

2002 FEDERAL ELECTIONS ANALYSIS:

Approaches To Governance Within The Permanent Campaign

Wednesday
November 6, 2002
2:00 p.m.



ELECTION OVERVIEW

- **American electorate remains closely divided**
- **Until election day, two distinct congressional elections appeared likely:**
 - (1) Relatively few competitive House elections where Republicans would consolidate House control
 - (2) Senate elections, hotly contested in 10 states, likely to result in narrow Democratic control
 - Expected result: Split Congress → prescription for gridlock
- **Republican Senate sweep of contested races not predicted even 48 hours out**
- **Reasons for Republican success**
 - Superior ground operations result in crucial midterm turnout (reverse of 1998)
 - President's year-long and late-election campaigning rallied Republican base
 - Crucial support by pro-Republican interest groups, including businesses (TV ads, GOTV)
 - Result: Republicans defy history and win seats in both House and Senate midterms
- **President has earned "window of opportunity" to advance agenda**
 - Republicans controlling Congress will press agenda
 - Republicans will support war efforts
 - President can build on early first-term legislative achievements
 - Then run in 2004 on legislative record
 - Timing Important: Approach of 2004 elections will impose time constraints

ELECTION OVERVIEW

- **President is both activist and disciplined**
 - Will define priorities carefully
 - Will press for early successes
 - Likely priorities: homeland security, economic stimulus/tax relief, legal reforms
- **To enact legislation, President needs support from moderate Democrats**
 - Most Senate legislation requires 60 votes
 - Moderate Democrats inclined toward legislating
 - Senate rules may allow for stimulus victory without filibuster
- **Congressional polarization factor**
 - Willingness of Republican base to move pragmatic agenda uncertain
 - Strong opposition from Democratic base certain
- **Legislative success preferable to stalemate**
 - Bush historically wins by promoting positive agenda
 - Penalty for failure: Re-ignite congressional gridlock
- **Bipartisanship difficult in Permanent Campaign**



APPROACHES TO GOVERNANCE WITHIN THE PERMANENT CAMPAIGN

“The Permanent Campaign” - The Merger of Politics and Governance

Permanent Campaign has existed since 1982

- Clinton Administration lived by Permanent Campaign
- 2002 election cycle raised Permanent Campaign to new intensity
- 2004 Permanent Campaign is well underway

Business participates vigorously in Permanent Campaign

- Such participation enhances ability to affect governance
- Campaign Finance Reform creates incentives to participate

Impact of Political Equilibrium on Governance

- Congressional gridlock
- Recourse to regulatory process
- Intervention by courts
- Intervention by state regulators, legislatures, and attorneys general
- Supreme Court emphasis on “New Federalism”
- Co-regulation by international authorities

Businesses need mobility to protect interests in multiple venues



TABLE OF CONTENTS

- I. Political Equilibrium
- II. 2002 Federal Elections Analysis
 - Senate Elections Analysis
 - House Elections Analysis
- III. Permanent Campaign: Tactics and Strategies
- IV. Impact of Political Equilibrium on Governance
 - Case Studies

Section I.

Political Equilibrium

NEAR TOTAL POLITICAL EQUILIBRIUM: 2000-2002 ELECTIONS



2000 Presidential Election

- Plurality Presidents: Clinton: 1992 – 43%; Clinton: 1996 – 49%; Bush: 2000 – 48%
- Bush Wins Electoral Vote 271 to 267 - Smallest Margin Since 1876
- Gore Wins Popular Vote 49% to 48%
- Continuing impact of third-party candidates
- Even Smallest States Pivotal (e.g., New Hampshire)
- In Some States, Every Vote Counts (Florida, Iowa, Wisconsin, New Mexico)
- Most Expensive Election in History
- Hallmark of Election - Battle for Turnout

Senate Elections

- 2000: Margin of Control Closest Since 1955
- 2002: Republicans resume Senate control
 - Margin of control remains slim

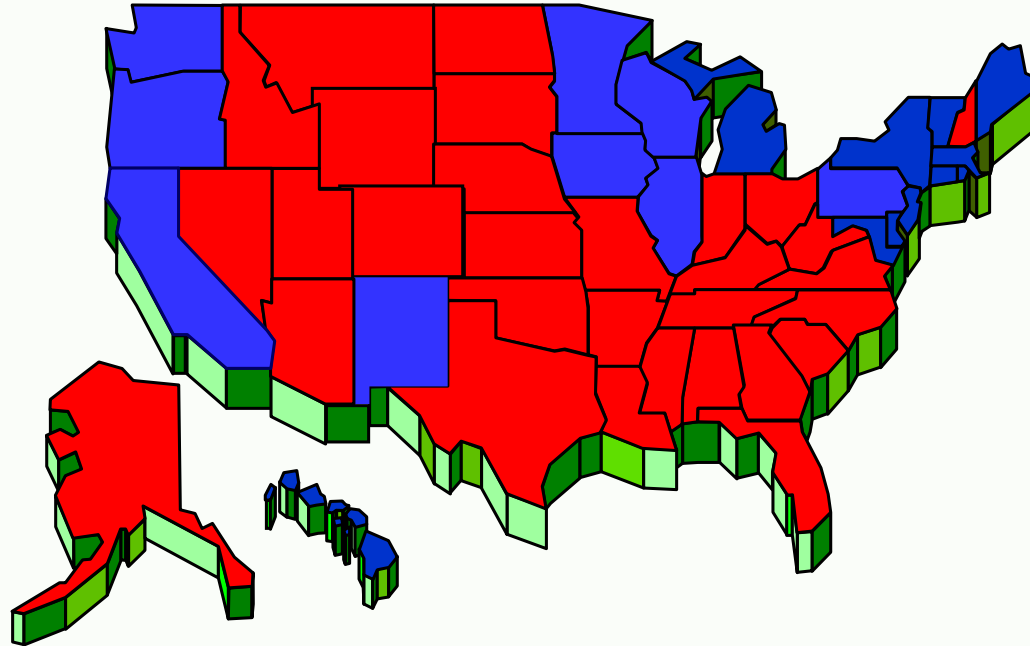
House Elections

- 2000: Margin of Control Closest Since 1953
- 2002: Republicans consolidate control
 - Margins remain close, but incumbents more secure

Future Elections

- Senate: Remains competitive in 2004
- House: Even fewer competitive races likely in 2004

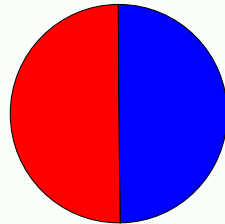
2000 PRESIDENTIAL ELECTION EQUILIBRIUM



**ELECTORAL
VOTE**

BUSH
GORE

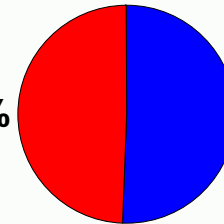
271



267

**POPULAR
VOTE**

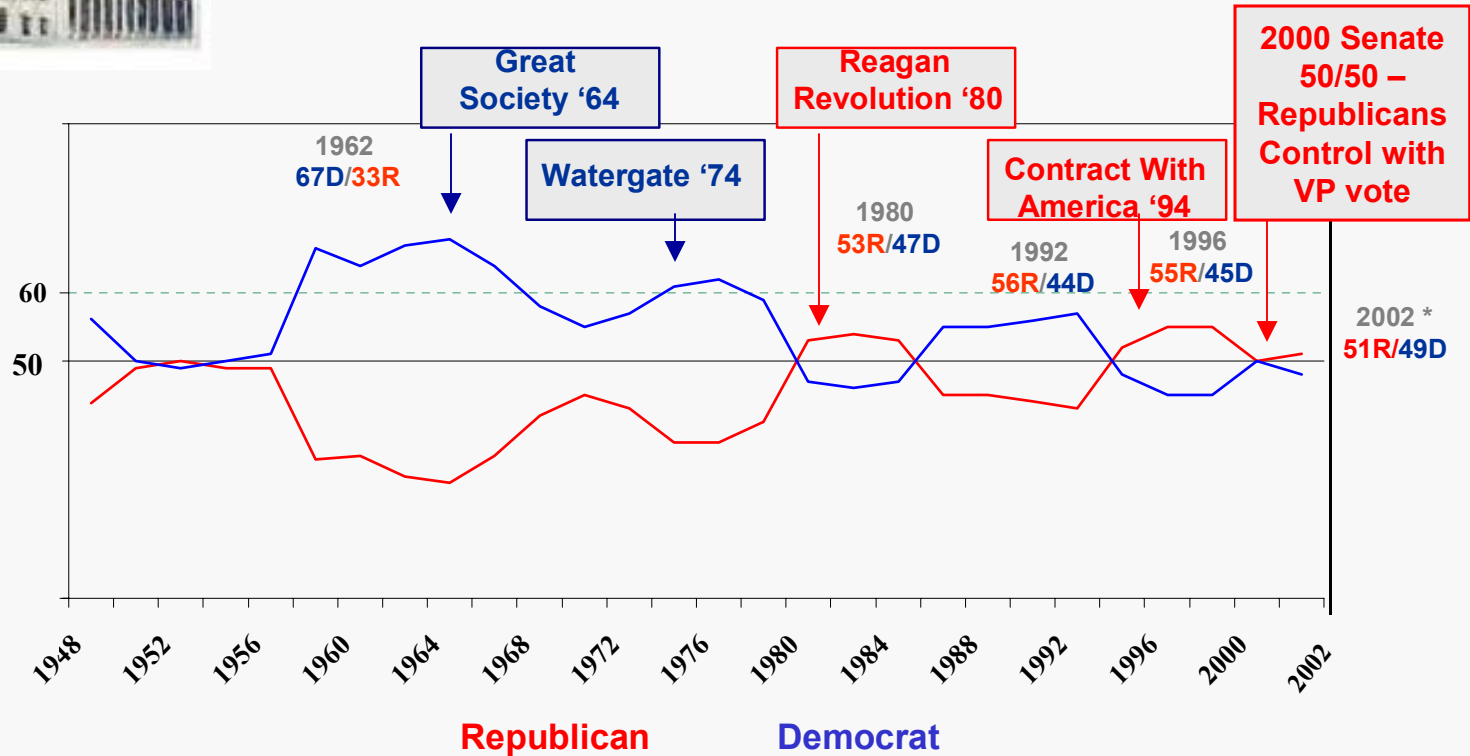
48%



49%



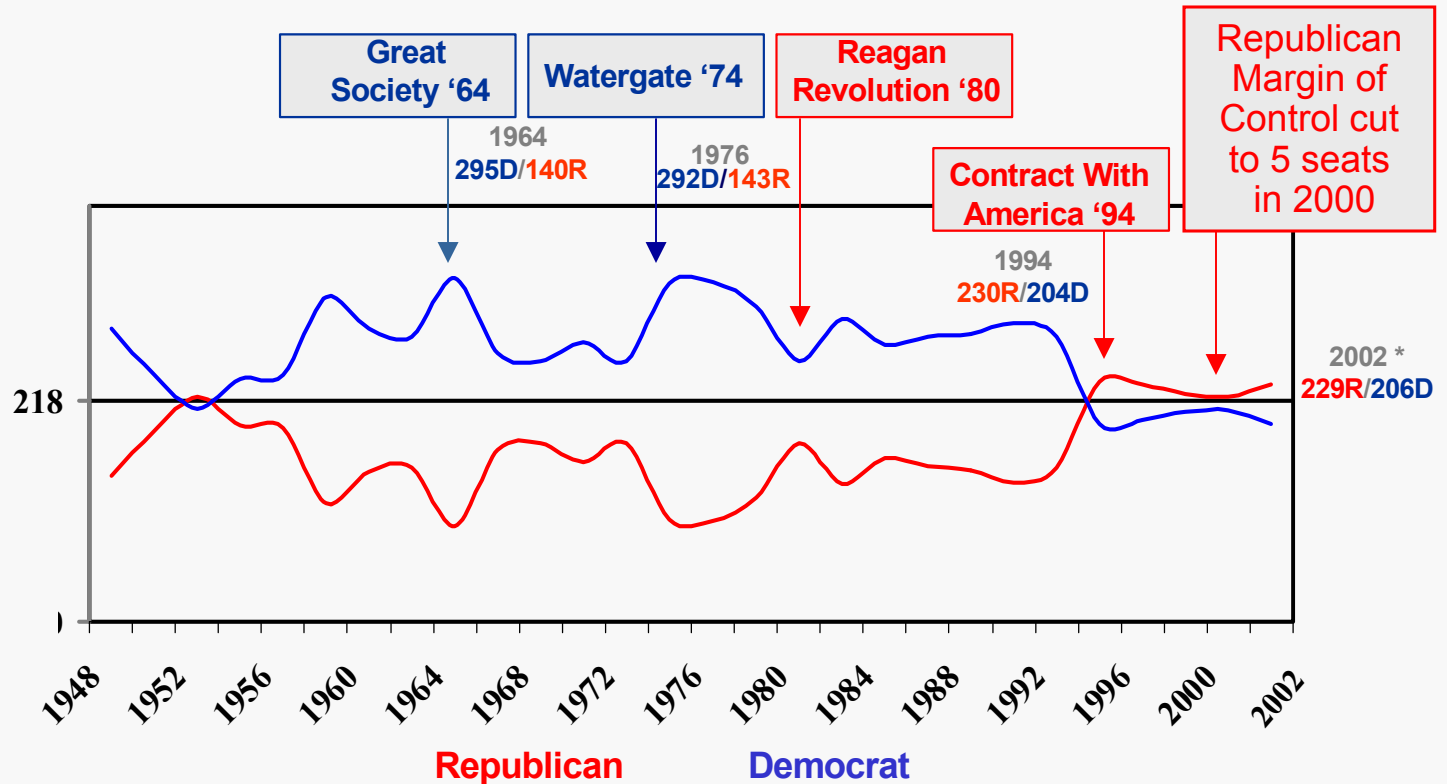
U.S. SENATE EQUILIBRIUM



Trends/Current Margin of Control Approximates 1955 Levels


* LA Landrieu-D undecided; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

U.S. HOUSE OF REPRESENTATIVES EQUILIBRIUM



Trends/Current Margin of Control Closest Since 1953

* Includes Independents; One Undecided/One Run-off



Section II. 2002 Federal Elections Analysis

Senate Elections Analysis

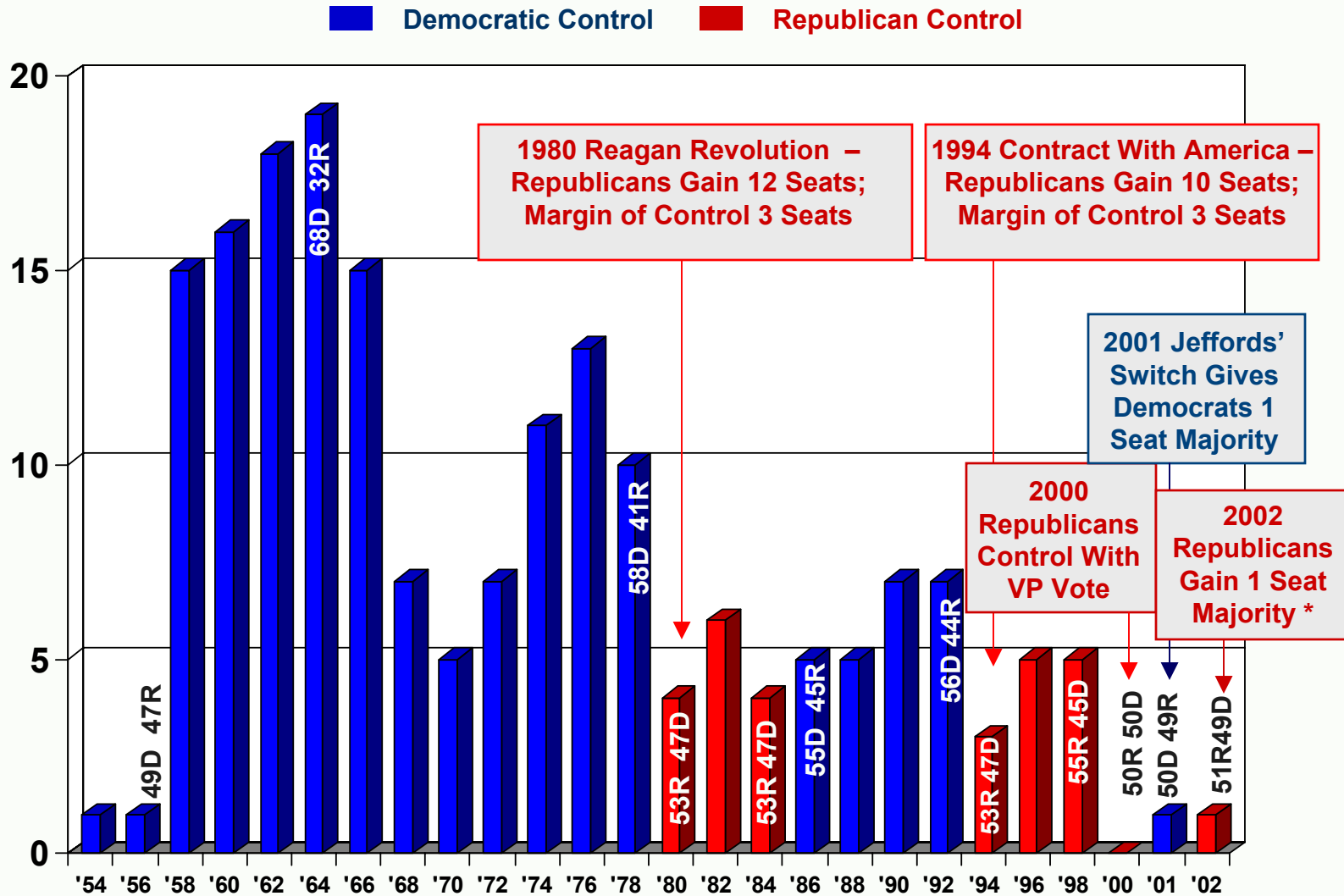


TRENDS LEADING UP TO 2002 SENATE ELECTIONS

- | | |
|-----------------|---|
| 1992 | Democrats control the Senate (56/44) |
| 1994 | Contract with America; Republicans seize control of Senate (53/47) |
| 1996 | Republicans increase margin of control (55/45) |
| 1998 | Republicans maintain margin of control (55/45) |
| 2000 | Republicans lose 5 seats but maintain control of the Senate with Vice President Cheney's vote (50/50) |
| 6/5/2001 | Senator Jeffords' switch gives Democrats 1-seat margin of control (50/49/1) |
| 2002 | As of Nov. 6, Republicans regain control (51/49)* |

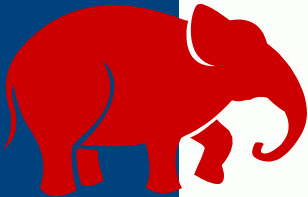
* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

SENATE MARGIN OF CONTROL 1954-2004



* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

2002 SENATE ELECTIONS: REPUBLICANS APPEARED MORE VULNERABLE



In 2000, Republicans lost a net of 5 seats (50/50 Senate)

In 2002:

- **More Seats To Defend:**
20 Republicans v. 14 Democrats
- **More Freshmen:**
8 Republicans v. 7 Democrats
- **Under 55% Vote In Previous Election:**
11 Republicans v. 9 Democrats
- **More Open Seats To Defend:**
5 Republicans v. 2 Democrats
(Gramm, Helms, R. Smith, Thompson, Thurmond, Torricelli, Wellstone)
- **All 5 Republican Seats Successfully Defended**
- **Incumbent Losses:**
1 Republicans/ 3 Democrats
(Hutchinson-AR, Carnahan-MO, Cleland-GA, Mondale-MN)
- **Senate Control:**
51/49*

* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organized with Democrats

OUTCOME: Republicans Regain Control



2002 SENATE CLASS

DEMOCRATS (14)

Max Baucus, MT
Joe Biden, DE
Jean Carnahan, MO- Freshman
(special election)
Max Cleland, GA- Freshman
Richard Durbin, IL- Freshman
Tom Harkin, IA
Tim Johnson, SD - Freshman
John Kerry, MA
Mary Landrieu, LA – Freshman
Robert Torricelli, NJ - Freshman (1)
Carl Levin, MI
Paul Wellstone, MN (2)
Jack Reed, RI - Freshman
John Rockefeller, WV

Italics: Retiring

BOLD: Received Under 55% Vote in 1996

(1) Resigned, replaced by Frank Lautenberg

(2) Deceased, replaced by Walter Mondale

(3) Defeated in primary by John Sununu

REPUBLICANS (20)

Wayne Allard, CO- Freshman
Thad Cochran, MS
Susan Collins, ME- Freshman
Larry Craig, ID
Pete Domenici, NM
Michael Enzi, WY- Freshman
Phil Gramm, TX
Chuck Hagel, NE-Freshman
Jesse Helms, NC
Tim Hutchinson, AR- Freshman
James Inhofe, OK
Mitch McConnell, KY
Pat Roberts, KS- Freshman
Jeff Sessions, AL- Freshman
Gordon Smith, OR- Freshman
Robert Smith, NH (3)
Ted Stevens, AK
Fred Thompson, TN
Strom Thurmond, SC
John Warner, VA



2002 SENATE ELECTION OUTCOMES

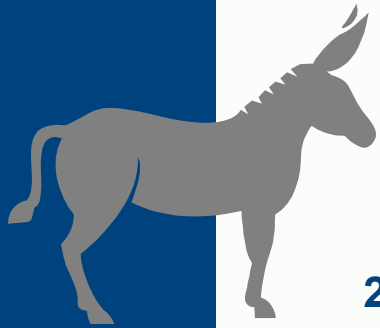
STATE	REPUBLICAN	DEMOCRAT
Alabama	Sessions	Parker
Alaska	Stevens	Vondersaar
Arkansas	Hutchinson	Pryor
Colorado	Allard	Strickland
Delaware	Clatworthy	Biden
Georgia	Chambliss	Cleland
Idaho	Craig	Blinken
Illinois	Durkin	Durbin
Iowa	Ganske	Harkin
Kansas	Roberts	NONE
Kentucky	McConnell	Weinberg
Louisiana	Terrell	Landrieu *
Maine	Collins	Pingrey
Massachusetts	NONE	Kerry
Michigan	Raczkowski	Levin
Minnesota	Coleman	Mondale
Mississippi	Cochran	O'Hara

STATE	REPUBLICAN	DEMOCRAT
Missouri	Talent	Carnahan
Montana	Taylor	Baucus
Nebraska	Hagel	Matulka
New Hampshire	Sununu	Shaheen
New Jersey	Forrester	Lautenberg
New Mexico	Domenici	Tristani
North Carolina	Dole	Bowles
Oklahoma	Inhofe	Walters
Oregon	Smith	Bradbury
Rhode Island	Tingle	Reed
South Carolina	Graham	Sanders
South Dakota	Thune	Johnson
Tennessee	Alexander	Clement
Texas	Cornyn	Kirk
Virginia	Warner	NONE
West Virginia	Wolfe	Rockefeller
Wyoming	Enzi	Corcoran

Democratic Winner

Republican winner

* Dec. 7 runoff



2004 SENATE ELECTIONS: THE BATTLE FOR CONTROL CONTINUES

2000 Elections: Republicans more vulnerable – net loss 5 seats

2002 Elections: Republicans more vulnerable – net gain at least 2 seats

(1 race still undecided LA runoff)

2004 Elections: Democrats appear more vulnerable

SEATS TO DEFEND:

15 Republicans v. 19 Democrats

10 of 19 Democratic seats in states Bush carried in 2000

FRESHMEN:

2 Republicans v. 5 Democrats

UNDER 55% VOTE IN PREVIOUS ELECTION:

3 Republicans v. 7 Democrats

POSSIBLE RETIREMENTS:

1 Republican v. 3 Democrats

POSSIBLE PRESIDENTIAL CANDIDATES:

3 Democrats



SENATORS UP FOR RE-ELECTION IN 2004

DEMOCRATS (19)

Evan Bayh, IN - Freshman
Barbara Boxer, CA
John Breaux, LA
Tom Daschle, SD
Christopher Dodd, CT
Byron Dorgan, ND
John Edwards, NC - Freshman
Russ Feingold, WI
Bob Graham, FL
Ernest Hollings, SC
Daniel Inouye, HI
Patrick Leahy, VT
Blanche Lincoln, AR - Freshman
Barbara Mikulski, MD
Zell Miller, GA - Freshman
Patty Murray, WA
Harry Reid, NV
Chuck Schumer, NY – Freshman
Ron Wyden, OR

REPUBLICANS (15)

Bob Bennett, UT
Christopher Bond, MO
Sam Brownback, KS
Jim Bunning, KY
Ben Nighthorse Campbell, R-CO
Michael Crapo, ID
Peter Fitzgerald, IL - Freshman
Charles Grassley, IA
Judd Gregg, NH
John McCain, AZ
*Frank Murkowski, AK
Don Nickles, OK
Richard Shelby, AL
Arlen Specter, PA
George Voinovich, OH - Freshman

BOLD: Received Under 55% Vote in 1998
* Elected Governor in 2002; Will appoint replacement by Dec. 5

House Elections Analysis

TRENDS LEADING UP TO 2002 HOUSE ELECTIONS

- Pre-1994: Democrats controlled House 40 years
- 1990: Democratic margin of control 267-167: (50 seats)
- 1992: 110 new House members - largest turnover since 1948
 - Democratic margin of control reduced 258-176 (41 seats)
- 1994: Republicans gain House control - “Republican Revolution,” “Contract with America”
 - Margin: 13-seats 230-204 (predictions of Republican House realignment by 2000)
 - After 2000 election, 13-seat margin of control reduced to 5-seat margin 222-212

Incumbent Losses

1992	(43)	13 Republicans	30 Democrats
1994	(38)	1 Republican	37 Democrats
1996	(21)	18 Republicans	3 Democrats
1998	(7)	6 Republicans	1 Democrat
2000	(9)	5 Republicans	4 Democrats
2002	(9)	4 Republicans	5 Democrats
TOTAL	127	35 Republicans	80 Democrats

Retirements

1992	(65)	24 Republicans	41 Democrats
1994	(48)	20 Republicans	28 Democrats
1996	(49)	21 Republicans	28 Democrats
1998	(33)	16 Republicans	17 Democrats
2000	(30)	23 Republicans	7 Democrats
2002	(18)	12 Republicans	6 Democrats
TOTAL (243)		116 Republicans	127 Democrats

Margin of Control

Source: *Vital Statistics on Congress 2001-2002*

* Includes 2 undecided races (likely Republican 11/6/02)

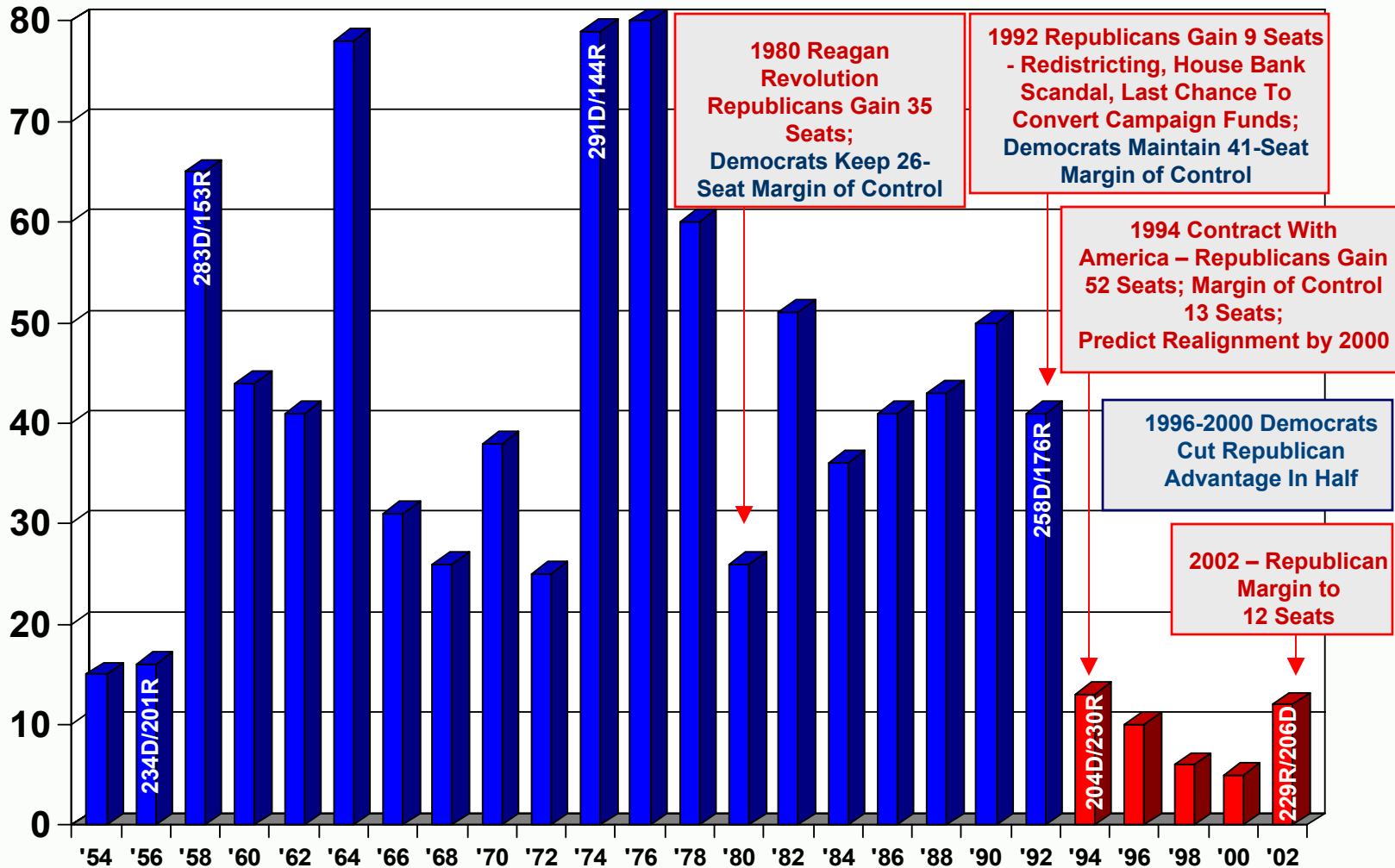
1994	13 Seats
1996	10 Seats
1998	6 Seats
2000	5 Seats
2002	12 Seats*



Result: Past 4 elections = margin of Republican control less than 1994

HOUSE MARGIN OF CONTROL 1955-2004

■ Democratic Control
 ■ Republican Control



* Includes 2 undecided races (likely Republican 11/6/02)

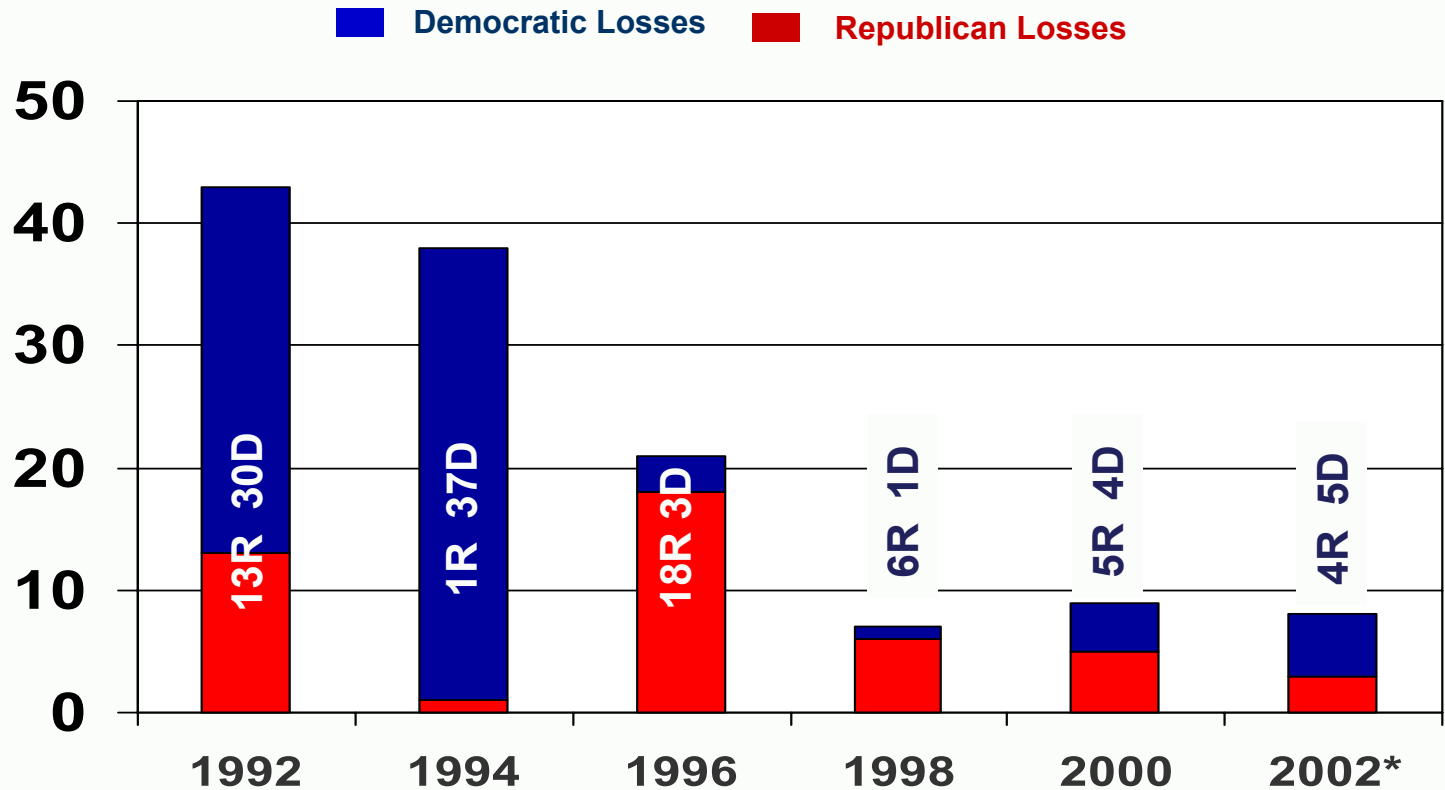


COMPARISON: CONGRESSIONAL REALIGNMENT 1959-1969

Year	Congress	House - Majority	House - Minority	Senate - Majority	Senate - Minority	President
1959 - 1961	86 th	D-283	R-153	D-64	R-34	R (Eisenhower)
1961 - 1963	87 th	D-262	R-175	D-64	R-36	D (JFK)
1963 - 1965	88 th	D-258	R-176	D-67	R-33	D (LBJ)
1965 - 1967	89 th	D-295	R-140	D-68	R-32	D (LBJ)
1967 - 1969	90 th	D-248	R-187	D-64	R-36	D (LBJ)

Operative Margins During Enactment of Great Society Programs

TREND: FEW HOUSE INCUMBENTS LOSE REELECTION



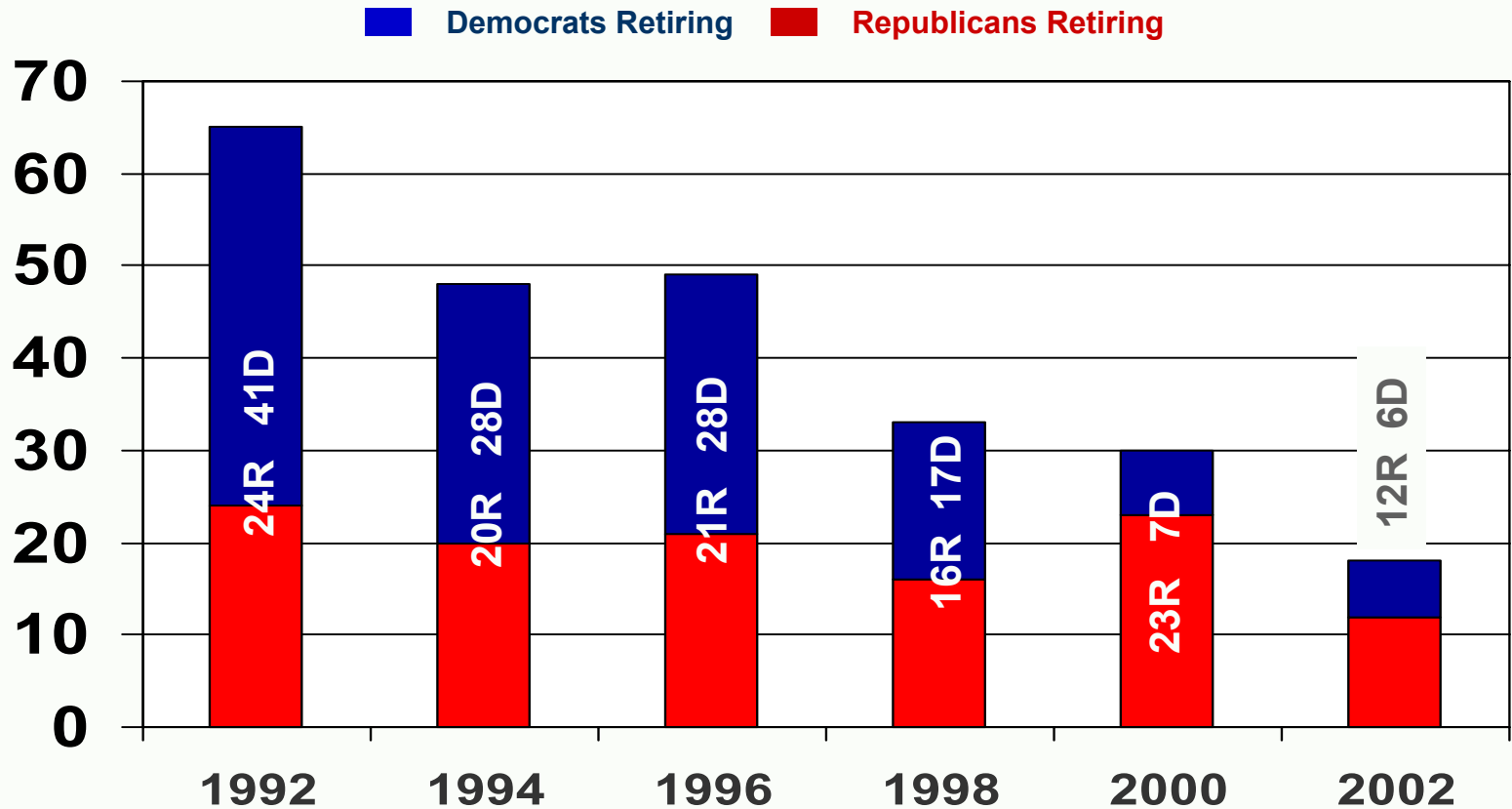
1992/1994: Weak Democrats lost

1996/1998/2000: Weak Republicans lost

2002: Even post-redistricting, only 9 incumbents lost (vs 1992 = 43 losses)

* 2 races remain undecided (likely Republican 11/6/02)

TREND: DECLINING HOUSE RETIREMENTS



1992: Record number of retirements (65) due to redistricting, House bank scandal and deadline for converting campaign funds to personal use

2004: Possible significant Democratic retirements

THE 2002 HOUSE ELECTIONS



REPUBLICANS APPEARED MORE VULNERABLE

- Historical mid-term trends favored Democrats
- President's party loses average 26 seats in mid-term elections
- Presidents with 60%-plus approval ratings lose average 5 seats
- Only twice since 1934 has president's party gained seats in midterms (1934, 1998)
- Past 3 elections: Republican margin of control cut in half
- After 2000: 5-seat margin of control

EVIDENCE OF REPUBLICAN VULNERABILITY MISLEADING

- **Flawed logic:** "There are still equal possibilities that Republicans or Democrats could seize (the House majority)..." (Pollster re: WSJ/NBC poll, WSJ, 10/24/02)
- **Better math:** (Source: *The Cook Political Report*)
 - Seats solidly, likely or leaning Democratic: 202
 - Seats solidly, likely or leaning Republican: 217
 - Remaining 16 races = toss-ups
 - If Democrats held all 202 seats, still had to win all 16 of closest races

FURTHER MISLEADING ASSUMPTIONS GAVE DEMOCRATS FALSE HOPE

- **Flawed logic:** "We believe that Bush's decision to embark on a 14-day, 17-state political tour (will have) the consequence of nationalizing midterms around the issue of the economy." (Former White House Chief of Staff, New York Times, 10/23/02)
- **Actual Result:** 1994 House elections turned on national issues; 2002 elections turned on local issues, tactics, and presidential campaign effort

HOW REPUBLICANS FARED IN COMPETITIVE RACES

Open Last Held By Republican (9)

Alabama 3
Indiana 2
New Hampshire 1
New Jersey 5
New Mexico 2
Oklahoma 4
South Dakota 1
Tennessee 4
Texas 5

RESULTS 8R 1D

Incumbent v. Incumbent (4)

Connecticut 5 – Johnson (R) v. Maloney (D)
Illinois 19 – Shimkus (R) v. Phelps (D)
Mississippi 3 – Pickering (R) v. Shows (D)
Pennsylvania 17 – Gekas (R) v. Holden (D)

RESULTS 3R 1D

New Districts (9)

Arizona 1
*Colorado 7
Florida 24
Georgia 3
Georgia 11
Georgia 12
Michigan 11
Nevada 3
Pennsylvania 6

RESULTS 8R 1D

Vulnerable Incumbents (10)

Connecticut 2 – Simmons (R) v. Courtney (D)
Iowa 1 – Nussle (R) v. Hutchinson (D)
Iowa 2 – Leach (R) v. Thomas (D)
Kentucky 3 – Northup (R) v. Conway (D)
Maryland 8 – Morella (R) v. Van Hollen (D)
Minnesota 2 – Luther (D) v. Kline (R)
*New Mexico 1 – Wilson (R) v. Romero (D)
New York 1 – Grucci (R) v. Bishop (D)
North Carolina 8 – Hayes (R) v. Kouri (D)
West Virginia 2 – Capito (R) v. Humphreys (D)

RESULTS 8R 2D

Open Last Held by Democrat (2)

California 18
Maine 2

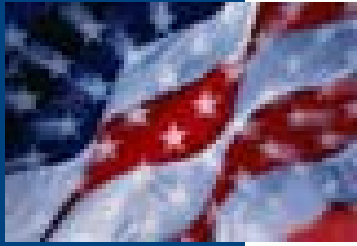
RESULTS 0R 2D

* = 11/6/02 likely Republican

CONCLUSIONS

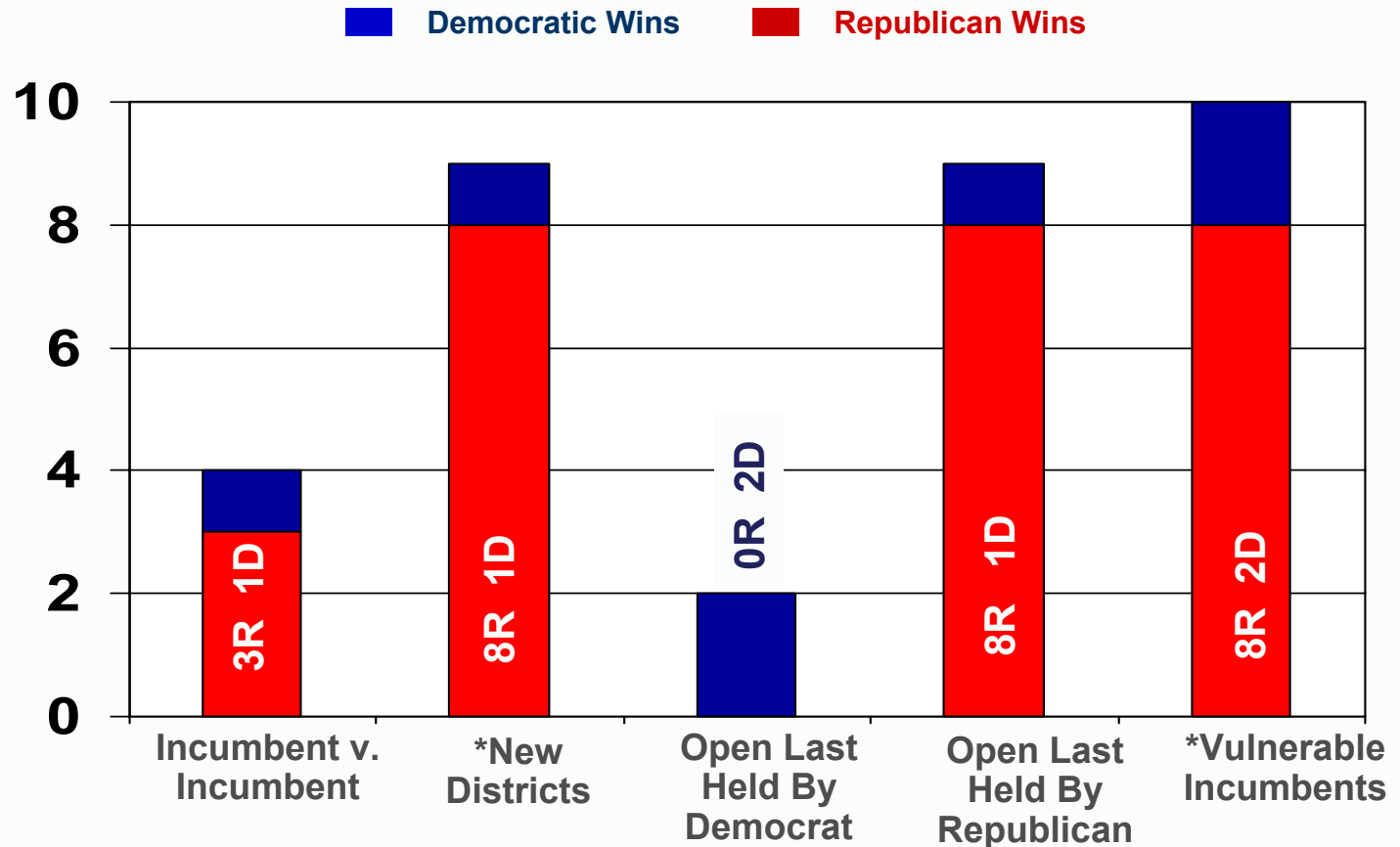
- Charlie Cook's election math superior to other analyses: Democrats' challenge was greater than simply overcoming 5-seat Republican advantage
- With more incumbent seats at risk, Republicans may have appeared vulnerable; but Republicans defended successfully against most Democratic challenges
- Republicans reversed 1998 low mid-term voter turnout in key races
- Republican margin of control for 108th Congress: 12*

* Includes 2 undecided races (likely Republican 11/6/02)



DEMOCRATS FAILED TO CAPITALIZE ON OPPORTUNITIES TO PICK UP SEATS

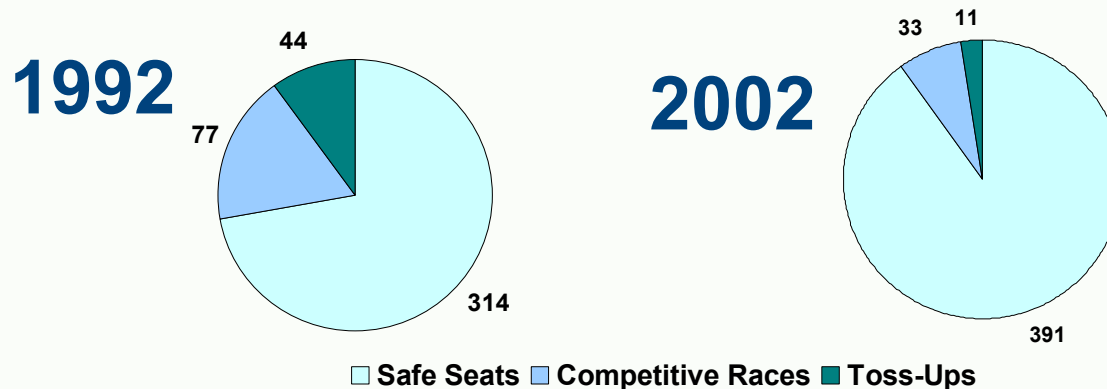
Republicans Won 80% of Competitive Races



* Includes 2 undecided races (likely Republican 11/6/02)

TRENDS LEADING INTO 2004 ELECTIONS

- 2002 Redistricting produced critical mass of safe seats in the House
- 2002 “Incumbent Protection” vs. 1992 partisan redistricting
 - Compare 3 competitive races in IA to few in FL, IL, MI, NY, TX



Year	1992	2002
Safe Seats	314	391
Competitive Races	77	33
Toss-Ups	44	11

Source: Cook Political Report

- Consolidation of strength among incumbents within both parties
- 2002 winning incumbents even stronger
- Fewer, not more, competitive races in 2004 cycle (barring uptick in Democrat retirement)
- With fewer inter-party competitive races and increased polarization, more intra-party primary challenges possible



SECTION III.

Permanent Campaign: Tactics and Strategies

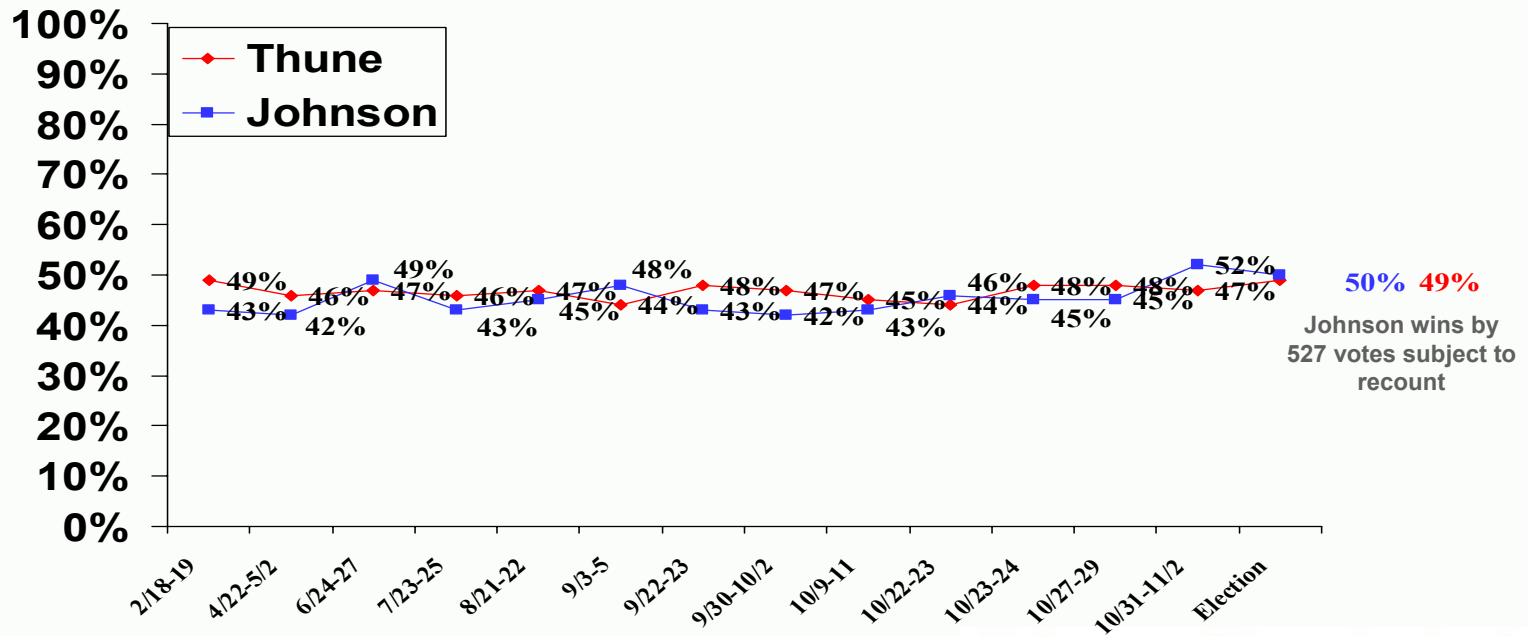


PERMANENT CAMPAIGN: TACTICS AND STRATEGIES

2004 ELECTIONS—EARLY START

- Campaign Finance Reform dictated start of 2004 campaign strategies before end of 2002 elections (e.g. rechanneling soft money)
- White House and Democrats jump-started 2004 election strategies in 2002 election activities (e.g. battle to win governors' seats in key states)

EXAMPLE OF A PERSISTENTLY TIGHT RACE: South Dakota



PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)



“BUSHWHACKED!”

- Post- Sept. 11th performance/War-time president
- National Approval Rating – 63% (vs. Clinton 42% in 1992)
 - Approval rating higher in contested states
- President raises over \$145 million for Republicans in over 60 events
 - Vice President Cheney raises \$40 million
- Unprecedented use of White House political assets in midterm election
 - Air Force One Campaign
 - Repeated post-September visits to 23 states
 - 17 states in last 5 days
 - Enlarged White House Political Staff
- Bush co-opted Democrats on economy and war
 - Result: Democrats had no coherent theme
- Bush helped Republicans hold all 5 GOP seats and helped beat vulnerable Democrats in GA, MN, MO
 - Polling showed all 3 Democrats even or ahead 24 hours before election
- Bush lays foundation for congressional support in 108th Congress

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

DETERMINATIVE DEBATES

- Kennedy-Nixon (1960 - Presidential); Clinton – Lazio (2000 – NY Sen.); Coleman - Mondale (2002 – MN Sen.); Chambliss-Cleland (2002 – GA Sen.); Bush-McBride (FL-Gov.); O'Brien-Romney (MA-Gov.); Lautenberg 30-minute debate strategy (2002 – NJ Senate)
- The “Russert Curse”

SELF-FINANCING

- 2000: Democratic Senate nominees spent \$90 million vs. Republican nominees' \$2.6 million (e.g. Corzine: \$63 million; Cantwell: \$10 million; Dayton: \$11 million)
- 2002: Key Senate races. (NJ: Lautenberg vs. Forrester; NC: Bowles vs. Dole)
- Roster of unsuccessful self-financed candidacies grows: Huffington (CA-\$29 million), Checchi (CA-\$40 million), Sanchez (TX-\$60-to-\$70 million), Golisano (NY-\$70 million), Roger Kahn (GA, 11th District-\$3 million in 2000 & \$2.5 million in 2002); Bowles (NC Sen. - \$4-\$6 million)

LATE-ELECTION REPLACEMENTS

- New Jersey Senate: Lautenberg replaces Torricelli
- Montana Senate: Mike Taylor leaves, then returns
- Minnesota Senate: Walter Mondale replaces Wellstone

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)



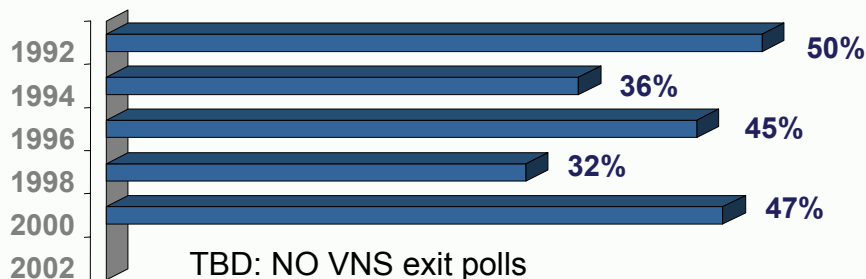
Get-Out-The-Vote (GOTV) Elections

- 1998, 2000: Democratic Base Voters Made the Difference
 - Disproportionate Impact: African-American/Union voting percentages exceeded population percentages
- In 2002, Republicans upended Democrats on turnout
 - Bush energized Republican base
 - Republicans outmaneuvered Democrats on the ground
 - Businesses and other independent groups added to the effort
 - Republican turnout in key states made the difference
- Bush stimulated Republican base without alienating Democrats and Independents

Early Voting

- More than 30 states now permit early (or permissive absentee) balloting
- Marriage of early balloting with high tech
- Forces reformulation of timing for TV ads, GOTV
- Calculated to enhance turn-out
 - (e.g. Washington in 2000 - 74.6% of registered voters turned out)

Voter Turnout: Midterm v. Presidential Elections





PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

EXPENSES SPIRAL UP

- 2002 television spending (candidates and independent groups) over \$900 million; double 1998 TV expenditures
- Most expensive election cycle in US history began November 6, 2002

TV OR NOT TV? THAT IS THE QUESTION

- TV pivotal in 1996 presidential election
- Unions shift to GOTV after 1996; successful in 1998
- “Ground war” in 2000 battleground states: “GOTV Election”
- In 2002, Republicans won with TV and GOTV
 - TV ad knock-outs: Davis-Riordan (CA-Gov); Davis-Simon (CA-Gov); Baucus-Taylor (MT-Sen.); Shimkus-Phelps (IL-17th); Renzi-Cordova (AZ-1st); Porter-Herrera (NV-3rd); Bush-Reno (FL-Gov.)
 - Momentum Changing Ads: Grucci-Bishop (“rape victims ad,” NY-1st); Nussle-Hutchinson (“job performance ads,” IA-1st);
- 2004 Republican Presidential Strategy: Reprise 1996 Pre-Convention TV Advantage



PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

NEW WEAPON: POLL-WATCHERS, LAWSUITS

- Supreme Court demurs in NJ case
- Allegations of registration fraud (e.g., MO, SD)
- Allegations of voter intimidation (e.g., AR)
- Republican and Democratic poll watchers/lawyers deployed broadly (e.g., AR, FL, MO)
- Justice Dept. deploys 432 federal election observers to 13 states
- Independent watchdog (Center for Democracy) dispatched to FL polls
- Standby Minnesota lawsuit: absentee ballots
- **Not determinative in 2002 elections**

CONCLUSIONS:

- Permanent campaign = permanent fixture
- Close margins/war of attrition won by Republicans
- Entire arsenal deployed: GOTV and TV
- Escalation certain in 2004
- **Business fully engaged in pivotal races**



BUSINESS EMBRACES GOTV: Perfects Successful Democratic Tactics

AFL-CIO: STRATEGY

- Buy television ads until 2 weeks before election then focus remaining efforts on GOTV
- Spend \$34 million – same as 2000
- Contact every union member at least four times before Election Day
- 750 full-time coordinators/4,000 local coordinators/10,000 volunteers unleashed in last week
- Hand out 15 million leaflets and reach union members through Internet, door-to-door, telephone, mail and workplace contacts

BUSINESS AND INDUSTRY POLITICAL ACTION COMMITTEE (BIPAC)

- Develop voter guide for 5,000 companies/20 million employees
- Trade associations using guide: American Petroleum Institute; National Association of Manufacturers; National Beer Wholesalers Association

HOUSEHOLD INTERNATIONAL

- Endorse sympathetic members
- Internal voter registration drive, e-mail to workers, distribute candidate position charts

NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)

- Spend about \$8 million
- Endorse federal and state candidates; publicize candidates' voting records; contact 500,000 small-business owners in about 19 Senate and 20 House races urging them to vote

U.S. CHAMBER OF COMMERCE

- Print tens of thousands of "Vote! It's Your Business" inserts for employees' paycheck envelopes in states with key Senate and House races
- Spend more than \$15 million

NATIONAL BEER WHOLESALERS ASSOCIATION (NBWA)

- Raise nearly \$2.2 million by the end of September
- Insert voting information fliers into employees' paycheck envelopes

CONCLUSION: Business Fully Engaged in Ground War in 2002 Elections



BUSINESS DOMINATES INDEPENDENT TELEVISION ADS IN KEY RACES

Business groups estimated to outspend traditional Democratic groups nearly 3 to 1 in 2002 House races

Business ads pivotal in close Republican victories: Promote critical turnout by seniors

Colorado Senate (Pro-Allard)

United Seniors Association (\$200,000)

Americans for Job Security (\$1 million in last 2 weeks)

American Medical Association (\$362,000)

New Hampshire Senate (Pro-Sununu)

Americans for Job Security/United Seniors Association
(\$1 million combined)

TV ADS SHOWCASE ISSUES

Market-based prescription drug coverage: United Seniors Association/Pfizer

Tax issues: NFIB, Americans for Job Security

Asbestos: Citizens for Asbestos Reform



Important Trends for Business: Campaign Finance Reform Law Prompts Growth of PACs & Proliferation of 501(c)(4) & 527 Organizations

Renewed Focus on Hard Money from PACs and Individuals

- Businesses with PACs will solicit more employees, urge greater participation
- Other businesses will create federal PACs for the first time

New Efforts to Rechannel Soft Money Outlets

- Federal soft money contributions to national parties and federal candidates prohibited
- 501(c)(4)s and 527s give businesses control over soft money spending
- Business contributions through such organizations has been pivotal in key races
- Soft money spending is likely to continue to increase
- For political and competitive reasons, businesses will use 501(c)(4)s and 527s increasingly

Importance of Legal Compliance and Political Strategies

- Scrutiny of campaign finance activity to continue and grow
- Businesses must ensure careful compliance with corporate, tax, and election laws for PACs, corporate political activities, and the creation of 501(c)(4) and 527 organizations
- Businesses must tailor their political strategies to maximize both impact and effectiveness for their legislative and business agendas

Section IV. Impact of Political Equilibrium on Governance

POLITICAL EQUILIBRIUM → GRIDLOCK → COMPETITION AMONG GOVERNING ENTITIES

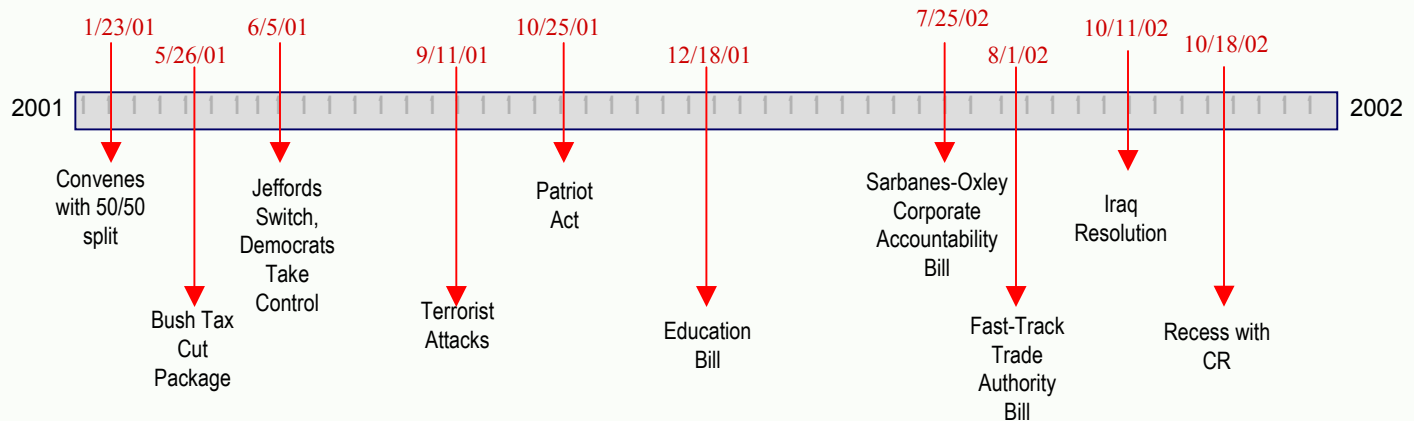
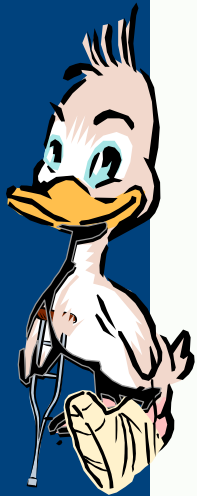


- **Separation of Powers/Jurisdictional Disputes:**
 - When Presidents lack working majorities in Congress, they regulate more extensively
 - When regulators overreach, the Courts or Congress can challenge their actions as “lawmaking”
 - Increasingly, Supreme Court overturns congressional action to protect states’ rights
- **State attorneys general and legislators capitalize on federal gridlock by intervening with own regulations and legal actions**
- **Parallel intervention by international regulators**

CONCLUSION:

Businesses must be prepared to protect their interests in multiple forums (federal/state/international) and multiple venues (legislative/regulatory/judicial/political)

CONGRESSIONAL GRIDLOCK: 107th Congress Stalled Agenda



LEGISLATION STALLED

- No Congressional budget
- Passed only 2 out of 13 Appropriations bills
- Homeland Security Department
- Terrorism insurance
- Prescription drug bill
- Patients' Bill of Rights
- Small business tax relief
- Pension reform
- Bankruptcy reform
- Energy bill

LAME DUCK SESSION

Objectives: Appropriations, Homeland Security, Terrorism Insurance, Bankruptcy

Outcome Uncertain: 107th may pass the buck to the 108th via continuing budget resolution



108th CONGRESS

- **Bush opportunity: Respite from Gridlock**
- Expect early statement of Bush priorities
- Expect early efforts to pass priority legislation
 - Stimulus bill, using budget reconciliation, not subject to filibuster
 - Other initiatives require 60 Senate votes
- Bipartisanship indispensable

BUDGET HISTORY

1998: + \$69 billion

1999: + \$125 billion

2000: + \$237 billion

2001: + \$127 billion

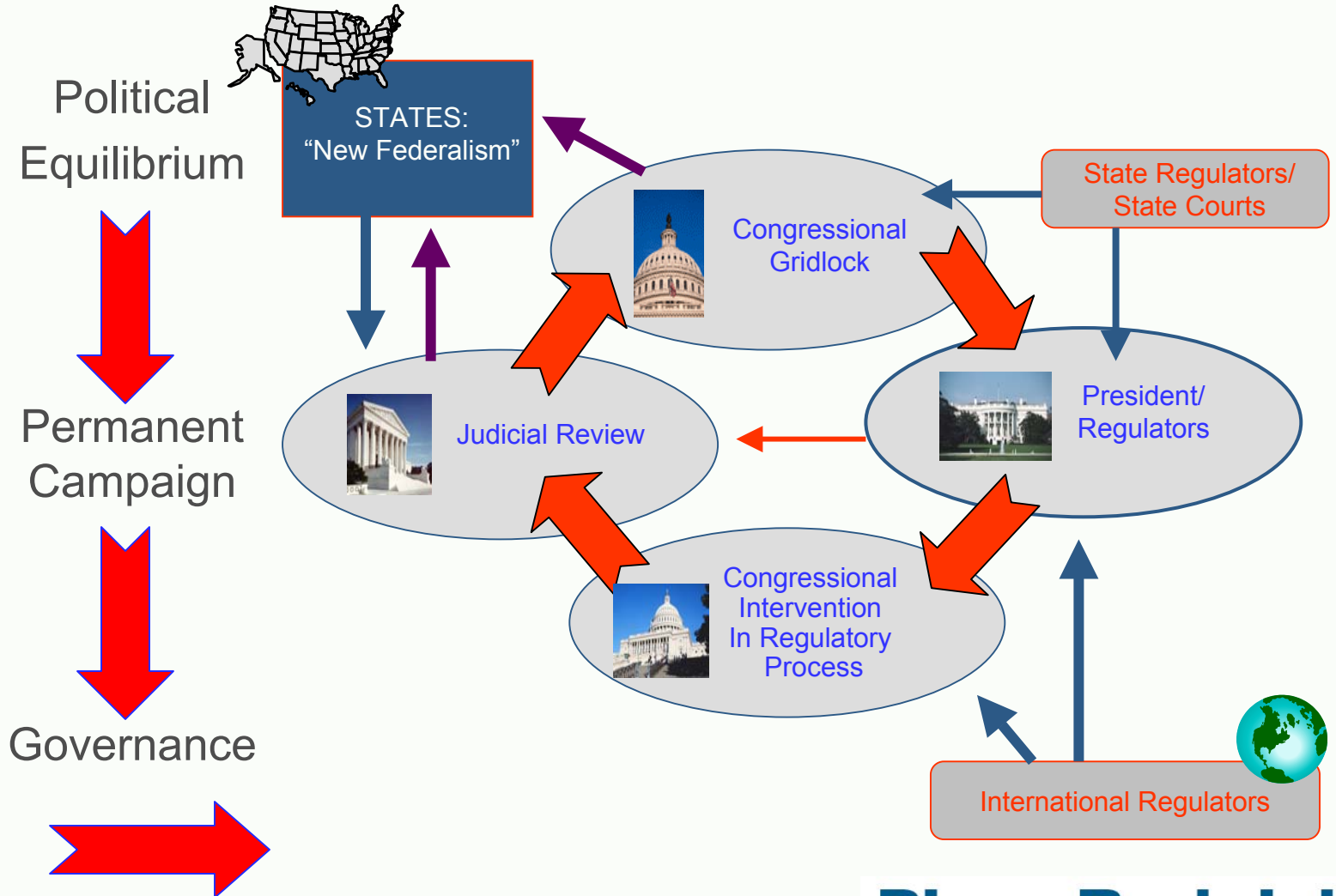
2002: - \$159 billion

- Moderate Democrats inclined to legislate
- Polarization renders bipartisanship difficult

After a 4-year budget surplus, Congress faces long-term deficits

- In 2001, the Congressional Budget Office projected a surplus of \$5.6 trillion by 2011
 - *Contrast:* In October 2002, OMB reported a \$159 billion deficit for FY2002, the largest one-year fiscal reversal in the nation's history
- Narrow window of opportunity
 - Impact of front-loaded presidential primaries on 2003 agenda

CONGRESSIONAL GRIDLOCK BREEDS GOVERNMENTAL COMPETITION



Case Studies

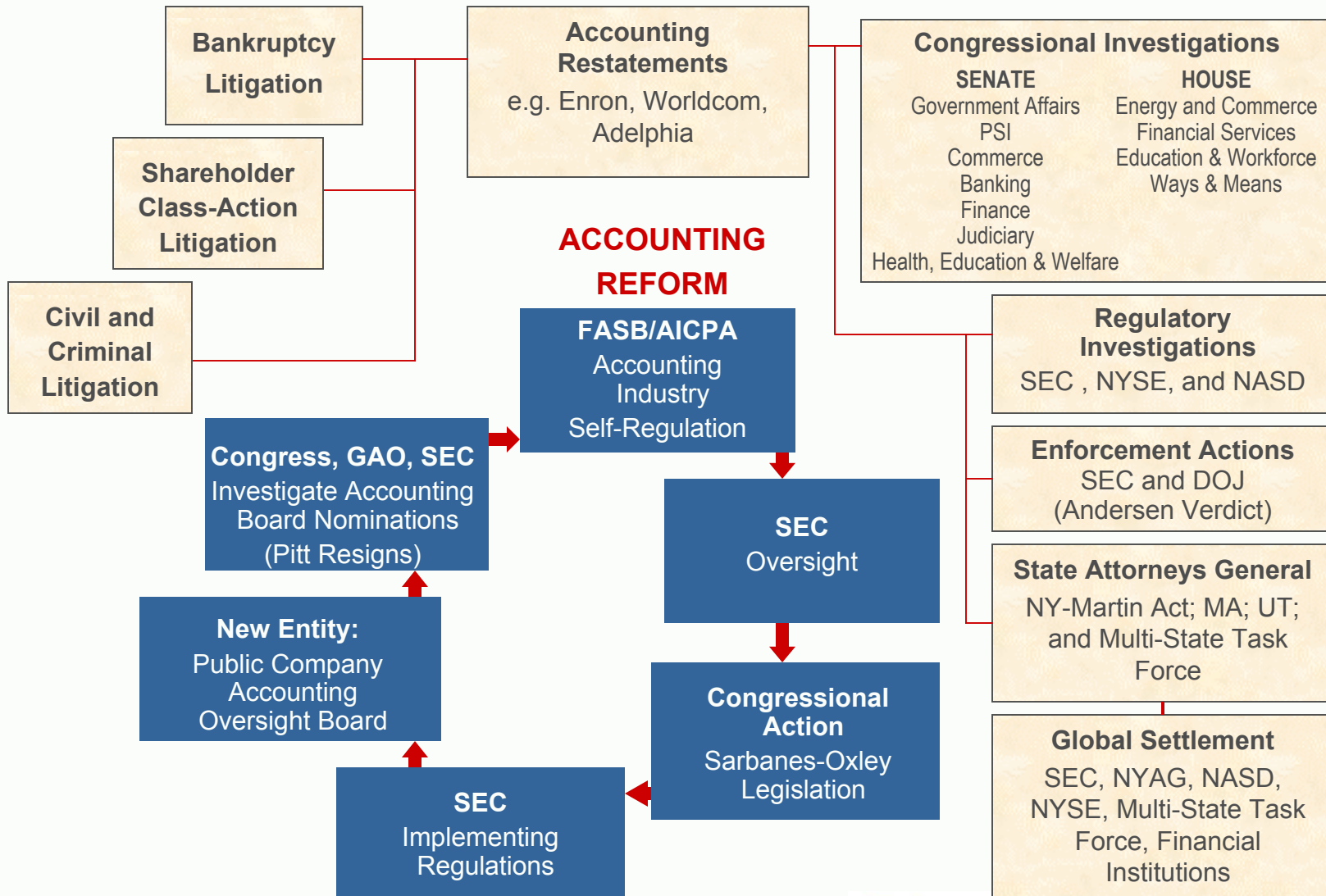
CASE STUDY # 1:

CONGRESSIONAL STALEMATE PROMPTS MULTI-VENUE REGULATION - AFFORDABLE DRUGS



- **July 31, 2002:** Senate passes legislation to improve access to affordable generic drugs
 - Reimportation waiver for prescription drugs added as amendment
 - House never acts on similar bill
- **Oct. 18, 2002:** Congress recesses for elections
- **Oct. 20, 2002:** Florida governor race tightens within margin of error; Jeb Bush and other Republicans court seniors' votes
- **Oct. 21, 2002:** President Bush announces FDA will propose rules to speed access to generic drugs
- United Seniors Association runs pro-Republican TV ads
- Congressional proponents vow action in 108th Congress on generic drug bill and reimportation provisions
- States promulgate parallel measures for affordability of prescription drugs
 - As of October 2002, 34 states enacted laws to address prescription drug access costs and pricing
- Brand-name and generic drug makers respond, threaten lawsuits

CASE STUDY # 2: MULTI-VENUE LEGAL ACTIONS – CORPORATE ACCOUNTABILITY/ACCOUNTING REFORM



CASE STUDY # 3:

MULTI-VENUE EFFORT TO REPAIR JUDICIAL SYSTEM - ASBESTOS

- Asbestos claims mount motivating multi-party class action settlements
- Supreme Court invalidates settlements, urges legislative solution
 - Amchem v. Windsor (1997) and Ortiz v. Fibreboard (1999)
- Trial lawyers flood courts with new cases for unimpaired claimants
- Proliferating lawsuits:
 - swamp bankruptcy trusts
 - bankrupt dozens of major corporations
 - deny compensation to mesothelioma victims and families
 - rob employees of jobs and pension plans
 - eventually sweep up small businesses and other peripheral defendants
- 106th and 107th Congresses introduce legislation and conduct hearings
- U.S. District Judge disqualifies unimpaired claims in federal consolidated cases; trial lawyers shift to state courts
- 2002 election: Issue advertising highlights asbestos crisis
- Congressional leaders urge all parties to coalesce behind workable legislative solution in 108th Congress

CASE STUDY # 4:

MULTI-VENUE REMEDIES IN LIEU OF LITIGATION - RUM WARS

Litigants and the Permanent Campaign: “You think you’re working in one area, and your adversary is busy eliminating your superior work in court with its own machinations in Congress.”

(American Lawyer, 02/02)

- 1993: French spirits distributor, Pernod Ricard enters agreement with Cuban government to market “Havana Club” – brand name of distillery seized by Cuban government in 1960; control of U.S. registration for Havana Club trademark transferred to Pernod Ricard
- Original owners of distillery sell Havana Club trademark rights to Bacardi
- Competing claims on Havana Club name generate disputes before Treasury Department Office of Foreign Assets Control, U.S. Patent and Trademark Office, U.S. Trade Representative, and ultimately Federal Court
- Recognizing political importance of Cuban policy within Permanent Campaign, Bacardi capitalizes on parallel efforts in Congress to tighten Cuban embargo, resulting in passage of statute amending Cuban embargo regulations
- New law bars U.S. courts from enforcing claims by Cuban government entities or their assignees to U.S. registrations for trademarks or trade names unless original owners consent to their use, preventing plaintiffs from asserting treaty rights to enforce disputed trademark claims
- **Result:** Federal Court dismisses most of Pernod's legal claims on Havana Club trademark
- European Union files challenge at WTO; Defense by USTR
- WTO upholds statute but requires clarifying amendment in Congress



CASE STUDY # 5: RECENT COORDINATED INTERVENTIONS BY STATE ATTORNEYS GENERAL

RECENT ACTIONS INCLUDE:

- Investigations of securities firms for conflicts of interest and fraud
- Antitrust actions against pharmaceutical companies (generic drugs), Microsoft (market domination), and recorded music distributors (CD prices)
- 23 state AGs join with Justice Dept. to block satellite television merger
- Actions against tobacco industry to enforce marketing restrictions
- Involvement in FTC rulemaking re telemarketing regulation/consumer privacy
- Settlement agreement with Bridgestone/Firestone Inc. re tire safety/deceptive trade practices
- Settlement agreement with manufacturer of genetically modified corn re consumer safety
- Lobbying Congress and FTC to assert states' jurisdiction over online commerce
- Settlement with mortgage lenders re predatory lending practices
- Settlement with financial institution to restrict use of personal financial information for direct marketing
- Settlement with long distance carriers re deceptive advertising