

2004 election may affect ability to push surgery's agenda

by Adrienne Roberts, Government Affairs Associate,
and Geoff Werth, Government Affairs Associate,
Division of Advocacy and Health Policy

The 2004 election produced big wins for the Republicans in the White House, the Senate, and the House of Representatives. President George W. Bush was reelected to a second term with 51 percent of the popular vote and 286 electoral votes. He was inaugurated on January 20.

Six Senate seats changed from Democratic to Republican (Georgia, Florida, North Carolina, South Carolina, South Dakota, and Louisiana), while two Senate seats changed from Republican to Democratic (Colorado and Illinois). Therefore, the current breakdown of Republican and Democratic Senate seats is 55-44, respectively, with one Independent, Sen. James Jeffords (I-VT), caucusing with the Democrats. Moreover, Tom Coburn, MD (R-OK), a family physician, won his bid for the Senate, thereby adding a second physician in that branch of Congress. The good news for Fellows is the possibility that these changes could lead to an additional four new votes for medical liability reform in the Senate.

House Republicans captured four additional seats, bringing the current membership breakdown to 232-202-1 (Republican-Democrat-Independent). More importantly, three Fellows of the American College of Surgeons (ACS) have been elected to the House: Tom Price, MD, FACS (R-GA), Joe Schwarz, MD, FACS (R-MI), and Charles Boustany, MD, FACS (R-LA). The American College of Surgeons Professional Association Surgeons' political action committee (ACSPA-SurgeonsPAC) supported all three Fellows, along with more than 100 additional candidates who support policies that are critical to surgical practice.

Senate

Of the Senate seat turnovers from Democratic to Republican, all were open-seat races involving retiring members, except one, and that was a huge loss to the Democratic Party. Senate Minority Leader Thomas Daschle (D-SD) was defeated in the general election 51 to 49 percent by John Thune (R-SD), a former member of the House of Representatives. This was Senator Thune's second attempt at a Senate seat. In 2002, he came within 400 votes of defeating Sen. Tim Johnson (D-SD).

In the wake of Senator Daschle's defeat, Democrats elected Sen. Harry Reid (D-NV) as the new Senate Minority Leader. Sen. Richard Durbin (D-IL) replaces Senator Reid as Minority Whip. Sen. Bill Frist, MD, FACS (R-TN), continues to serve as the Majority Leader, and Sen. Mitch McConnell (R-KY) is Majority Whip.

Although Senator Frist now has more Republican votes to rely on in the 109th Congress, this new class of conservative senators may prove to be a mixed blessing. Conservative ideologues such as Sens. Jim DeMint (R-SC), David Vitter (R-LA), and Coburn could encumber negotiations with Democrats.

Nonetheless, the Republicans have clear control over the issues that will be debated within the various committees. With the Senate membership at 55-45, Republicans have expanded their margin from one seat to two on most committees. Party leaders negotiated this ratio according to how many seats are held by each party. Also, along with an expanded ratio, Republicans received an increase in staff and budget resources.

More importantly, the 109th Congress is the first in which the committees are affected by Republican term limits, under which GOP senators may only serve as chairs for six years. The term limits resulted in the following chairs passing the gavel to other senators: Sen. Ted Stevens (R-AK) of Appropriations, Sen. John McCain (R-AZ) of Commerce, Sen. Orrin Hatch (R-UT) of Judiciary, and Sen. Arlen Specter (R-PA) of Veterans' Affairs.

Three of these senators have gone on to chair other committees. Senator Specter took over the Judiciary Committee and passed the gavel at Veterans Affairs to Sen. Larry Craig (R-ID). Sen. Thad Cochran (R-MS) took control of the Appropriations Committee, and Senator Stevens moved

to chair Commerce. Senator McCain took over at Indian Affairs.

With respect to the key Senate health committees, Sen. Charles Grassley (R-IA) continues as chairman of the Finance Committee, and Sen. Mike Enzi (R-WY) has taken the reins at the Health, Education, Labor, and Pensions (HELP) Committee. The HELP Committee's previous Chairman was Sen. Judd Gregg (R-NH), who has moved on to chair the Budget Committee.

At press time, new members had not yet been appointed.

House of Representatives

The party breakdown in the House of Representatives is now 232-202-1 (Republican-Democrat-Independent). Of the seven House incumbents defeated for reelection, only two were Republicans: Reps. Max Burns (R-GA) and Philip Crane (R-IL).

Most House chairs kept control of their committees, and with an overall increase of three seats in the House, Republicans are expected to push a very conservative agenda in the 109th Congress. The issues most commonly mentioned by the White House as top priorities for the 109th Congress are tax reform, overhaul of the Social Security program, continued support of the war on terrorism, and medical liability reform.

The only major chairmanship change in the House took place in the Appropriations Committee. Rep. C.W. "Bill" Young (R-FL) will turn over control to either Rep. Ralph Regula (R-OH), Rep. Harold Rogers (R-KY), or Rep. Jerry Lewis (R-CA). All three made 30-minute presentations to the 29-member GOP Steering Committee, in whose hands the decision rested. A moderate and currently chairman of the Labor, Health & Human Services, and Education (L-HHS-E) Subcommittee, Rep. Regula is a strong supporter of increased health research funding. The change at the full committee level may cause a minor shuffle of subcommittee chairmanships. In addition to Representative Regula at the L-HHS-E panel, Representative Rogers is chairman of the Homeland Security Subcommittee, and Representative Lewis is chairman of the Defense Subcommittee.

Additionally, the Appropriations Committee also had two Republican vacancies due to Rep. David Vitter's (R-LA) move to the Senate and Rep.

George Nethercutt's (R-WA) loss to Sen. Patty Murray (D-WA). These are viewed as "Southern" and "Western" seats; historically, Appropriations seats have been assigned by region, and Republicans sought to secure them.

The tax-writing House Ways & Means Committee had seven (five Republican and two Democratic) openings available. Retiring Republicans include Amo Houghton (R-NY), Jennifer Dunn (R-WA), and Scott McInnis. Rep. Philip Crane (R-IL) was defeated in the general election, and Rep. Mac Collins (R-GA) lost a Senate primary race. On the Democratic side, Rep. Gerald Kleczka (D-WI) is retiring, and Rep. Max Sandlin (D-TX) lost in the general election.

There were six vacancies (three Republican and three Democratic) opening up at the Energy & Commerce Committee. Reps. Billy Tauzin (R-LA) and James Greenwood (R-PA) retired and Rep. Richard Burr (R-NC) was elected to the Senate. On the Democrat's side Rep. Peter Deutsch (D-FL) was defeated in a Senate primary, Rep. Chris John (D-LA) was defeated in the Louisiana Senate race, and Rep. Karen McCarthy (D-MO) retired.

At press time, decisions regarding how to fill the vacant committee seats had not been made.

Outlook

With the reelection of President Bush and the increased Republican majorities in both the House and the Senate, the GOP is more confident in the prospects for their health care agenda. Two health care issues that are expected to take center stage this year are medical liability reform and the impending sharp cuts in Medicare reimbursement. In addition, an overhaul of Medicaid, the introduction of market-based incentives to help the uninsured, the reauthorization of trauma care, and the reintroduction of patient safety measures are all expected to receive the attention of lawmakers in the 109th Congress. Yet, large deficits and the busy legislative calendar may prevent the Republicans from moving as aggressively as they would like.

Liability reform

The federal effort to curtail the skyrocketing medical liability premiums that are driving surgeons from practice and making access more diffi-

cult for patients continues to lead the nation's health care agenda. President Bush has indicated that his top health care priority for the 109th Congress will be the passage of medical liability legislation. The College's hard work has helped to push this important legislation to the forefront, but much work remains to be done. Last year, the Help Efficient Accessible Low Cost Timely Health Care (HEALTH) Act passed in the House, but the bill was stymied in the Senate. This legislation would have set a ceiling of \$250,000 on recovery of non-economic damages, such as pain and suffering. This crucial legislation, which promises greater protections for both patients and physicians, is expected to be reintroduced early this Congress with the strong support of the President. The new composition of the Senate, combined with continued pressure from the ACS and the current administration's support, should improve the chances of passing this legislation.

Medicare reimbursement

Lawmakers are feeling intense pressure from the College and other medical organizations to circumvent a series of sharp cuts in Medicare physician payments that are scheduled to occur in 2006. Adding to the difficulty of averting the reimbursement cuts are plans to introduce a deficit reduction package, and it remains to be seen how the shrinking budget will affect the billions of dollars Medicare pays to insurers, hospitals, physicians, and so on. The College will continue to pressure Congress to achieve changes in the currently flawed Medicare physician payment update formula to ensure equitable and stable reimbursement for physicians, so they may continue to deliver quality health care to beneficiaries.

Medicaid

Lawmakers also could be forced to aim their deficit reduction efforts at the Medicaid program. Many experts say the administration is likely to revive its proposal to cap Medicaid funding, but this plan may prove difficult to implement when governors continue to struggle to meet their share of the funding for the federal-state program. Without help from Congress, many states will continue to trim their Medicaid programs, resulting in po-

tential cuts to physician rates. Energy and Commerce Chairman Joe Barton (R-TX) plans to hold hearings this year on ways to overhaul the program. The ACS will continue to monitor these developments closely.

Covering the uninsured

Many experts believe Congress may be moving closer to returning to an effort that has been off the radar for a number of years—extending coverage to the millions of Americans who lack health insurance. The Republican majority supports increasing the accessibility of coverage by expanding tax-free health savings accounts (HSAs) and by offering small businesses tax credits with opportunities to pool their resources and form association health plans (AHPs). AHPs would be exempt from state insurance regulations. The College continues to support federal efforts to expand access to health insurance coverage.

Trauma funding

Over the last several years, the College has successfully resurrected federal funding for state trauma care system planning and development grants under Title XII of the Public Health Service Act. This section of the Public Health Service Act was established by the Trauma Care Systems Planning and Development Act (P.L. 101-590), which the College strongly supported in 1990, when Congress originally approved the legislation. For the last five years (FYs 2001-2005), the trauma program has received \$17 million in funding.

In addition to continuing the fight for increased federal funding, the College and many other specialty groups will be working together in a coalition to have legislation introduced and passed that will reauthorize this crucial program. The program's reauthorization expired after FY 2003.

Patient safety

Nearly five years after the landmark Institute of Medicine report, *To Err Is Human: Building a Safer Health System*, showed that as many as 98,000 people die annually because of preventable medical errors, patient safety legislation almost passed last year. However, the bill became mired

in a standoff between competing House and Senate plans. The House and Senate versions were alike in that both would allow physicians to confidentially report medical errors to patient safety organizations, which would analyze the data in order to prevent the reoccurrence of similar mistakes. However, the bills differed in that the House version would permit data collected through the patient safety system to be used in criminal prosecutions, while the Senate bill was stricter with regard to how this information would be discoverable. Despite the 108th Congress' failure to pass patient safety legislation, the College will support the reintroduction of this initiative in the 109th Congress. □