

2018 ELECTION OUTLOOK

TECHNOLOGY 

Waxman

WHAT TO WATCH

IN THE NEXT TWO WEEKS

With polls predicting a possible “blue wave”, the 2018 mid-term elections bring with them the potential to dramatically reshape the legislative landscape. At Waxman Strategies, we are preparing and planning for the many possible outcomes of this election. Given the importance of this year’s election, we wanted to share some of our insights around what to expect on and following election night and how they could affect the technology policy landscape.



THE RACES WE'RE FOLLOWING

We've selected five House races and five Senate races that we see as election night bellwethers. If the Democrats win the races lower on the lists, it may indicate a "blue wave."

REPUBLICAN HOLD

HOUSE RACES TO WATCH

IA-1: Rod Blum (R) v. Abby Finkenauer (D)

- Abby Finkenauer is an Iowa State Representative
- 2016 Presidential: Trump +3.5%
- 2016 House: Blum +7.7%
- Cook: Lean Dem • FiveThirtyEight: Solid Dem

CO-6: Mike Coffman (R) v. Jason Crow (D)

- Jason Crow is an attorney and former Army Ranger
- 2016 Presidential: Clinton +9%
- 2016 House: Coffman +8.3%
- Cook: Lean Dem • FiveThirtyEight: Likely Dem

NJ-7: Leonard Lance (R) v. Tom Malinowski (D)

- Tom Malinowski is a former State Department official
- 2016 Presidential: Clinton +1.1%
- 2016 House: Lance +11%
- Cook: Toss-Up • FiveThirtyEight: Lean Dem

FL-26: Carlos Curbelo (R) v. Debbie Mucarsel-Powell (D)

- Debbie Mucarsel-Powell is a non-profit organizer
- 2016 Presidential: Clinton +16.3%
- 2016 House: Curbelo +10.8%
- Cook: Toss-Up • FiveThirtyEight: Toss Up

TX-7: John Culberson (R) v. Lizzie Pannill Fletcher (D)

- Lizzie Pannill Fletcher is an attorney
- 2016 Presidential: Clinton +1.4%
- 2016 House: Culberson +12.4%
- Cook: Toss-Up • FiveThirtyEight: Toss-Up

SENATE RACES TO WATCH

NJ-Sen: Bob Menendez (D) v. Bob Hugin (R)

- Bob Hugin is former CEO of Celgene
- 2016 Presidential: Clinton +14%
- 2012 Senate: Menendez +19.5%
- Cook: Lean Dem • FiveThirtyEight: Likely Dem

FL-Sen: Bill Nelson (D) v. Rick Scott (R)

- Rick Scott is the current Governor
- 2016 Presidential: Trump +1.2%
- 2012 Senate: Nelson +13%
- Cook: Toss-Up • FiveThirtyEight: Lean Dem

MO-Sen: Claire McCaskill (D) v. Josh Hawley (R)

- Josh Hawley is the State Attorney General
- 2016 Presidential: Trump +18.5%
- 2012 Senate: McCaskill +15.7%
- Cook: Toss-Up • FiveThirtyEight: Lean Dem

TN-Sen: Marsha Blackburn (R) v. Phil Bredesen (D)

- Blackburn represents TN in the House
- Bredesen is the former Governor
- 2016 Presidential: Trump +26%
- 2012 Senate: Corker +34.5%
- Cook: Toss-Up • FiveThirtyEight: Likely Rep

TX-Sen: Ted Cruz (R) v. Beto O'Rourke (D)

- Beto O'Rourke represents TX in the House
- 2016 Presidential: Trump +9%
- 2012 Senate: Cruz +16.1%
- Cook: Toss-Up • FiveThirtyEight: Likely Rep

DEMOCRATIC WAVE

WHAT WE MAY EXPECT

FROM THE 116TH CONGRESS

Three potential scenarios could play out following the results on Election Day. This is our assessment of how the various scenarios could set the tech policy agenda for the 116th Congress.

1

REPUBLICANS RETAIN BOTH CHAMBERS

- In this scenario, Republicans will likely continue to bring in big technology companies to talk about privacy, content moderation and security issues; however, likely Democratic filibuster leverage may blunt or temper these efforts.
- Legislation that has bipartisan support, like actions designed to maintain American competitiveness - especially with regards to China - in emerging tech may see some action.

2

DEMOCRATIC HOUSE, REPUBLICAN SENATE

- A Democratic House would be more likely take a more consumer-focused approach to tech issues, pushing for action on things like net neutrality and privacy legislation, but passage in the Senate would not be guaranteed.
- A Democratic House could create opportunities for green tech to find its way into infrastructure and energy legislation that would be less likely under Republican leadership.
- In this scenario, the House has the opportunity to hold oversight hearings on issues like election security and antitrust concerns that could affect the technology sector.

3

DEMOCRATIC HOUSE AND SENATE

- In this case, Democrats may be empowered to pass privacy standards, shore up election cybersecurity and perform oversight of "Big Tech."
- However, Senate Republicans would likely still have input given, they would probably still have 40 or more seats.
- There may be opportunities for Big Data, green tech, IoT and other smart cities-enabling tech in an infrastructure bill, one of the few areas where the Trump White House could find common cause with a Democratic Congress.
- There will be pressure from net neutrality advocates to pass legislation reinstating the 2015 Obama-era FCC regulations classifying broadband as a Title II utility.

TECH POLICY ISSUES WE ARE WATCHING

Waxman Strategies' technology team is closely monitoring a number of issues that are likely to come up in the 116th Congress including:

ONLINE PRIVACY

The push for comprehensive privacy legislation may be one of the few areas where Republicans and Democrats will be able to align for action, regardless of how the 2018 election plays out. As one of the only developed countries without a national privacy law, legislators in both chambers and from both parties have called for legislation to ensure consumers understand how their data will be used and companies have a framework that clearly delineates what they can and can't do with that data. And the technology industry wants action too, wary of attempting to comply with a patchwork of state laws and preferring national action over a piecemeal approach - spurred on by the recent passage of strict privacy standards by the state of California.

The Senate Commerce Committee has brought tech and telecom industry experts to the Hill recently in preparation for a privacy legislation push. Led by Committee Chairman John Thune (R-S.D.), Republicans are looking to introduce legislation in 2019 that would create a nationwide privacy standard. On the Democratic side, Senators Ron Wyden (D-OR) and Mark Warner (D-VA) have been working on their own consumer privacy bill that might set the stage for action in 2019, should the Democrats take control of the Senate.

In the House, Democratic Leader Nancy Pelosi (D-CA) has already made clear that she hopes to tackle online privacy if she is speaker in 2019. In a recent interview with Recode's Kara Swisher, Pelosi commits to introducing an "Internet Bill of Rights" designed to codify how data is used and collected from Americans and provide consumers with control over how their information is used online. Pelosi has tasked

Rep. Ro Khanna (D-CA), whose district includes major tech companies like Apple, Intel and Yahoo, with spearheading these efforts.

ARTIFICIAL INTELLIGENCE

With more industries adopting AI and machine learning to help make decisions, streamline processes and, in some cases, replace human input, Congress is just beginning to think about what a regulatory framework for AI would look like. In the 115th Congress, some progress was made on AI-related bills that addressed topics like driverless cars, the impact of AI on the labor force, and national security concerns. While none of these became law, they set the stage for what the conversation may look like in the 116th Congress, as legislators seek to balance creating consumer and national security safeguards against misuse of AI, while continuing to foster an environment that encourages innovation.

In a white paper released in September, Representatives Will Hurd (R-TX) and Robin Kelly (D-IL), who currently serve as the chair and ranking member of the House IT subcommittee, wrote that “the United States cannot maintain its global leadership in AI absent political leadership from Congress and the executive branch” and warned against allowing China to gain a competitive advantage in AI. Expect their call for increasing research funding, data sharing, government-sponsored AI competitions, and ethics standard-setting to be echoed by members of both parties in 2019.

SMART INFRASTRUCTURE

Should Democrats take control of one or both houses, we may see the White House resurrect plans for a comprehensive infrastructure bill – an idea floated early in the Trump Administration as one of the few areas where there seemed to be an appetite for cooperation between Congressional Democrats and the White House. If so, expect technology to be at the heart of many infrastructure discussions as municipal, state and federal government efforts will look to adopt emerging technologies like IoT devices: sensors, tracking systems and connected technologies, big data visualizations for traffic, energy and health services, and new connectivity solutions like 5G and mesh networks, and more via funding from an infrastructure revamp.

Additionally, we expect that any infrastructure play – especially if Democrats have a majority in at least one chamber – might provide real opportunities for green tech companies. While passage of significant climate change legislation may be difficult under a Republican president, renewable energy and green technology incentives may be able to find their way into energy and infrastructure bills because of Democratic leverage.

OVERSIGHT OF BIG TECH

Big tech CEOs testifying before Congress have been a common sight on Capitol Hill, and we would expect this to continue into 2019 - especially if Democrats have the gavel in one or both chambers. With the 2020 election approaching, Democrats will want to hear what companies like Facebook and Twitter are doing to combat disinformation on their platforms. Under either party, we would expect to see tech companies face scrutiny and possible legislation on privacy and security issues. However, if Democrats are in power, there may be an additional focus on consumer protection as well as issues like working conditions at technology company facilities.

While both parties will want to ensure that the US maintains an innovation leadership position, the big tech companies - Google, Facebook, Amazon - have become large enough that both sides of the aisle have reason to look at them skeptically - Democrats through an antitrust lens and Republicans who have criticized them for what they view as moves to limit conservative voices on major platforms.

NET NEUTRALITY

Earlier this year, the FCC rolled back Obama-era rules that restricted the ability of internet providers to prioritize specific data or content. Should Republicans lose control of the House, it's possible Democrats could move forward with legislation designed to restore these rules. Worth watching are several ongoing court cases which could set up further action around this issue. Currently, the Justice Department is suing to block California's state-level net neutrality provisions arguing that Federal regulations would preempt state laws around this issue. Net neutrality advocates are looking at several suits - including one backed by 22 state Attorneys General - that seek to overturn the FCC's 2018 decision. Congress may take its cues on how and if to legislate on net neutrality from the outcomes of these legal actions.

Waxman Strategies is following these issues closely and will be posting insights on our [Election Hub](#).

KEY DATES

NOVEMBER 6	Election Day
NOVEMBER 27	Runoff date for Mississippi Senate Special Election (if needed)
DECEMBER 5	House Democratic Caucus Organizational Meetings Begin; Leadership elections; Possible committee leadership decisions.
JANUARY 3	New House and Senate Members are sworn in
REST OF JANUARY	Final committee assignments/ Subcommittee leadership decisions likely made.

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| OUTCOMES THAT MATTER |

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