targets club members and indirectly...private clubs
 - Hikes top individual rate from 37% to 39.6% for those making \$400K+ (\$450K+/family)
 - Hikes Medicare tax from 3.8% to 5% for those making \$400K+ - in earned AND unearned income
 - Hikes cap. gain rate from 20% to 39.6% for those making \$1M+
 - A “wealth tax” for those with \$100M+ = minimum 25% on yearly earning
 - A “retirement tax” for those with \$10M in Roth IRAs making \$400K+ by prohibiting use of Roths
 - A tax on investment managers by taxing earnings at their tax rate rather than cap. gains rate
 - Hikes corporate tax rate from 21% to 28%
 - Hikes corporate stock buyback tax rate from 1% to 4%
 - 45% fed. rate (income and Medicare tax) PLUS state tax means a 50%+ rate for members
 - This could reduce disposable income members spend at clubs
 - While clubs are tax exempt, these corp. tax hikes could mean less employee income
 - This could reduce disposable income members spend at clubs



Legislative Action

- Biden's tax/legislative agenda won't get through Congress – but it's a marker for '24
 - House won't pass anything he supports
 - But even Rs passing what they want will be difficult
 - Senate won't pass anything he supports as Schumer can't overcome 60 vote threshold on most issues
 - No major healthcare bills will pass
 - No minimum wage bill or other changes to employment laws will pass
 - No labor bills will pass, but unions will want some messaging bills to pass (PRO Act)
 - No comprehensive immigration reform bill will pass
- Split control of the House and Senate means gridlock
 - House leadership will focus on gov't spending and executive branch oversight
 - Debt ceiling and funding bills will be held up – is any agreement possible?
 - Intense scrutiny of Cabinet Secretaries and of Hunter Biden
 - Senate leadership will focus on confirmations and social issues (no reconciliation option)
 - Judicial posts will be a high priority
 - Health, welfare and social justice bills will be the focus to set the tone for '24



Regulatory Action

- Biden will use regulatory agencies in areas he can't legislate
 - DOL
 - OT Exemption Rule – salary threshold for exempt worker (\$684/week) likely going up
 - Inflationary impact so it won't happen immediately, but soon...
 - No change to the OT Exemption “Duties Test”
 - DHS – H-2B numbers increased again for FY23, but unions want something for it
 - See NLRB....
 - NLRB – Card Check, Micro-Unions and Independent Contractor Rules coming back
 - New Joint Employer Rule – will likely go into effect in August
 - If a club, directly or indirectly, has control or exercises control or has the right to exercise control over essential terms and conditions of employment = joint employer
 - If terms of employment describe method or manner of work = essential terms
 - Removes “direct and immediate control” standard



Regulatory Action

- DOL's new Independent Contractor Rule will have the biggest impact on clubs
 - The new rule reverts back to Obama's 6-factor "economic reality" test:
 - 1.) Whether the club controls the worker and the work to be performed
 - Does the IC work for others, set his schedule, and fees or is he supervised, trained, clothed or disciplined by the club?
 - 2.) Whether the worker creates an opportunity for profit or loss based upon his business acumen
 - Does the IC market the business, accept and decline work based on sound business decisions – not just work more hours to generate more money?
 - 3.) Whether the worker invests in the business to support growth or reduce costs
 - Does the IC make capital or entrepreneurial investments in the business to reduce costs or extend market reach – not just pay for the costs of the job?
 - 4.) Whether the service rendered requires a special skill
 - Does the IC bring a skill the club does not have and would not train its employees to do?



Regulatory Action

- DOL's new Independent Contractor Rule
 - The 6-factor “economic reality” test continued:
 - 5.) Whether there is a permanent working relationship between the worker and club
 - Does the IC have a specific project to do at the club or work for a short period of time or does he work continuously at the club?
 - 6.) Whether the service rendered is an integral part of the club's business
 - Does the IC do a job that the club needs to be done, i.e., is it critical, necessary or central to the club's business?
 - This is a totality of the circumstances review
 - No single factor is more important than another – unlike the old rule....
 - Economic dependence is the key
 - If he's economically dependent on the club for work, then he's an employee
 - If he's economically dependent on his business for work, then he's an IC
 - Rule will likely go into effect in May



The Race for the White House and Control of Congress



Biden's Swan Song

- Historic midterm for Biden
 - He did something only FDR ('34), JFK ('62), Bush I ('90) and Bush II ('02) have done
 - Finished 1st midterm election with 0 or 1 net Senate losses and < 10 net House losses
- Blue wall was repaired in '20 = 44 electoral college votes
 - MI voted D since 1992 (save for '16) – 15 electoral college votes
 - Biden won by 155K, and a D Governor won in '22
 - PA voted D since 1992 (save for '16) – 19 electoral college votes
 - Biden won by 80K, and a D governor won in '22
 - WI voted D since 1988 (save for '16) – 10 electoral college votes
 - Biden won by 20K, and a D governor won in '22



Biden's Swan Song

- Four other toss-up states to watch = 49 electoral college votes
 - AZ voted R since 2000 (save for '20) – 11 electoral college votes
 - Biden won by 10K, and a D governor won in '22
 - GA voted R since 1996 (save for '20) – 16 electoral college votes
 - Biden won by 13K, but a R governor won in '22
 - NV voted D since 2008 – 6 electoral college votes
 - Biden won by 33K, but a R governor won in '22
 - NC voted R since 1980 (save for '08) – 16 electoral college votes
 - Trump won by 75K, but a D governor won in '20
- 2020 Electoral College vote was 306-232 (need 270 to win)
 - Biden starts with 226 and the Republican starts with 219 (1st primary is 2/24!)
 - 93 Electoral College votes up for grabs
 - If blue wall holds, Biden wins



U.S. Senate

- Majority will be determined by 8 races (Rs just need to flip 2)
 - Democrat races to watch – all ran and won in 2018 (Trump’s first midterm)
 - WV: Sen. Joe Manchin (won by 3%) – 2-term incumbent in a heavily R state
 - MT: Sen. Jon Tester (won by 4%) – 3-term incumbent in a heavily R state
 - NV: Sen. Jackie Rosen (won by 5%) – 1st re-election race in a Pres. toss-up state
 - MI: Sen. Debbie Stabenow retiring (won by 7%) – open seat in a Pres. toss-up state
 - OH: Sen. Sherrod Brown (won by 7%) – 3-term incumbent in a heavily R state
 - WI: Sen. Tammy Baldwin (won by 11%) – 2-term incumbent in a Pres. toss-up race
 - Republican race to watch (maybe)
 - MO: Sen. Josh Hawley (won by 5%) – 1st re-election race in a heavily R state but...
 - Independent race to watch
 - AZ: Sen. Kyrsten Sinema (won by 2%) – 1st re-election in a Pres. toss-up state but she’ll likely split the vote with the D candidate
- Republican Pres. and Senate nominees will greatly impact these races



U.S. House of Representatives

- Republicans need some luck to keep their majority
 - Ds just need to flip 5 seats to take back control – same as Rs needed in 2022
 - But...the House hasn't flipped control in a presidential election year since 1952
 - The Republican Pres. nominee will go a long way to determining how well Rs do
 - Neither side will have money issues
 - Retirements will help tell the tale – how many Rs/Ds leave in 2024??
 - 35 Ds retired in 2022
 - 26 Rs retired in 2020
 - 34 Rs retired in 2018
 - 18 Rs won in districts Biden won and 5 Ds in districts Trump won
 - These races will likely decide the majority





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