

ALERT

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Election 2000: A Political and Policy Analysis

Overview

The elections that were held on November 7, 2000 produced the closest results in the history of the United States. In the presidential race, if the results in Florida withstand further challenge, Texas governor, George W. Bush, will be sworn in as America's 43rd president, without having won either a majority or plurality of the voters in the United States. There is also the possibility that electoral disputes and further court challenges could arise in a number of other states in which the popular vote was also very close, including New Mexico, Wisconsin, and Oregon. (Governor Bush has decided not to challenge the results in Iowa.) Pending the outcome of the counting of absentee ballots in the State of Washington, it is possible that there will be 50-Republican/50-Democrat tie in the Senate for the first time in its history. And in the House of Representatives, of 435 seats, it is likely that there will be around a nine-seat advantage for the Republican Party. In sum, these results could either lead to continued legislative gridlock, or a true bipartisan approach in dealing with crucial issues of concern to ShawPittman clients for the next two years, until the next congressional elections.

Possible Significance to the Legislative Process

Broadly speaking, these results suggest that on major issues like tax, trade, health care, technology and financial matters, only those legislative proposals that are supported by majorities of each party will ever find their way to the president's desk. This is especially true in the Senate, where the tie-breaking vote of the Vice President (presumably Richard Cheney) could be necessary to secure passage of Republican-initiated legislation in Congress. Should Vice President Gore be declared the victor, Senator Joseph Lieberman, his

running mate, who also won re-election in the State of Connecticut, would have to resign. The Connecticut governor is a Republican, who would, it is expected, appoint a Republican to fill the Lieberman seat, resulting in a 51-49 Republican majority.

This is not to suggest that little or no legislation will pass in the upcoming 107th Congress. Almost certainly, a successful move would be made to strengthen the military, which would mean greater spending in this sector. There will also no doubt be legislation of less than national import that will appeal to individual regions or industry sectors that will be passed and praised mightily by its supporters. However, fundamental changes to significant sectors of U.S. industry will not pass and will more than likely continue to be issues in the next congressional elections, which will take place in November 2002.

Perhaps the biggest impact of a Bush Administration will be felt in executive branch departments and independent agencies. Bush appointments to lead these bodies would significantly alter the current focus and approach throughout the executive branch and regulatory arena, including the financial services, trade and commerce policy of the United States. Appointees of Bush would be more likely to turn regulation over to the states. Agencies like the Federal Communications Commission (FCC) might focus more upon enforcement rather than the regulation of entities within its jurisdiction. A Bush Administration would more than likely take a less activist approach in Microsoft-like cases, and its anti-trust agenda would focus more on price-fixing cases. In these areas, a Gore Administration is likely to continue on the path of its predecessor. Gore would likely empower his department and agency heads to actively carry out their mandates with less reliance upon the states. In either

case, the closely divided Congress could do little to alter these approaches.

Issues of Concern

In the summaries below, we have attempted to outline broadly the areas that we believe will be the focus of the next two years and how these matters could ultimately be addressed. However, anticipating the future is not an exact science. The reader should use this overview in order to develop a general sense of the political dynamics that will control American politics for the coming years.

1. Agriculture/Biotechnology

In the area of agriculture, it is clear that the upcoming two years will involve re-examining the *Freedom to Farm Act of 1996*, a very extensive and highly contentious program which touches upon virtually every aspect of America's farm policy. Not only is the Act set to expire in 2002, but critics and supporters alike are eager to examine the effects as well as remedy the shortfalls of the 1996 reform bill.

Intended to make the American farm economy more responsive to market forces as well as gradually wean it from the federal subsidies farmers had enjoyed since the 1930s, Congress has almost schizophrenically changed its mind on the policies included in the legislation, each year injecting more money into federal farm programs.

Caught between a general downturn in agricultural prices over the last two years and continued support in Europe, for example, of agricultural subsidization, many American farmers have felt the pinch of the reform legislation. As a result, Members of Congress, cognizant of the importance of voters in agricultural states, have extended financial support to the farm sectors the legislation was intended precisely to make less dependent on subsidies.

Vice President Gore has stated that he would repeal the *Freedom to Farm* legislation outright, calling for a return to the old policies. He advocates further

expanding federal insurance policies to enhance protection of farmers from the effects of the market. Governor George W. Bush has indicated support for the goals of the *Freedom to Farm* legislation overall but has promised an expanded "safety net" particularly during the transition from the old policies to the new ones instituted by the legislation. Bush has also cited that the administration has to do more to open up new markets to American farm products, assigning blame to the current Administration for general problems with the *Freedom to Farm* legislation. Finally, he supports eliminating the estate tax, which would help alleviate some of the financial woes experienced by many farm families.

In the sensitive area of biotechnology, the two presidential camps agree on the need to provide additional federal funds toward valuable research in this field. Governor Bush has stated he would call upon the European Union to open its markets to bio-engineered crops, as has Vice President Gore, adding that a strong scientific review process must be put in place to address consumers' safety concerns about bio-engineered foods. At the same time, Gore's attack on drug companies has apparently alienated some in the industry, fearful of continued attacks should he become president.

Moreover, of critical importance will be those individuals appointed by either Bush or Gore to top positions in the agencies regulating bio-engineered foods and other products, such as the Environmental Protection Agency (EPA), the Department of Agriculture (DOA), and the Food and Drug Administration (FDA).

Members of Congress are expected to address these issues as well, most likely examining proposals on labeling, safety testing, and the responsibilities of the EPA, FDA and DOA in regulating the industry.

2. Affirmative Action

Whether Governor George W. Bush or Vice President Al Gore attains the presidency, either will have the greatest opportunity to make his mark on affirmative

action matters through executive orders as well as through judicial and administrative appointments.

George W. Bush opposes quotas and racial preferences in favor of affirmative-access programs similar to the "Texas Ten Percent Plan," which automatically admits high school graduates from the top of their class to any state college or university. It is unclear how George Bush would apply his affirmative-access model to government procurement and employment (*i.e.*, recruitment, retention and professional advancement). Bush's appointees will have great influence over how the Department of Justice, the Office for Civil Rights at the Education Department, the Office of Federal Contract Compliance Programs at the Labor Department, and the U.S. Equal Employment Opportunity Division, implement affirmative action programs. Bush could alter greatly federal enforcement of affirmative action by placing anti-preference administrators in major civil rights posts. He could have a high impact on affirmative action through judicial appointments. Depending on which seats are vacated, a Bush presidency could expand the majority of the Supreme Court against affirmative action. In addition, Bush's appointments to the federal district courts and the courts of appeals could also impact the viability and effectiveness of affirmative action programs. His appointments could institutionalize the anti-preference sentiment in the judiciary.

Al Gore is a staunch defender of President Clinton's "mend it, not end it" affirmative action policy and has promised to continue it. Gore has championed the Clinton Administration's establishment of an Education Department Advisory Board to advise the Education Secretary on ways to strengthen historically black colleges. In addition, Gore has worked with the Small Business Administration to provide business development and federal contract support to minority-owned businesses. Depending on which seats are vacated, a Gore presidency could tip the balance in the Supreme Court in favor of affirmative action. In addition, Gore's appointments to the federal courts could result in a liberal majority, which would provide a possible safeguard for affirmative action.

3. Education

Regardless of whether George W. Bush or Al Gore is elected, either is likely to have some significant impact on education policy.

It is clear that both parties have a great interest in education and that successful education initiatives have tended toward the political center. Many predict that next year's education debate will be less partisan, because it is a non-election year, and a divided Congress will mean that lawmakers who feel pressured to show progress on the education front will need to compromise. Thus, they are not likely to consider the highly contentious issues, such as sex education and vouchers.

More specifically, Bush has proposed allowing low-income students attending failing schools to transfer to another public school, or use their share of federal funding in the form of vouchers to pay for tutoring or private schools. In addition, he has promised to double the number of charter schools. He supports using \$500 million in federal funds to reward schools that raise student performance and narrow the achievement gap among racial and ethnic groups.

Gore has proposed expanding the federal role in education, including teacher hiring and training, school construction and early-childhood education. Gore opposes vouchers but supports charter schools and public school choice. He would use federal money to triple the number of charter schools by 2005.

Both candidates support substantial increases in funding for education as well as new measures for increased accountability, *i.e.*, tests scores.

4. Financial Services

In the area of financial services, a Bush Administration would vigorously support the enforcement of existing laws, but would oppose increased governmental regulation of the industry. Such an Administration would favor the Republican-authored *1999 Bankruptcy Reform Act*, which is awaiting final action in Congress.

That bill would force some bankruptcy filers to pay off more of their debts to credit card issuers.

A Bush Administration would support the banking industry's position that consumer-privacy protections in the *1999 Financial Services Modernization Act* are adequate. It also would endorse provisions enacted in recent financial reforms that require community groups filing comments on bank mergers and expansions to report information annually about their own borrowing. As president, George Bush also would support the newly mandated and less onerous regulatory reviews of small banks' fair-lending practices.

A Gore Administration would favor increased consumer-protection regulations in the banking industry. It would, however, oppose the *1999 Bankruptcy Reform Act* on the grounds that it provides insufficient consumer protections. Vice President Gore endorses compromise reforms that would require credit card issuers to provide easy-to-understand information about their interest rates and fees. A Gore Administration would seek to strengthen the *1999 Financial Services Modernization Act* to prevent banks from using their customers' personal data for marketing purposes.

As president, Al Gore would support a review of the new financial services law's fair-lending provisions, on the grounds that the rules may invite small banks to skirt their obligations to lend to the poor. Gore also believes the law's supposed "sunshine" provisions may actually discourage public comment on bank mergers and expansions.

5. Health Care

A Bush Administration would advocate reducing the number of uninsured citizens by subsidizing their purchase of private health coverage. It would also support limited patients' rights and give individuals who do not have employer-sponsored health insurance an annual tax credit of up to \$1,000 per individual and \$2,000 per family to cover up to 90 percent of the cost of health insurance. A President Bush would want the amount of the subsidy to vary depending on income.

If Bush becomes president, he would work to give states more flexibility in administering the *Children's Health Insurance Program (CHIP)*, a federal block grant, and allow states to expand CHIP to other eligible individuals, including some parents. He also wants to make existing medical savings account (MSA) pilot programs permanent and lift the federal cap of 750,000 on the number of accounts. A Bush Administration also would allow all employers to offer MSAs, and would let both employers and employees contribute to them. It also would lower the minimum deductible for accompanying catastrophic health plans to \$1,000 for an individual and \$2,000 for families.

A Bush Administration would seek to give patients in federally governed health plans a limited ability to sue their health plans for denied medical services. It also would make the cost of long-term care insurance fully deductible, and establish a personal tax exemption for home caregivers. It would seek to allow small businesses to band together across state lines and form association health plans, in order to buy health insurance through bona fide trade associations.

A Gore Administration would support incremental movement toward reducing the number of uninsured citizens, first by expanding coverage through existing government programs. It also would support broad patients' rights legislation, including patients' rights to sue their health plans for denied services. Such an Administration would advocate the use of tax credits as a way to make insurance more affordable for the uninsured where the tax credit would be the equivalent of 25 percent of a person's health insurance costs. A Gore Administration would support enrolling more children, and some parents, in some state CHIPs and in Medicaid, by expanding eligibility to include children living at up to 250 percent of the federal poverty level (which would make a family of four earning \$41,000 eligible), and make states responsible for enrolling eligible children.

If Gore is elected president, his Administration would oppose the widespread use of medical savings accounts, but would seek a broad patients' bill of rights that

allows individuals who are denied medical services to sue their health plans. A Gore Administration would seek a \$3,000 tax credit for home caregivers and would provide tax credits to small business employees who join health care purchasing cooperatives, which could be run by non-profit organizations or other groups. A Gore Administration would not support association health plans.

6. Labor

Regardless of who is ultimately elected president, the winner will have the opportunity to appoint individuals to key federal agencies that will make decisions on issues that range from union organizing to regulations dealing with injuries on the job. The two political parties are deeply divided on their views of labor and given the current composition of Congress, efforts by Bush or Gore to impose sweeping changes to labor laws will be hard to achieve. However, either could use their power to issue executive orders to bring about changes.

For example, it is possible that Bush might reinstate former-President Bush's executive order requiring government contractors with a unionized work force to inform employees of their right to reclaim the part of their dues that unions use to advance political causes. If a large number of workers requested such a rebate, unions would lose millions of dollars for galvanizing the grass roots and increasing voter turnout. Bush has favored an unspecified increase in the minimum wage, provided that the president could rescind it if it is judged to threaten job creation.

In general, it is likely that Al Gore would continue and expand on his predecessor's proposals. Gore supports a minimum wage hike of \$1 an hour. Like Clinton, Gore rejects the concept that federal spending can create jobs and shares the GOP position that job creation and job training are best left to the private sector. Gore may expand the *Family and Medical Leave Act*, which currently guarantees employees up to 12 weeks of unpaid leave for family emergencies or for the birth or adoption of a child.

7. Taxation

Regardless of who is sworn in as president, it is unlikely that any broad-based tax legislation will be enacted in this 107th Congress which begins on January 3, 2001.

During the presidential campaign, Governor Bush proposed a broad tax cut of \$483 billion over five years including structural changes in the tax rates. Vice President Gore favored targeted tax cuts for specific programs. It is unlikely that either proposal could pass in current form. Governor Bush's proposal is more likely to be successful especially if it were limited in cost and more focused on specific areas. For example, Bush's proposal to replace the current tax rate structure of 15, 28, 31, 36 and 39.6 percent with four lower rates of 10, 15, 25 and 33 percent, if proposed under the banner of fairness and simplification, might have a chance of passage. If Vice President Gore is declared the victor, it is unlikely that the Republican-controlled Congress would send to him a bill that in any way resembles his proposals for taxpayer-specific targeted cuts, such as expanding the earned income tax credits for families with three or more children.

Several popular tax proposals that were debated in the 106th Congress may have a higher likelihood of passage than broad-based tax reform. The so-called marriage penalty has more than nominal support among Democratic members of the House. The same can be said for repeal of the estate tax. Each of these bills could be passed in the House in 2001 and would almost certainly be signed into law if Governor Bush assumes the presidency. The only obstacle to passage would be in the U.S. Senate, a place that could become the graveyard of many House-passed bills in the 107th Congress that would otherwise be signed into law during a Bush presidency. One bill that is likely to be enacted regardless of who succeeds President Clinton is legislation to make permanent the research and development tax credit which provides tax breaks to businesses conducting research. Other tax legislation considered in the last Congress that will likely be favorably addressed in the next Congress—unless they are resolved in the lame duck session that is scheduled

to begin on December 5, 2000—include tax incentives to build and modernize schools, tax-free opportunities to save for retirement, tax credits for the purchase of health insurance and tax relief for child care expenses.

8. Technology

Technology policy remains the “favorite son” for U.S. federal legislators on both sides of the political aisle. Though neither presidential candidate addressed any specifics during the campaign, Democratic and Republican policymakers across the board and throughout the country have generally supported the concept of “industry-led, market-driven, self-regulatory.” Information technology (“IT”) continues to be a non-partisan/bipartisan issue, with Congress and the Administration doing everything in their power to ensure the information technology industry’s continued robust growth in leading the positive indicators of the U.S. economy. The narrowing of the Republican majorities in both the House of Representatives and Senate, together with the lack of a mandate for the next president (whether Bush or Gore), should not have a major impact on the U.S. government’s support for e-commerce.

In addition, the thirty so-called “New Democrats” (who are represented in both chambers) have built their reputation on issues regarding the information economy and e-commerce. On a number of key IT issues, such as privacy, Internet taxation, intellectual property, broadband access and Internet gambling, these members will be looked to by their colleagues for advice and counsel, and—due to the slim Republican majorities—could sway the final outcome on key technology policy issues.

There will be a number of committee leadership changes that could impact e-commerce/technology issues in the 107th Congress. Due to the internal term limits on House chairmanships and several retirements, the two key IT committees in the House—Judiciary and Commerce—will see new chairmen, for example. But again, individual personality changes will have less of an impact than the possible overall gridlock that may ensue due the lack of a clear and

substantial majority by either political party. The one area of possible impact regarding “personalities” may be when the next president is tasked with appointing members to key regulatory and administration agencies, including the Federal Trade Commission (FTC), the Federal Communications Commission (FCC) and the Departments of Justice and Commerce.

Thus, the balance of power, together with the increased numbers and visibility of the “New Democrats” will probably result in many bills being introduced, and a lot of hearings, but little legislation in the area of regulating the Internet and e-commerce.¹

9. Trade

On trade matters, there will not be any significant changes in the attitude of Congress and the White House. Issues relating to China’s admission into the World Trade Organization (“WTO”) dominated the 106th Congress’ trade agenda. It is unlikely that there will be an issue of this salience in the 107th Congress. Whether George W. Bush or Al Gore becomes President, and given the close margins in the House and the Senate, it is also unlikely that Congress will grant the new chief executive fast-track authority to negotiate new trade accords or adopt other major trade legislation. Rather, the next administration’s United States Trade Representative will administer most of the nation’s trade policy. The area to watch most will be whether the new president acts to resolve current trade disputes, independent of Congress.

If George Bush becomes president, for example, he might move to settle some outstanding issues with Mexico, a nation with which he has had close ties. As Governor of Texas, Mr. Bush urged Washington to keep its NAFTA pledge to permit cross-border trucking, a move blocked by the Teamsters Union’s influence in the Clinton White House. As President, Mr. Bush could be expected to look more favorably on such a move now, especially in light of the U.S. interest

¹ For more information on this topic, please consult the separate, focused *Alert* on technology policy issues in the 107th Congress.

in the success of Mexico's new president, Vincente Fox. Conversely, Al Gore, who worked hard to win Teamsters support for his campaign, could be expected to move more slowly, if at all, to resolve this issue if he were to occupy the Oval Office.

The razor-thin margin in Florida's presidential vote will not make it easier for either man to resolve a second major dispute with Mexico over how much sugar Mexico can export to the United States under the NAFTA. A politically connected Florida family with sugar interests in the Dominican Republic has long been a prominent opponent of increased U.S. imports of Mexican sugar. And, either Bush or Gore, however, might move to settle a third dispute, over permitting Mexico to export avocados to more than the 19 U.S. states and the District of Columbia, where they are currently allowed during winter months. The U.S. opponents of such a move are California avocado producers.

Both men also are likely to follow similar policies on China's continued integration into the global trade community, and there is little reason to believe that their approaches would diverge significantly on such other trade disputes as those with Europe over bananas, beef, genetically modified foods and offshore tax shelters.

The new administration presumably would seek to continue preliminary discussions on creating a Free Trade Agreement of the Americas (FTAA) and try to launch a new round of World Trade Organization negotiations. However, without the fast-track authority that would bar floor amendments in Congress, other nations would be reluctant to enter into such agreements. The elections certainly have not made it easier to pass fast-track, which mainly leaves congressional trade committees with the prospect of holding hearings on various issues.

Within Congress, two events of relative significance will occur. In the House of Representatives, a new Chairman will take the reins of the House Ways and Means Committee because of Republican caucus rules that require a turnover in the chairmanship of commit-

tees after three terms. Thus, the House Ways and Means Committee will have a new Chairman when the 107th Congress convenes. There is currently a race to see who will succeed outgoing Chairman Bill Archer of Texas. Based on seniority, Representative Philip Crane of Illinois is next in line. He is being seriously challenged, however, by Representative Bill Thomas of California. Crane, who represents a neighboring district of House Speaker Dennis J. Hastert, is counting on seniority, regular order and his close relationship with the Speaker to prevail. Thomas, however, is making great inroads particularly because of his strong involvement in the campaigns of endangered Republicans who may thank him for their election and maintenance of their majority status by rewarding him with this coveted chairmanship. That decision will not be resolved until January 2001. There will also be a new chairman of the tax writing committee of the Senate. Senator Charles Grassley of Iowa is almost certain to assume the chairmanship of the Senate Finance Committee filling the vacancy created after the election defeat of Senator William Roth of Delaware. All three of these individuals are fiscal conservatives and free traders and although each would place his own stamp upon the committees, neither will deviate from the philosophical thrust of their predecessors.

10. Transportation

A Bush Administration's transportation policy may not look radically different from the Clinton agenda. A Gore Department of Transportation (DOT) would have been placed in a quandary of whether the need for infrastructure (highways, transit, airports, etc.) should take precedence over the environment. The Gore campaign's web site had an extensive transportation platform; Bush's organization did not produce a similar statement.

A President Bush is likely to make two or three major changes from the Clinton/Gore programs. For the past eight years, unions have been one of—if not the—prime policy guidance sources for the DOT. A Bush Administration would not give such great deference to

labor. This is particularly true as to the FAA's relations with the unions of air traffic workers, technicians, lawyers, administrative staff, safety inspectors, etc. These organizations have had substantial impact on the FAA's daily operations; it will be interesting to see how effective the Bush political appointees and the career DOT staff will be in addressing this substantial problem.

A second theme of the DOT's eight years has been the ceding of its environmental powers to other agencies like the Department of the Interior, the Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ) and others. Bush's history in Texas allowed for greater industry impact into these issues. A lead indicator of how well Bush appointees can deal with the environment is the desperate need for the airspace system to increase its capacity. Hearings during the summer of 2000 suggest bipartisan support for relaxing strict environmental constraints.

Third, the Clinton/Gore Administration had a dismal record of inserting its political appointees within all modes of the DOT. Part of this problem was precipitated by the extraordinarily high ethical requirements of the Clinton/Gore Administration for its appointees. Anyone who earned his or her income in one of the regulated industries or, perhaps more importantly, who hoped to make a living in transportation, was discouraged by these rules to accept a political appointment in the DOT. How Bush crafts his Administration's rules should have an impact on the quality of his appointees.

The transportation policies of the United States have historically been substantially impacted by Congress. The shrinking of the Republican majorities in both the House and Senate is well documented. The Senate side of this equation will see little impact; Senator McCain will remain chairman of the Senate Commerce Committee, which has jurisdiction over all modes of transportation. He has a reputation as a very vocal critic of the DOT. How he will channel his energies

will be interesting to watch. In the House, the very dominant Chairman Shuster will have to relinquish his control of the House Transportation and Infrastructure Committee. He, by virtue of his personality, forced the passage of several landmark bills. His movement back to chair of a subcommittee will likely leave a vacuum in this arena. With much need for new legislation, the new leadership may have a difficult time moving bills through Congress.

Many of the major transportation initiatives started over the past eight years may continue or even escalate under a President Bush. "Open Skies" and opportunities for "public-private partnerships" are projects that are likely to prosper.

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