

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2003 APR 17 A 11: 33



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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2002 DEC 26 A 11: 21

December 17, 2002

Office of General Counsel
Federal Elections Commission
999 E. St., NW
Washington, DC 20004

MUR # 5342

SENSITIVE

Re: Revised Complaint – Notary Affidavit

I am writing on behalf of the Foundation for Taxpayer and Consumer Rights -- a non-profit, non-partisan public interest organization -- to request that you launch an investigation into corporate interference in the 2002 election cycle.

A November 6th election analysis developed by the corporate law firm Piper Rudnick outlines corporate political activism in the last election which appears to be illegal electoral activity. Federal law prohibits partisan communications by employers to rank and file workers about voting. Nonetheless Piper Rudnick's presentation, attached, describes corporate "Get Out The Vote" (GOTV) efforts targeted at employees as partisan, part of a "ground war," and as comparable to GOTV efforts by labor unions, which are permitted to be partisan.

Sec. 441b of the Federal Election Campaign Act states that it is unlawful for any corporation to make a contribution or expenditure in connection with a national election, for Senator or Representative in Congress, that is directed at rank and file workers, unless that expenditure is nonpartisan in nature, or is intended solely to get out the vote, and does not express a preference for any candidate.

The business communications to employees outlined in the Piper Rudnick analysis appear to cross this line because the analysis emphasizes business involvement as "pivotal in close Republican victories."

Among the specific activities and business organizations referenced in Piper Rudnick's presentation which should be examined for violation of federal law:

- "U.S. Chamber of Commerce: Print tens of thousands of 'Vote! It's Your Business' inserts for employees' paycheck envelopes in states with key Senate and House races;"
- "National Beer Wholesalers Association (NBWA): Insert voting information fliers into employees' paycheck envelopes;"
- "Business and Industry Political Action Committee (BIPAC): Develop voter guide for 5,000 companies/20 million employees."

- "Household International: Internal voter registration drive, e-mail to workers, distribute candidate position charts."

The Federal Election Commission should immediately request copies of each of these employee communications, as well as any other contact between corporations and their employees this election cycle. Piper Rudnick was privy to the actions of only a portion of the business community and compliance with federal elections law must be ensured across the corporate spectrum.

The Federal Election Commission was created specifically to administer and enforce the provisions of the Federal Elections Campaign Act. It is the responsibility of your office to ensure compliance with the laws that safeguard the public against such unlawful corporate intrusion into the electoral process.

Thank you for your prompt attention to this request. I would appreciate a written response to this inquiry.

Sincerely,

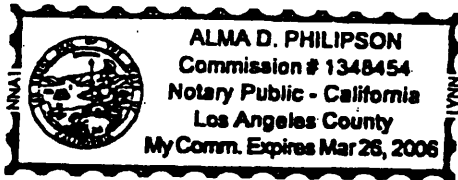
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Carmen Balber

~~enclosure~~

JURAT

State of California }
County of Los Angeles } ss.



Subscribed and sworn to (or affirmed) before me

this 18 day of December, 2002 by
Date Month Year

(1) Carmen Barber
Name of Signer(s)

(2) _____
Name of Signer(s)

Alma D. Philipson
Signature of Notary Public

OPTIONAL

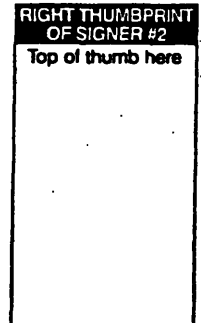
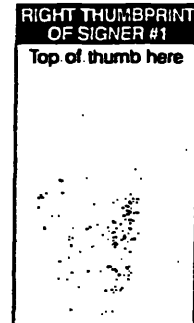
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Signer(s) Other Than Named Above: _____

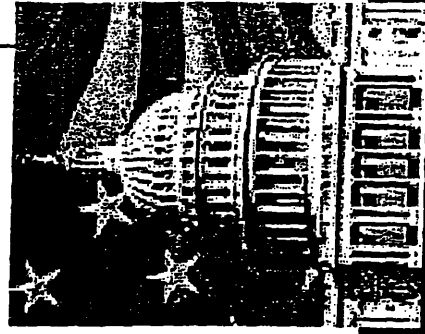


Piper Rudnick

2002 FEDERAL ELECTIONS ANALYSIS:

**Approaches To Governance
Within The
Permanent Campaign**

**Wednesday
November 6, 2002
2:00 p.m.**



ELECTION OVERVIEW

- American electorate remains closely divided
- Until election day, two distinct congressional elections appeared likely:
 - (1) Relatively few competitive House elections where Republicans would consolidate House control
 - (2) Senate elections, hotly contested in 10 states, likely to result in narrow Democratic control
 - Expected result: Split Congress → prescription for gridlock
- Republican Senate sweep of contested races not predicted even 48 hours out
- Reasons for Republican success
 - Superior ground operations result in crucial midterm turnout (reverse of 1998)
 - President's year-long and late-election campaigning rallied Republican base
 - Crucial support by pro-Republican interest groups, including businesses (TV ads, GOTV)
 - Result: Republicans defy history and win seats in both House and Senate midterms
- President has earned "window of opportunity" to advance agenda
 - Republicans controlling Congress will press agenda
 - Republicans will support war efforts
 - President can build on early first-term legislative achievements
 - Then run in 2004 on legislative record
 - Timing Important: Approach of 2004 elections will impose time constraints

ELECTION OVERVIEW

- President is both activist and disciplined
 - Will define priorities carefully
 - Will press for early successes
 - Likely priorities: homeland security, economic stimulus/tax relief, legal reforms
- To enact legislation, President needs support from moderate Democrats
 - Most Senate legislation requires 60 votes
 - Moderate Democrats inclined toward legislating
 - Senate rules may allow for stimulus victory without filibuster
- Congressional polarization factor
 - Willingness of Republican base to move pragmatic agenda uncertain
 - Strong opposition from Democratic base certain
- Legislative success preferable to stalemate
 - Bush historically wins by promoting positive agenda
 - Penalty for failure: Re-ignite congressional gridlock
- Bipartisanship difficult in Permanent Campaign

APPROACHES TO GOVERNANCE WITHIN THE PERMANENT CAMPAIGN

"The Permanent Campaign" - The Merger of Politics and Governance

Permanent Campaign has existed since 1982

- Clinton Administration lived by Permanent Campaign
- 2002 election cycle raised Permanent Campaign to new intensity
- 2004 Permanent Campaign is well underway

Business participates vigorously in Permanent Campaign

- Such participation enhances ability to affect governance
- Campaign Finance Reform creates incentives to participate

Impact of Political Equilibrium on Governance

- Congressional gridlock
- Recourse to regulatory process
- Intervention by courts
- Intervention by state regulators, legislatures, and attorneys general
- Supreme Court emphasis on "New Federalism"
- Co-regulation by international authorities

Businesses need mobility to protect interests in multiple venues

Piper Rudnick

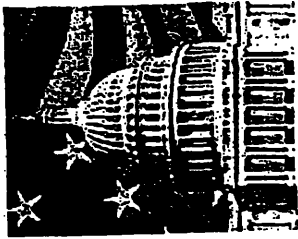


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- I. Political Equilibrium
- II. 2002 Federal Elections Analysis
 - Senate Elections Analysis
 - House Elections Analysis
- III. Permanent Campaign: Tactics and Strategies
- IV. Impact of Political Equilibrium on Governance
 - Case Studies

Section I. Political Equilibrium

NEAR TOTAL POLITICAL EQUILIBRIUM: 2000-2002 ELECTIONS

2000 Presidential Election

- Plurality Presidents: Clinton: 1992 – 43%; Clinton: 1996 – 49%; Bush: 2000 – 48%
- Bush Wins Electoral Vote 271 to 267 - Smallest Margin Since 1876
- Gore Wins Popular Vote 49% to 48%
- Continuing impact of third-party candidates
- Even Smallest States Pivotal (e.g., New Hampshire)
- In Some States, Every Vote Counts (Florida, Iowa, Wisconsin, New Mexico)
- Most Expensive Election in History
- Hallmark of Election - Battle for Turnout

Senate Elections

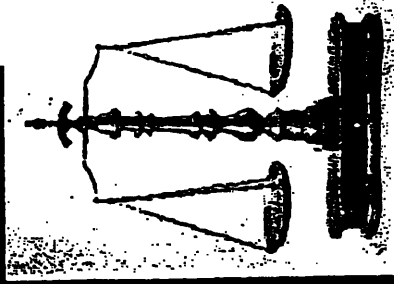
- 2000: Margin of Control Closest Since 1955
- 2002: Republicans resume Senate control
 - Margin of control remains slim

House Elections

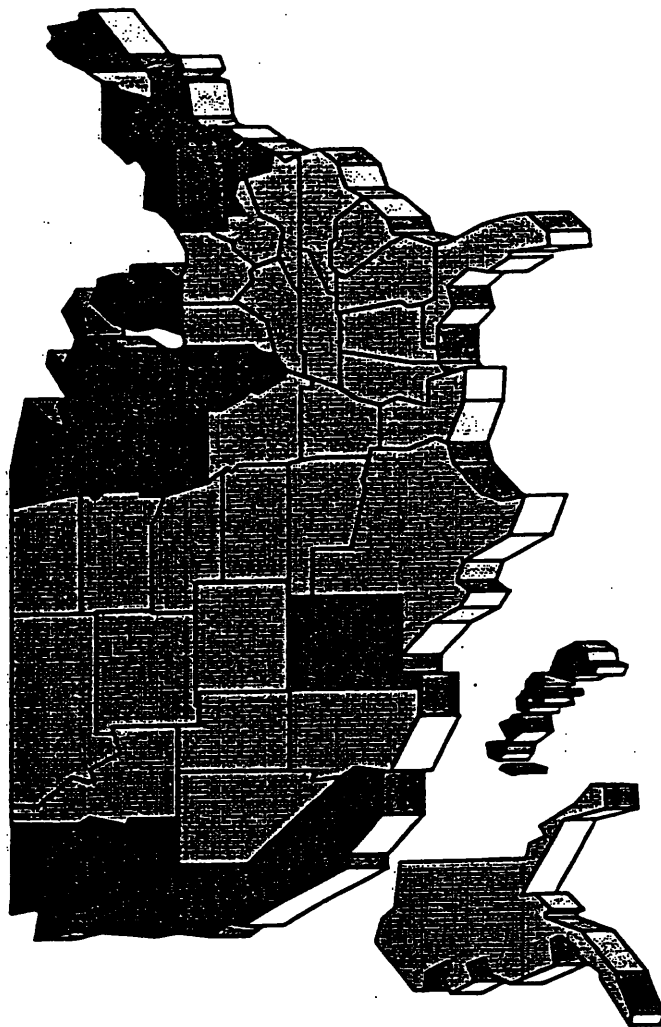
- 2000: Margin of Control Closest Since 1953
- 2002: Republicans consolidate control
 - Margins remain close, but incumbents more secure

Future Elections

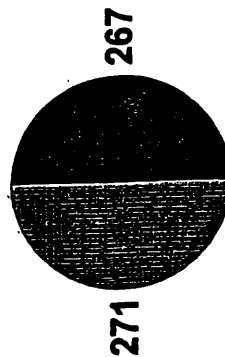
- Senate: Remains competitive in 2004
- House: Even fewer competitive races likely in 2004



2000 PRESIDENTIAL ELECTION EQUILIBRIUM



ELECTORAL
VOTE

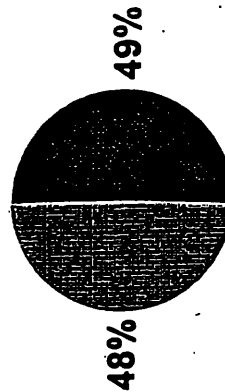


BUSH
GORE

267

271

POPULAR
VOTE



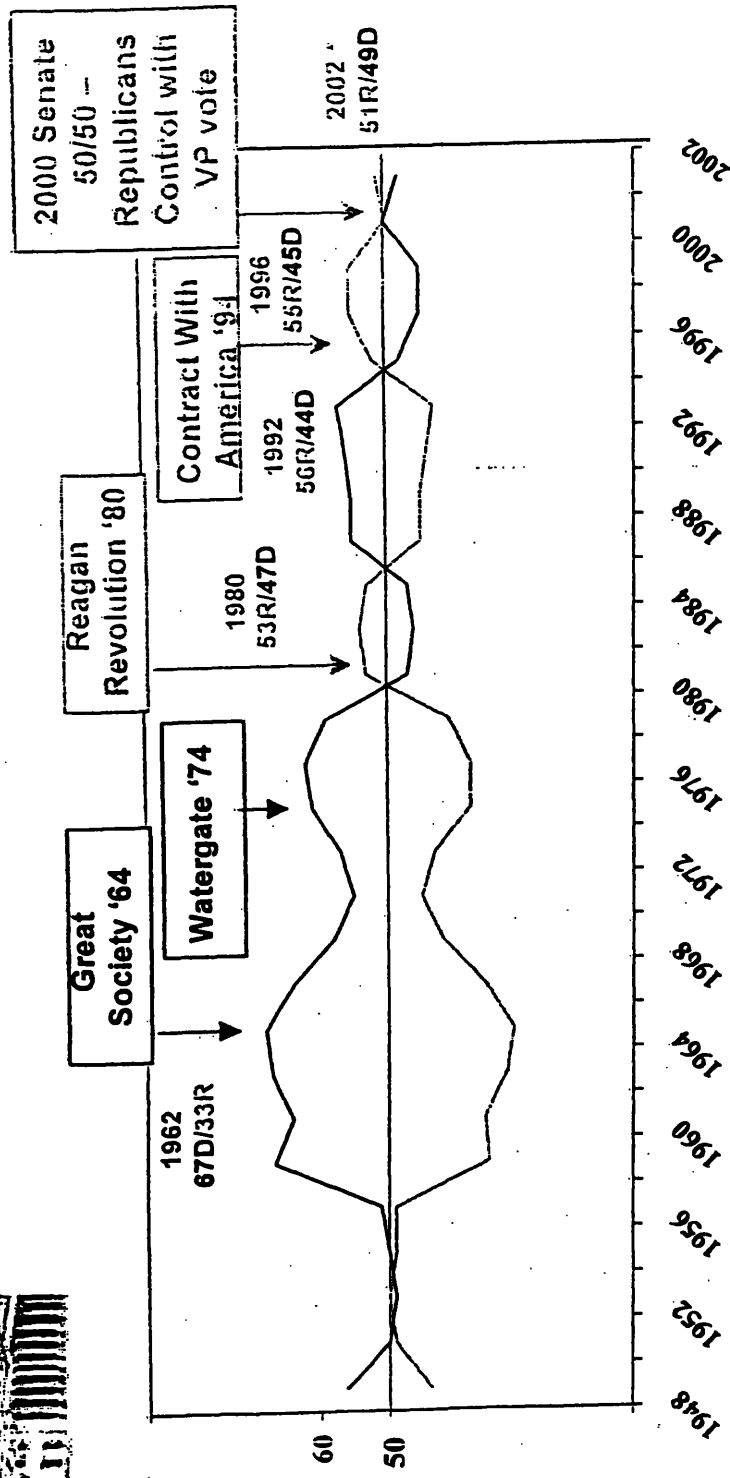
48%

49%

24 "04" 403 "1574



U.S. SENATE EQUILIBRIUM

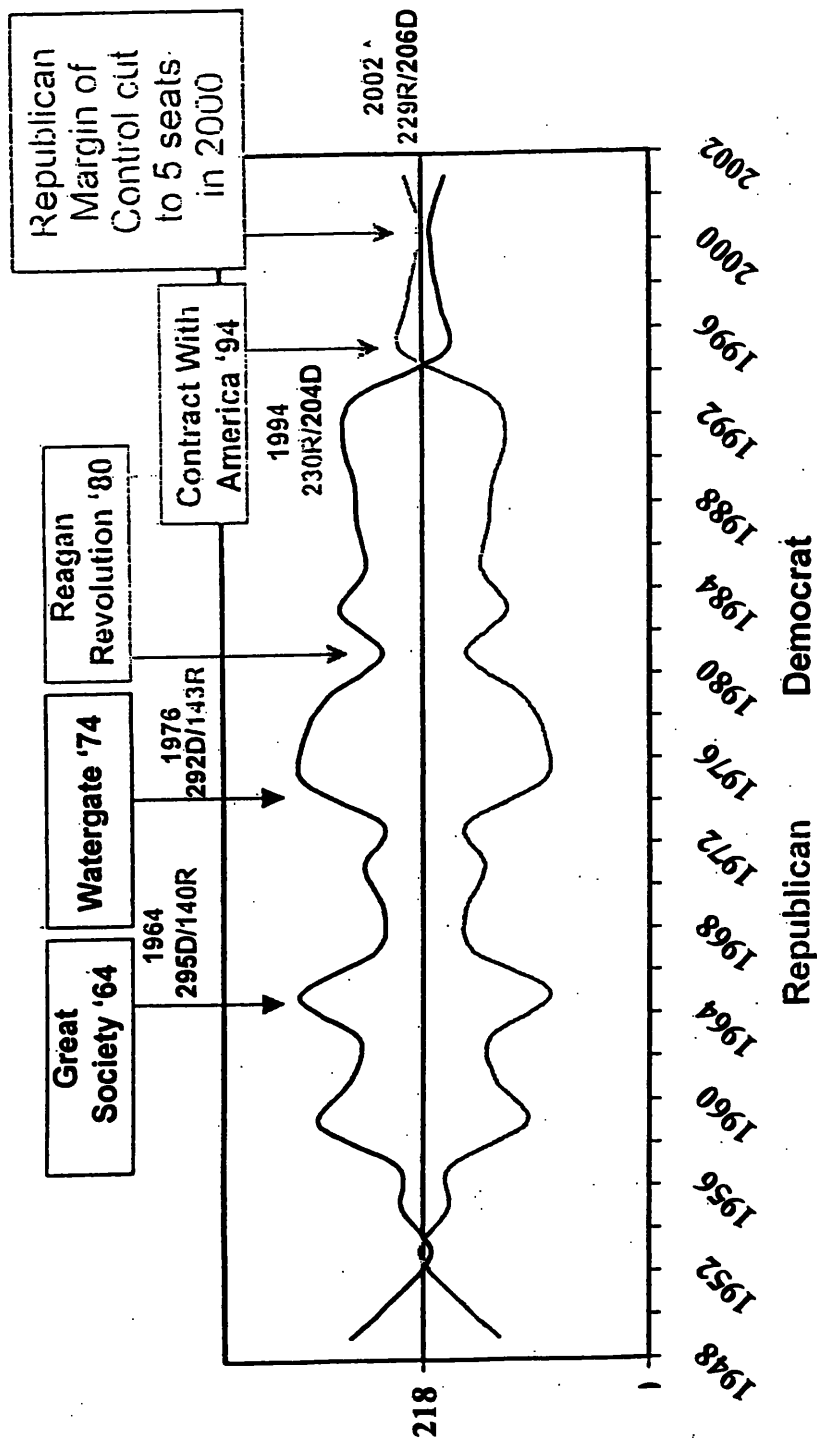


Trends/Current Margin of Control Approximates 1955 Levels

* LA Landrieu-D undecided; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

Piper Rudnick

U.S. HOUSE OF REPRESENTATIVES EQUILIBRIUM



Trends/Current Margin of Control Closest Since 1953

* Includes Independents; One Undecided/One Run-off

Section II.

2002 Federal Elections

Analysis

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Senate Elections Analysis

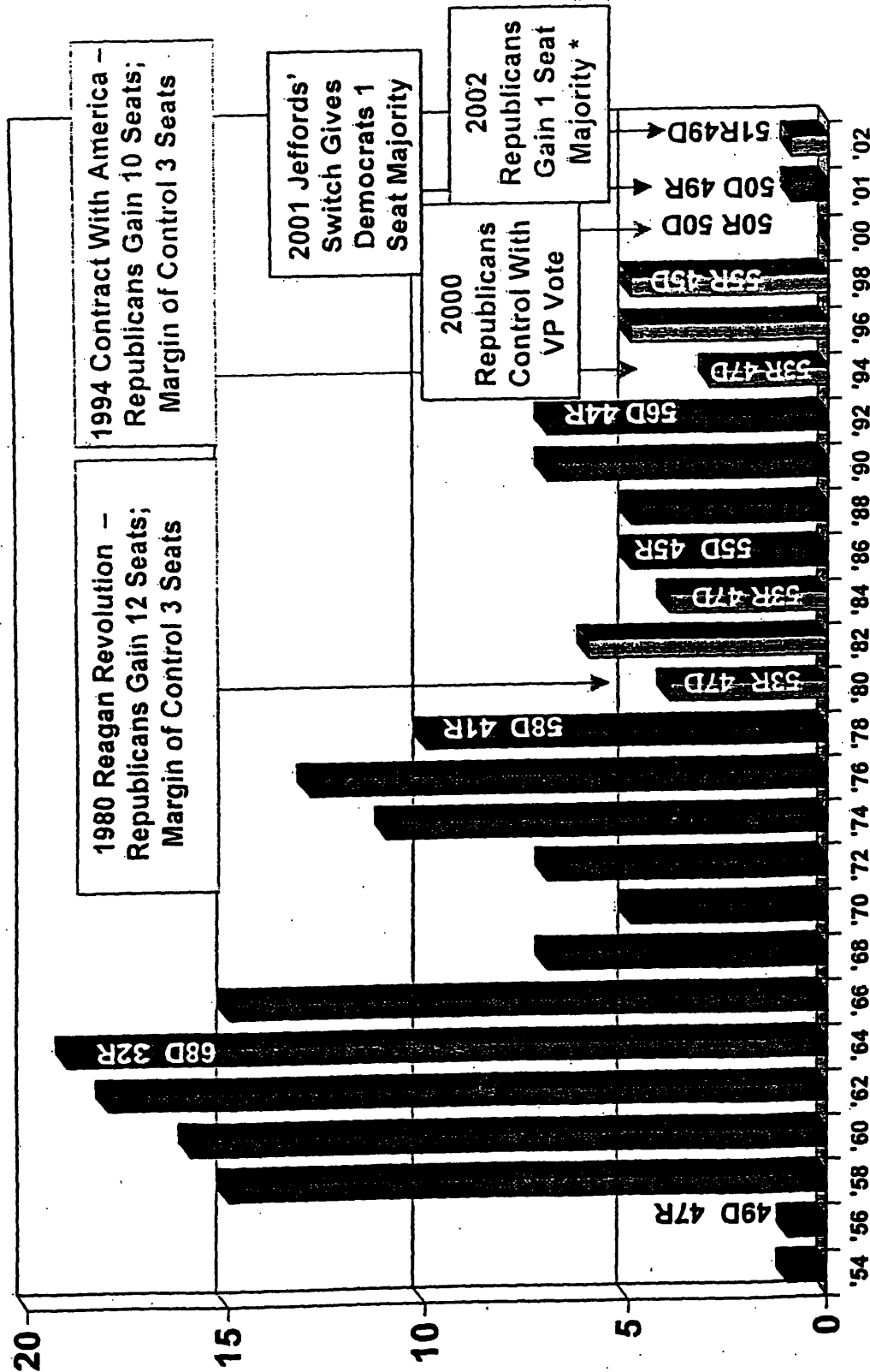
TRENDS LEADING UP TO 2002 SENATE ELECTIONS

- 1992** Democrats control the Senate (56/44)
- 1994** Contract with America; Republicans seize control of Senate (53/47)
- 1996** Republicans increase margin of control (55/45)
- 1998** Republicans maintain margin of control (55/45)
- 2000** Republicans lose 5 seats but maintain control of the Senate with Vice President Cheney's vote (50/50)
- 6/5/2001** Senator Jeffords' switch gives Democrats 1-seat margin of control (50/49/1)
- 2002** As of Nov. 6, Republicans regain control (51/49)*

* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

SENATE MARGIN OF CONTROL 1954-2004

■ Democratic Control ■ Republican Control



* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organizes with Democrats

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2002 SENATE ELECTIONS: REPUBLICANS APPEARED MORE VULNERABLE

In 2000, Republicans lost a net of 5 seats (50/50 Senate)

In 2002:

- More Seats To Defend:
20 Republicans v. 14 Democrats
- More Freshmen:
8 Republicans v. 7 Democrats
- Under 55% Vote In Previous Election:
11 Republicans v. 9 Democrats
- More Open Seats To Defend:
5 Republicans v. 2 Democrats
(Gramm, Helms, R. Smith, Thompson, Thurmond, Torricelli, Wellstone)
- All 5 Republican Seats Successfully Defended
- Incumbent Losses:
1 Republicans/ 3 Democrats
(Hutchinson-AR, Carnahan-MO, Cleland-GA, Mondale-MN)
- Senate Control:
51/49*

* LA Landrieu-D runoff 12/7/02; SD Johnson-D recount likely; Jeffords-I organized with Democrats

OUTCOME: Republicans Regain Control



2002 SENATE CLASS

DEMOCRATS (14)

Max Baucus, MT
 Joe Biden, DE
 Jean Carnahan, MO- Freshman
(special election)
 Max Cleland, GA- Freshman
 Richard Durbin, IL- Freshman
 Tom Harkin, IA
 Tim Johnson, SD - Freshman
 John Kerry, MA
 Mary Landrieu, LA - Freshman
 Robert Torricelli, NJ - Freshman (1)
 Carl Levin, MI
 Paul Wellstone, MN (2)
 Jack Reed, RI - Freshman
 John Rockefeller, WV

REPUBLICANS (20)

Wayne Allard, CO- Freshman
 Thad Cochran, MS
 Susan Collins, ME- Freshman
 Larry Craig, ID
 Pete Domenici, NM
 Michael Enzi, WY- Freshman
Phil Gramm, TX
 Chuck Hagel, NE- Freshman
Jesse Helms, NC
 Tim Hutchinson, AR- Freshman
 James Inhofe, OK
 Mitch McConnell, KY
 Pat Roberts, KS- Freshman
 Jeff Sessions, AL- Freshman
 Gordon Smith, OR- Freshman
 Robert Smith, NH (3)
 Ted Stevens, AK
Fred Thompson, TN
Strom Thurmond, SC
 John Warner, VA

Italics: Retiring

BOLD: Received Under 55% Vote in 1996

(1) Resigned, replaced by Frank Lautenberg

(2) Deceased, replaced by Walter Mondale

(3) Defeated in primary by John Sununu



2002 SENATE ELECTION OUTCOMES

STATE	REPUBLICAN	DEMOCRAT	STATE	REPUBLICAN	DEMOCRAT
Alabama	Sessions	Parker	Missouri	Talent	Carnahan
Alaska	Stevens	Vondersaar	Montana	Taylor	Baucus
Arkansas	Hutchinson	Pryor	Nebraska	Hagel	Matulka
Colorado	Allard	Strickland	New Hampshire	Sununu	Shaheen
Delaware	Ciaworthly	Biden	New Jersey	Forrester	Lautenberg
Georgia	Chambliss	Cleland	New Mexico	Pomenici	Tristani
Idaho	Craig	Blinken	North Carolina	Rohle	Bowles
Illinois	Durkin	Durbin	Oklahoma	Inhofe	Walters
Iowa	Ganske	Harkin	Oregon	Smith	Bradbury
Kansas	Robert	NONE	Rhode Island	Tingle	Reed
Kentucky	McConnell	Weinberg	South Carolina	Graham	Sanders
Louisiana	Terrell	Landrieu *	South Dakota	Thune	Johnson
Maine	Collins	Pingrey	Tennessee	Alexander	Clement
Massachusetts	NONE	Kerry	Texas	Cornyn	Kirk
Michigan	Raczkowski	Levin	Virginia	Wagner	NONE
Minnesota	Coleman	Mondale	West Virginia	Wolfe	Rockefeller
Mississippi	Cochran	O'Hara	Wyoming	Enzi	Corcoran

Democratic Winner

Republican winner

* Dec. 7 runoff

Piper Rudnick



2004 SENATE ELECTIONS: THE BATTLE FOR CONTROL CONTINUES

2000 Elections: Republicans more vulnerable – net loss 5 seats

2002 Elections: Republicans more vulnerable – net gain at least 2 seats
(1 race still undecided LA runoff)

2004 Elections: Democrats appear more vulnerable

SEATS TO DEFEND:

15 Republicans v. 19 Democrats

10 of 19 Democratic seats in states Bush carried in 2000

FRESHMEN:

2 Republicans v. 5 Democrats

UNDER 55% VOTE IN PREVIOUS ELECTION:

3 Republicans v. 7 Democrats

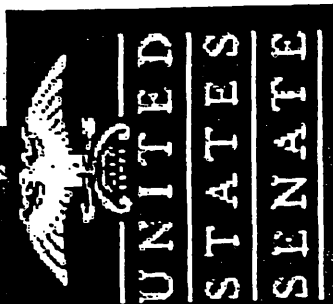
POSSIBLE RETIREMENTS:

1 Republican v. 3 Democrats

POSSIBLE PRESIDENTIAL CANDIDATES:

3 Democrats

SENATORS UP FOR RE-ELECTION IN 2004



DEMOCRATS (19)

Evan Bayh, IN - Freshman
 Barbara Boxer, CA
 John Breaux, LA
 Tom Daschle, SD
 Christopher Dodd, CT
 Byron Dorgan, ND
 John Edwards, NC - Freshman
 Russ Feingold, WI
 Bob Graham, FL
 Ernest Hollings, SC
 Daniel Inouye, HI
 Patrick Leahy, VT
 Blanche Lincoln, AR - Freshman
 Barbara Mikulski, MD
 Zell Miller, GA - Freshman
 Patty Murray, WA
 Harry Reid, NV
 Chuck Schumer, NY - Freshman
 Ron Wyden, OR

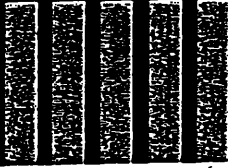
REPUBLICANS (15)

Bob Bennett, UT
 Christopher Bond, MO
 Sam Brownback, KS
 Jim Bunning, KY
 Ben Nighthorse Campbell, CO
 Michael Crapo, ID
 Peter Fitzgerald, IL - Freshman
 Charles Grassley, IA
 Judd Gregg, NH
 John McCain, AZ
 *Frank Murkowski, AK
 Don Nickles, OK
 Richard Shelby, AL
 Arlen Specter, PA
 George Voinovich, OH - Freshman

BOLD: Received Under 55% Vote in 1998
 * Elected Governor in 2002; Will appoint replacement by Dec. 5

04 04 07 1565

House Elections Analysis



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TRENDS LEADING UP TO 2002 HOUSE ELECTIONS

- Pre-1994: Democrats controlled House 40 years
- 1990: Democratic margin of control 267-167: (50 seats)
- 1992: 110 new House members - largest turnover since 1948
 - Democratic margin of control reduced 258-176 (41 seats)
- 1994: Republicans gain House control - "Republican Revolution," "Contract with America"
 - Margin: 13-seats 230-204 (predictions of Republican House realignment by 2000)
 - After 2000 election, 13-seat margin of control reduced to 5-seat margin 222-212

Incumbent Losses

1992	(43)
1994	(38)
1996	(21)
1998	(7)
2000	(9)
2002	(9)
TOTAL	127

13 Republicans	30 Democrats
1 Republican	37 Democrats
18 Republicans	3 Democrats
6 Republicans	1 Democrat
5 Republicans	4 Democrats
4 Republicans	5 Democrats
35 Republicans	80 Democrats

Retirements

1992	(65)	24 Republicans	41 Democrats
1994	(48)	20 Republicans	28 Democrats
1996	(49)	21 Republicans	28 Democrats
1998	(33)	16 Republicans	17 Democrats
2000	(30)	23 Republicans	7 Democrats
2002	(18)	12 Republicans	6 Democrats
TOTAL	(243)	116 Republicans	127 Democrats



Margin of Control

Source: Vital Statistics on Congress 2001-2002

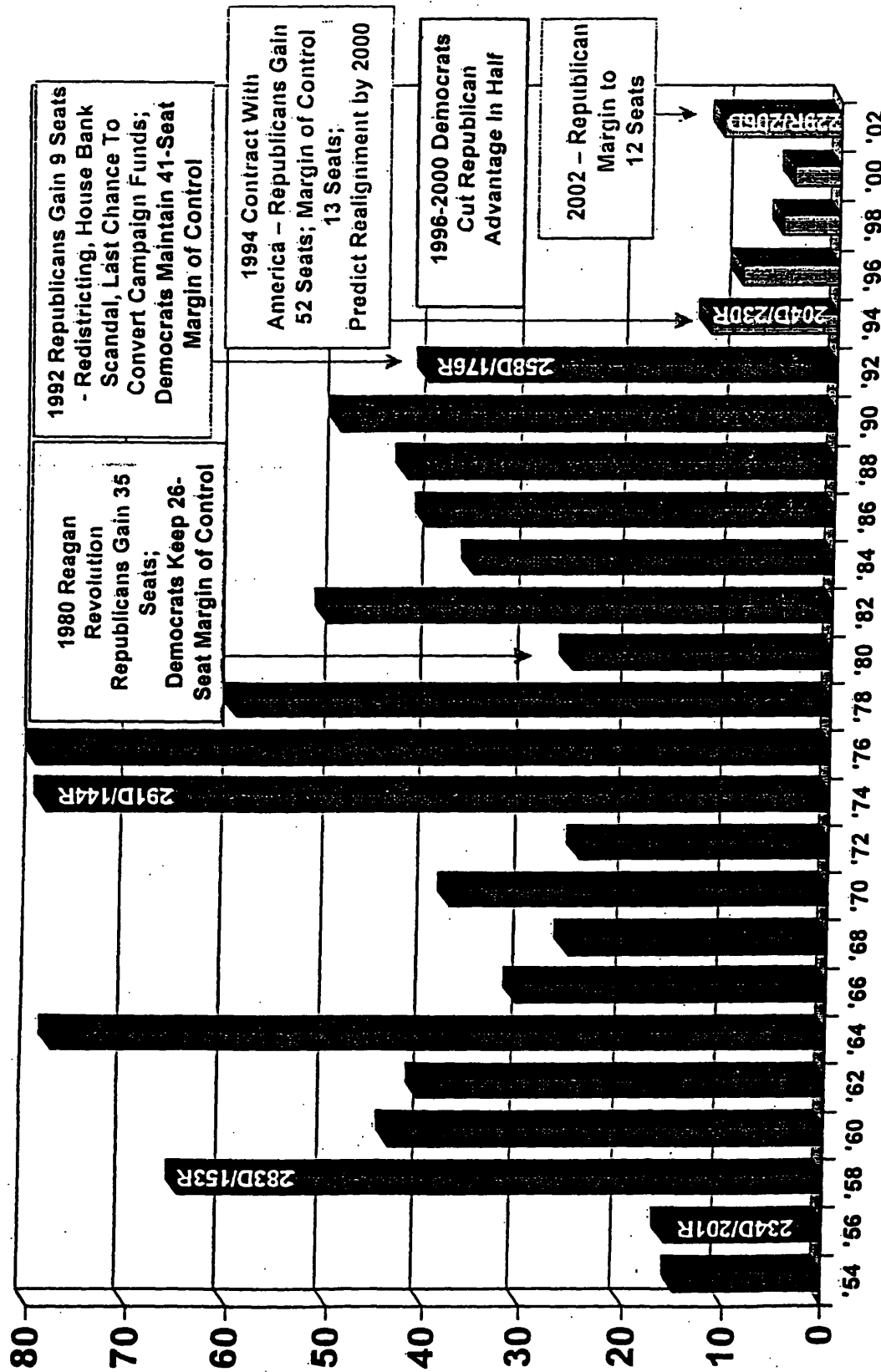
1994	13 Seats
1996	10 Seats
1998	6 Seats
2000	5 Seats
2002	12 Seats*

* Includes 2 undecided races (likely Republican 11/6/02)

Result: Past 4 elections = margin of Republican control less than 1994

HOUSE MARGIN OF CONTROL 1955-2004

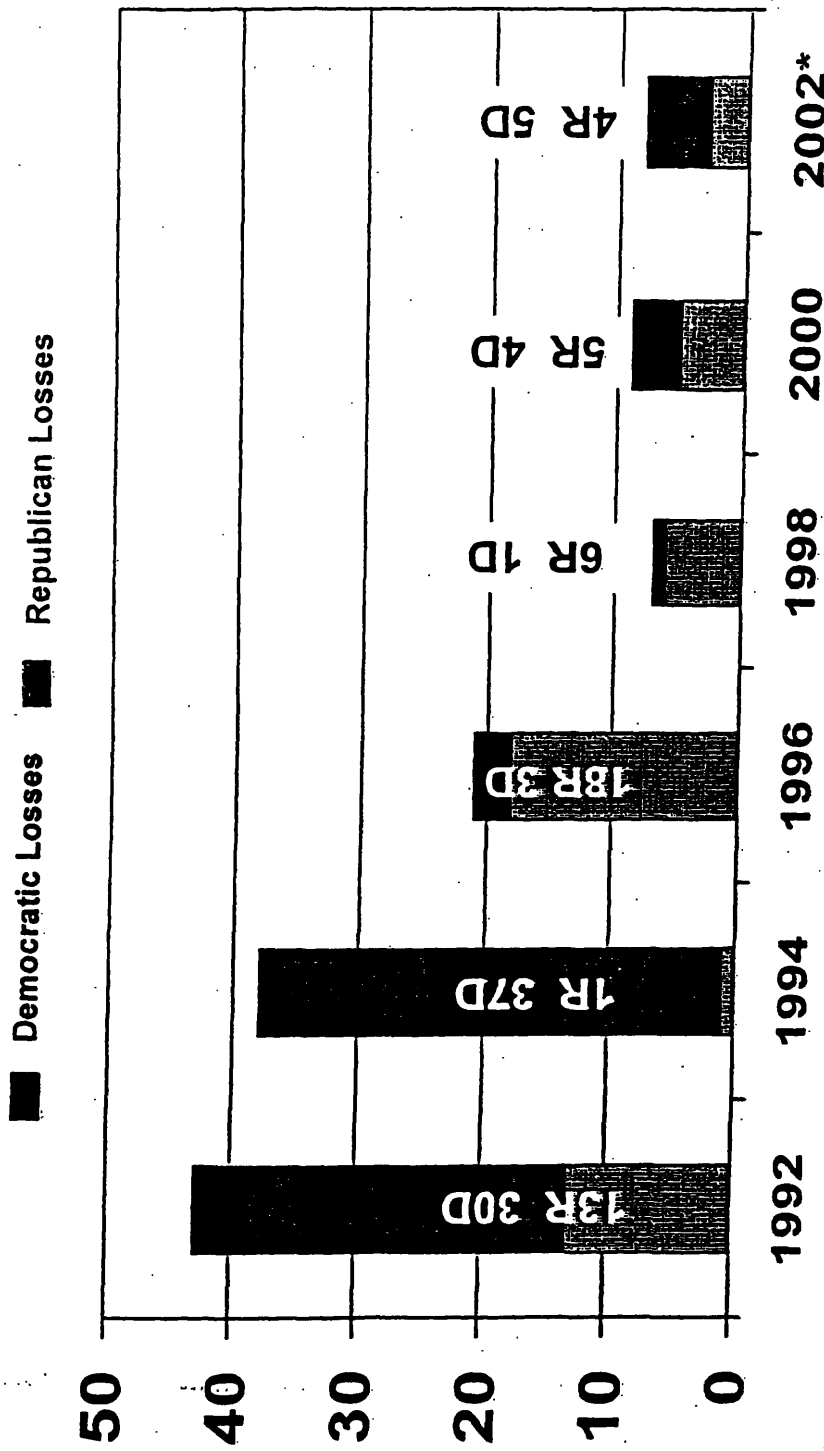
■ Democratic Control ■ Republican Control



* Includes 2 undecided races (likely Republican 11/6/02)

Operative Margins During Enactment of Great Society Programs

TREND: FEW HOUSE INCUMBENTS LOSE REELECTION



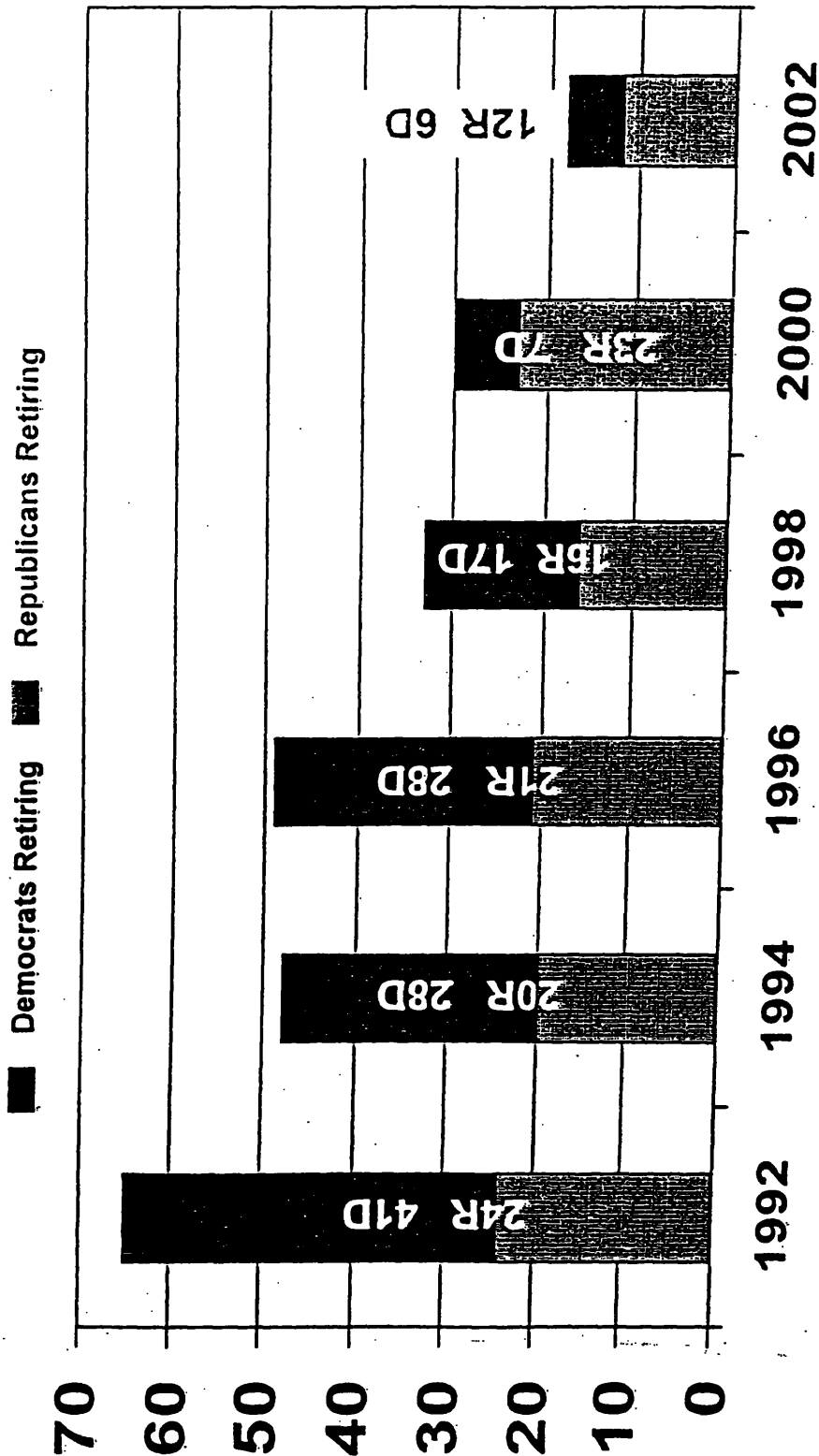
1992/1994: Weak Democrats lost

1996/1998/2000: Weak Republicans lost

2002: Even post-redistricting, only 9 incumbents lost (vs 1992 = 43 losses)

* 2 races remain undecided (likely Republican 11/6/02)

TREND: DECLINING HOUSE RETIREMENTS



1992: Record number of retirements (65) due to redistricting, House bank scandal and deadline for converting campaign funds to personal use

2004: Possible significant Democratic retirements

THE 2002 HOUSE ELECTIONS



REPUBLICANS APPEARED MORE VULNERABLE

- Historical mid-term trends favored Democrats
- President's party loses average 26 seats in mid-term elections
- Presidents with 60%-plus approval ratings lose average 5 seats
- Only twice since 1934 has president's party gained seats in midterms (1934, 1998)
- Past 3 elections: Republican margin of control cut in half
- After 2000: 5-seat margin of control

EVIDENCE OF REPUBLICAN VULNERABILITY MISLEADING

- **Flawed logic:** "There are still equal possibilities that Republicans or Democrats could seize (the House majority)..." (Pollster re: WSJ/NBC poll, WSJ, 10/24/02)
- **Better math:** (Source: *The Cook Political Report*)
 - Seats solidly, likely or leaning Democratic: 202
 - Seats solidly, likely or leaning Republican: 217
 - Remaining 16 races = toss-ups
 - If Democrats held all 202 seats, still had to win all 16 of closest races

FURTHER MISLEADING ASSUMPTIONS GAVE DEMOCRATS FALSE HOPE

- **Flawed logic:** "We believe that Bush's decision to embark on a 14-day, 17-state political tour (will have) the consequence of nationalizing midterms around the issue of the economy." (Former White House Chief of Staff, New York Times, 10/23/02)
- **Actual Result:** 1994 House elections turned on national issues; 2002 elections turned on local issues, tactics, and presidential campaign effort

HOW REPUBLICANS FARED IN COMPETITIVE RACES

Open Last Held By Republican (9)

Alabama 3
Indiana 2
New Hampshire 1
New Jersey 6
New Mexico 2
Oklahoma 4
South Dakota 1
Tennessee 4
Texas 5

RESULTS 8R 1D

Incumbent v. Incumbent (4)

Connecticut 5 - Johnson (R) v. Maloney (D)
Illinois 19 - Shimkus (R) v. Phelps (D)
Mississippi 3 - Pickering (R) v. Shows (D)
Pennsylvania 17 - Gekas (R) v. Holden (D)

RESULTS 3R 1D

Vulnerable Incumbents (10)

Connecticut 2 - Simmons (R) v. Courtney (D)
Iowa 1 - Nussle (R) v. Hutchinson (D)
Iowa 2 - Leach (R) v. Thomas (D)
Kentucky 3 - Northup (R) v. Conway (D)
Maryland 8 - Morrell (R) v. Van Hollen (D)
Minnesota 2 - Luhrer (D) v. Kline (R)
*New Mexico 1 - Wilson (R) v. Romero (D)
New York 1 - Grupp (R) v. Bishop (D)
North Carolina 8 - Hayes (R) v. Kauri (D)
West Virginia 2 - Capito (R) v. Humphreys (D)

RESULTS 8R 2D

New Districts (9)

Arizona 1
*Colorado 7
Florida 24
Georgia 3
Georgia 11
Georgia 12
Michigan 11
Nevada 3
Pennsylvania 6

RESULTS 8R 1D

Open Last Held by Democrat (2)

California 18
Maine 2

RESULTS 0R 2D

* = 11/6/02 likely Republican

CONCLUSIONS

- Charlie Cook's election math superior to other analyses: Democrats' challenge was greater than simply overcoming 5-seat Republican advantage
- With more incumbent seats at risk, Republicans may have appeared vulnerable; but Republicans defended successfully against most Democratic challenges
- Republicans reversed 1998 low mid-term voter turnout in key races
- Republican margin of control for 108th Congress: 12*

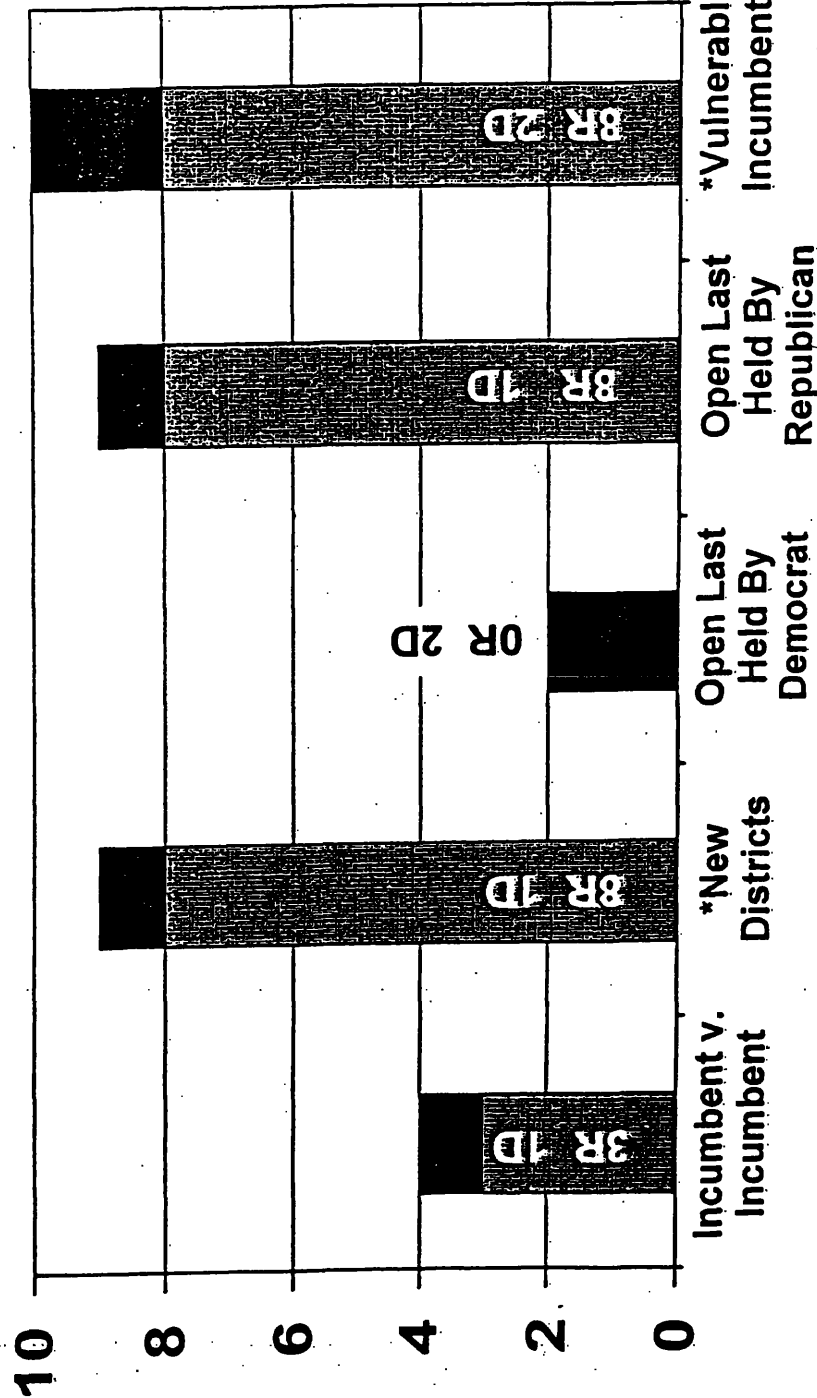
* Includes 2 undecided races (likely Republican 11/6/02)

Piper Rudnick

DEMOCRATS FAILED TO CAPITALIZE ON OPPORTUNITIES TO PICK UP SEATS

Republicans Won 80% of Competitive Races

■ Democratic Wins ■ Republican Wins

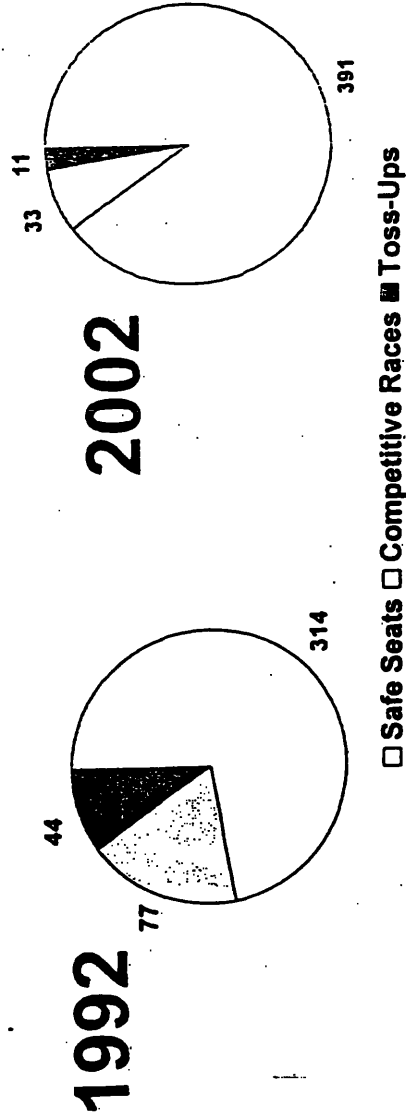


* Includes 2 undecided races (likely Republican 11/6/02)

Piper Rudnick

TRENDS LEADING INTO 2004 ELECTIONS

- 2002 Redistricting produced critical mass of safe seats in the House
- 2002 "Incumbent Protection" vs. 1992 partisan redistricting
 - Compare 3 competitive races in IA to few in FL, IL, MI, NY, TX



Source: Cook Political Report

- Consolidation of strength among incumbents within both parties
- 2002 winning incumbents even stronger
- Fewer, not more, competitive races in 2004 cycle (barring uptick in Democrat retirement)
- With fewer inter-party competitive races and increased polarization, more intra-party primary challenges possible

SECTION III.

**Permanent Campaign:
Tactics and Strategies**

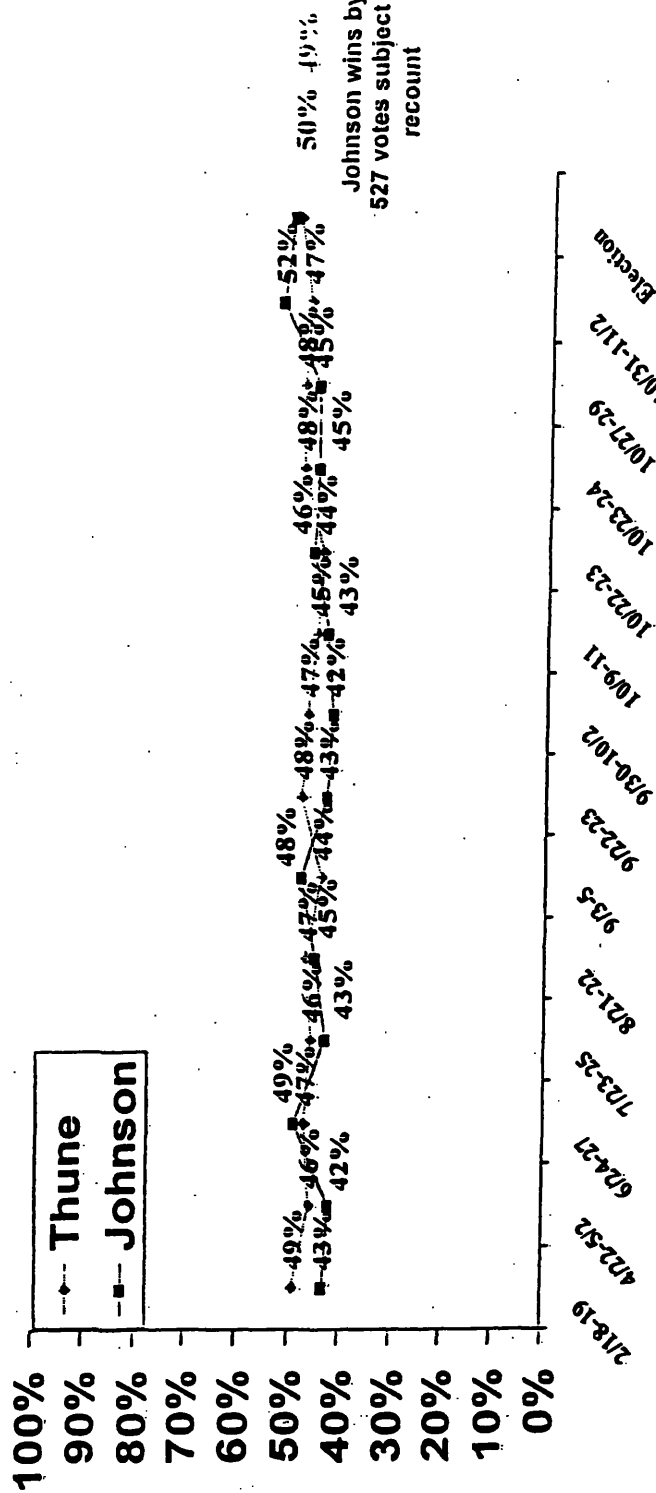
VOTE

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES

2004 ELECTIONS—EARLY START

- Campaign Finance Reform dictated start of 2004 campaign strategies before end of 2002 elections (e.g. rechanneling soft money)
- White House and Democrats jump-started 2004 election strategies in 2002 election activities (e.g. battle to win governors' seats in key states)

EXAMPLE OF A PERSISTENTLY TIGHT RACE: South Dakota



PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

"BUSHWHACKED!"

- Post- Sept. 11th performance/War-time president
- National Approval Rating – 63% (vs. Clinton 42% in 1992)
 - Approval rating higher in contested states
- President raises over \$145 million for Republicans in over 60 events
 - Vice President Cheney raises \$40 million
- Unprecedented use of White House political assets in midterm election
 - Air Force One Campaign
 - Repeated post-September visits to 23 states
 - 17 states in last 5 days
 - Enlarged White House Political Staff
- Bush co-opted Democrats on economy and war
 - Result: Democrats had no coherent theme
- Bush helped Republicans hold all 5 GOP seats and helped beat vulnerable Democrats in GA, MN, MO
 - Polling showed all 3 Democrats even or ahead 24 hours before election
- Bush lays foundation for congressional support in 108th Congress

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

DETERMINATIVE DEBATES

- Kennedy-Nixon (1960 - Presidential); Clinton - Lazio (2000 - NY Sen.); Coleman - Mondale (2002 - MN Sen.); Chambliss-Cleland (2002 - GA Sen.); Bush-McBride (FL-Gov.); O'Brien-Romney (MA-Gov.); Lautenberg 30-minute debate strategy (2002 - NJ Senate)
- The "Russert Curse"

SELF-FINANCING

- 2000: Democratic Senate nominees spent \$90 million vs. Republican nominees' \$2.6 million (e.g. Corzine: \$63 million; Cantwell: \$10 million; Dayton: \$11 million)
- 2002: Key Senate races. (NJ: Lautenberg vs. Forrester; NC: Bowles vs. Dole)
- Roster of unsuccessful self-financed candidacies grows: Huffington (CA-\$29 million), Checchi (CA-\$40 million), Sanchez (TX-\$60-to-\$70 million), Golisano (NY-\$70 million), Roger Kahn (GA, 11th District-\$3 million in 2000 & \$2.5 million in 2002); Bowles (NC Sen. - \$4-\$6 million)

LATE-ELECTION REPLACEMENTS

- New Jersey Senate: Lautenberg replaces Torricelli
- Montana Senate: Mike Taylor leaves, then returns
- Minnesota Senate: Walter Mondale replaces Wellstone

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

Get-Out-The-Vote (GOTV) Elections

- 1998, 2000: Democratic Base Voters Made the Difference
 - Disproportionate Impact: African-American/Union voting percentages exceeded population percentages
- In 2002, Republicans upended Democrats on turnout
 - Bush energized Republican base
 - Republicans outmaneuvered Democrats on the ground
 - Businesses and other independent groups added to the effort
 - Republican turnout in key states made the difference
- Bush stimulated Republican base without alienating Democrats and Independents

Early Voting

- More than 30 states now permit early (or permissive absentee) balloting
- Marriage of early balloting with high tech
- Forces reformulation of timing for TV ads, GOTV
- Calculated to enhance turn-out
 - (e.g. Washington in 2000 - 74.6% of registered voters turned out)

Voter Turnout: Midterm v. Presidential Elections



PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

EXPENSES SPIRAL UP

- 2002 television spending (candidates and independent groups) over \$900 million; double 1998 TV expenditures
- Most expensive election cycle in US history began November 6, 2002

TV OR NOT TV? THAT IS THE QUESTION

- TV pivotal in 1996 presidential election
- Unions shift to GOTV after 1996; successful in 1998
- "Ground war" in 2000 battleground states: "GOTV Election"
- In 2002, Republicans won with TV and GOTV
 - TV ad knock-outs: Davis-Riordan (CA-Gov); Davis-Simon (CA-Gov); Baucus-Taylor (MT-Sen.); Shimkus-Phelps (IL-17th); Renzi-Cordova (AZ-1st); Porter-Herrera (NV-3rd); Bush-Reno (FL-Gov.)
 - Momentum Changing Ads: Grucci-Bishop ("rape victims ad," NY-1st); Nussle-Hutchinson ("job performance ads," IA-1st);
- 2004 Republican Presidential Strategy: Reprise 1996 Pre-Convention TV Advantage

PERMANENT CAMPAIGN: TACTICS AND STRATEGIES (cont'd)

NEW WEAPON: POLL-WATCHERS, LAWSUITS

- Supreme Court demurs in NJ case
- Allegations of registration fraud (e.g., MO, SD)
- Allegations of voter intimidation (e.g., AR)
- Republican and Democratic poll watchers/lawyers deployed broadly (e.g., AR, FL, MO)
- Justice Dept. deploys 432 federal election observers to 13 states
- Independent watchdog (Center for Democracy) dispatched to FL polls
- Standby Minnesota lawsuit: absentee ballots
- **Not determinative in 2002 elections**

CONCLUSIONS:

- Permanent campaign = permanent fixture
- Close margins/war of attrition won by Republicans
- Entire arsenal deployed: GOTV and TV
- Escalation certain in 2004
- **Business fully engaged in pivotal races**



BUSINESS EMBRACES GOTV:

Perfects Successful Democratic Tactics

AFL-CIO: STRATEGY

- Buy television ads until 2 weeks before election then focus remaining efforts on GOTV
- Spend \$34 million - same as 2000
- Contact every union member at least four times before Election Day
- 750 full-time coordinators/4,000 local coordinators/10,000 volunteers unleashed in last week
- Hand out 15 million leaflets and reach union members through Internet, door-to-door, telephone, mail and workplace contacts

BUSINESS AND INDUSTRY POLITICAL ACTION COMMITTEE (BIPAC)

- Develop voter guide for 5,000 companies/20 million employees
- Trade associations using guide: American Petroleum Institute; National Association of Manufacturers; National Beer Wholesalers Association

HOUSEHOLD INTERNATIONAL

- Endorse sympathetic members
- Internal voter registration drive, e-mail to workers, distribute candidate position charts

NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)

- Spend about \$8 million
- Endorse federal and state candidates; publicize candidates' voting records; contact 500,000 small-business owners in about 19 Senate and 20 House races urging them to vote

U.S. CHAMBER OF COMMERCE

- Print tens of thousands of "Vote! It's Your Business" inserts for employees' paycheck envelopes in states with key Senate and House races
- Spend more than \$15 million

NATIONAL BEER WHOLESALERS ASSOCIATION (NBWA)

- Raise nearly \$2.2 million by the end of September
- Insert voting information fliers into employees' paycheck envelopes

CONCLUSION: Business Fully Engaged in Ground War in 2002 Elections

BUSINESS DOMINATES INDEPENDENT TELEVISION ADS IN KEY RACES

Business groups estimated to outspend traditional Democratic groups nearly 3 to 1 in 2002 House races

Business ads pivotal in close Republican victories: Promote critical turnout by seniors

Colorado Senate (Pro-Allard)

United Seniors Association (\$200,000)

Americans for Job Security (\$1 million in last 2 weeks)

American Medical Association (\$362,000)

New Hampshire Senate (Pro-Sununu)

Americans for Job Security/United Seniors Association
(\$1 million combined)

TV ADS SHOWCASE ISSUES

Market-based prescription drug coverage: United Seniors Association/Pfizer

Tax issues: NFIB, Americans for Job Security

Asbestos: Citizens for Asbestos Reform

Important Trends for Business: Campaign Finance Reform Law Prompts Growth of PACs & Proliferation of 501(c)(4) & 527 Organizations

Renewed Focus on Hard Money from PACs and Individuals

- Businesses with PACs will solicit more employees, urge greater participation
- Other businesses will create federal PACs for the first time

New Efforts to Rechannel Soft Money Outlets

- Federal soft money contributions to national parties and federal candidates prohibited
- 501(c)(4)s and 527s give businesses control over soft money spending
- Business contributions through such organizations has been pivotal in key races
- Soft money spending is likely to continue to increase
- For political and competitive reasons, businesses will use 501(c)(4)s and 527s increasingly

Importance of Legal Compliance and Political Strategies

- Scrutiny of campaign finance activity to continue and grow
- Businesses must ensure careful compliance with corporate, tax, and election laws for PACs, corporate political activities, and the creation of 501(c)(4) and 527 organizations
- Businesses must tailor their political strategies to maximize both impact and effectiveness for their legislative and business agendas

Section IV.
Impact of Political
Equilibrium on
Governance

POLITICAL EQUILIBRIUM → GRIDLOCK → COMPETITION AMONG GOVERNING ENTITIES

- Separation of Powers/Jurisdictional Disputes:

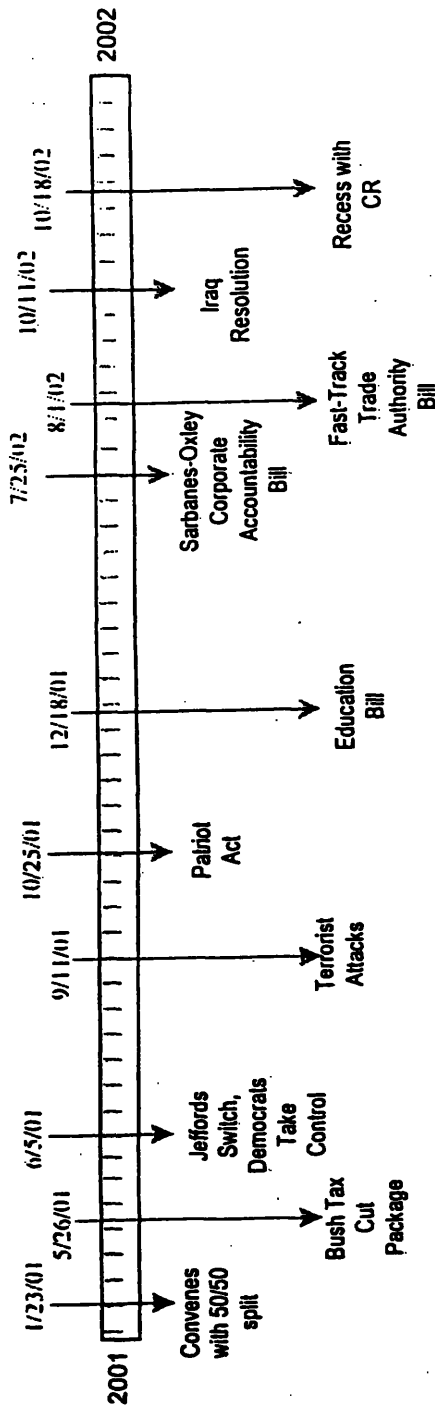
- When Presidents lack working majorities in Congress, they regulate more extensively
- When regulators overreach, the Courts or Congress can challenge their actions as "lawmaking"
- Increasingly, Supreme Court overturns congressional action to protect states' rights
- State attorneys general and legislators capitalize on federal gridlock by intervening with own regulations and legal actions
- Parallel intervention by international regulators

CONCLUSION:

Businesses must be prepared to protect their interests in multiple forums (federal/state/international) and multiple venues (legislative/regulatory/judicial/political)

CONGRESSIONAL GRIDLOCK:

107th Congress Stalled Agenda



LEGISLATION STALLED

- No Congressional budget
- Passed only 2 out of 13 Appropriations bills
- Homeland Security Department
- Terrorism insurance
- Prescription drug bill
- Patients' Bill of Rights
- Small business tax relief
- Pension reform
- Bankruptcy reform
- Energy bill

LAME DUCK SESSION

Objectives: Appropriations, Homeland Security, Terrorism Insurance, Bankruptcy

Outcome Uncertain: 107th may pass the buck to the 108th via continuing budget resolution

108th CONGRESS

- Bush opportunity: Respite from Gridlock
- Expect early statement of Bush priorities
- Expect early efforts to pass priority legislation

➤ Stimulus bill, using budget reconciliation, not subject to filibuster

➤ Other initiatives require 60 Senate votes

Bipartisanship indispensable

- Moderate Democrats inclined to legislate
- Polarization renders bipartisanship difficult

After a 4-year budget surplus, Congress faces long-term deficits

- In 2001, the Congressional Budget Office projected a surplus of \$5.6 trillion by 2011

- *Contrast:* In October 2002, OMB reported a \$159 billion deficit for FY2002, the largest one-year fiscal reversal in the nation's history

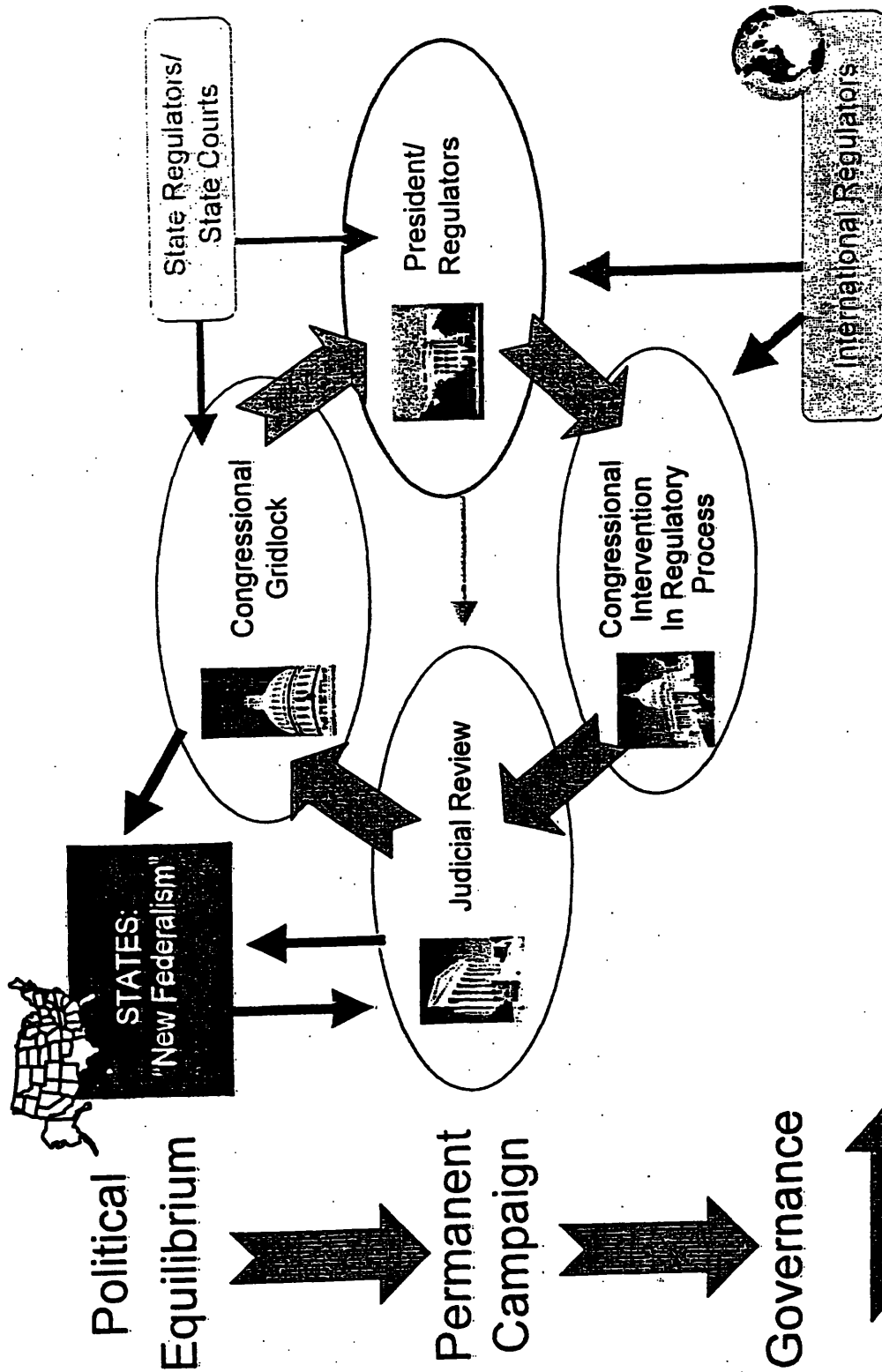
Narrow window of opportunity

➤ Impact of front-loaded presidential primaries on 2003 agenda

BUDGET HISTORY

1998: + \$69 billion
1999: + \$125 billion
2000: + \$237 billion
2001: + \$127 billion
2002: - \$159 billion

CONGRESSIONAL GRIDLOCK BREEDS GOVERNMENTAL COMPETITION



Piper Rudnick

Case Studies

CASE STUDY # 1:

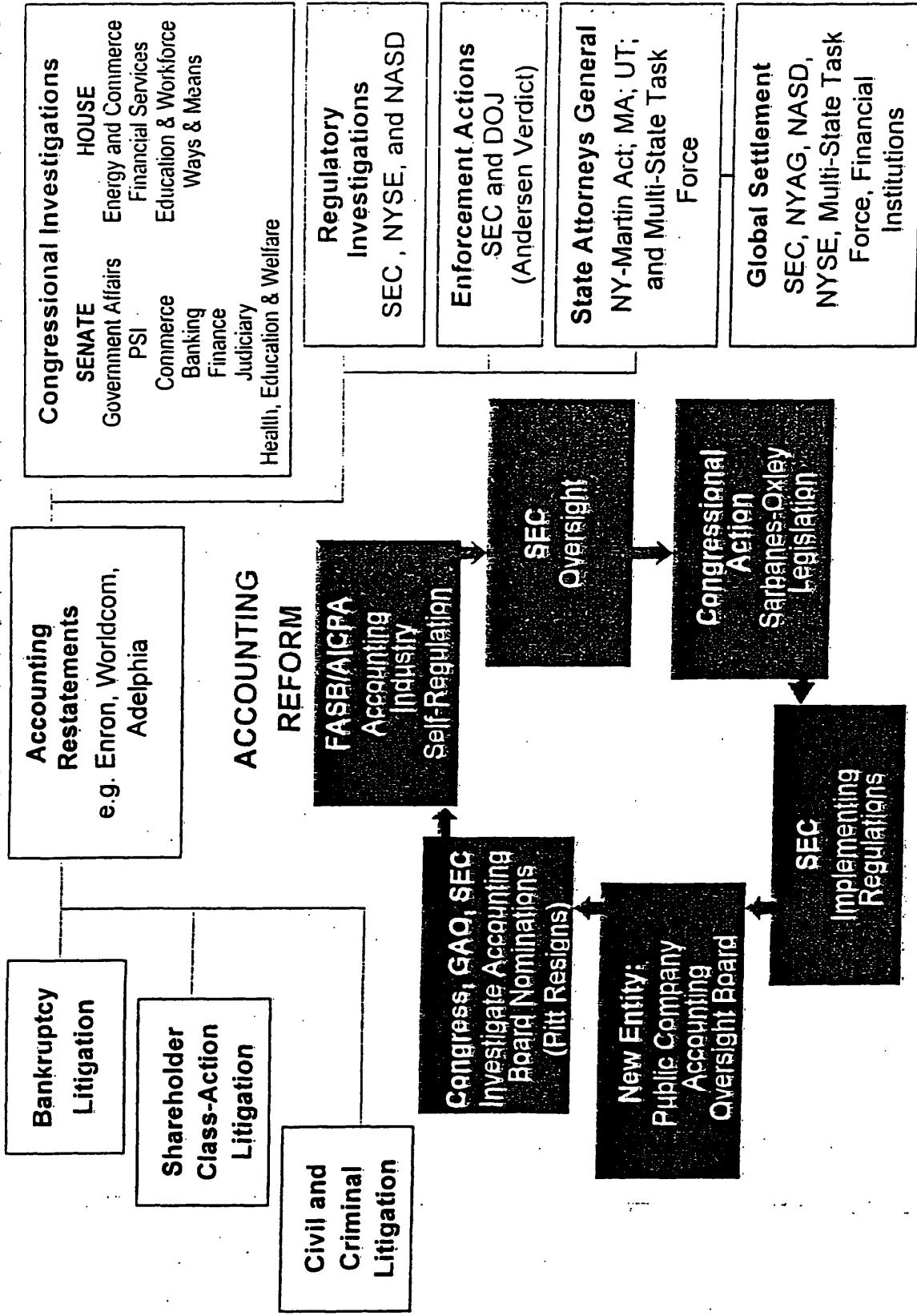
CONGRESSIONAL STALEMATE PROMPTS MULTI-VENUE REGULATION - AFFORDABLE DRUGS

- **July 31, 2002:** Senate passes legislation to improve access to affordable generic drugs
 - Reimportation waiver for prescription drugs added as amendment
 - House never acts on similar bill
- **Oct. 18, 2002:** Congress recesses for elections
- **Oct. 20, 2002:** Florida governor race tightens within margin of error; Jeb Bush and other Republicans court seniors' votes
- **Oct. 21, 2002:** President Bush announces FDA will propose rules to speed access to generic drugs
- United Seniors Association runs pro-Republican TV ads
- Congressional proponents vow action in 108th Congress on generic drug bill and reimportation provisions
- States promulgate parallel measures for affordability of prescription drugs
 - As of October 2002, 34 states enacted laws to address prescription drug access costs and pricing
- Brand-name and generic drug makers respond, threaten lawsuits

CASE STUDY # 2:

MULTI-VENUE LEGAL ACTIONS -

CORPORATE ACCOUNTABILITY/ACCOUNTING REFORM



CASE STUDY # 3:

MULTI-VENUE EFFORT TO REPAIR JUDICIAL SYSTEM - ASBESTOS

- Asbestos claims mount motivating multi-party class action settlements
- Supreme Court invalidates settlements, urges legislative solution
 - Amchem v. Windsor (1997) and Ortiz v. Fibreboard (1999)
- Trial lawyers flood courts with new cases for unimpaired claimants
- Proliferating lawsuits:
 - swamp bankruptcy trusts
 - bankrupt dozens of major corporations
 - deny compensation to mesothelioma victims and families
 - rob employees of jobs and pension plans
 - eventually sweep up small businesses and other peripheral defendants
- 106th and 107th Congresses introduce legislation and conduct hearings
- U.S. District Judge disqualifies unimpaired claims in federal consolidated cases; trial lawyers shift to state courts
- 2002 election: Issue advertising highlights asbestos crisis
- Congressional leaders urge all parties to coalesce behind workable legislative solution in 108th Congress

CASE STUDY # 4:

MULTI-VENUE REMEDIES IN LIEU OF LITIGATION -

RUM WARS

Litigants and the Permanent Campaign: "You think you're working in one area, and your adversary is busy eliminating your superior work in court with its own machinations in Congress."

(American Lawyer, 02/02)

- 1993: French spirits distributor, Pernod Ricard enters agreement with Cuban government to market "Havana Club" – brand name of distillery seized by Cuban government in 1960; control of U.S. registration for Havana Club trademark transferred to Pernod Ricard
- Original owners of distillery sell Havana Club trademark rights to Bacardi
- Competing claims on Havana Club name generate disputes before Treasury Department Office of Foreign Assets Control, U.S. Patent and Trademark Office, U.S. Trade Representative, and ultimately Federal Court
- Recognizing political importance of Cuban policy within Permanent Campaign, Bacardi capitalizes on parallel efforts in Congress to tighten Cuban embargo, resulting in passage of statute amending Cuban embargo regulations
- New law bars U.S. courts from enforcing claims by Cuban government entities or their assignees to U.S. registrations for trademarks or trade names unless original owners consent to their use, preventing plaintiffs from asserting treaty rights to enforce disputed trademark claims
- Result: Federal Court dismisses most of Pernod's legal claims on Havana Club trademark
- European Union files challenge at WTO; Defense by USTR
- WTO upholds statute but requires clarifying amendment in Congress

CASE STUDY # 5:

RECENT COORDINATED INTERVENTIONS BY STATE ATTORNEYS GENERAL

RECENT ACTIONS INCLUDE:

- Investigations of securities firms for conflicts of interest and fraud
- Antitrust actions against pharmaceutical companies (generic drugs), Microsoft (market domination), and recorded music distributors (CD prices)
- 23 state AGs join with Justice Dept. to block satellite television merger
- Actions against tobacco industry to enforce marketing restrictions
- Involvement in FTC rulemaking re telemarketing regulation/consumer privacy
- Settlement agreement with Bridgestone/Firestone Inc. re tire safety/deceptive trade practices
- Settlement agreement with manufacturer of genetically modified corn re consumer safety
- Lobbying Congress and FTC to assert states' jurisdiction over online commerce
- Settlement with mortgage lenders re predatory lending practices
- Settlement with financial institution to restrict use of personal financial information for direct marketing
- Settlement with long distance carriers re deceptive advertising