

## **Campaigns, Transitions, and Congress**

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Presidential campaigns are full of promises. Candidates stake out their positions on a number of issues, the waffle on others, and they completely neglect others. Despite public cynicism, once in office, new presidents most of the time genuinely try to keep their promises. Counting carefully, from 1960 through 1996, presidents took significant actions to keep close to 60 percent of their campaign promises.<sup>1</sup> In the fragmented U.S. system of separated powers, presidents cannot count on support from Congress, making it difficult to deliver on campaign promises. The 2008 campaign, though unusual in some respects, fits the general pattern of presidential promises. On the Iraq war, candidates have staked out relatively clear positions; on immigration they have waffled; and on fiscal policy they have been AWOL.

This paper will take up the issue of the 2008 presidential campaign and the probabilities of Congressional action in the new president's first year in office. The first section will analyze some of the major policy issues facing the United States and the difficult choices facing a new president of either party. The next section will speculate about how Congress will react to the new president's policy agenda. Presidents will face a polarized Congress, and regardless of which party controls Congress or the presidency, finding enough common ground to pass a legislative agenda will be challenging. Finally, the paper will lay out some lessons of past presidents' relations with Congress that might provide some insights on how the new president could deal with Congress in 2009.

### **I. Critical Issues facing the New President in 2009**

Although there are a plethora of policy issues that the new president will have to face upon taking office, the most consequential long-term challenges are in national security and fiscal policy. The most pressing national security challenge is the Iraq war and how to end it. Republicans have promised that U.S. forces will stay in Iraq until victory is achieved. Democrats have promised to begin the withdrawal of U.S. forces soon after taking office, though with differing timetables. The difference in approaches to Iraq of the two parties are stark. Just as stark are the likely consequences of neglecting our fiscal challenges, but on this issue the candidates have been quiet. American voters do not seem to like pessimists or candidates who talk about difficult choices. This may be regrettable, but it is predictable. Any responsible fiscal policy will involve benefit cuts and/or tax increases, but any candidate who addresses this reality in the campaign

will significantly decrease his or her chance of being elected. Walter Mondale tried it in 1984 and became toast. This section will first take up the fiscal dilemmas facing the country and then analyze the challenge of policy dealing with the Iraq war.

### *Fiscal Policy Dilemmas*

With large budget deficits likely for the foreseeable future, a \$9.3 trillion national debt, and a weakening economy, the fiscal position of the United States government is tenuous. This is one of the areas, as might be expected, where the candidates are AWOL. Neither party wants to tell the voters that significant cuts in benefits and/or increases in taxes will be necessary to deal with imbalances in Medicare, Medicaid, and Social Security. The aging of the population combined with escalating health care costs and interest on the national debt will overwhelm the federal budget within a decade or so if present policies are not changed. These structural problems cannot be eliminated by economic growth, rooting out “waste, fraud, and abuse,” or tax cuts.

In a bi-partisan spirit, both political parties have agreed not to address the looming deficits of \$400 billion plus and ballooning national debt that will approach \$10 trillion. President Bush’s projection of balanced budgets by 2012 are based on unrealistic assumptions -- that spending for the Iraq war will decrease substantially, that large cuts will be made in Medicare spending, and that his tax cuts will expire in 2010 – these developments are unlikely to happen. The Republican party has promised to leave the Bush tax cuts in place and stay in Iraq indefinitely. Democrats have promised large health care increases in coverage of the uninsured, more spending on education, and middle class tax cuts. These budget problems are aggravated by the plunging value of the dollar in international financial markets and our increased dependency on foreign nations, particularly China, to lend us money to finance our debt. There is no short term solution to our balance of payments deficits or dependence on foreign loans.

One of the most intractable issues that cannot be ignored is the budget conundrum. The new president will inherit a national debt of \$9 trillion and a probable deficit of about \$400 billion. War costs will have amounted to close to \$1 trillion when the new president takes office. Its total cost through 2017 will range from \$1.5 trillion to \$3 trillion.<sup>2</sup> With health care costs rising, spending for Medicare and Medicaid is likely to double over the next decade. The defense budget is more than a half trillion dollars, with little likelihood that spending for the wars in Iraq and Afghanistan will abate soon.

Contrary to Vice President Cheney’s assertion in 2002 that “Reagan proved that deficits don’t matter,”<sup>3</sup> conventional economists Alice Rivlin (Democrat) and Rudolph Penner (Republican) argue that “The nation is headed for a fiscal train wreck.”<sup>4</sup> They warn that continuing deficits will reduce national saving and thus investment, slow productivity, increase our vulnerability to foreign lenders, and consequently lower our standard of living. Thus conventional economists call for fiscal restraint and a gradual move toward budget balance.

Unfortunately, most budget expenditures are locked in (uncontrollable) and not amenable to quick changes in Congress. Eliminating “wasteful” programs will not solve the problem. Non-defense discretionary spending amounts to only about 18% of the budget, and most of that funds programs that are necessary for the normal operation of the government.<sup>5</sup> Shaving earmarks or slashing funding for discretionary social programs will not help much. Even if all the earmarks were eliminated, saving about \$17 billion in 2008, the savings would barely make a dent in the projected deficits.

The real challenge facing the country is the long-term, structural budget imbalance, and it can only be tackled by taking on the large uncontrollable entitlement programs: Social Security, Medicare, and Medicaid. Any significant changes in these programs that will have the longer term impact of reducing federal expenditures will necessarily involve both cuts in benefits or increases in taxes. Democrats will oppose any cuts in benefits and Republicans will fight any increase in taxes. There is unlikely to be a large enough landslide for either party to be able to force its own priorities on the country, so any movement toward a solution will have to entail bipartisan agreement.

Such an agreement is not impossible. Facing a funding crisis in Social Security in 1983, the Greenspan Commission was able to engineer a long term compromise in which some benefits would be cut (the retirement age was increased over many years) and payroll taxes increased. This bi-partisan solution, however, was not sufficient on its merits alone. What it really took for success was for Ronald Reagan Tip O’Neill to hold hands and jump off the cliff together (publicly backing both benefit cuts and tax increases); their compromise agreement succeeded in making solving the Social Security fiscal imbalance through the first decade of the 21<sup>st</sup> century. The balanced budget agreement in 1997 also involved bipartisan cooperation.<sup>6</sup>

The situation in 2009 will be even more difficult than the Social Security crisis of the early 1980s. With no policy changes (benefit cuts and tax increases), the three largest entitlement programs (Social Security, Medicare, and Medicaid) would absorb all of the projected revenues of the government in 2030.<sup>7</sup> Interest on the national debt now absorbs more than 10% of all revenues. It is understandable that presidential candidates do not want to face this reality and make it part of their campaigns. Of course, neither do members of Congress. Yet this is the reality facing the new administration and the 111<sup>th</sup> Congress in January 2009. Even if a president and Congress of the same party are elected in 2008, the budget chasm cannot be spanned without significant bi-partisan support that distributes the pain to both sides of the aisle.

In the abstract, voters want a president to tackle the budget imbalance and move the nation toward fiscal responsibility. But the issue resembles the health care debacle of the early Clinton administration. In 2003 public opinion polls showed a sizable majority in favor of health care financing reform. But when it came to concrete proposals, it turned out that health care reform was much more attractive in the abstract than in the particular. Any specific plan advantaged some and disadvantaged others, and no proposal even made it to a vote in Congress, much less passed.

Any president who tries seriously to confront the budget issue risks negative political fallout, as Presidents George H.W. Bush and Bill Clinton learned the hard way. In 1991 the increasing size of the deficit looked like it would be a threat to the economy, and President Bush felt that he had to take action. The problem was that in his quest for the GOP nomination, he had promised the party, “No New Taxes.” When Bush finally did come to an agreement with the Democrats in Congress to reduce deficits by about \$500 billion over five years, he was denounced by conservatives in his party and got no political benefit for what was arguably the right thing to do.

In President Clinton’s early months in office, he had to face the dilemma of fulfilling his promise for a middle class tax cut or reducing the deficit. White House staffers who had been in the campaign argued for the former, and deficit hawks in the administration warned that increased deficits would jeopardize the longer term health of the economy.<sup>8</sup> Clinton decided to go with the deficit hawks and proposed about \$500 billion in reduced spending and increased taxes (4 cents a gallon on gas and a higher marginal rate on the rich). He was denounced by Republican members of Congress who refused to cast even one vote for his budget plan; he was barely able to eek out a victory with tie-breaking votes in the House and Senate. Politically, he felt that he did not get any credit for imposing pain on the political system, even if it was in the country’s best interests.

Both Bush and Clinton suffered politically for their responsible choices. Were it not for the political risks they took in 1991 and 1993, the nation would not have been able to achieve a series of four balanced budgets from 1998 through 2001. There is little doubt that the occupant of the White House in 2009 will remember both of these incidents. But in the face of mounting deficits and predictable future crises, any new president would be irresponsible not to confront the budgetary conundrum. A rapidly deteriorating economy will aggravate these budgetary dilemmas. It will take exceptional leadership in the presidency and Congress to confront these problems.

### *National Security Policy*

Military and foreign policy challenges facing the next president and Congress make the budget crisis seem manageable. The most pressing problem is the war in Iraq and how to deal with it. Democratic candidates have promised to move toward reducing U.S. troop strength, and Republicans have promised to press on until victory has been achieved. Either approach will lead to continued loss of U.S. lives and continued disaster for the Iraqi people.

Reducing the U.S. presence will entail engineering a strategy of withdrawal that does not look like a U.S. retreat. Photographs of the final U.S. extractions from Vietnam from the roof of the U.S. embassy are still seared in the national consciousness. The aftermath of a U.S. withdrawal would likely entail bloodbaths with the militias of the Sunnis and Shiites battle for control of the country.

Staying the course does not present much of a better scenario. The U.S. presence

and its inability to provide security for much of the country makes U.S. forces vulnerable to the continued insurgent tactics that have led to 4,000 U.S. dead and 15,000 seriously wounded. There is little likelihood that the Shiites and Sunnis will sit down at the bargaining table and settle their differences peacefully; the stakes are too high and the bitterness too strong to hope for any reconciliation in the near term. Thus U.S. troops will face an indefinite commitment.

Afghanistan presents a similarly bleak picture, even if not as bloody as the war in Iraq. When the U.S. pulled personnel, materiel, intelligence, and economic resources out of Afghanistan in early 2002 in order to fight the war in Iraq, the resources left were not sufficient to secure the Afghan government and economy. As a result, poppy crops have returned to pre-war levels, and the Taliban is making a comeback.

U.S. forces are stretched very thin and over-extended in Iraq. Generals warn that combat tours of 15 months with short stays in the U.S. before redeployment to war zones are threatening U.S. readiness and ability to confront an unexpected military threat. The next U.S. president will be forced to make difficult choices in war and military policy, regardless of who wins or what policy choices are made. The new president must also confront the increasing public hostility toward the United States throughout the world. The war in Iraq has cut heavily into what used to be general support for U.S. policy and ideals. International opinion polls show significant drops in positive attitudes toward the United States.

Politically, either staying in Iraq or withdrawing presents large downsides. Most of the population thinks that going into Iraq was a mistake, and large portions of Democrats and independents want the United States to begin systematically withdrawing U.S. forces. Democratic candidates have promised to begin drawdowns shortly after taking office. If a Democratic president decides not to begin significant decreases in U.S. troops, partisans in the electorate will decry the broken promises, liberal Democrats in Congress will react hostilely, and public opinion will probably disapprove. If the Democrat decides to begin drawdowns soon after taking office, a united Republican party will accuse the president of abandoning Iraqis just when President Bush's surge was beginning to bring results.<sup>9</sup> They will be blamed for the probable bloodbath when Shiites and Sunnis search for revenge. The question will be raised: "Who lost Iraq?"

If a Republican is elected and U.S. troops are projected to stay in Iraq indefinitely, public opinion will be negative and Democrats will blame them for continuing deaths of U.S. personnel and Iraqis. A Democratic Congress would pursue further challenges to presidential Iraq policy. The cost of the war would quickly approach \$1 trillion, Army readiness would deteriorate further, and troop morale would suffer with the continuance of 15 month tours with only short breaks between tours.

Either way, conflict between the parties over budgetary priorities and the Iraq war will likely dominate the relations between Congress and the new president.

## II. The Implications of a Polarized Congress

Whoever wins the presidency in 2008 will face a very difficult situation with Congress, regardless of how much he or she “reaches out” to the other party, proposes bi-partisan measures, or courts Congress. Conciliatory statements, symbolic gestures, and bi-partisan moves may help at the margins, but the fundamentals of political polarization will not be overcome by presidential skills or bi-partisan gestures. The polarization of Congress over the past several decades has been firmly documented, and its consequences are likely to overwhelm goodwill gestures by a new president.

The roots of polarization began with Republican success in breaking up the “solid” Democratic South. With general urbanization and black migration to the north in the 1960s, the partisan complexion of the south began to change. The Republican Party became a viable party and came to dominate the congressional delegations from southern states. Partisan realignment in the South was further encouraged by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, both of which increased the number of black voters, who voted overwhelmingly Democratic.

This political transformation, along with serious partisan disputes over social issues (abortion, gay marriage, etc.) resulted in a Congress that is highly polarized.” Both parties have strong policy preferences that are opposed to each other. Each party is internally cohesive. More power is delegated to the leadership of each party in order to achieve party goals. And narrow margins compel the stricter party discipline that has characterized Congress in the previous 50 years. Aldrich and Rohde have called this situation “conditional party government,” a useful term, even though, as Don Wolfensberger points out, parliamentary democracies are very different from the U.S. separation of powers system.<sup>10</sup>

Regardless of the causes of polarization, the effects in Congress are undeniable. The traditional norms of courtesy, reciprocity, and comity (even if often hypocritical) that marked the 1950s and 1960s in Congress began to break down in the 1970s. One consequence of the polarization documented above is that Congress is less able to legislate in order to deal with pressing policy issues. The farther apart the two parties are ideologically (polarization), the less likely they are to be able to find common ground to pass laws. And often, the parties would rather have an issue to debate than to compromise and accept half a loaf.<sup>11</sup>

According to Sarah Binder’s systematic comparisons of the ratio of actual laws enacted to important issues considered by the political system, two dimensions of polarization outweighed even the effect of divided government: the ideological gap between the parties and the ideological distance between the two houses of Congress. Thus if one is concerned with the problem of “gridlock” (which she defines as “the share of salient issues on the nation’s agenda left in limbo at the close of each Congress”), ideological polarization in Congress is even more important than divided government, and it has increased significantly in the past few decades.<sup>12</sup>

In the last 15 years of the 20<sup>th</sup> century the moderate, cross-pressured members of each party all but disappeared. Bond and Fleisher have calculated the number of liberal Republicans and conservative Democrats in Congress from the 1950s through the 1990s and have documented their decline. The number of conservative Democrats in the House has decreased from a high of 91 in 1965-66 to 11 in 1995-96. In the Senate the high of 22 in the early 1960s was reduced to zero in 1995-96. Liberal Republicans similarly fell from a high of 35 in the early 1970s to 1 in 1993-94 in the House and a high of 14 in 1973-74 to 2 in 1995-96 in the Senate.<sup>13</sup> This disappearance of the middle is a convincing demonstration of ideological polarization in Congress. Sarah Binder has also found that the area of ideological overlap between the two parties in Congress has drastically decreased from a relatively high level of overlap in 1970 to “virtually no ideological common ground shared by the two parties.”<sup>14</sup> The distance between the two parties continued to increase consistently through the 108<sup>th</sup> Congress.<sup>15</sup>

Another measure of partisan conflict that reflects the polarization in Congress is the “party vote” in which a majority of one party opposes a majority of the other party in a roll call vote. This measure of polarization has been increasing in recent years, especially in the House. From 1955 to 1965 the percentage of votes in the House that were party votes averaged 49 percent; from 1967 to 1982 the percentage was 36 percent. But after 1982 it began to climb, and it reached 73.2 percent in 1995.<sup>16</sup> Senate scores on party voting roughly paralleled those in the House though at slightly lower levels, reaching 68.8 percent in 1995.<sup>17</sup> Party unity scores, in which members of the two parties vote with their majorities on party line votes, also increased to unusually high levels.<sup>18</sup>

The increasing use of the filibuster is a useful indicator of partisan differences in the Senate. In the early decades of the 20<sup>th</sup> century use of the filibuster would occasionally peak at ten per Congress, but in the 1980s and 1990s the use of the filibuster expanded to 25 or 30 per Congress.<sup>19</sup> The increased use of the filibuster and other dilatory tactics, such as “holds” on nominations, has amounted to a “parliamentary arms race” in which each side is willing to use the extreme tactic because the other side has used it against them.<sup>20</sup>

In addition to actual filibusters, Barbara Sinclair has calculated that threats to filibuster major legislation have increased significantly in the past three decades. Presidential threats to veto bills increased sharply in the 1990s, from 15 to 25 percent of important bills in the 1970s to 60-69 percent in the late 1990s.<sup>21</sup> Binder found that in the 103<sup>rd</sup> and 104<sup>th</sup> Congresses either an actual filibuster or the threat of one affected almost 20 percent of all items on the congressional agenda and 40 percent of the most important issues.<sup>22</sup> Cloture motions averaged 22 in the 1970s and reached 49 in the 108<sup>th</sup> Congress. There were 43 cloture motions from January through August 2007, a record for comparable periods.<sup>23</sup> As a practical matter, any contentious bill need 60 votes in the Senate, no formal filibuster

While filibusters indicate polarization in the Senate, special and closed rules signaled polarization in the House. Don Wolfensberger has calculated that open or modified open rules have decreased from 85 percent (on initial bills) in the 95<sup>th</sup> Congress

to 44 per cent in the 103<sup>rd</sup> to 27 percent in the 109<sup>th</sup>. Closed rules have increased from 9 percent in the 103<sup>rd</sup> to 22 percent in the 109<sup>th</sup> Congresses (28 percent in the 108<sup>th</sup>).<sup>24</sup> Speaker Hastert publicly asserted that he would allow to come to the floor only measures that were supported by a “majority of the majority,” blocking popular measures that had bi-partisan support, but not a majority of Republicans (Democrats have also used this tactic).<sup>25</sup>

What the above data mean in a practical sense is that each of the political parties in Congress is more ideologically homogenous and that there is greater ideological distance between the two parties. Thus there is less need to compromise in a moderate direction when reaching a consensus within each party. And it is correspondingly more difficult to bridge the ideological gap between the contrasting perspectives of the two parties. Finding middle ground where compromise is possible becomes much more difficult. It is more likely that votes will be set up to highlight partisan differences and used for rhetorical and electoral purposes rather than to arrive at compromise policies.<sup>26</sup>

The record of the first session of the 110<sup>th</sup> Congress demonstrates that a determined president can prevail on important issues as long as the minority is united behind him or her. Despite some of the lowest presidential support scores ever recorded by CQ, President Bush was able to control the issues most important to him, especially on the war in Iraq. The Democratic House supported President Bush for only 15 percent of the roll call votes that he took a position on, the lowest ever recorded by CQ. In the Senate (excluding confirmations) Bush prevailed on 52 percent of the votes. His combined score of 38 percent put him ahead of only Bill Clinton who won 38 percent of the time in 1995.

Despite Clinton’s low score in 1995, he won the most important issues in the showdown over shutting down the government in the fall of 1995. Clinton vetoed Republican efforts to drastically cut social programs, and the Republicans were blamed by the people for obstruction. Similarly, President Bush’s very low presidential support scores in 2007 did not stop him from prevailing on votes important to him. Republicans in Congress also supported him by preventing unwanted bills from coming to his desk. The filibuster was used frequently, and when there was a cloture vote, Bush won 17 of 18 times. When bills he opposed did come to his desk, he used the veto effectively, with only one of seven being overridden (and that one was a water projects bill that had bipartisan pork in it).<sup>27</sup>

The new President in 2009, regardless of party, will face a Congress with narrow partisan majorities and opposing parties at ideological loggerheads. If the president decides to appeal to the base of the party, as President Bush did, the frustration of the minority party will lead to hostility and obstruction. However, if the President tries to carve a working majority from the relatively moderate members of both parties, bridging the ideological gap will present a formidable challenge.



### III. Legislative Strategies for the President in 2009

In dealing with Congress and achieving legislative goals, the ideal position for a new president is to:

- win the election by a landslide
- bring in large partisan majorities on your coattails
- run ahead of most members of Congress in their own districts
- maintain high levels of public approval

Needless to say, these are unusual conditions. Franklin Roosevelt in 1932 and Lyndon Johnson in 1964 had long coattails and brought into office with them large numbers of Democrats in Congress. It helped FDR that in the Great Depression there was a consensus among a large majority of voters that the nation was in a crisis and that government action was needed. With a large election victory and huge partisan advantages in Congress, FDR was able to engineer his famous “100 Days” legislative agenda through Congress.

The winner of the 2008 elections is not likely to possess the advantages that FDR and LBJ enjoyed when he or she takes office in January 2009. The electorate is evenly divided between the parties, and independents have split their votes, creating close elections over the last several election cycles. The winner of the presidential election will have won with a narrow margin and will face an narrowly divided and polarized Congress. The winner will face difficult policy choices on national security and fiscal policy and will have to deal with a number of other contentious issues, from immigration reform, to homeland security, to stem cell research.

#### *Courting Congress and avoiding Early Mistakes*

Although the policy problems facing the new president are daunting, there are more and less effective ways for new presidents to approach Congress. Despite the improbability of a new president in 2009 forging a broad, cross-party coalition on major policy issues, a sincere effort to adopt a positive tone toward the other party in Congress could facilitate interbranch relations. Courting Congress with symbolic and bi-partisan gestures may not guarantee legislative success, but failing to pay attention to congressional sensitivities can hurt a new president. New presidents are also well advised to avoid unforced errors that hurt have other presidents with Congress. Max Friedersdorf, Reagan’s head of congressional liaison, said: “enemies and mistakes made in the first week will dog a President throughout his term in office.”<sup>28</sup>

For example, Jimmy Carter had been governor of Georgia and had developed a disdain for traditional pork barrel water projects that are the lifeblood of congressional constituent service. So when he was elected, Carter wanted to send a fiscally conservative budget to Congress and demonstrate his commitment to saving the taxpayers’ money and protecting the environment. When they learned of Carter’s

gambit, members of both parties were outraged. In the end, Carter's tactic did not work; the projects were attached to an economic stimulus bill that Carter felt he had to sign. Thus Carter, in a battle over a relatively small amount of money, hurt his relations with Congress early in his administration. Carter might have thought that his demonstration of fiscal probity would win him support from tax payers and show Congress who was in charge. The reality was that few voters knew about the showdown, and it hurt Carter's relations with Congress.

In recent years, traditional pork barrel legislation is often provided in earmarks, specifying that funds be expended for individual projects. Earmarks have ballooned in recent years. In defense spending for 2000, there were 997, up to 2,506 in 2005; in labor, health and education there were 491 and by 2005 there were 3,041.<sup>29</sup> Overall, the total number of earmarks were 13,491 in 2005 (worth \$18.9 billion) and in 2008 down slightly to 11,733 (worth \$16.9 billion). While the merits of the projects themselves may be debatable, the total amounts were no more than a rounding error in the budget as a whole and a very small proportion of total controllable spending.

Earmarks are easily understood by voters, and there are always some spending provisions that can be derided by politicians. Thus presidential candidates in 2008 may want to imitate President Bush in denouncing them as wasteful, porkbarrel spending. They may be tempted to think that cutting earmarks would be a big political winner with the voters; it certainly makes for attractive rhetoric. But if the new president in 2009 thinks that it would be a good political move to eliminate a significant portion of those earmarks, he or she might remember that Jimmy Carter went down that same road, and the damage to his relations with Congress far outweighed any political gain he might have earned as a protector of the taxpayers' dollars. Such a battle would distract a new president from more important policy priorities as well as make it less likely that any large-scale budget agreement could be reached; it might result in higher deficits. Even if a new president succeeded in eliminating some earmarks, a lot of political capital would be spent for little gain and a lot of grief from Congress.

Ronald Reagan learned a similar lesson in the spring of 1981 when he sought to save some taxpayers' dollars by making some minor adjustments in Social Security formulas. He told Budget Director David Stockman to change the Social Security payment structure so that early retirees would receive slightly less money in Social Security benefits. After a large outcry and the threat of denunciations by Democrats, Reagan quickly backed away from his proposal.

Bill Clinton's experience with his first weeks in office also provides some lessons on what to avoid. He seemed to back into his "gays in the military" initiative, and it was not a major priority during his transition into office. Yet it came to dominate a few early weeks during his transition into office and play a role in the perception of him as a liberal who would upset long-standing traditions in order to please a Democratic constituency.<sup>30</sup>

Clinton's early presidency also suffered from the insufficient vetting of nominees for cabinet posts. In his first week in office, Clinton had to withdraw the nomination of

Zoe Baird for Attorney General and reverse itself on the nomination of Kimba Wood. Similarly, President George W. Bush moved toward the nomination of Bernard B. Kerik to be Secretary of Homeland Security. Though not at the beginning of an administration, the incident indicated that the administration had not done a sufficiently thorough job on vetting a potential nominee.

In 2009 one of the major issues of contention in the presidential race is U.S. policy on immigration and the legal status of alien workers. Any candidate has to ensure that he or she does not have any personal connection with illegal workers and that their cabinet nominees are also safely insulated from partisan attack. Early in the Republican primary, Mitt Romney was criticized about the legal status of grounds workers at his home in Massachusetts.

### *Hit the Ground Running*

New presidents are well advised to act quickly on their legislative agenda priorities, because their first months in office are likely to be the most fruitful in terms of winning issues in Congress. (The exceptions, of course, are major national disasters like 9/11). Early successes will not be handed to a new president on a silver platter; the idea of a presidential “honeymoon” with Congress is greatly exaggerated (FDR and LBJ, aside). Nevertheless, a president is well advised to move his or her congressional agenda items quickly, when a “mandate” from the voters can be claimed. Political scientists now that perceived mandates are problematical, for voters make decisions based on many more factors than policy issues. But a mandate from the voters can be asserted by a president seeking votes in Congress. LBJ and FDR arguable had mandates; but Ronald Reagan was able to successfully assert one when the Senate turned Republican for the first time in a quarter century, and he was successful with his initial legislative agenda. Even George Bush who took the presidency after losing the popular vote, asserted a mandate from the voters while pursuing his conservative agenda.

A new president in 2009 is unlikely to receive a mandate from the voters. The probability is that the election will be close, and both houses in Congress will have narrow majorities. Given a polarized Congress with narrow partisan majorities, it is all the more important to hit the ground running with a policy agenda. Data from the first terms of presidents indicates that they are most successful with Congress in their first year in office.<sup>31</sup> Paul Light points out the irony of cycle of decreasing influence at the same time that experience gives a new administration better skills in dealing with Congress. Lyndon Johnson put it this way, “we have to keep at it, never letting up. One day soon, I don’t know when, the critics and the snipers will move in and we will be at stalemate. We have to get all we can, now, before the roof comes down.”<sup>32</sup> In the second year of the administration, “they’ll all be thinking about their reelections. I’ll have made mistakes, my polls will be down, and they’ll be trying to put some distance between themselves and me.”<sup>33</sup> And in midterm elections, the president’s party usually loses seats in Congress.

As presidential candidates and their campaigns run for office, they carefully choose policy positions to enhance their chances of being elected. But once elected, they must decide which policies they intend to pursue seriously with Congress and which they will put on the back burners. The contrast between the initial policy agendas of the Carter and the Reagan administrations is instructive. Jimmy Carter campaigned on a wide range of issues and, choosing the “shotgun approach,” promised early action on many of them. Carter’s unwillingness to set legislative policy priorities hurt him with Congress and limited the effectiveness of his initial policy agenda.<sup>34</sup>

The early Reagan administration took advantage of their transition into office by choosing the rifle over the shotgun approach and focused on a small number of legislative priorities. Though Reagan campaigned on a number of social issues, such as bussing, abortion, school prayer, and crime; he wisely decided to put his energy into his most important policy priorities: cutting domestic spending, cutting taxes, and increasing defense spending. By narrowing his administration’s focus on these issues he was able to achieve his goals by the summer of 1981. According to Max Friedersdorf, “The president was determined not to clutter up the landscape with extraneous legislation.”<sup>35</sup> He also “knew we had to get our bills enacted before the Labor Day recess.”<sup>36</sup>

The new president in 2009 will have to decide which campaign promises will take priority and how many initiatives to try to push through Congress. In addition, the new president will have to decide how to put together a coalition that will win him or her some early policy victories. A majority of the voters may want toned-down partisanship and a moderate policy agenda, but the dynamics of a polarized and closely divided Congress may tempt a new president to use the majority to ram policies through House using restrictive rules and strongarm enough Senators to get a 60 vote majority in the Senate. On the other hand, trying to cobble together a majority out of the few moderates in Congress may be an exercise in frustration.

### **Conclusion: Institutional Challenges**

In addition to partisan, political, and policy issues, the new president will have to decide what institutional stance to take toward Congress. President Bush has strategically decided to take an aggressive approach to presidential prerogatives vis a vis Congress. He has denied habeas corpus to suspects in the war on terrorism and has argued in court that he has exclusive authority to detain suspects indefinitely without any judicial oversight. He has asserted that he has the authority to suspend the Geneva Convention treaty and, despite laws to the contrary, to use harsh interrogation techniques on detainees that most of the world considers torture. He secretly ordered NSA to undertake surveillance of Americans without warrants, which was a violation of the law. And he systematically used signing statements to argue that he did not feel bound by more than 1200 provisions of laws, most of which he had signed.<sup>37</sup>

The new president will need to decide which of these precedents to embrace and which to renounce. Although both Democratic nominees and the Republican nominee have said they will not be as assertive of executive prerogative as President Bush has,

once in office their perspective many change. The framers of the Constitution were right when they expected executives to seek to expand their power. But they were not as accurate in their expectation that the other two branches would fight back vigorously to defend their own prerogatives. Possibly, the framers did not foresee the impact of political parties on the separation of powers system.

The fundamental challenges examined in this paper will affect the new president in 2009 regardless of which political party controls Congress or the presidency. An outcome of divided government would undoubtedly exacerbate the normal friction between the two branches. Unified government may facilitate cooperation between Congress and the presidency, but it could also easily lead to the frustration that Presidents Clinton and Carter faced when the Democrats controlled both houses of Congress. In addition, unified government might lead to increased partisanship and polarization as happened during George W. Bush's terms. Whatever the outcome of the 2008 elections, the new president can expect to face major policy and political challenges.

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## ENDNOTES

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<sup>1</sup> For an analysis of presidential promises see, James P. Pfiffner, *The Character Factor* (College Station, TX: Texas A&M University Press, 2004), pp. 91-115. For data on presidential promises fulfilled, see Jeff Fishel, *Presidents and Promises* (Washington, CQ Press, 1985).

<sup>2</sup> For the present costs of the wars in Iraq and Afghanistan, see Steven M. Kosiak, "The Cost of U.S. Operations in Iraq and Afghanistan," Washington: Center for Strategic and Budgetary Assessments (September 12, 2007). For projected costs of the war through 2017, see Joseph E. Stiglitz and Linda J. Blimes, *The Three Trillion Dollar War* (2008).

<sup>3</sup> Ron Suskind, *The Price of Loyalty* (NY: Simon and Schuster, 2004) p. 291

<sup>4</sup> Rudolph G. Penner and Alice M. Rivlin, "Dimensions of the Budget Problem," in Alice M. Rivlin and Isabel Sawhill, *Restoring Fiscal Sanity* (Washington: Brookings, 2005), p. 17.

<sup>5</sup> William Frenzel, et al., "Taming the Deficit," (Washington: Brookings, 2008).

<sup>6</sup> See John L. Hilley, *The Challenge of Legislation : Bipartisanship in a Partisan World* (Washington: Brookings, 2008).

<sup>7</sup> Frenzel, et al., "Taming the Deficit,"

<sup>8</sup> See James P. Pfiffner, "President Clinton and the 103<sup>rd</sup> Congress: Losing Battles and Winning the War," in James A. Thurber, ed. *Rivals for Power: Presidential-Congressional Relations* (Washington: CQ Press, 1996), pp. 170-190.

<sup>9</sup> For an example of the nasty attacks that can be expected in the main stream press, see Michael Gerson, "Obama's First 100 Days," *Washington Post* (March 5, 2008), p. A21. The attacks from other quarters can be expected to be much worse.

<sup>10</sup> John H. Aldrich and David W. Rohde, "The Consequences of Party Organization in the House: The Role of the Majority and Minority Parties in Conditional Party Government," in Jon R. Bond and Richard Fleisher, *Polarized Politics: Congress and the*

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President in a Polarized Era Washington: CQ Press, 2000). For a critique, see Don Wolfensberger, “How and Why Does Congress Change?”, paper prepared for the Congress Project Roundtable, (Washington: Woodrow Wilson International Center for Scholars, 2006).

<sup>11</sup> Binder, *Stalemate*, p. 58.

<sup>12</sup> Sarah A. Binder, “Going Nowhere: A Gridlocked Congress?”, *The Brookings Review* (Winter 2000), p. 17.

<sup>13</sup> Bond and Fleisher, “The Disappearing Middle, p. 7. The authors calculate their ideological scores from the rankings of liberal and conservative groups, Americans for Democratic Action (liberal) and American Conservative Union (conservative)..

<sup>14</sup> Sarah Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington: Brookings, 2003), p. 24, 66.

<sup>15</sup> Barbara Sinclair, *Party Wars* (Norman, OK: University of Oklahoma Press, 2006), pp. 7-12. See also, Barbara Sinclair, “Spoiling the Sausages? How a Polarized Congress Deliberates and Legislates,” in Pietro S. Nivola and David W. Brady, eds. *Red and Blue Nation?* (Washington: Brookings, 2008).

<sup>16</sup> It was the highest since CQ began keeping the data in 1954, *CQ Weekly Reports* (27 January 1996), p. 199. According to John Owens’ calculations party voting was the highest since 1905-06. See John Owens, “The Return of Party Government in the U.S. House of Representatives: Central Leadership - Committee relations in the 104<sup>th</sup> Congress,” *British Journal of Political Science*, Vol. 27 (1997), p. 265. See also Barbara Sinclair, “Transformational Leader or Faithful Agent?”, p. 5; and *CQ Weekly Reports*, (27 January 1996), p. 199.

<sup>17</sup> See Richard Fleisher and Jon Bond, “Congress and the President in a Partisan Era,” in Bond and Fleisher, *Polarized Politics* (Washington: CQ Press, 2000), p. 4. Party unity voting fell off slightly from 2001 to 2004 because of consensual voting on homeland security issues in response to the terrorist attacks of 2001. Gary C. Jacobson, *The Politics of Congressional Elections*, 6<sup>th</sup> ed.(NY: Longman, 2004), p. 231.

<sup>18</sup> Sinclair, “Transformational Leader or Faithful Agent?”, p. 5.

<sup>19</sup> Richard E. Cohen, “Crackup of the Committees,” *National Journal* (31 July 1999), p. 2212. See also Sarah A. Binder and Steven S. Smith, *Politics or Principle?* (Washington: Brookings, 1997), p. 10.

<sup>20</sup> Binder and Smith, *Politics or Principle?*, p. 16.

<sup>21</sup> Barbara Sinclair, “Hostile Partners: The President, Congress, and Lawmaking in the Partisan 1990s,” in Bond and Fleisher, *Polarized Politics* (Washington: CQ Press, 2000), p. 145.

<sup>22</sup> Binder, *Stalemate*, p. 93.

<sup>23</sup> Barbara Sinclair, “Leading the New Majorities,” *PS: Political Science and Politics* (January 2008), p. 90.

<sup>24</sup> See Donald R. Wolfensberger, “The House Rules Committee Under Republican Majorities: Continuity and Change,” Woodrow Wilson Center paper. Wolfensberger updated his in a separate table compiled in 2006. See also Barbara Sinclair, *Party Wars*, p. 162.

<sup>25</sup> Barbara Sinclair, “Leading the New Majorities,” *PS: Political Science and Politics* (January 2008), p. 92.

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- <sup>26</sup> On the decrease of the number of moderates in Congress see also Binder, “Going Nowhere,” APSR, p. 526.
- <sup>27</sup> Clea Benson, “CQ Vote Studies – Presidential Support: The Power of No,” *CQ Weekly Report* (January 14, 2008), p. 132.
- <sup>28</sup> Quoted in Joel Swerdlow, “Words of Wisdom for Jimmy Carter from Presidential Adviser-Survivors of Honeymoons Gone By,” *Potomac Magazine, Washington Post*, January 9, 1977.
- <sup>29</sup> Jonathan Weisman, “Bush Aims to Cut Earmarks, but Not Yet,” *Washington Post* (January 29, 2008), p. A12.
- <sup>30</sup> James P. Pfiffner, “President Clinton and the 103<sup>rd</sup> Congress: Losing Battles and Winning the War,” in James A. Thurber, ed. *Rivals for Power: Presidential-Congressional Relations* (Washington: CQ Press, 1996), pp. 170-190.
- <sup>31</sup> Paul Light, *The President’s Agenda* (Baltimore, MD: Johns Hopkins University Press, 1982), pp. 36-45.
- <sup>32</sup> Light, *The President’s Agenda*, p. 44.
- <sup>33</sup> Jack Valenti, *A Very Human President* (NY: Norton, 1975), p. 144.
- <sup>34</sup> For an analysis of the Carter and Regan transitions, see James P. Pfiffner, *The Strategic Presidency: Hitting the Ground Running* (Lawrence, KS: University Press of Kansas, 1996).
- <sup>35</sup> Stephen Wayne, “Congressional Liaison in the Reagan White House,” in *President and Congress: Assessing Reagan’s First Year* edited by Norman Ornstein (Washington: AEI, 1982), p. 56.
- <sup>36</sup> Stephen Wayne, “Congressional Liaison,” p. 57.
- <sup>37</sup> For an analysis of these constitutional issues, see James P. Pfiffner, *Power Play: The Bush Administration and the Constitution* (Washington; Brookings, forthcoming, 2008), and “Constraining Executive Power: George W. Bush and the Constitution,” *Presidential Studies Quarterly* Vol. 38, No. 1 (March 2008), pp. 123-243.