



# SBLC WEEKLY

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## PREDICTIONS

*Here's Monday's Weekly again and my critique of my predictions in red.*

The House will be controlled by the Republicans by 221-214 margin. (Republicans control but with a bigger margin. At the moment at least 239 seats. More on that below.) The Democrats will retain control of the Senate with 51 Democrats and two Independents in the majority. (This prediction might be spot on. Bennet, (D-CO) Murray (D-WA) and Murkowski (R-AK) may hold their seats. The morning line is Colorado may go to a recount. No matter what, the Democrats/Inds will have at least the 51.) That's my prediction and I am sticking with it.

I have two Senate races that I go back and forth on. At various times this year, I have thought there is no way Senate Majority Leader Harry Reid (D-NV) is going to be re-elected. At various times I have thought there is no way Senator Russ Feingold (D-WI) will not be re-elected. I felt if Feingold lost, (and he has been trailing,) the Republicans might run the table and capture control of the Senate. I am not feeling that way today even with

a Feingold loss. (My feeling was correct. Feingold did lose but it was no longer the bellwether) Reid might even pull a rabbit out of his hat. (He did.)

Here's the reality check: it is not going to make much difference whether the Republicans or Democrats control the Senate. The Senate is the land of 60 votes and nobody is going to be close to having them in his or her pocket in the 112<sup>th</sup> Congress. Not much will get done. (Yes) On balance, one could make a case that is not a bad thing.

If President Obama and Speaker-presumptive John Boehner (R-OH) change their styles and want to compromise a la President Clinton, the story line for the 112<sup>th</sup> Congress and President Obama's chances for re-election might change. A House Republican/President Obama deal on deficit reduction, for example, would force the Senate's hand, regardless of which party controls the Senate. (This will be the \$64,000 question going into next year. It is quite possible.)

Otherwise, it is not going to be much fun to be a Representative unless Speaker Boehner or Speaker Pelosi (or another Democrat? If the

Dems pull off the miracle) change his or her modus operandi. The margin is going to be slim. I am sure you will see those painful dialogues on the House floor as the last party member is cajoled into "doing it for the party." It could be a weekly exercise. (Hey, cannot call them all correctly! This is my miss and glad to be wrong. With this margin, Speaker Boehner has some wiggle room and can allow some folks to stray off the path. Or looking at it the other way, a small group of his own party cannot hold their votes as hostages to get their views included even though the majority of the party agrees on something. This also gives him room if the President is willing to deal and the Speaker likes the deal. If he had only a vote or two majority, he would not have the upper hand in the negotiations.)

Oddly enough, I see pro-active opportunities for small business. While the big ticket items will not get out of the filibuster desert, I can see a consensus building for small ticket items with a Republican majority in the House leading the way. A good example would be repealing the Form 1099 requirement. I can see the House Ways and Means Committee popping out a bill as soon as its first

business meeting. (I give us a slight chance of repealing it in the lame duck session. More below on that.) (The election is good news for us on the “smaller” small business issues like the Form 1099, maybe the self employed health care deduction, home office standard deduction etc. – Our new motto “Start in the House and build in the Senate.”) I haven’t mentioned the estate tax up to this point. I think the temptation for the new House majority will be to pass a repeal bill. I would much rather they passed a reasonable higher exemption I think it would be a rather quick negotiation with the Senate to get it done. Either way, the chances of some estate tax relief in the 112<sup>th</sup> Congress has risen dramatically. The key on this will be Representative Dave Camp (R-MI) who is expected to be the Chair of the Ways and Means Committee.

Forget about health care repeal. I do not see it happening even if both chambers of Congress are controlled by the Republicans. There is that tiny thing call the Constitution that is going to prevent that. Article I, Section 7, of the Constitution requires two-thirds majorities in both chambers to override vetoes: “Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be

reconsidered, and if approved by two thirds of that House, it shall become a Law.” (This is still the case. No health care reform repeal. The likely outcome of the election is the House Republicans can pick their spots in the appropriations process to slow down some aspects. They will still have to negotiate with the Senate and the President, so not likely to be major changes. So the next stop for health care reform is what will happen in the courts. I would expect it to go all the way to the Supreme Court.)

### *LAME DUCK FIRST*

The 111<sup>th</sup> Congress is coming back and the principal decision is how to fund the government when the current continuing resolution runs out on December 3<sup>rd</sup>. Some say, “Let’s force repeal of health care by refusing to pass a continuing resolution and shutting down the government.” I do not see that happening. (I still do not see this happening.)

I do see the possibility of a deal on extending at least some of the expiring individual tax relief provisions like the rates and marriage tax penalty relief. (I am still holding on to this prediction as likely) I could see a couple of business extenders getting tossed in such as the expired Research and Development Credit. (Still think it has a chance in the lame duck. The President supports a permanent R&D so if it does not happen in the lame duck. Look to next year) Also I could see the Alternative Minimum Tax income “patch” extended for this year. (Still think the same) I also give us an outside chance at throwing the Form 1099 repeal in there too. (Ditto)

My guess is that as the end of the lame duck session approaches, concerns about revenue offsets are going to take a back seat to “piling on.” Think extra ornaments on the Christmas tree as the lame ducks approach the holidays. Or the last train to Clarksville.(I would still buy my ticket.)

Why would the Republicans go along with any tax deal now? Wouldn’t they have more leverage in the 112<sup>th</sup> Congress to get more? The 112<sup>th</sup> Congress is going to be faced with a nasty tax revenue scoring problem any time it wants to provide tax relief. Remember, in 2001 we were sitting on surpluses. Not now. The thinking may be it might be better to get something while it is still under the other team’s watch. (Still think this is the scenario but...)

Why would the Democrats go along with any tax deal now? I think it has sunk in that an automatic tax increase that will reach down into the middle and low income levels is not the way to start the New Year. Talk about sticker shock. If the first paychecks are cut before something is done, you are not going to be hearing anybody say “It is okay, I knew it was temporary all along.” (...the Dems might not as willing to do this given the outcome of the election. Some, particularly in the House, will be saying, “Why should we let them off the revenue hook.” But at the end of the day, I think reasonable minds will prevail. The middle and low income parts of our economy are not in any condition for any diminution of their take home pay.)

In the 112<sup>th</sup> Congress, I think there is going to be a lot of pressure to tackle tax issues under the disguise of tax reform. There are just too

many expired and expiring tax relief provisions and no simple ways to deal with the revenue offsets. If you can hide the ball, you may be able to get to the same goal line. Think President Reagan and Rosty and Bob Packwood. (PS if you favor meaningful deficit reduction, I have not run across many deficit reduction experts who think you can get there without an increase in tax revenues – did I mention hide the ball.) (Time will tell but I think we will be talking about tax reform a lot in the 112<sup>th</sup> Congress for all the reasons above.)

### DEFICIT REDUCTION COMMISSION

The election strengthens the hands of the spending cut advocates on the commission. This commission is set to report on December 1<sup>st</sup>. You may recall that it requires a supermajority of the commission to make a recommendation. Congress is not required to act on their recommendations – if the Commission makes any. But Majority Leader Reid said he would try during the lame duck.

Even if he does not, any recommendations, if any, will have credibility going into the next Congress.

So I guess I will make some new predictions. I think the Commission recommends some significant spending reductions including defense and upper income entitlements (means testing for Medicare?). It proposes a reduction in tax expenditures. (Tax expenditures are credits, deductions etc (think mortgage interest deduction) that provide incentives or relief – a fancy term for trying to get around the issue of avoiding tax increase recommendation.)

They will say something about tax reform. Finally, it does take whack at Social Security. My guess is pushing the age up (or perhaps reduction based on income)

Can Erskine Bowles and Alan Simpson get the super majority of 14 votes? Here's the roster of the Commission:

Co-Chairmen:

Sen. Alan Simpson. Former Republican Senator from Wyoming.

Erskine Bowles, Chief of Staff to President Clinton

Commissioners:

Sen. Max Baucus (D-MT)

Rep. Xavier Becerra (D-CA 31)

Rep. Dave Camp (R-MI 4)

Sen. Tom Coburn (R-OK)

Sen. Kent Conrad (D-ND)

David Cote, Chairman and CEO, Honeywell International

Sen. Mike Crapo (R-ID)

Sen. Richard Durbin (D-IL)

Ann Fudge, Former CEO, Young & Rubicam Brands

Sen. Judd Gregg (R-NH)

Rep. Jeb Hensarling (R-TX 5)

Alice Rivlin, Senior Fellow, Brookings Institute and former Director, Office of Management & Budget

Rep. Paul Ryan (R-WI 1)

Rep. Jan Schakowsky (D-IL 9)

Rep. John Spratt (D-SC 5)

Andrew Stern, President, Service Employees International Union

Gregg and Spratt are not coming back so they have some flexibility in their votes. Gregg was retiring, Spratt lost