



## Ep. 5: Mid-Term Elections Preview

October 23, 2018

### Jose Garriga:

Hello, and welcome to *OnAir with Akin Gump*. I'm your host, Jose Garriga.

Tuesday, November 6, is Election Day in the United States, and rarely have midterm elections been more closely watched, or anticipated. The first 21 months of the Trump presidency have not seen the President—or his critics—turn the heat down, as investigations, resignations, accusations and counter-accusations have brought partisanship, scandal and controversy to the fore. As a result, the races for the 35 Senate seats, and 435 House seats in the U.S. Congress, along with those for 36 governorships and a host of seats in state legislative chambers, are imbued with remarkable urgency and passion.

In this episode, we'll be speaking with Akin Gump public law and policy partner Arshi Siddiqui and senior advisor Geoff Verhoff. Arshi Siddiqui came to Akin Gump from Capitol Hill, where she served as senior policy advisor and counsel to former House Speaker Nancy Pelosi. Geoff Verhoff, similarly, is a Hill veteran, having worked for then-Chairman of the Senate Finance Committee William Roth and subsequently as a member of the Republican National Committee's finance team. We'll be looking at these elections, and the potential impact of the Democrats retaking the House, or the GOP retaining it, along with what the business community is seeing, and perhaps hoping for.

Welcome to the podcast.

Arshi, Geoff, thanks for appearing on the show today. As I mentioned, these are momentous, perhaps historic, elections in terms of their impact and meaning, both real and perceived. Let's just start talking about the elections in general. Midterm elections are often seen as a referendum on, or sometimes a corrective to, the preceding presidential election. So, let's start by discussing to what extent does the "blue wave" and "Trump train" rhetoric speak to what's really driving voter interest and engagement?

### Arshi Siddiqui:

This is Arshi Siddiqui. I would start by saying that there has been a lot of talk about what's going to happen in this election. And, first and foremost, there is a lot of passion out there, which is a good thing. But we also live in a very politically volatile time, so, I don't think that we can make any hard, strong, fast predictions until we see what happens on Election Day, and then, let me take a step back, and going into Election Day where things stand today. A month is, we're roughly a month out, and that's a lifetime in politics.

And we've seen that in recent weeks with the Kavanaugh nomination, where he was looking to be quickly confirmed for Supreme Court, and we had another very intense chapter as we run into this next election cycle. So, the landscape that we go into the

November elections is this: It still is very heavily tilted to the Republicans. And I say that because the way the districts are drawn every year under the census, and because Republicans controlled a number of governorships, they were able to draw districts that are very heavily favored towards the Republican side.

So, that said, at the same time on the Democratic side, what we see today is that there is significant intensity. There were Democrats in the last election cycle, when you were talking to them about Trump and Hillary Clinton, there was actually a school of thought in the Democratic Party that there was actually no difference between the two candidates. And I think since we have seen the Trump administration, I think there are a number of Democrats who believe that now they truly understand that elections have consequences and want to get out and do something about it.

So, the passion and the volatility—the passion will help, the voter intensity will help Democrats; the volatility is something that, until we get to Election Day and see who shows up, we'll have to be in a wait-and-see. And then going to your point on President Trump, he does incite quite a bit of emotion on both sides, and he has a very strong core following. So, the question is: Are those core Trump voters going to get out to the polls? There is some recent polling that shows that the Kavanaugh nomination has really engaged Republican voters, and that they are going to come out in stronger numbers. The Democrats, I think, also see some uptick in some of their women voters.

At the end of the day, elections are about who shows up. So, I don't know that “blue wave” or kind of a Trump election necessarily—as the President likes to call it, a “red wave”—necessarily hits the nail on the head more. It would be more on the regard of potentially, I think, a series of storms regionally, and we'll see what kind of numbers that leads to.

And the last point I will say is that there is a huge distinction between the House races and the Senate races. The House is generally more susceptible to larger trend lines because of the number of seats. And the Senate, what we find is that every race in the Senate on the Democratic side is being fought state by state and candidate by candidate. And a lot of the Democratic candidates actually do have very strong brands in the sense that the state voters are familiar that, let's say a Heidi Heitkamp, she is very much all things about representing her constituents. Similarly, you see this with Joe Manchin. So, across the board, we have members in the Senate really fighting localized election battles.

**Geoff Verhoff:**

I agree with most of what Arshi said. I mean, one of the things you have to take into consideration when you're talking about politics is there's conventional wisdom, which we always like to put political debates and snapshots into to judge what's going to happen in the future. But all too frequently, at least in recent memory, politics is more about making new rules rather than following past trends. And, so, typically, you have an economy that's doing well, and the old conventional wisdom was: it's the economy, stupid.

If the economy's well, the President gets credit for that, and those benefits trickle down to his political coalition, therefore helping in the next election. I don't think that's going to hold true this time. There's nothing between now and November that I think is going to fundamentally change the economy in a negative way, and the President is struggling with very troubling poll numbers and has throughout his term. And, obviously, that's because he's a very controversial figure. He's not going to change; he is who he is.

To Arshi's point, the most important thing he can deliver at this point to the Republican Party is energy and getting people out. Because at this stage, it's all about turnout. Most of the money's been raised, most of the ads have been cut, the primaries are over. It's

about whose base is going to turn out. And a week ago, 10 days ago, even a month ago, I think the Republican base was demoralized. And I think, as Arshi pointed out and I agree with, the Kavanaugh nomination increased the passion on all sides, but, more importantly, looking at the Republican side of the aisle, really did energize the Republican base that may well have been content to stay home. Historically, midterms are a lot better for Republicans; our voters tend to come out. Democrats historically, or conventional wisdom says, really come out in the general and not the midterms. I don't think that's going to happen. You look at what happened to Ed Gillespie in Virginia just a year ago, massive turnout. Ed didn't do poorly; it's just that Democrats came out in droves. So, there's nothing to suggest the energy on the other side isn't at a full tilt.

The only other thing is candidates matter. In 2012, we had a very similar, if not an identical, Senate map. It looked very good for the Republicans—we lost every contested race. That's because we had subpar candidates. And, so, in the Senate races, I think we've done a better job at recruiting. And, so, the Senate map looks a little different because we've got better candidates in those races, even though it's our territory. But in 2016, it wasn't going to be our territory, and we overperformed. So, the map is just one piece of the puzzle.

The only other thing I'll say, an interesting thing to look at is governor's races. Rarely, if ever, does the governor of a party win and that Senate candidate lose. So, the governor's races could be an indication—and I think Democrats are doing fairly well in the polling—but governor's races could be an indication of how the Senate might look at the end of the night. There's not a lot of split ticket. In a national level, you vote one way for President, and then you vote a different way for your member, or your Senator as a check. That really doesn't happen in the state, if ever, from a gubernatorial to a Senate perspective. That's one thing to watch.

And then one of the big hurdles in the House for us, quite frankly, is retirement. Candidates matter, and, so, folks who have been through election, after election, after election and you think of retirement, people who have been there for a long time, that's typically true. These are people voters know, voters are comfortable with, even if they don't like the President, they know that their member cuts a different way. A brand new election with two unknowns, a lot of energy and a national environment like we have absolutely favors the Democrats and is one of the big reasons why I think the 23 seats that separates Republicans and Democrats in the House could be, Republicans could lose just because of retirements.

**Jose Garriga:**

One of the things that's been a constant throughout these first 21 months is investigations. And there's already talk about investigations that would stop, or perhaps start, were the House to be flipped. What other practical impacts do you see from a change in control of either chamber? And Geoff, I'll pitch this one to you first: What would the impact be of the GOP retaining control of both chambers?

**Geoff Verhoff:**

I think the most dramatic difference would be that we most likely will have a tax bill. History tells us if you look at Bush, if you look at Reagan, those are the most recent examples of Republicans running for reelection, assuming Trump runs for reelection; there's been a tax bill in the third year of their first term. So, we only do tax bills under reconciliation, which, of course, are special budget rules that require budgetary items that can be protected from the filibuster.

But you don't need the other party's help, but you do need both chambers. So, if Republicans retain control of the House, I think there's another tax bill next year that either makes permanent, or extends, some of the tax cuts that they did in 2017 and could potentially get into some health care, some "repeal and replace," some other issues that were left on the table over the course of the last two years.

**Jose Garriga:** Arshi, what do you think would happen were that to be the case, of the GOP retaining control of the Senate and the House?

**Arshi Siddiqui:** Geoff's comments were very telling in the sense that if the Republicans retain control, the tax bill is a great example. Democrats really actually had hoped for a bipartisan process, and tax reform generally has been bipartisan in terms of past years. So, I think that if the Republicans retain control, I think Democrats have continued to say, "Listen, if we are going to move forward, we should move forward together." The strongest legislation is always bipartisan.

But we do live in, again, a very politically volatile time. And I think there was a political call made by the Republicans that they had unified control. They controlled the White House, the House and Senate, and they wanted to leverage that to the full extent possible. So, the best way to do that was to pursue a Republican-only agenda. It was also, you started off the question talking about investigations, it's interesting because, on the Democratic side, I think that is the overarching concern about this past Congress as it relates to the administration: that there has not been a true check and balance between the coequal branches of government.

And, so, the oversight has been wholly lacking. I think the Democrats in the House and Senate have been increasingly concerned that there is no check and balance on the administration and that Congress is really not upholding its duty to hold the administration accountable for the way it conducts itself and the way it makes decisions and the way it runs agencies. So, I think that from a Republican-only perspective, the Democrats would continue to call for a bipartisan approach.

If Democrats take control, I think there will be a focus, it will be a balance. It's very much about a positive agenda: forward movement on jobs, health care, expanding opportunity. Geoff mentioned the tax bill. There would also be talk about various pieces where the last tax bill, there are a number of loose ends that the Democrats would like to revisit, but in a constructive way. And I think you will see a call for bipartisanship where bipartisanship is a possibility. And then there will also be a focus on oversight and accountability. So, I think under both scenarios, the Democrats, I think, will try to highlight this notion of bipartisanship and moving forward together.

**Jose Garriga:** That's interesting. I think that, in terms at least of the public perception of the rhetoric coming from the two parties, there seems to be a sense that the GOP believes compromise is weakness. And that the Democrats tend to speak more about bipartisanship, at least when they're out of power. It will be interesting to see how that plays out should they be able to flip the House.

A reminder, listeners, that we're here today with Akin Gump public law and policy partner Arshi Siddiqui and senior advisor Geoff Verhoff, discussing the potential impact and outcomes of the midterm elections next month.

You've touched on this a bit, Arshi, and I just wanted to circle back and discuss. Let's say the Democrats were to take the House, you spoke of bipartisanship, you spoke of some of the things that would be on a legislative docket. Do you think, realistically speaking, that these legislative initiatives would go through, or would we see gridlock? And what might we expect to see during this lame-duck session?

**Arshi Siddiqui:** I think you made a good point about the whole idea of not everything can be necessarily bipartisan. So, I would view the most value in terms of a House majority specifically is that, in those first months, they will set the agenda. They will have an opportunity to put their best foot forward in terms of their vision for America, and being reactive to the results of the elections. So, I would put those into kind of three buckets. There will be a

focus on core Democratic values, and those are issues where Democrats believe that there has been a stalemate, and there has not been the proper focus.

So, I'm talking about immigration in terms of certainty for the Dreamers. As Democrats look at this, they have really focused on the fact that that situation and the uncertainty that Dreamers are facing is totally unacceptable. So, we can absolutely envision that the year will start where Democrats will look at some of these issues, or whether it's health care, the Affordable Care Act, in terms of really, rather than the singular focus on repealing the ACA, how do you make the ACA better? So, there will be a whole host of issues, core Democratic issues.

Similarly, on education, across the board, safety in schools and communities, given the issue of the background checks still are not the law of the land. So, that would be the first kind of tranche of the legislative agenda under a Democratic majority is those core issues. But then there would also be a focus on where our bipartisan bills, legislation that's been introduced. And that would be a focus on the art of the possible.

And then lastly, which, I think, which will surprise many, but I think we have seen this. The tax bill, in many regards, was actually an aberration. If you look at what's passed in recent years, the bills that passed are must-pass bills—there is some sort of urgency, deadline that Congress must back, or the consequences are dire, whether that's a government shutdown, whether that's an expiration of benefits.

And when you look at those pieces of legislation, they actually have all been bipartisan negotiations. Not to say that the process isn't messy, not to say that the Republicans haven't tried to pass them themselves first. But when they have failed, they have come to Democrats to find the art of the possible. So, I think you will see Democrats looking to see what that piece looks like. You will also see the Democrats looking to see if President Trump is willing to work together.

And one notable kind of example that you can potentially very likely see is infrastructure. The President has expressed an interest there, and Democrats have a longstanding interest in infrastructure. Now, obviously, the details will matter; obviously the scope and the funding sources will matter. But there will be that conversation. In the lame duck, I would say that there are two factors that would be in play in how Democrats view the calculus in the lame-duck session post-election.

One would be the margin of their victory—they will look to see how they fared in the election. Two will be the willingness of Republicans to come to the table in a true negotiation. If there is some give and take, we can fully expect the Democrats to be open to some sort of robust legislative package at the end of the year. But I think that would really depend on a true give and take, because I think the sense will be, on the Democratic side, that if the Republicans aren't willing to pursue a true negotiation, then they can wait until they hold the majority in January.

And then the last caveat I would say to a lame-duck piece is, you often see in transitions of power, if there are issues that both sides want to get off the table prior to a new legislative session, then that's another area where you can see movement. But as we go into next year, there will be a window. I think it's difficult yet to say whether there will be gridlock or real progress, but I will say this: that window will be at the beginning of the year probably until July, August, where there will be an opportunity for forward movement. And then we'll likely see a very robust presidential campaign, on both sides, as both sides try to navigate their way forward. So, that window will be the key moment where we'll see whether progress has been made.

**Jose Garriga:**

Geoff, what do you think? Do you think the GOP will be willing to come to the table and talk turkey should the Democrats flip the House, or do you think that they would take another path?

**Geoff Verhoff:**

You know, I'm not sure that it matters. What I think is that the Democrats should hire me to tell them what not to do. *[laughter]* Now whether they'll listen .... Because we have, Republicans have some experience with this going back to 2010. And that our House majority was delivered to us largely through energy and enthusiasm around frustration with the Obama administration. I think it's arguable, or I would argue that the energy on the Democratic side, by and large, I have not picked up or detected some positive agenda that they're going to enact in the first 100 days or the first six months. They've had their priorities, which they've always campaigned on, but, by and large, from my perspective, this is driven by a hatred, or a deep dislike, of this President.

So, on some level, it doesn't really matter. Republicans, at this stage, I think, especially into next year from the legislative perspective, are going to be led by the White House. And, so, Paul Ryan will not be the Speaker, or the Majority Leader, right? or Minority Leader. We'll have new House leadership, Conventional wisdom, remember what I said about that?, but conventional wisdom says Kevin McCarthy will be the new Republican leader, who's very close to the White House.

And if Kevin isn't the leader, I think whoever gets that role is going to be tied very closely to the White House. So, I think one of the things I would caution Democrats—and I've been through this, too, working on the Marco Rubio campaign for President, who everyone thought was young and new and had a different message and could really take the Republican Party in a different direction, and he was just the third Republican that Trump mowed through being rewarded for all the wrong reasons in the national campaign—is it's going to be very hard to resist putting points on the board if you're a Democrat for not attacking, or trying to bring down, this administration.

And while people don't like the tweeting, and people think he can be immature and boorish, and don't necessarily like the rallies, and are worried about some of the things that are part and parcel of what this administration is about because it's so largely predicated on his personality, I don't think people are unhappy with the direction of the country. And I don't think people are electing a Democrat majority, even if out of frustration, because they want another two years of this.

And, so, I say that because November 6 is Election Day; November 7th the primary for 2020 begins. And the activists who are going to support the Kamala Harris, the Cory Bookers, the Elizabeth Warrens, the Bernie Sanders, these aren't the people, from my experience or perspective, that Arshi talks about that are ready to roll up their sleeves and get to work. And I think the negative voices and the partisan voices are the most energized at times. And if you look back at the Tea Party, they put my party's leadership in terrible positions throughout Boehner's reign as Speaker and even in the early days of the Trump campaign.

Look, time will tell, I'm not quite sure it matters if Republicans are willing or not. Because I think we got to see can Democrats tame that energy in a way that is productive rather than all about bringing down Trump, which I think, ultimately, may well help to reelect him if it's all consuming.

The only other thing I'll say, which is interesting that Paul Ryan came out yesterday about the lame duck. Paul Ryan came out and said, the lame duck, "We will fund the wall."

That was the first time I can remember a Republican leader basically parroting and putting the marker down that some legislative window is going to be about wall funding.

We've always tried to kick that can down, our leaders have always tried to kick that can down the road, let's have that fight another day, let's not shut the government down. Now, of course, Paul Ryan is retiring, but, more importantly, this is a Trump priority. It's been a Trump priority since day one. He didn't have the fight on September 30th, and if he loses the House, he's not going to get it done in the next Congress.

So, while I think there's great hope for a lame duck that could be full of interesting things and must-pass stuff, as Arshi indicated, immigration's coming back. It's a very divisive issue. And if Donald Trump has the Republican leadership in line to say exponential funding is going to be devoted to his wall, and that's the way to get out of the year legislatively, you need 60 votes in the Senate for that—I think the lame-duck could be consumed by an immigration fight.

**Jose Garriga:**

Going back just to follow up quickly on something that Arshi had noted, to what extent do you think the House, in this case, and more generally the Hill on the Republican side, is meeting its obligations by hewing so closely to what the executive wants to do and not providing the sort of check and balance that one might expect from congressional leadership?

**Geoff Verhoff:**

Yeah, I mean and I think that's fair. I think there's a fine line between oversight and being consumed by a desire to see this President be brought down. So, the Republicans have spent ... And the other thing is, and this doesn't absolve anybody: It's very easy to say, "This is our agenda, this is what we're going to do, this is how we're going to do it," and then trying to do more than one thing at a time in a legislative body. You saw the tax cut—the tax cut consumed the last quarter of 2017. The Kavanaugh fight really had to do for most of the year with the Senate Judiciary Committee. For the last six weeks, it's consumed the Senate. Events have a way of taking over what is actually possible, and I think Republican priorities have clearly not been, let's conduct robust oversight of this administration. They've been trying to repeal and replace health care, enact tax cuts, confirm two Supreme Court judges. These things have taken priority.

**Jose Garriga:**

To wrap up, both of you have discussed constituencies, and I think one of the constituencies that's most important, particularly in a Republican administration, is the business community. What are those in the business community looking at in these races? What might change for them in 2019, assuming we see a Republican-controlled Senate and a Democratic-controlled House? I know you've spoken to a tax bill, which would be very high on that agenda. But what else would we be looking at that you think the business community would think of being top of the list in terms of priority and significance?

**Geoff Verhoff:**

Well, the first thing favors Akin Gump among our peers, is that most people in town are questioning and making sure that they're prepared for a change in power. We've had Republican Congresses now for four years; a Republican President for the last...unified government for the last two years. And, so, in town, it's great to have people like Arshi and Vic [*Fazio*] and others. And similarly when Trump won, and nobody thought he would, to have the Republicans that we have is that Akin Gump is well positioned to be able to deal with whatever Election Day brings, and that's always been a goal of ours.

From a more substantive perspective, if the House flips, I think legislation becomes much more difficult. So, one of the things the business community will be doing, playing defense, yes, because Congress can always, even without legislation, do things that hurt you. But I think this administration has shown itself to be one that is willing to work with people, work with business, whether that's reducing the regulatory burden, rulemaking, guidance, implementation of the Tax Cuts and Jobs Act. So, I think engagement from the business community with the administration and the agencies is going to be much more, far more robust even than it's been, and it's been pretty active.

**Jose Garriga:** Arshi, what have you been hearing from those in the business community as they look at the elections next month?

**Arshi Siddiqui:** So, I think Geoff hit on a really important point in terms of being prepared. And although I hate to tell Geoff that I don't think he has any real prospects on the Democratic side in terms of a job [*laughter*], just because I think his view of our party usually characterizes our most liberal members, rather than recognizing that the party has always been a party where discussion and debate is celebrated.

**Geoff Verhoff:** I'm just always trying to sell, Arshi. [*laughter*]

**Arshi Siddiqui:** And I think that kind of goes to the piece on the national agenda as well. The Democrats have core principles, core kind of priorities. But at the same time, when you look at a lot of these races, we have some great candidates, a lot of good energy and members of Congress that are going to come to Washington who will really want to see some forward movement. So, I think the business, from a business community perspective, it is very much about being prepared. And, as Geoff said, I think we really pride ourselves at Akin Gump as being prepared for those shifts and thinking four to five steps ahead.

So, we have spent a lot of time with many of these individuals who are running for office; they are, I think, unique. I think, on the Democratic side, certainly are seeing a generational shift. There's a lot of energy with these candidates; what's also interesting is they don't have a lot of necessarily quote-unquote political experience. So, they'll come to Washington with a very open mind and with very, very big ambitions on what they can get done. So, I think that to say that we know what January, February, March are going to look like, I think there's going to be a real effort for forward movement.

Now, whether that flails, and whether the national trend line and what we've seen in recent years in terms of the level of discourse in Washington, whether that drowns them out, absolutely possible. But I do think that, for the business community, there will be two, three actually, priorities. One is, as Geoff mentioned, certainly playing defense to make sure that what happens with a potential Democratic majority, that they are at the table and their interests are being represented in terms of the approach.

Two, we will see these new members really trying to put their mark on Washington. And then, three, I think the biggest X factor will be, how does President Trump deal with a potential new Democratic majority? And what is his approach in terms of, does he prioritize teeing up his presidential campaign based on a lot of friction, or does he want to get a couple of wins on the board?

**Jose Garriga:** Thank you, Arshi. Listeners, you've been listening to Akin Gump public law and policy partner Arshi Siddiqui and senior advisor Geoff Verhoff. Thank you both for joining us today, and for sharing your thoughts on these vital upcoming elections.

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