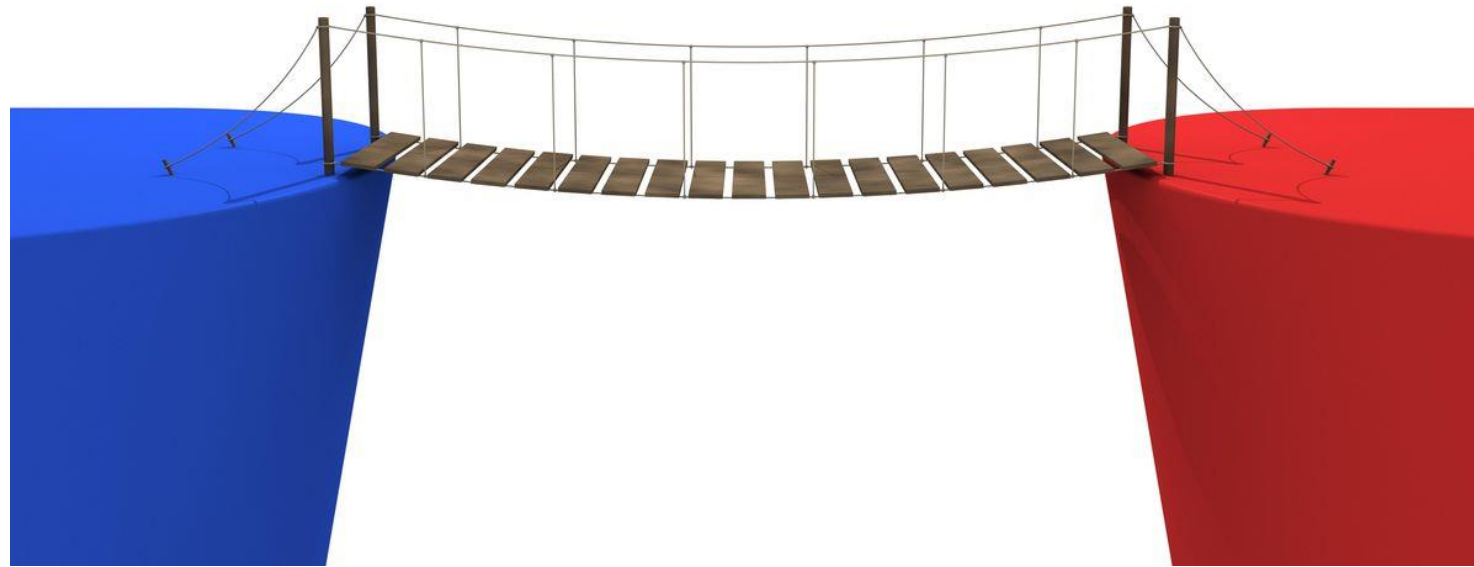


Bridging the Divide: What to Expect from Washington



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

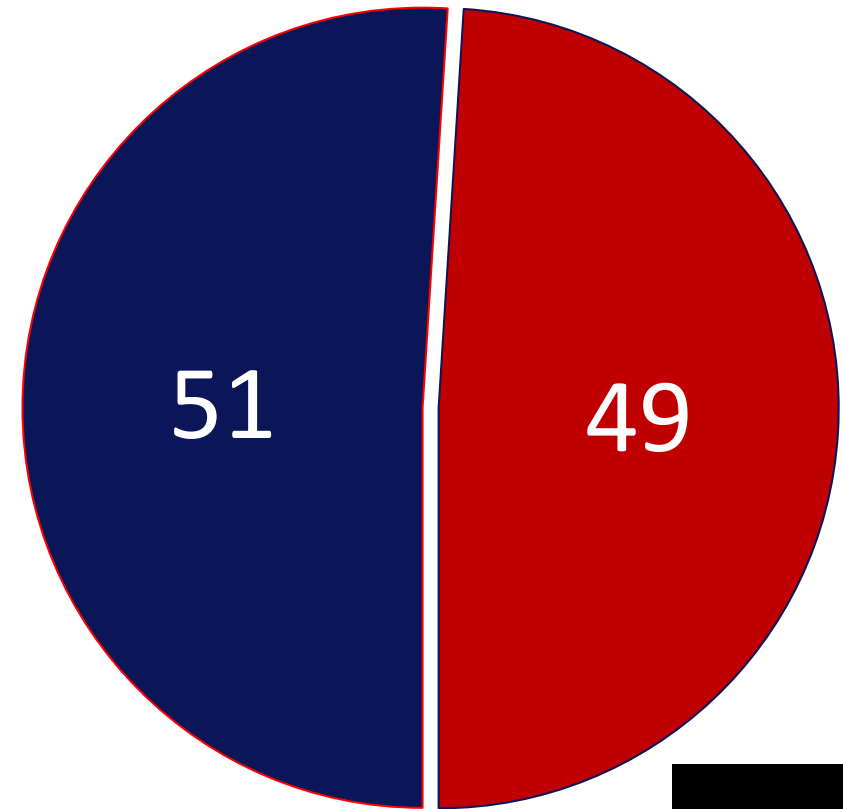


Balance of Power



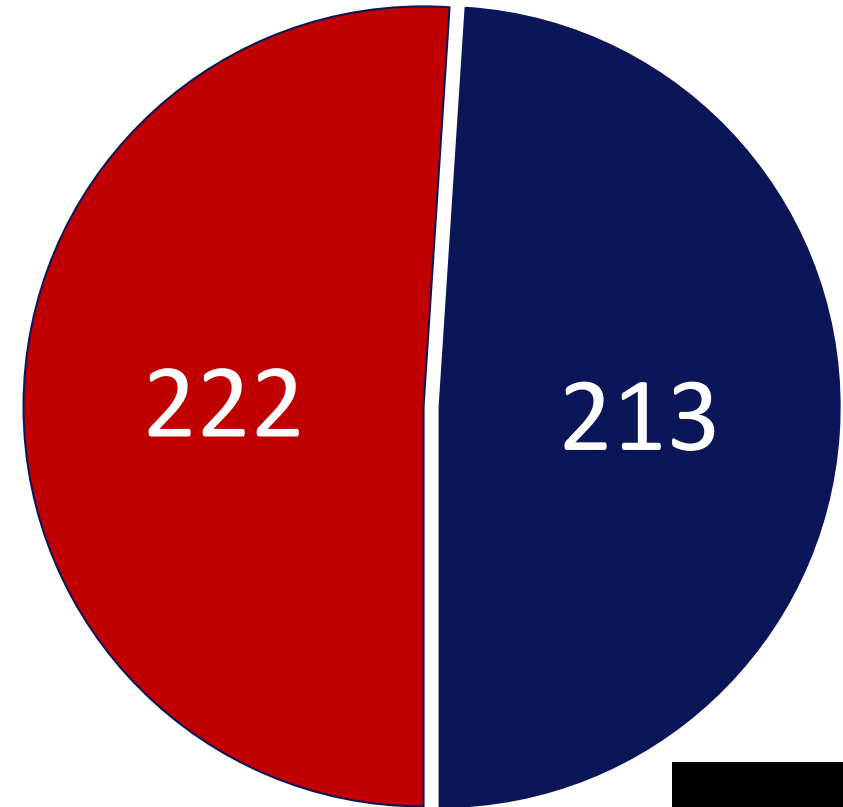
Senate

- Democrats have the majority
 - But still can't pass anything without 60
 - Ds didn't lose anywhere in midterm election
 - Kept seats in AZ, GA, NV and NH
 - Trump aligned candidates lost in all D toss-up races
 - Rs lost PA 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 none in jeopardy



House of Representatives

- Republicans have control – in name only
 - Rs had a net gain of 9 seats in midterm election
 - They control all 4 Long Island seats
 - Took 4 seats in FL and in NY
 - Ds had more wins than expected
 - They control all 6 N.E. states and Alaska
 - The new Speaker still has a numbers problem
 - Takes 218 to pass anything so he can't lose > 4 votes
 - It's the "troublesome 20" vs. establishment Rs
- 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 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 earnings
 - Those making \$400K+ with \$10M+ in Roth IRAs must withdraw ½ over \$10M and all over \$20M
 - Taxes investment managers earnings (carried interest) 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 rate means a 50%+ tax 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 and legislative agenda is a marker for his second term
 - House won't pass anything he supports in '24
 - Rs passing what *they* want will be difficult....
 - Senate can't pass anything he supports in '24
 - Schumer can't overcome 60 vote threshold on most issues
- Split control of the House and Senate means gridlock
 - House leadership will focus on government spending and executive branch oversight
 - With troublesome 20, funding bills won't pass, and any House bill won't pass the Senate = shutdown
 - Impeachment of Pres. and investigation of Hunter Biden will be the focus in '24
 - Senate leadership will focus on confirmations and social issues
 - Judicial posts will be a high priority
 - Chaos in the Republican House will be the focus in '24



Regulatory Action

- Two new NLRB Rules
 - New Independent Contractor Ruling (The Atlanta Opera case) – in effect now
 - An 11-factor test to see if a worker is an IC or employee – why do we care?
 - If he’s an employee, then he’s covered by NLRA for **unfair labor practices** and **union purposes**
 - “Entrepreneurial Opportunity” was the key factor under old Rule; now it’s just 1 of 11 factors....
 - New Joint Employer Rule – will likely go into effect by end of the year
 - 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
 - “Direct and immediate control” was the key factor under old Rule; now it’s just one factor....



Regulatory Action

- DOL's proposed OT Exemption Rule
 - For standard employees to be exempt, they must still meet 3 requirements
 - Be paid a salary; be paid the min. weekly salary (currently \$684); and satisfy the “Duties Test” of at least 1 of the applicable White Collar Exemptions (WCEs)
 - The new min. weekly salary is set at **\$1,059** (from \$35,568/yr. to \$55,068/yr. = a 50+% jump)
 - Club may still pay 10% less each week (\$953/week) if the yearly rate is paid by end of the year
 - For Highly Compensated Employees to be exempt, they must meet 4 requirements
 - Be paid the min. yearly salary (\$107,432); the min. weekly salary (\$684); meet at least 1 part of the “Duties Test” found any of the applicable WCEs; and perform office or non-manual work
 - The new HCE salary threshold is set at **\$143,988** (from \$107,432 = a 30+% jump)
 - They must also earn the new min. weekly salary of \$1,059/week
 - No change to the “Duties Test”
 - If your state rules are more strict, follow them – otherwise this Rule likely starts early ‘24



Regulatory Action

- DOL's new Independent Contractor Rule will impact clubs (including FLSA problems)
 - The new rule reverts back to the 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
 - If your state rules are more strict, follow them – otherwise this Rule likely starts SOON



The Race for the White House and Control of Congress



Biden's Swan Song

- Historic 2022 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 no more than 1 net Senate loss and 9 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

- Three 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
- 2020 Electoral College vote was 306-232 (need 270 to win)
 - Biden starts with 226 and the Republican starts with 235 (1st primary is 1/15/24!)
 - 77 Electoral College votes up for grabs
 - If blue wall holds, Biden wins



U.S. Senate

- Majority will be determined by 7 races (Rs just need to flip 2)
 - All ran and won in 2018 – Trump’s first midterm
 - AZ: Sen. Kyrsten Sinema (won by 2%) – 1st re-election in a presidential toss-up state
 - But, the 3-way race could actually lessen the chances for the R candidate
 - 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 presidential 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 presidential toss-up race
 - MI: OPEN seat in a presidential toss-up state
- Republican Pres. and Senate nominees will greatly impact these races



U.S. House of Representatives

- Republicans need some luck to keep their majority
 - If Ds flip 5 seats, they take back control
 - But...the House hasn't flipped control in a presidential election year since 1952
 - The chaos in the House and the Pres. nominee will go a long way to determining how well Rs do
 - Retirements will help tell the tale - 4 Rs and 11 Ds so far in 2024
 - 35 Ds retired in 2022 - Rs won
 - 26 Rs retired in 2020 - Ds won (maintained control)
 - 34 Rs retired in 2018 - Ds won
 - 18 Rs won in districts Biden won and 5 Ds in districts Trump won - these could decide the majority
 - Impeachment won't help the 18 Rs in Biden districts
 - Several states have challenged and won claims regarding redistricting issues
 - Redistricting could flip 9 R seats and 8 D seats = net 1 for Ds (more to come?)



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