

AROUND THE STATES

National Restaurant Association **ELECTION WRAP-UP**

Decision '06

FOR THE FIRST TIME SINCE 1994, DEMOCRATS TOOK CONTROL OF CONGRESS AND THE MAJORITY OF THE NATION'S STATE LEGISLATURES.

Thomas "Tip" O'Neill — longtime Speaker of the U.S House of Representatives — once said, "All politics is local." But for this year's midterm election that theory did not hold true. For the first time in a decade Democrats now hold the majority in Congress and the state legislative chambers. On Election Day voters ousted the nation's Republican majority in the wake of an unpopular war and Washington scandals, focusing on national issues rather than state and local issues.

The 110th Congress

The federal balance of power in both the U.S. House of Representatives and the U.S. Senate shifted from Republican to Democrat-controlled this election.

In the House of Representatives, Democrats currently hold 232 seats, with Republicans retaining 199 seats, giving the Democrats a safe majority. However, there are still various seats that have yet to be decided. Political pundits predicted a loss of Republican members ranging from 10 to 40 seats.

★ **North Carolina, 8th District:** Rep. Robin Hayes, a Republican, led Democrat Larry Kissell by 339 votes after results were certified by county election boards post-election.

★ **Ohio, 2nd District:** Rep. Jean Schmidt, a Republican, was ahead of Democrat Victoria Wulsin by about 2,800 votes. Workers have still to begin counting as many as 10,000 provisional and absentee ballots.

★ **Ohio, 15th District:** Rep. Deborah Pryce, a member of the House Republican leadership, leads Democrat Mary Jo Kilroy by 3,536 votes. Thousands of provisional ballots need to be recounted, but results won't be announced until November 27 because of a dispute over a new voter identification law.

★ In addition, runoffs will pick the officeholder in Louisiana, where Democratic Rep. William Jefferson, the subject of an FBI bribery investigation, will face fellow Democrat Karen Carter in a December 9 runoff; and in Texas, where GOP Rep. Henry Bonilla will face Democratic former Rep. Ciro Rodriguez in a yet-unscheduled runoff to happen no sooner than December 12.

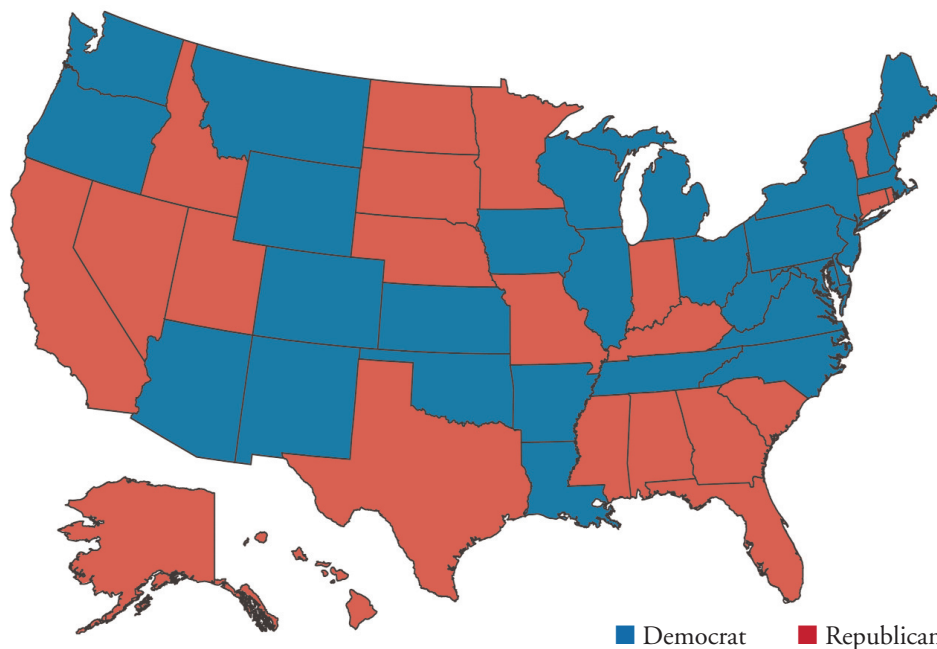
In the Senate, the Democrats took control by gaining five seats, giving the final count of 49 Democrats, 49 Republicans and two independents who will caucus with the Democrats. Various Republican incumbents were unable to overcome national sentiment and retain their seats this cycle. Sen. Jim Talent (R-MO) lost to Democrat Claire McCaskill, Sen. Conrad Burns (R-MT) was defeated by Democrat Jon Tester,

and Sen. George Allen (R-VA) fell to Democrat James Webb in incredibly tight races. Sen. Mike DeWine (R-OH) was defeated early by Democrat Sherrod Brown, Sen. Rick Santorum (R-PA) lost handily to Democrat Bob Casey, Jr., and Sen. Lincoln Chafee (R-RI) lost his race to Democrat Sheldon Whitehouse.

The loss of the House of Representatives by the Republicans was predicted since the beginning of the 2006 election season, and many forecast the possible loss of the Senate to the Democratic Party. With an unpopular war, a President with consistently low ratings, a trend of unethical activities, scandal within the Republican Party, and general disillusionment with Washington D.C., there was momentum that foreshadowed Congress' change in power. In fact, many Democrat candidates, such as Democrat Senator elect Jim Webb (VA), were able to defeat current Republican incumbents by running on more conservative platforms.

In the end, while many races were too close to call on Election Day, many House Republican incumbents were simply defeated by their own personal controversies: AZ-05 (J.D.

2007 GOVERNORS SEATS



Hayworth), CA-11 (Richard Pombo), FL-16 (Mark Foley), OH-18 (Bob Ney), PA-07 (Curt Weldon), PA-10 (Don Sherwood), TX-22 (Tom DeLay), and NY-20 (John Sweeney).

Looking ahead to the next election cycle, the pressure will focus on the Democratic party to continue to re-elect those new members who represent districts that are traditionally Republican-leaning. For House members, nearly 70 percent of seats picked up by the Democrats are located in conservative voting areas. House Speaker elect Nancy Pelosi and the newly Democratic House will need to work with the closely-divided Democratic Senate and President Bush to determine how American voters will decide who holds the House, Senate and Presidency in 2008. Additionally, the 2008 presidential campaign will be the most "wide open" in 50 years, as there is no sitting president or vice president running for the nomination.

State Legislatures

This year 46 states had state legislative races, and 35 had gubernatorial races as well. Only four states — New Jersey, Virginia, Mississippi and Louisiana — had no state elections this cycle. Of the nation's 7,382 legislative seats 84% were up for reelection, with several seeing major party control changes.

Democrats picked up approximately 322 state legislative seats, giving them new majorities in at least 9 chambers: the Iowa House and Senate, the Indiana House, the Minnesota

House, the Michigan House, the New Hampshire House and Senate, the Oregon House and the Wisconsin Senate. (The Iowa Senate was previously tied.) The Oklahoma House moved to a tied chamber and initially Republicans picked up the Montana House, with the Senate moving to a tie. But results in the Montana have appeared to shift again, and it appears the Democrats after the pending recount (see below) will have control of both the Senate and the House. Thus giving Democrats a pick up (or post election retention) of 11 of the 12 legislative chambers to switch hands on election day.

The most gains for Democrats this election came from the mid west. While Democratic gains in the South were relatively small, they were historically significant. Democrats gained 19 seats in the South this year, the first time they haven't suffered a loss of southern legislative seats since 1982.

The **Montana** House, **Indiana** House and the **Wisconsin** Senate are chambers that often pivot. Since 1938, the Montana legislative chambers have changed a record 28 times.

Montana has been a rollercoaster this election cycle. Following the election, the previously Democrat-controlled Senate became a 25–25 split, while the House, which before the election was a 50–50 split, saw Republicans ahead by one seat at 50–49 (with 1 independent). However, on November 13, Republican Senator Sam Kitzenberg announced he planed to switch

parties, thus giving Democrats a 26–24 majority. And in the House, Representative Emelie Eaton (D) picked up four more votes in the counting of provisional ballots, forging a tie with House District 58 opponent Krayton Kerns, a Republican. If the tie remains after a vote recount later in November, Governor Brian Schweitzer (D) would appoint the winner — and Democrats are presuming he'll appoint the Democrat. This would give Democrats a 50–49 edge in the House to pick up the chamber.

The **Indiana** House had a 52–48 Republican majority before the election, now it's 51–49 for the Democrats. It's the 15th time the chamber has changed hands in the last 35 elections.

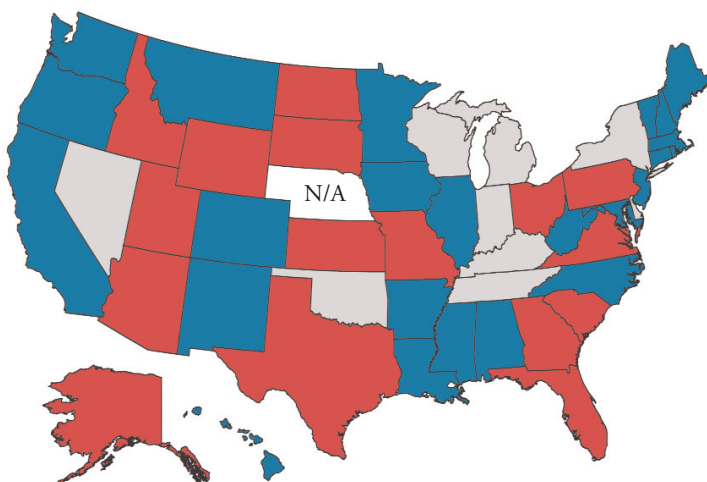
In **Oregon**, no Democrat incumbents lost as they seized control of the House.

Iowa was easy ground for the Democrats. They picked up 4 seats in the Senate, for an 8 seat lead. In the House Democrats only needed 1 seat for control, but gained 9.

In the **Minnesota** House, Republicans went into the election with a 2 seat majority. Democrats picked up 18 seats for a strong 36 seat lead. Democrats 9 seat gain in the **Michigan** House surprised many who considered the states district lines to be Republican friendly. Democrats now hold a six seat majority in that chamber.

The **New Hampshire** House and Senate were the biggest swing of the election. Democrats picked up 90 seats, giving them a

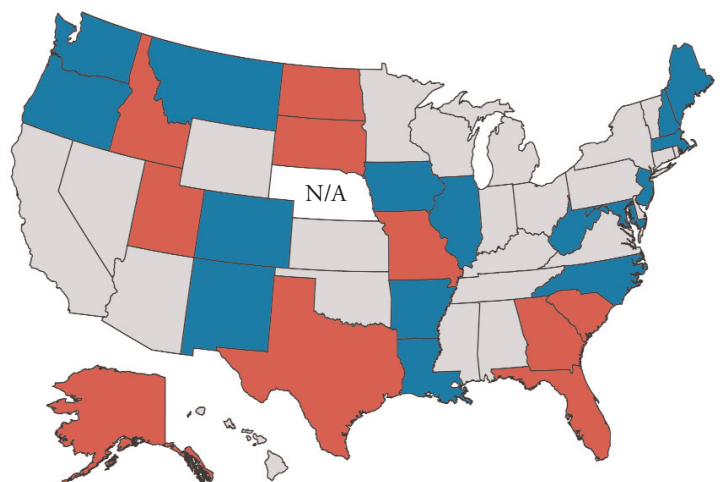
2007 STATE LEGISLATIVE CONTROL



■ Democrat ■ Republican ■ Split

* Projected results

2007 STATE PARTY CONTROL



■ Democrat ■ Republican ■ Split

* Projected results

74-seat advantage and a majority of seats for the first time since the Civil War.

In **Pennsylvania**, the Republicans held onto the House majority by a narrow margin (102–101). However, three close races are awaiting official vote recounts, and Democrats only need one of those seats to take the majority. The Chester County Board of Elections began to count absentee and provisional ballots on November 14, following the deadline for receiving military votes.

Initially, following the election Democrats controlled 23 legislative chambers, Republicans 16 and 10 were split. But with the Montana House now looking to swing in the Democrats favor they would hold the majority in 24 legislative chambers, Republicans 16 and 9 would be split.

One interesting result of the elections is that there are now fewer chambers that have less than a 55 percent majority. In fact, it is the lowest number since 1988.

In the end, historical trends suggest that this year's election was average. Historical research shows that state legislators have a 23–24 percent turnover. About 12 chambers switch party control. The president's party typically loses 300-plus seats in mid-term election. All of these things happened in the 2006 elections.

Academics studying voting behavior say the results show that Democrats turned out to vote in larger numbers than Republicans this cycle and captured the independent voter. The Democrats have their work cut out for them; new seats will mean an even more diverse caucus. Their challenge now is defining their goals and forming an effective strategy to achieve them.

Governors Seats

Democrats picked up six gubernatorial seats this cycle; they now control 28 of the nation's governor's seats. Democrats gained 6 seats in Massachusetts, New York, Maryland, Ohio, Arkansas and Colorado. The election shows a mirror shift in the number of Republican versus Democrat governors. Before the election Republicans held 28 of the nation's governor's seats and the Democrats 22. Now that figure has switched to 28 Democrat governors and 22 Republican Governors.

Republicans were able to retain the governor's mansions in California, Texas, Florida, Georgia and Minnesota. The only incumbent Governor defeated was Republican Robert Ehrlich of Maryland, who was replaced by

Baltimore Mayor Martin O'Malley.

Democrats retained Governors seats in Pennsylvania, Illinois, Michigan, Wisconsin and Oregon.

Several changes in Governor and chamber control have resulted in Democrats taking full control of state government. The election of Democrats as governors in Arkansas, Colorado, Maryland, and Massachusetts, has resulted in one party control of those states (which already had Democrat-controlled legislatures). The change in control of both the House and Senate means Democrats also picked up full control of Iowa (which elected a new Democratic governor) and New Hampshire (which re-elected Democratic Governor John Lynch). With the switch in control of the House, Indiana has gone from a Republican full control state to a split control, while the election of a Democrat as governor in Ohio has changed that state from full control by the Republican Party to split control as well.

Democrats now have full party control of 15 states, Republicans 10, and 24 are split. If Democrats pick up control of the Montana

House the breakdown would become 16 Democrat, 10 Republican and 23 split state party control.

Ballot Initiatives

This year voters decided 204 ballot initiative measures, the second highest number in the last eight election cycles. Seventy six of those measures were citizen driven initiatives, including 6 on minimum wage and 6 competing state smoking bans. Other initiative issues included taxes, immigration, same-sex marriage, marijuana legalization, abortion rights, and eminent domain.

The use of the initiative process to circumvent legislative approval has been increasing over the recent election cycles. With national and regional groups, like ACORN growing increasingly adept, businesses with experience in ballot initiative planning and signature gathering are booming.

More campaigns and paid signature gatherers mean more fraud in the petition process. This cycle initiatives were blocked in 3 states (Michigan, Montana and Oklahoma) for fraud

State Minimum Wage Initiatives

Arizona – Proposition 202, passed 65.3%

Increases the minimum wage to \$6.75 on 1/1/07. Cash wage increase to \$3.75 (50% tip credit) on 1/1/07. Minimum wage and cash wage will increase yearly according to inflation.

Colorado – Amendment 42, passed 52.87%

Increases the minimum wage to \$6.85 on 1/1/07. Cash wage increase to \$3.83 (\$3.02 tip credit) on 1/1/07. Minimum wage and cash wage will increase yearly according to inflation.

Missouri – Proposition B, passed 75.9%

Increases the minimum wage to \$6.50 on 1/1/07. Cash wage increase to \$3.25 (50% tip credit) on 1/1/07. Minimum wage and cash wage will increase yearly according to inflation.

Montana – Initiative 151, passed 73%

Increases the minimum wage to \$6.15 on 1/1/07. No tip credit is permitted. Minimum wage will increase yearly according to inflation.

Nevada – Question 6, passed 68.7%

Increases the minimum wage to \$6.15 on 11/28/06 if employer does not provide specified health benefits. No tip credit is permitted. Requires state minimum wage to always be at least \$1.00 above federal wage rate. Minimum wage will increase yearly according to inflation.

Ohio – Issue 2, passed 56.17%

Increases the minimum wage to \$6.85 on 1/1/07. Cash wage increase to \$3.43 (50% tip credit) on 1/1/07. Minimum wage and cash wage will increase yearly according to inflation.

For more information on state minimum wage rates visit: www.restaurant.org/legal/state_rates.cfm

in the petition process. The high rate of initiatives being introduced, combined with rampant fraud in the process, strongly suggest that the systems needs to be reformed. The National Restaurant Association and the American Legislative Exchange Council (ALEC) continue to discuss meaningful state ballot reform as a way to preserve the integrity of the state initiative process.

When the votes were tallied just a over a third of the initiatives were approved, less than the usual average — but for the restaurant industry the passage of minimum wage hikes with indexing and smoking bans were detrimental.

This year's election has included a lot of debate about how partisan initiatives may increase voter turnout to help candidates in particularly competitive races. The National Conference of State Legislatures says it is difficult if not impossible to untangle the results of ballot measures and candidate races to determine how they might have influenced each other. This year's ballots were particularly crowded with initiatives from both sides of the political spectrum.

This election activist organizations including ACORN (the Association of Community Organizations for Reform Now), the AFL-CIO and the Ballot Initiative Strategy Center were successful in qualifying minimum wage initiatives in six states including Arizona, Colorado, Missouri, Montana, Nevada and Ohio. Business groups, including the restaurant industry lead the opposition to these initiatives, but while they were effective in getting the right messages out to voters, funding remained a critical factor.

After the votes had been tallied all the minimum wage initiatives had passed. With these six states increasing their minimum wage rate with indexing components, 29 states will have minimum wage rates that exceed the federal standard by January 2007. 10 states will now include indexing as a provision of the minimum wage.

Immigration Initiatives

Illegal immigration ballot initiatives were passed by voters in Arizona and Colorado this election.

In **Arizona** 4 immigration ballot initiatives passed overwhelmingly, including making English Arizona's official language (74%), denying bail to illegal aliens (78%), barring illegal aliens from winning punitive damages (74%), and denying in-state college tuition to illegal

immigrants (72%).

In **Colorado** voters narrowly approved two ballot measures on immigration. Referendum H, denies a state tax credit to employers who knowingly hire undocumented workers (50.8%). Referendum K, which directs the state attorney general to sue the federal government to demand enforcement of immigration laws, received 56% of the vote.

With the lack of comprehensive immigration reform in Congress, many states and localities are expected to take up the issue during their 2007-2008 legislative sessions.

Smoking Ban Initiatives

3 states (Arizona, Nevada and Ohio) had dual smoking ban initiatives on their ballots this election. In all three cases the stricter ban was adopted, while the looser ban failed. Sixteen states will now have statewide smoking bans.

★ **Arizona:** In Arizona, Proposition 201 passed 54.4%. The initiative prohibits smoking in all public places and places of employment, except in retail tobacco stores that are physically separated and independently ventilated, veterans and fraternal clubs when they are not open to the public, hotel rooms designated as smoking rooms and outdoor patios.

Additionally, the initiative does not prohibit or repeal more restrictive city, town or county laws. The new law becomes effective on May 1, 2007.

★ **Nevada:** Nevada State Question No. 5 passed 53.92%, effectively prohibiting smoking tobacco in certain public places, in all bars with a food-handling license, but excluding gaming areas of casinos and certain other locations. The act is effective 10 days after its passage and approval, which is December 8th according to the Nevada Restaurant Association.

★ **Ohio:** Ohio's State Issue 5 passed 58.28%. The initiative prohibits smoking in public places and places of employment. Outdoor patios, private clubs, and family-owned and operated places of business are all exempt. The smoking ban takes effect December 7, 2006.

Looking Ahead to 2007

The upcoming state legislative sessions and 110th Congress will be an important time of political debate and change for the restaurant industry. In the states, mandated health care, immigration reform, minimum wage and menu labeling are set to take the "stage," and in Congress a minimum wage hike is certain. How the political "chips" will fall is uncertain, and anything is possible.

The National Restaurant Association and its state partners will continue to represent, educate and promote the restaurant industry before elected officials and opinion leaders around the country.

Other Ballot Initiatives This Cycle

★ **Property rights:** passed in Arizona, Florida, Georgia, Louisiana, Michigan, Nevada, New Hampshire, North Dakota, Oregon, and South Carolina; failed in California, Idaho and Washington.

★ **Same sex marriage restrictions/defining marriage as only between one man and one woman:** passed in Colorado, Idaho, South Carolina, South Dakota, Tennessee, and Virginia; failed in Arizona.

★ **Tobacco (in the form of smoking bans, higher taxes, and/or appropriation of settlement revenue):** California, Missouri, Nevada, and Ohio failed measures; Florida, Idaho, Louisiana, Nevada, and South Dakota passed measures; and Arizona and Ohio each passed one and failed one.

★ **Gambling questions** passed in Arkansas, failed in Nebraska, Ohio, Rhode Island, and South Dakota.

★ Oregon failed a measure that would prohibit insurance companies from using credit score or "credit worthiness" in calculating rates or premiums.

★ The State of Florida was successful in changing the parameters by which ballot initiatives can be passed. All future ballot initiatives that seek to amend Florida's Constitution will be required to receive 60 percent voter approval rather than a simple majority.