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## The 2022 Midterm Congressional Elections and Their Impact on Business Lawyers



4 Min Read

By: Caitlin A. Anderson, Jason Abel, Charles F. Bass, Ryan Guthrie | September 8, 2022

*This article is related to a Showcase CLE program that took place at the ABA Business Law Section's Hybrid Annual Meeting on Thursday, September 15, 2022. The program, co-sponsored by the [Government Affairs Practice Committee](#), featured Jason Abel, Partner, Steptoe & Johnson LLP, and former chief counsel for U.S. Senate Committee on Rules and Administration Chairman Charles Schumer; former U.S. Representative Charles F. Bass (NH 2nd District), Senior Director, Greenberg Traurig, LLP; and Ryan Guthrie, Head of Government Affairs, Chipotle Mexican Grill. The program was chaired by Jonathan Bing, Shareholder, Government Law & Policy, Greenberg Traurig, LLP, and moderated by Caitlin Anderson, Associate, Harter Secrest & Emery LLP.*

*All CLE programs were recorded live and will be available for on-demand credit, free for Business Law Section members.*

United States elections, especially over the past decade, have become increasingly tense events. The heightened political tensions, spilling over into such events like the January 6<sup>th</sup> Capitol Attack, impact not only the fabric of our nation, but businesses operating in the country. The political temperature in the United States is high and is proving to be a challenge for businesses to navigate.

It is important for business lawyers to consider how the possible change of control of one or both houses of Congress will affect their personal and professional lives. Business lawyers will have to adjust their expectations and “asks” accordingly depending upon their clients’ and/or company’s interests, which may or may not be in vogue under a new regime. Building or reestablishing relationships with those newly in power will be key.

If the midterm elections promise one thing, it is some significant change in the makeup of Congress. Currently, the Democrats have a razor-thin majority in Congress. The Senate has a 50-50

split, with Vice President Kamala Harris providing Democrats with the tie-breaking vote. For the 2022 election, all 435 House seats and 35 of the 100 Senate seats are on the ballot. In the Senate, 21 of the 35 seats up for election this year are currently held by Republicans. There are seven total retirements, six of which are Republicans. In the House, 50 of the voting members in the chamber are retiring: 31 Democrats and 19 Republicans. Additionally, the 2022 election will be the first after the 2020 redistricting cycle. There has been significant litigation regarding state redistricting efforts, with more than 70 cases having been filed challenging congressional and legislative maps.

The uncertainty caused by the midterm elections—be it from the change in political party in control to the potential for violence in the leadup to and aftermath of the election—places stress on both individuals and companies. Internal company policies that may be in vogue with the current party in power may fall out of favor in Washington by 2023. Business lawyers will need to wrestle with the pressures of Washington and the expectations

of company employees. For example, we have seen dozens of companies offer to pay for the travel expenses of employees, their spouses, and their partners to receive reproductive healthcare access if they live in states that have tightly restricted such access in the wake of *Dobbs v. Jackson Women's Health Organization*. These policies have largely been embraced by employees and will likely be considered a major selling point to companies looking to attract and retain talent. On the other hand, these policies may cause companies to face scrutiny if even one chamber of Congress switches hands. In addition, if the chambers switch hands, business lawyers will need to establish and/or reestablish relationships with the officials and staff in power.

Even in the highly polarized political atmosphere that we currently live in, there will be areas for potential bipartisan compromise. We have seen recent bipartisan success with the bipartisan infrastructure bill and the gun safety bill. Further, there are certain things that Congress must pass in order to keep the government functional, including

governmental funding and the debt ceiling. We may see bipartisan compromise surrounding immigration policies; the CHIPS Act of 2022 to strengthen semiconductor manufacturing, design, and research and improve national security; and certain privacy reforms. With the growing pressure on the U.S. labor market, Congress is being pushed by companies to expand immigration access. Business lawyers need to be prepared to potentially see changes in those areas and weigh in with concerns appropriately.

Beyond legislative activity, there is a high chance that if one or both of the chambers change

hands, we will see an increase in Congressional investigational activities. Currently, we are seeing specific industries facing increased scrutiny, including big tech, oil and gas, healthcare and prescription drug manufacturers, and firearm manufacturers. If the House of Representatives switches hands, we may see investigations into which companies received funding from the American Rescue Plan Act of 2021. We may see clean energy companies come under an investigative magnifying glass. Further, despite the Supreme Court's decision in *West Virginia v. Environmental Protection Agency*, we may see

administrative agencies increase enforcement action and regulatory activity.

Overall, the American political atmosphere is rapidly changing. By the time this program is presented, some of the information contained herein will have already changed. It is imperative that a business lawyer working in this area stay abreast of each development so that they are properly advising their clients. The goal of this program is to provide the business lawyer with background and tips for how to keep current in this evolving world.

## ABOUT THE AUTHOR



**Caitlin A. Anderson**

Caitlin is a government affairs attorney in Albany, New York. She provides counsel to clients regarding the nuances of New York State government, including lobbying and liaising with the Governor's office for clarification on legislation, regulatory actions, and executive orders.

She develops short-term and long-term legislative plans, drafts and arranges for the introduction of bills, advocates to secure or modify legislation and administrative action on behalf of clients and represents clients through dealings with state agencies—from negotiating regulations to defending clients in administrative hearings.

Throughout the COVID-19 pandemic, Caitlin closely monitored rapidly changing executive orders and guidance, advocated to state officials to allow clients to remain open or reopen, and

presented at numerous trade and association webinars on the topic.



**Jason Abel**

Jason Abel leads Steptoe's Campaign Finance and Political Law practice and advises clients on a range of government affairs issues, including legislative strategy and process. Jason served as chief counsel for US Senate Committee on Rules and Administration Chairman Charles Schumer and prior to that, as counsel for Senator Schumer in his personal office.

Jason is a lecturer in law at the University of Pennsylvania Carey Law School, where he teaches election law, and a professorial lecturer in law at George Washington University Law School, where he teaches campaign finance law and Congressional procedure.



**Charles F. Bass**

Charles F. Bass is a member of the firm's Government Law & Policy group, focusing his practice on government policy and legislative matters throughout the federal government. Bass served as a member of the United States House of Representatives for New Hampshire's 2nd Congressional district from 1995 to 2007 and from 2011 to 2013. Working with members of the firm's Government Law & Policy Practice, Bass's practice focuses on strategic advice and legislative advocacy. His expertise enables him to provide assistance with matters before the House of Representatives, and the U.S. Senate and Executive Branch agencies. During his 14-year tenure in Congress, Bass served on the Budget, Government Reform and Oversight, Transportation and Infrastructure, Intelligence, and Energy and Commerce Committees. He enjoys a reputation as a substantive and pragmatic legislator who has worked well with both Democrats and Republicans.



**Ryan Guthrie**

A native Hoosier and current Washington D.C. resident, Ryan Guthrie is a former Capitol Hill staffer and current head of government affairs at Chipotle Mexican Grill. He joined Chipotle in June of 2021 to build the first ever government affairs function at the company. In his work he is responsible for identifying trends that will shape public policy discourse and create and execute a strategy to promote Chipotle's interests in response to those trends as well as translate policy implications.