

# 2008 Election Overview

Election Preview and Policy Implications

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Public Policy Practice Group

## 2008 Election Analysis: Presidential

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- **Republican Presidential Nominee**  
Senator John McCain (R-AZ)
  - **Republican Vice Presidential Nominee**  
Governor Sarah Palin (R-AK)
  
- **Democratic Presidential Nominee**  
Senator Barack Obama (D-IL)
  - **Democratic Vice Presidential Nominee**  
Senator Joseph Biden (D-DE)

## Recent Polling: Presidential

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### ■ Nationwide Polling

- Real Clear Politics average of 10 national polls taken October 21-27 has Sen. Obama leading Sen. McCain by 7.2 percentage points (50.6% to 43.4%)
  - Following the Democratic Convention (August 25-28), Senator Obama led 48.8% to 44.3%
  - Following the Republican Convention (September 1-4), Senator McCain led 48.3% to 45.4%
    - High volatility in polling since conventions: in less than 2 months, Obama went from being up 4 points, to down 3 points, to up by over 7
    - Defying conventional wisdom, the polls have not yet begun to narrow as we close in on Election Day

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## Recent Polling: Presidential

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### ■ Electoral College: 270 needed to win

- Real Clear Politics predictions as of October 28
  - Obama/Biden: 306 (255 solid/51 leaning)
  - McCain/Palin: 157 (127 solid/30 leaning)
  - Toss Up: 75
- Rothenberg Political Report predictions as of October 21
  - Obama/Biden: 306 (235 likely/71 leaning)
  - McCain/Palin: 163 (140 likely/23 leaning)
  - Toss Up: 69

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## The Electoral Map: States in Play

- Obama leads in every state won by Sen. John Kerry, the Democratic nominee in 2004 (Kerry won a total of 251 electoral votes (EVs) to Bush's 286). Competitive states (with number of EVs) include:

MN (10): Obama up 11.3 points (10/13-10/22)	NH (4): Obama up 7.7 points (10/17-10/23)
PA (21): Obama up 10.8 points (10/16-10/26)	WI (10): Obama up 10.6 points (10/16-10/23)

- Obama maintains leads in 10 states won by President Bush in 2004:

CO (9): Obama up 6.2 points (10/11-10/26)	VA (13): Obama up 7.3 points (10/19-10/26)
IA (7): Obama up 11.4 points (10/19-10/24)	FL (27): Obama up 2.7 points (10/20-10/26)
IN (11): Obama up 0.3 points (10/7-10/26)	MO (11): Obama up 0.6 points (10/20-10/26)
NM (5): Obama up 8.4 points (9/29-10/13)	NV (5): Obama up 3.5 points (10/16-10/26)
NC (15): Obama up 1.6 points (10/18-10/26)	OH (20): Obama up 6.0 points (10/18-10/27)

- McCain maintains a 3.3 point lead in Montana, a 5.3 point lead in Georgia, and an 8.0 point lead in West Virginia, three other states won by President Bush in 2004

Source: *Real Clear Politics* averages as of October 27

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## The Political Climate

- Significance of the Moment
  - Closeness of race and swings in polling demonstrate that undecided voters seem to be responding to the events of the moment
    - Potentially the most historic period leading up to an election since WWII
      - In a recent NBC/WSJ poll, 98% of respondents said this election for president is either equally important or more important than recent past elections, with 70% saying more important
    - Key game changers
      - Sen. Obama's primary rise
      - The Russia-Georgia conflict
      - Selection of Gov. Palin as GOP VP nominee
      - Financial crisis
- Historical shifts in power
  - Since WWII, only once has one party maintained control of the presidency for three consecutive terms
    - George H.W. Bush's election in 1988 following President Reagan's two terms

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## The Political Climate

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- The Economy
  - Mortgage/housing and Wall Street financial crises
  - Unemployment rate at 6.1% in September
    - Up from 5.1% in March 2008 and up from 4.7% in September 2007
    - Since August 2007, the number of unemployed persons has increased by 2.2M
- Voter Sentiment
  - A recent NBC News/WSJ poll (Oct. 4-5) found that 77% of respondents think the country is in a recession and 56% are worried about their personal financial situations looking ahead to next year
  - A more recent NBC/WSJ poll (Oct. 17-20) asked respondents what set of issues was most important in deciding for whom they would vote:
    - 54% said economic issues including job losses, home foreclosures, and energy prices
  - Sen. Obama had a 21 point advantage when respondents were asked which candidate would better handle the economy (49% to 28%)

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## The Political Climate

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- Foreign Policy
  - 15% of NBC/WSJ poll respondents rated foreign policy issues such as Iraq, Russia, and the war on terrorism as the most important set of issues in deciding their vote
  - Continued concerns over wars in Iraq and Afghanistan; however, a recent CBS/NY Times poll found that for the first time in over 3 years, a majority of Americans thinks things are going well in Iraq
  - 50% of Americans also think the surge is working (CBS/NY Times poll)
  - Sen. McCain had a 6 point advantage over Sen. Obama on the situation in Iraq (NBC/WSJ)
- Close to 9 in 10 Americans think the country is on the “wrong track”
- Presidential approval ratings (26.5%)
  - Referendum on Bush
- Experience is still a factor

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## Additional Factors Influencing the Election

- Energizing the Base: Intensity Factor (Oct. 17-20 NBC/WSJ poll)
  - 26% of McCain voters "excited" (34% "satisfied")
    - Compared to 34% post-convention and 12% pre-convention
    - Conservative base: concerned by Sen. McCain's independent nature; energized by Gov. Palin
  - 52% of Obama voters "excited" (33% "satisfied")
    - Compared to 55% post-convention and 46% pre-convention
- Record Interest
  - Democratic primary records were set in 23 states and Republican records were set in 10 states; Overall turnout (30.2% of the electorate) fell just short of the all-time high set in 1972 (30.9%)
  - Close to 40M people tuned in for both candidates' acceptance speeches
  - Since the 2006 midterm elections, more than 2 million Democrats have registered in the 28 states that register voters according to affiliation; Republicans have lost close to 344,000 voters in the same states
  - Almost 57 million viewers watched the final Presidential debate (10/15) and close to 70 million viewers tuned in for the Vice Presidential Debate (10/2)
  - Early voting
- Youth Vote

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## Additional Factors Influencing the Election

- Resources
  - McCain opted for public financing, but can rely upon the RNC, which took in roughly \$66M in September and had \$77M cash on hand at the end of the month
    - The DNC took in \$50M in September and had about \$27M cash on hand at the end of the month
  - Senator Obama raised \$150M in September, more than double the amount he raised in August
  - In October, Obama has out-spent McCain in advertising by a ratio of about 4-1
    - Sen. Obama is advertising in a number of states previously thought to be non-competitive, such as North Carolina, Indiana, and West Virginia
  - Role of 527s (soft money)
    - Since Labor Day, independent groups supporting Sen. Obama have spent roughly \$15.8M, compared to \$5.4M spent by groups supporting McCain (Los Angeles Times, October 13)
- Role of Independent Voters
  - Both candidates and campaigns known for rejecting "politics as usual"
  - Senator Obama is gaining ground with Independent voters
    - In the most recent WSJ/NBC News poll, Independents favored Obama by 12 points
    - In the Sept. 19-22 WSJ/NBC News poll, McCain had a 13 point lead

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## 2008 Election Analysis: U.S. Senate

- Current Democratic Majority
  - 49 Democrats
    - 2 Independents who caucus with the Democrats
  - 49 Republicans
  
- 2008 Race Breakdown
  - Democrats are defending 12 seats
  - Republicans are defending 23 seats
    - 5 GOP retirements (“open seats”)
  - 3 Senators involved in the Presidential race
  
- 60 seats needed for “filibuster-proof” majority
  - Something no President has enjoyed since Jimmy Carter

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## Races to Watch: U.S. Senate

*Current Breakdown: 49 D, 49 R, 2 I*

State	Incumbent	Challenger
Virginia	Sen. John Warner (R) retiring	Jim Gilmore (R) vs. Mark Warner (D)
New Mexico	Sen. Pete Domenici (R) retiring	Steve Pearce (R) vs. Tom Udall (D)
Colorado	Sen. Wayne Allard (R) retiring	Bob Schaffer (R) vs. Mark Udall (D)
New Hampshire	John Sununu (R)	Jeanne Shaheen (D)
Alaska	Ted Stevens (R)	Mark Begich (D)
Oregon	Gordon Smith (R)	Jeff Merkley (D)
North Carolina	Elizabeth Dole (R)	Kay Hagan (D)
Minnesota	Norm Coleman (R)	Al Franken (DFL); Dean Barkley (I)
Louisiana	Mary Landrieu (D)	John Kennedy (R)
Mississippi	Roger Wicker (R)	Ronnie Musgrove (D)
Kentucky	Mitch McConnell (R)	Bruce Lunsford (D)
Georgia	Saxby Chambliss (R)	Jim Martin (D)

- The Rothenberg Political Report (October 28), the Cook Political Report (October 21), and UVA's Larry Sabato (October 23) all predict a Democratic gain of 7-9 seats

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## 2008 Election Analysis: U.S. House

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- Current Democratic Majority
  - 235 Democrats
  - 199 Republicans
  - 1 vacancy
- 2008 Race Breakdown
  - 35 Open Seats
    - 6 Democratic: 3 retiring; 3 seeking higher office
    - 29 Republican: 23 retiring; 3 seeking higher office; 3 defeated in primary elections

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## Races to Watch: U.S. House

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- Key Races
  - 21 of 35 open seat races thought be competitive – almost all Republican-held
  - Democrats who won traditionally Republican seats in 2006
    - 30 Democrats either defeated a Republican incumbent or won an open seat held by a Republican
    - 10 freshmen Democrats won in districts where President Bush won at least 55% of the presidential vote in 2004
  - Down-ticket impact of Presidential race unclear
- Democrats are favored by about 10 percentage points in generic polling, but also a general anti-incumbent sentiment
  - Congress's approval rating stands at 16%
  - Impact of local economic issues (e.g., gas prices, job losses, etc.)
- Recent Predictions
  - Larry Sabato (UVA) predicts a Democratic pick-up of 22-37 seats (October 23)
  - The Rothenberg Political Report predicts a Democratic pick-up of 27-33 seats (October 29)
  - The Cook Political Report estimates that Democrats will pick up between 24 and 30 House seats (October 28)

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## Races to Watch: U.S. House

- Open Seats in Play
  - Seats Currently Held by a Republican

AL-02 (Everett)	LA-04 (McCrery)	NM-02 (Pearce)	NY-26 (Reynolds)
AZ-01 (Renzi)	MD-01 (Gilchrest)	NJ-03 (Saxton)	OH-15 (Pryce)
CA-04 (Doolittle)	MN-03 (Ramstad)	NJ-07 (Ferguson)	OH-16 (Regula)
IL-11 (Weller)	MO-09 (Hulshof)	NY-13 (Fossella)	VA-11 (Davis)
KY-02 (Lewis)	NM-01 (Wilson)	NY-25 (Walsh)	WY-AL (Cubin)

- Open Seat Currently Held by a Democrat

AL-05 (Cramer)
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## Races to Watch: U.S. House

- Republican Incumbent Seats in Play

AK-AL (Young)	FL-21 (L. Diaz-Balart)	MI-09 (Knollenberg)	OH-02 (Schmidt)
AZ-03 (Shadegg)	FL-24 (Feeney)	MN-06 (Bachmann)	PA-03 (English)
CA-03 (Lungren)	FL-25 (M. Diaz-Balart)	MO-06 (Graves)	SC-01 (Brown)
CA-46 (Rohrabacher)	ID-01 (Sali)	NE-02 (Terry)	VA-02 (Drake)
CO-04 (Musgrave)	IL-06 (Roskam)	NV-03 (Porter)	VA-10 (Wolf)
CT-04 (Shays)	IL-10 (Kirk)	NY-29 (Kuhl)	WA-08 (Reichert)
FL-08 (Keller)	IN-03 (Souder)	NC-08 (Hayes)	WV-02 (Capito)
FL-13 (Buchanan)	MI-07 (Walberg)	OH-01 (Chabot)	

- Democratic Incumbent Seats in Play

AZ-05 (Mitchell)	GA-08 (Marshall)	MS-01 (Childers)	PA-11 (Kanjorski)
AZ-08 (Giffords)	KS-02 (Boyda)	NH-01 (Shea-Porter)	PA-12 (Murtha)
CA-11 (McNerney)	KY-03 (Yarmuth)	PA-04 (Altmire)	TX-22 (Lampson)
FL-16 (Mahoney)	LA-06 (Cazayoux)	PA-10 (Carney)	WI-08 (Kagen)

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## 110<sup>th</sup> Congress: Prospects for a Lame Duck

- Economic Stimulus Package
  - In September, the House passed a \$60 billion stimulus bill, but Senate Republicans blocked a similar effort in that chamber
  - Democratic leaders have expressed interest in taking up a bill during a post-election lame duck session and are coordinating with Senator Obama's presidential campaign
    - The package, expected to cost \$60-300 billion, could include:
      - Extended unemployment insurance benefits
      - Increased aid to states for Medicaid and food stamp programs
      - Funding for Low-Income Home Energy Assistance Program (LIHEAP)
      - Increased infrastructure investment (for near-term projects)
      - Aid for consumers
        - E.g., temporary moratorium on foreclosures, curbs on predatory lending, changes to the bankruptcy code, tax rebates
    - Alternatively, Senator McCain and other Republican leaders have proposed expedited off-shore oil and gas drilling and a number of business-focused tax cuts
    - Fed Chairman Bernanke has expressed support for a second stimulus, but stressed that it should be "well-targeted" for quick and maximum economic impact
      - In Congressional testimony, he stressed the need to improve access to credit by consumers, home buyers, and businesses

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## 110<sup>th</sup> Congress: Prospects for a Lame Duck, cont'd

- Consideration of Colombia, Panama, and South Korea free trade agreements unlikely
  - However, there is speculation that the agreements could be used to gain Administration and GOP support for Trade Adjustment Assistance and the economic stimulus package
- Senate Democratic leadership also hopes to consider an omnibus piece of legislation comprised of public lands bills held up by Senator Tom Coburn (R-OK)

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## 110<sup>th</sup> Congress: Legislative Accomplishments

- Major 2<sup>nd</sup> Session Highlights
  - Consolidated Security, Disaster Assistance and Continuing Appropriations Act
    - FY09 funding for Departments of Defense, Homeland Security, and Veterans Affairs
    - CR to fund remaining programs at 2008 levels through March 2009
    - Includes disaster aid, an auto industry loan guarantee program, and allows the ban on off-shore oil and gas drilling to expire
  - Iraq/Afghanistan War Supplemental
    - Includes Democratic priorities such as a new GI bill, extended unemployment benefits, and disaster relief
  - Department of Defense Authorization Act
  - Foreign Intelligence Surveillance Act (FISA) reauthorization
  - Consumer Protection Safety Modernization Act
  - Farm Bill
  - Comprehensive housing reform package
  - Economic Stimulus legislation (rebate checks)
  - Medicare Improvements for Patients and Providers Act
  - Highway technical corrections bill
  - Amtrak reauthorization combined with rail safety legislation
  - Financial rescue and tax extenders

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## 110<sup>th</sup> Congress: Left Undone

- Major Legislation Stalled in the 110<sup>th</sup>
  - 9 out of 12 appropriations bills
  - A second comprehensive energy bill
    - The Energy Independence and Security Act of 2007 was signed into law at the end of the first session
  - Trade enforcement legislation
  - Trade Adjustment Assistance (TAA) reauthorization
  - Free Trade Agreements with Colombia, Panama, and South Korea
  - Climate change legislation
  - Patent reform
  - Immigration reform
  - Employee Free Choice Act
  - Federal Trade Commission (FTC) reauthorization
  - Coast Guard reauthorization

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## Looking Ahead to 2009

### On the Issues

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- Policy Agendas in the Next Administration and Congress
  - The Economy/Financial Services
    - Without question, the economy will be the number one priority for the incoming Administration.
    - Will we see an economic recovery package early in the next Congress?
    - How will the current financial crisis drive overall regulatory reform of the financial system?
  - Climate Change
    - Both Presidential candidates support an economy-wide cap-and-trade regime.
    - Will we see a cap-and-trade regime legislated in 2009-2010? If an economy-wide fix is not feasible, are more incremental bills likely?
    - Will EPA regulate CO<sub>2</sub> under the Clean Air Act in response to the Supreme Court's decision in Massachusetts v. EPA?

## On the Issues, cont'd

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- Energy
  - Driven by economic, national security, and environmental concerns, both candidates advocate increased energy independence. Senator McCain is more focused on domestic production and strongly supports incentives for nuclear power. Senator Obama advocates increased R&D spending on alternative energy and supports a Federal Renewable Portfolio Standard.
  - What is the nexus between climate and energy legislation? Will bipartisan working groups in both chambers find the “right” mix of increased production, conservation and efficiency, and clean-energy solutions?
- Trade
  - Senator McCain is an ardent free-trader, while Sen. Obama has advocated stronger labor and environmental standards in trade agreements.
  - Will a stronger Democratic Congress push for expanded Trade Adjustment Assistance (TAA) and stricter trade enforcement?
  - What are the prospects for concluding the WTO Doha Round of global trade talks?

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## On the Issues, cont'd

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- Tax
  - Senator Obama would increase taxes for individuals in the top two tax brackets while providing additional middle-class tax breaks; Senator McCain would make permanent the Bush Administration’s tax cuts and reduce the corporate tax rate.
  - House Ways and Means Chairman Rangel and Senate Finance Committee Chairman Baucus have both expressed an interest in comprehensive tax reform in the next Congress, but that may be eclipsed as their focus shifts to the current economic crisis.
- Healthcare
  - Senator Obama advocates a new national health plan calling for universal healthcare coverage by 2012, while Senator McCain would eliminate the tax deductibility of employee sponsored health insurance and provide tax credits for families and individuals to buy their own insurance.
  - Will Congress pick up where it left off in the 110<sup>th</sup>, focusing on priorities such food and drug safety (especially related to imports), health IT, and boosting the generic drug industry?

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## On the Issues, cont'd

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- **Communications/Telecommunications**
  - How far will the pendulum swing to greater regulatory oversight, and how much deregulation can be undone?
  - What will this mean for more restrictive ownership rules and conditions on mergers?
  - Are Net Neutrality regulations a certainty?
- **Privacy**
  - Will the Federal Trade Commission and Federal Communications Commission become more aggressive in adopting new consumer privacy protections?
  - Is Congress likely to finally consider and act on new, baseline privacy legislation?

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## On the Issues, cont'd

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- **Environment**
  - Senator Obama supports tougher drinking water standards and stronger pollution limits. Senator McCain is known to be a moderate on environmental issues.
  - Will Congress follow the EU's lead and reform and strengthen the Toxic Substances Control Act (TSCA) or first work to strengthen existing EPA chemicals management programs?
  - Will there be a renewed interest in "polluter pay" legislation to aid clean-up of Superfund sites?
- **Infrastructure**
  - Senator Obama would provide \$60 billion over 10 years to provide financing to transportation infrastructure projects nationwide and touts the job-creating benefits of such projects. Senator McCain questions whether infrastructure spending, as part of an economic stimulus package, would provide a boost to the economy and has previously opposed highway funding bills due to the presence of earmarks for pet projects.
  - In discussions related to economic stimulus legislation, Congressional leaders often cite infrastructure as a key funding target given the high return on investment. Will such spending be included in an upcoming stimulus package?
  - In 2009, Congress will reauthorize national highway and transit legislation and House Transportation and Infrastructure Committee Chairman Oberstar has said that the measure could total as much as \$450 billion. Will "earmarks" be limited? How will such a bill be funded?

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## On the Issues, cont'd

- Labor
  - Senator Obama strongly supports the “Employee Free Choice Act” (to facilitate union organization) and the “Fair Pay Restoration Act,” both of which Senator McCain opposes.
  - Will larger Democratic majorities in both chambers facilitate passage of those labor priorities?
  - Would a Democratic administration reinvigorate OSHA, leading to stricter enforcement of workplace health and safety laws?
- Oversight
  - Anticipate an active oversight agenda setting the table for regulatory action. A continued focus on the financial crisis and what led to it is likely, as is more oversight of industry generally.

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*Next week, Kelley Drye & Warren LLP will be releasing a more comprehensive policy document reflecting the results of Tuesday's elections.*

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