Elections Have Consequences

The November 2008 Election and Reproductive Health Issues

November 6, 2008
(updated January 8, 2009)
INTRODUCTION

The November 4 election will usher in a decidedly more pro-choice and pro-family planning environment than any in recent memory. Buoyed by the election of a pro-choice President and by a significant influx of Members of Congress who are friendly to reproductive health issues, we have high hopes that the anti-reproductive rights legacy of the past eight years can start to be reversed and that issues that advance a pro-active reproductive health agenda will take their rightful place at the top of the presidential and legislative agendas.

When President-elect Barack Obama takes the oath office and the 111th Congress convenes in January 2009, Democrats will have unified control of the White House and Congress for the first time since 1994. And control of the legislative branch will rest firmly in the hands of pro-choice leaders, with the exception of Senate Majority Leader Harry Reid – who is anti-choice but staunchly supports pro-family planning policies. Our preliminary analysis of Tuesday’s results indicates that pro-choice and pro-family planning ranks in the House have grown by at least 15 votes, with the Senate ranks growing by at least six. A handful of other self-described anti-choice members could prove to be pro-family planning, although it is difficult to assign precise numbers to this group at the outset.

Evolution of Reproductive Rights Issues in the 2008 Campaign

The conventional wisdom for much of the 2008 election cycle was that reproductive rights would not play a significant role. And while it was certainly eclipsed by the economy, right-wing opponents continued to lob attacks designed to paint pro-choice candidates as extremists. Yet, the issue continued to surface prominently throughout the Presidential campaign and in the final months of the election cycle, several Congressional candidates actually highlighted their pro-choice credentials as an important distinction from their opponent.

Contrary to the early (and mistaken) impression that Republican presidential candidate Senator John McCain was a moderate on reproductive health issues, the campaign exposed clear cut distinctions in the views held by the two candidates. In addition to making clear that he believed Roe should be overturned, McCain stumbled badly when asked if private insurance should be required to cover contraception if it covered Viagra. In the final presidential debate, when McCain was discussing abortion he noted that "[Senator Barack Obama supports] health for the mother. You know, that's been stretched by the pro-abortion movement in America to mean almost anything. That's the extreme pro-abortion position, quote, 'health.'" For better and worse, that exchange clarified McCain’s position for many voters – it was vindication for the conservative anti-choice base but alienated many women voters for whom protecting a woman’s health isn't an extreme position.
McCain's running-mate selection of Alaska Governor Sarah Palin and her appeal to the anti-choice base also caused reproductive health to rise to unexpected prominence. Palin’s contradictory answers to Katie Couric in which she called for criminalizing abortion even in cases of rape and incest, but then said no one should end up in jail for having an abortion, revealed an uninformed grasp of the issues. Palin also said there was a right to privacy in the Constitution but called for overturning Roe v. Wade. Governor Palin was also publicly criticized for her decision as Mayor of Wasilla, Alaska to charge rape victims for test kits.

There was no ambiguity regarding Obama’s views on reproductive health issues. He had a record of pro-choice votes in the U.S. Senate and the Illinois Legislature and clearly laid out his reproductive health policy positions as a presidential candidate. Obama responded to criticism from conservatives related to his long-standing support for reproductive rights by reaching out to voters who are ambivalent about abortion – including a segment of anti-choice Catholic voters-- to emphasize the importance of reducing unintended pregnancy by increasing access to birth control.

**PRESIDENT-ELECT OBAMA**

**Clear record of support for reproductive rights**

Although Obama is undeniably supportive of reproductive health and family planning, the degree to which he will expend political capital to press for this agenda is an open question. Despite that caveat, he has consistently supported reproductive choice and has directly stated that he will “make preserving women’s rights under Roe v. Wade a priority as President.” He has voted to increase access to family planning services and supports comprehensive sex education, sponsoring legislation that would replace failed "abstinence-only" sex education with comprehensive, medically accurate curricula. In the Senate, he cosponsored legislation to restore birth control discounts for low-income and college women. He also cosponsored the Freedom of Choice Act, which would codify Roe v. Wade as the law of the land.

**SENATE**

**Democrats Lock in Majority Party Control**

Democrats came into the 2008 election cycle refreshed from their pickup of six seats in 2006 that gave them party control of the Senate. The pre-election partisan tally was 49 Republicans, 49 Democrats, and two Independents that were part of the Democratic Caucus (Bernie Sanders-VT and Joe Lieberman-CT). In this year’s cycle, Democrats faced the easier task of defending only 12 of their own seats, with all 12 incumbents re-elected. In contrast, Republicans faced the larger task of protecting 23 seats, including
five Republican-held seats being vacated by retiring Senators Wayne Allard (CO), Larry Craig (ID), Chuck Hagel (NE), Pete Domenici (NM), and John Warner (VA).

The partisan breakdown for the 111th Congress is in limbo for the first few weeks of the session. The Senate began the first session of the 111th Congress on January 6, 2009, with vacant seats in Illinois and Minnesota. In addition, President-elect Obama looked to the Senate to fill key administration positions – leaving governors in Colorado, Delaware, and New York to appoint Senators to these seats once they become vacant. Assuming all of these seats remain in Democratic control, the partisan breakdown for the 111th Congress is expected to be 57 Democrats, 2 Independents (part of the Democratic Caucus), and 41 Republicans. This represents a net gain of 8 seats for the Democrats and brings the Democratic Caucus to 59 Senators – one vote shy of the 60 votes needed for a filibuster-proof majority.

Expanded Support for Reproductive Rights in Senate

In the 110th Congress, 52 Senators were considered pro-family planning, with 35 solidly pro-choice and 48 Senators were considered anti-choice. All eight of the Democratic pick-ups for the 111th Congress are pro-choice. Our best estimate is that 58 Senators can be considered pro-family planning, including 43 that can be considered solidly pro-choice and 42 Senators can be considered anti-choice. However, the degree to which they would take a pro-choice position on a range of reproductive health will become clear only after multiple votes.

New Pro-Choice Senators

Democratic Senators Ken Salazar (CO) and Hillary Clinton (NY) will remain on the roster for the 111th Congress pending the approval of their nominations as Interior Secretary and Secretary of State respectively. Similarly, Vice-President-elect Joe Biden (D-DE) remains on the Senate roster for the 111th Congress until he is sworn in on January 20, 2009. Colorado Governor Bill Ritter named Denver Public Schools Superintendent Michael Bennett (D) to fill Salazar’s seat and Delaware Governor Ruth Ann Minner (D) chose longtime Biden aide, Edward "Ted" Kaufman (D) to replace Biden once he is sworn in. New York Governor (D) David Paterson has not named a successor but speculation is that Carolyn Kennedy will be named to fill Clinton’s seat. Embattled Illinois Governor Rod Blagojevich (D) picked former Illinois Attorney General Roland Burris (D) to fill Obama’s Senate seat. However, the initial hesitancy by the Senate Democratic Leadership to seat anyone chosen by Blagojevich prevented Burris from being seated at the start of the new Congress. Carolyn Kennedy has stated that she is staunchly pro-choice and speculation is that the other nominees would at least be pro-family planning.

Alaska Democrat Mark Begich: Despite the felony conviction of anti-choice incumbent Senator Ted Stevens (R) shortly before election-day, Stevens held his own in a nail-biter of a race against pro-choice Anchorage Mayor Mark Begich (D). Several days post-election Begich was declared the winner.
**Colorado Democrat Mark Udall:** Pro-choice U.S. Representative Mark Udall defeated anti-choice former U.S. Representative Bob Schaffer (R) in a race to replace anti-choice retiring Senator Wayne Allard (R). Udall is a co-sponsor of the Prevention First Act. On his campaign website he says, "As a matter of constitutional rights, however, I do not believe we can compromise a woman's right to make her own decisions with regard to her reproductive health. My view is that we should have a policy of making abortion safe and legal, but rare--and that good information about family planning, contraception, adoption, sexually-transmitted diseases and other reproductive health matters should be a part of our consideration."

**Minnesota Democrat Al Franken:** A razor thin margin in the race between pro-choice Democrat Al Franken and anti-choice incumbent Republican Norm Coleman triggered an automatic recount. Minnesota election officials declared Franken the victor in early January but Franken is unlikely to be seated in the 111th Congress until an expected legal challenge by Coleman is resolved.

**New Hampshire Democrat Jeanne Shaheen:** Pro-choice former Governor Jeanne Shaheen defeated anti-choice Senator John Sununu (R) in a rematch of their 2002 open seat contest. While Governor, Shaheen has protected the reproductive rights of women by repealing state laws that made abortion a felony, Sununu was an anti-choice activist during his Senate tenure.

**New Mexico Democrat Tom Udall:** Pro-choice Representative Udall will replace retiring anti-choice Senator Pete Domenici (R). Udall is a solid supporter of reproductive health.

**North Carolina Democrat Kay Hagan:** Pro-choice state senator Kay Hagan picked up the seat held by anti-choice Senator Elizabeth Dole (R). Hagan, during her tenure as co-chair of the powerful state Senate Budget and Appropriations Committee, co-sponsored legislation to require small businesses to add contraception coverage to health care plans. “I am a strong supporter of a woman’s right to choose,” she says. “These decisions are best made privately by a woman in consultation with her doctor.”

**Oregon Democrat Jeff Merkley:** In a highly competitive race pro-choice State House Speaker Jeff Merkley defeated mixed-record incumbent Gordon Smith (R).

**Virginia Democrat Mark Warner:** Former Governor and cell phone mogul Mark Warner picked up the open seat from retiring mixed-record Senator John Warner (R). Warner describes himself as a "radical centrist" who respects "responsible choice." As governor, he opposed a 24-hour waiting period for women requesting abortions and said he would fight efforts to chip away at Roe. He vetoed the partial birth abortion ban in the state when he was governor but supported state legislation to require parental notification for teens seeking abortion.
Democrats Widen House Majority

The pre-election landscape for House Republicans was a bit dreary from the start. Heading into the election Democrats controlled 236 House seats and Republicans held 199. Twenty-nine of the 35 open seats on the ballot in 2008 were Republican-held and early on it was expected that the unfavorable odds would translate into Democratic pick-ups. But the list of endangered Republicans seats continued to grow until the final weeks of the campaign and one week out, the outlook for House Republicans was widely agreed to be dire with the number of endangered Republican seats climbing past 30 by election day. The few endangered Democratic seats belonged to Tim Mahoney in Florida, who was considered a shoe-in until revelations of two extramarital affairs; Nick Lampson, from the very Republican district in Houston that had been represented by Tom DeLay when the GOP controlled the House; Chris Carney and Paul Kanjorski from Pennsylvania; Carol Shea-Porter from New Hampshire; and the open seat in Alabama vacated by retiring Democrat Bud Cramer.

In the end, the net gain for Democrats was 20 seats (Democrats picked up 24; Republicans picked up 4), leaving party control in the House at the start of the 111th Congress at 256 Democrats, 178 Republicans, with one vacancy (Rep. Rahm Emanuel’s seat) that is expected to be filled by a Democrat.

Pro-Reproductive Health Majority Elected in House

After almost a decade of running to stand still, pro-reproductive health advocates are daring to dream again. In the 110th Congress, 220 Members (the barest majority) were considered solidly anti-choice, a slight but agenda-stopping majority for the 215 members considered pro-family planning (including 165 Members considered solidly pro-choice).

Assuming that former Representative Rahm Emanuel’s seat will be filled by a reproductive health supporter, we estimate that 23 newly elected members - either self-proclaimed supporters or those receiving pro-choice endorsements – should be added to the pro-family planning or pro-choice roster. This represents a net gain of 15 pro-reproductive health Members, in that some House members were replaced by like-minded individuals and others, friendly to reproductive health, fell to anti-choice candidates. We estimate that the 111th Congress will include 230 pro-family planning Members (including 184 Members considered solidly pro-choice) and 205 anti-choice Members.

Pro-family planning Representatives Tim Mahoney (D-FL), Nancy Boyda (D-KS), and Nick Lampson (R-TX) lost to anti-choice incumbents. However, reproductive health advocates cheered the exit of several high profile anti-choice members including Representatives Marilyn Musgrave (R-CO), Tim Walberg (R-MI), Thelma Drake (R-
VA), and Dave Weldon (R-FL). Although Weldon chose to retire and was ultimately replaced by a fellow conservative, his exit was noteworthy because of his numerous successful attacks on reproductive health access. In what reproductive health advocates might call poetic justice, Musgrave, Walberg and Drake were replaced by solidly pro-choice members.

As part of a national campaign strategy to expand the Democratic majority, the Democratic Congressional Campaign Committee (DCCC) recruited and/or funded over a dozen anti-choice Democrats to compete in open seats or challenge Republican incumbents. This strategy, considered troubling by many pro-choice advocates, certainly paid off in terms of Democratic gains but in the end did not significantly impact support for reproductive health issues because the seats were largely held by anti-choice candidates.

**New Pro-choice/pro-family planning Representatives**

**Arizona – 1:** In the open seat being vacated by retiring anti-choice Representative Rick Renzi (R), pro-choice State Representative Ann Kirkpatrick defeated businesswoman Sydney Hay. Hay, president of the Arizona Mining Association, had been endorsed by Arizona Right to Life.

**Colorado – 4:** Pro-choice Democrat Betsy Markey defeated outspoken anti-choice Representative Marilyn Musgrave (R). At the national level, Musgrave supported the federal abortion ban legislation, the Child Custody Protection Act, and the Child Interstate Abortion Notification Act to name a few. She also opposed embryonic stem cell research and in 2005 criticized a witness at a congressional subcommittee hearing who had claimed she was "humiliated and discriminated against" at a pharmacist's refusal to fill prescription of emergency contraception, claiming that it was only an issue of "inconvenience" to be denied emergency contraception.

**Connecticut – 4:** Incumbent Representative Chris Shays (R) could not stave off a challenge from Greenwich Democratic Chair Jim Himes. Pro-family planning Himes replaces pro-family planning Shays.

**Florida – 8:** After narrowly surviving a primary challenge, anti-choice incumbent Republican Ric Keller was ultimately defeated by pro-choice attorney Alan Grayson (D).

**Florida – 24:** Anti-choice Republican Representative Tom Feeney’s effort to seek a fourth term was thwarted by former State Representative Suzanne Kosmas (D). Kosmas received backing from the national party and from EMILY’s List, an organization dedicated to electing pro-choice women candidates.
Idaho – 1: In an unlikely outcome, anti-choice incumbent Representative Bill Sali (R) was narrowly defeated by pro-choice businessman Walt Minnick (D) in this traditionally safe Republican district.

Illinois – 11: State Senate Majority Leader Debbie Halvorson (D) knocked out Martin Ozinga (R) in the race to fill the open seat vacated by anti-choice Representative Jerry Weller (R). Halvorson is pro-choice.

Maryland – 1: Pro-choice attorney Frank Katovil (D) narrowly defeated anti-choice State Senator Andy Harris (R) for the seat being vacated by pro-family planning Republican Wayne Gilchrist. Gilchrist, who had held the seat for 18 years, was ousted in a primary earlier this year.

Michigan – 7: Extreme anti-choice incumbent Tim Walberg (R) fell to pro-choice State Senate Minority Leader Mark Schauer (D).

Michigan – 9: Anti-choice incumbent Joseph Knollenberg (R) was thwarted in his effort to win a 9th term by pro-choice former State Senator Gary Peters (D).

Nevada – 3: In a hotly contested race, pro-choice former State Senate Minority Leader Dina Titus (D) defeated anti-choice incumbent Jon Porter (R) in his effort to win a fourth term.

New Jersey – 3: Pro-choice State Senator John Adler (D) was victorious in his bid for the open seat vacated by retiring anti-choice Republican James Saxton. Adler defeated anti-choice Medford Township Councilman Chris Meyers (R).

New Mexico – 1: Pro-choice Albuquerque Councilman Martin Heinrich (D) won the highly competitive race for the open seat being vacated by anti-choice Republican Heather Wilson (R). Heinrich handily defeated anti-choice Bernalillo County sheriff Darren White (R).

New Mexico – 2: Former Lea County Commissioner Harry Teague (D) defeated restaurant owner Ed Tinsley (R) in the race for the open seat vacated by anti-choice Representative Steve Pearce (R). Teague’s pro-choice credentials stood in stark contrast the National Right to Life endorsement of Tinsley.

New York – 13: Pro-choice New York City Councilor Michael McMahon (D) crushed the competition for the open seat being vacated by anti-choice Republican Vito Fossella. McMahon defeated anti-choice former Republican State Assemblyman Bob Straniere.

New York – 25: New York added another pro-choice member to their delegation when pro-choice businessman Dan Maffei (D) soundly defeated anti-choice Republican Dale Sweetland for the open seat being vacated by anti-choice James Walsh (R).
**New York – 29:** Anti-choice incumbent Republican Randy Kuhl could not fend off challenger Eric Massa (D), a pro-choice retired Navy officer.

**North Carolina – 8:** Teacher Larry Kissell (D) defeated anti-choice incumbent Republican Robin Hayes. Although Kissell’s statement that he believes abortion should be a private matter doesn’t shed much light on how he might vote, even that appears to trump the solidly anti-choice views held by Hayes.

**Oregon – 5:** Pro-choice State Senator Kurt Schrader (D) defeated anti-choice Mike Erickson (R) for the open seat of retiring pro-choice Representative Darlene Hooley (D).

**Virginia – 2:** Pro-choice advocates can rest easier with the defeat of fiercely anti-choice incumbent Republican Thelma Drake by pro-choice former foreign service officer Glenn Nye (D). Drake was widely known for her opposition to stem-cell research and restricting abortion access for minors.

**Virginia – 5:** Six-term incumbent anti-choice Republican Virgil Goode is still working to fend off a challenge from mixed-record attorney Tom Perriello (D). Perriello holds a slight lead in this race that is still too close to call.

**Virginia – 11:** In yet another solidly pro-choice pick-up for the Virginia delegation, pro-choice Fairfax County Council Chair Gerry Connolly (D) defeated anti-choice accountant Keith Fimian (R) for the open seat of retiring anti-choice Republican Tom Davis.

**GOVERNORS’ RACES**

Although the number of gubernatorial contests was down by two-thirds from the 2006 election cycle, in the eleven contests this year competitive races in Indiana, Missouri, North Carolina, Vermont and Washington State contributed their share of intrigue to the political landscape this fall. Three of the 11 seats up this year were open seats (Delaware, Missouri, North Carolina) with the 8 remaining contested seats split evenly among Democrats and Republicans. The pre-election partisan tally showed that Democrats held 28 seats and Republicans held 22.

Ultimately Democrats had a net gain of one seat. Pro-choice Missouri Attorney General Jay Nixon (D) defeated anti-choice U.S. Representative Kenny Hulshof (R) for the open seat being vacated by anti-choice Governor Matt Blunt (R). In North Carolina’s open seat pro-family planning Lieutenant Governor Beverly Perdue (D) kept Charlotte Mayor Pat McCory (R) at bay in a race that went down to the wire. In Indiana and Vermont, incumbent Republican governors held onto their seats as did pro-choice Democratic Governor Christine Gregoire in Washington State. The partisan tally for the governors now stands at 29 Democrats and 21 Republicans.
BALLOT INITIATIVES

In keeping with pro-choice, pro-family planning gains at the top of the tickets, voters rejected anti-choice ballot measures in three states. A fourth approved the use of state funds for stem cell research.

**California - Parental Notification (Proposition 4):** The ballot measure sought to amend the California Constitution to require health care providers to notify a minor’s (under age 18) parent or legal guardian 48 hours before performing an abortion. It would permit notification to certain adult relatives if the health care provider reports parental mistreatment to law enforcement or Child Protective Services. The measure would allow for notification exceptions in cases of medical emergency or if a parent requests a waiver of the 48 hour waiting period. The measure also allows damages against physicians for violations. This marks the third time in four years the parental notification measure was put before voters – and the third time the measure will likely be narrowly defeated. Although the outcome has not officially been determined, with 100% of precincts reporting the measure appears to have failed 52%-48%.

**Colorado - Defining ‘Personhood’ (Amendment 48):** Amendment 48 would have amended the Colorado Constitution to define the term “person” to include "any human being from the moment of fertilization" for those provisions in Colorado's constitution dealing with inalienable rights, due process, and equality of justice. The amendment could have made abortion illegal and threatened stem cell research, in vitro fertilization, and common birth control methods. The amendment was handily defeated 73%-27%.

**South Dakota - Abortion Ban (Initiated Measure 11):** Measure 11 would have amended the South Dakota Constitution to ban virtually all abortion except in cases of rape or incest, to save a woman’s life or to avert a “substantial and irreversible” maternal health risk of impairment to “a major bodily organ or system.” Measure 11 was a slightly modified version of a ballot initiative rejected in 2006. The initiative was defeated 55%-45%.

**Michigan - Stem Cell Research (Proposal 08-2):** This initiative amends the state constitution to expand the use of human embryos for research permitted under federal law. The amendment requires that the donated embryos would be those discarded unless otherwise used for research, i.e. extra embryos or embryos unsuitable for implantation. The measure prohibits anyone from selling or purchasing embryos. The measure was approved 53%-47%.
MOVING FORWARD

We fully expect to encounter challenges in 2009 due to funding constraints and lingering political reticence about dealing with reproductive health, along with the perception – if not the reality – that abortion is a “third rail” in domestic politics. However, this election should go a long way toward dispelling these perceptions. And given President-Elect Obama’s clear record of support for reproductive health and rights, combined with the far more hospitable environment in the 111th Congress, we are convinced that we are on the path toward the progressive agenda for women’s health that Americans both want and need.

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