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DC Deep Dive: The Meaning of the Midterm

One week after election day, results are finally beginning to paint a picture for what we can expect to be the makeup of the 118th Congress.

Democrats will officially control the Senate with 50 seats, with a runoff election in Georgia for the remaining Senate seat.

Republicans are poised to control the House of Representatives. As of this publication date, Republicans are only 1 seat away from House majority with 10 districts yet to be called – 4 of which Republican candidates are leading, 2 by large margins.

CivicPoint DC Principal, Jonathan Miller, interviewed Trey Grayson, a national elections law expert and CivicPoint's Managing Director, to help us understand what this latest election and the results mean for our democratic institutions.

Transcript

JM: Why is it taking so long to count votes?

TG: States have different rules and procedures– in western states, most voters vote by mail and are only required to have their ballots postmarked by election day. This can lead to votes coming in and being counted after the official date of the election. Additionally,

there are a few different ways for voters to drop off ballots, and many voters wait until election day to drop off ballots. When many ballots are delivered at once, states and counties with fewer resources have trouble processing them quickly, and when an election is close, it takes a lot longer to call the election.

JM: We are currently in a climate where there are a lot of election deniers. Election denial and delays in vote counts can undermine confidence in the elections systems. To solve this, Democrats have put forth proposals to federalize elections which Republicans have generally opposed. What federal policy can we expect to see and could federalizing elections help solve the delays and build more confidence in election integrity?

TG: The lame duck session taking place over the upcoming weeks will likely be a time when congress chooses to reform the Electoral Count Act (ECA), which is the law that governs how electoral votes are counted. There is currently a bipartisan bill in the Senate that we expect to pass which would amend the ECA to make it challenging to object the results of the electoral count- requiring more than one member of each chamber to object, and this should restore some confidence. In regard to other election policy, Democrats tried to push some reforms to create more uniformity in all elections, but it failed because of the filibuster in the Senate. As long as the filibuster is in play, the only election legislation likely would be when there is consensus on the floor. An historic example of this occurred after the 2000 election to modernize voting systems when Congress appropriated money for states to develop standards. Other examples of consensus occurred to make it easier for military and overseas citizens to participate in elections, to ensure there is no discrimination via the Voting Rights Act, and to make it easier to register to vote via the National Voter Registration Act. Absent that level of consensus, we should not expect to see Congress doing much outside of providing funding for election security. Without that consensus, you can't get overcome a filibuster.

JM: You have been an outspoken advocate for election integrity, and you are a Republican. You have been critical of fellow party members that have been undermining confidence in the system. This election cycle, most of the higher profile election deniers were defeated. Do you think the fever is broken or do you see that this climate of concern about fair and free elections will continue for some time?

TG: The fever appears to have broken, but it's possible it may still recur. Voters sent a strong message across the country by voting against prominent election deniers, so moving forward Republicans will be less likely to embrace it. Unfortunately, it has become more common for candidates on both sides to claim cheating when they lose. Importantly, many of the election denier candidates have conceded without raising concerns.

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JM: Another big election law topic has been redistricting and reform at the state level. Every ten years, we go through a census and redistricting process—both parties have tried to engage in gerrymandering and reshaping their districts to benefit their parties. Interestingly, a few of the leading republican gerrymanders were approved by courts, Florida for example. A few Democratic gerrymanders were rejected by the courts, New York for example—in fact, that approval could have changed the outcome of House control. What should we expect to see at the state level on redistricting? Are we going to see more commissions that will try to apply fair standards or will Democrats back away from trying to play fair to compete with republican states that are not playing fair?

TG: Redistricting is about power. Rule number 1 is protecting incumbents; rule 2 is to promote your party. The Supreme Court has upheld partisan gerrymandering as not being unconstitutional. The suspicion is that in the next few years, as we start focusing on redistricting, we are still going to see political parties try to take advantage. Politicians don't want to give up that power if they don't have to.

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JM: Gerrymandering, election denial, delayed voting...a lot of hits to the confidence in the system. As part of national advisory groups that are part of restoring confidence. What are some steps that might be taken in the next few years to try to overcome this cloud and help restore confidence in the ballot?

TG: The irony is that today's elections are more secure than they ever have been, and that's good, but that doesn't mean we can't do a better job. Here are some things that might be done:

- More resources. Allocating federal or state money for state-of-the-art equipment and increased funds for election worker pay. Currently, elections are underfunded. A lot of challenges like counting ballots can be solved by hiring more employees. More resources lead to quicker results leads to more confidence.
- Pass the Electoral Count Act. This is an immediate reaction to the events that occurred on January 6th, 2021, and it would eliminate some of the doubt that exists from the false notion that Congress can manipulate the electoral count.
- Risk Limiting Audit. After an election, but before the election is certified, this audit would require the sampling a few ballots to test to help determine if there was a problem. All voting systems are tested before their sold. There's currently a test called a Logic and Accuracy test that takes place before every election, and there is also transparency via bipartisan observers and bipartisan poll workers. Adding this additional step to also perform a Risk Limiting Audit by sampling votes before final vote count would help add confidence in the final results by helping to immediately determine whether or not anything seems to be off with the results.
- At the ballot box. Voters are responsible for rejecting candidates who are willing to steal an election, and that will impact the behavior of candidates and political parties. This is something that all of us can accomplish as voters.

JM: The youth turnout for these midterms elections was at a record level this year. Some of that might be policy driven with the Biden administration's forgiveness of student loans, the pardon of

marijuana offenders, and the abortion issue that drove a lot of democratic young people to the polls. As a former Director at Harvard's Institute of Politics, an organization that has studied the youth vote for quite some time, is this a blue blip among young people or are we going to see a more engaged younger generation as the years progress?

TG: It seems to be more sustained– young votes are continuously turning out for midterms in larger numbers. Something interesting is that this generation leans Democratic and boasts the biggest partisan break of any generation. To clarify, younger voters in their twenties or early thirties are much more democratic than seniors or Gen X are republican. Part of the reason why Democrats did better on election day than expected was because these younger voters did turn out and they did vote Democratic. This will be something the Republican party will need to address by encouraging young voters to continue participating in the election process and earning their votes.

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