

# **President Obama and the 111<sup>th</sup> Congress**

## **The State of the Union**

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“There are no second acts in American lives.”

--F. Scott Fitzgerald

## Introduction

On January 26, 1982, President Ronald Reagan appeared before the 97<sup>th</sup> Congress to give his first State of the Union Address. With the prime rate of interest having reached an all-time high (21.5%) shortly after the election and the unemployment rate having reached 8.6% by the time he appeared before Congress, Reagan's approval rating had fallen to 47%.

On January 25, 1994, President Bill Clinton went before the 103<sup>rd</sup> Congress to offer his first State of the Union Address. With unemployment at 6.6% (U-3) and 11.8% (under the broader U-6 measure), his approval rating stood at 54%.

Last night, President Barack Obama gave his first State of the Union Address. Unemployment is now running at approximately 10% (U-3) and 17.3% (U-6). His approval rating, which stood at 67% on Inauguration Day, now stands at 48% and thus is essentially the same as President Reagan's at a comparable period in his first term.

It may be said that there are no second acts in American lives, but Presidents have a way of confounding the pundits. The Democratic Party may have suffered a near-death experience a week ago Tuesday, but we're not about to write off this President or his agenda.

Some perspective. Two weeks before President Reagan gave his first State of the Union Address, Hedrick Smith of the New York *Times* said: "[A]s the President heads into his second year, a lot of the magic is gone and the politics of optimism has fallen on hard times. Recession has hit with a force totally unexpected in the euphoric high tide of Reaganism last summer." By March 1982, with a new poll in hand, the AP was reporting that "[m]ost Americans are turning against President Reagan because of concerns about the economy and hope he does not seek a second term." At about the same time, through an editorial entitled "Captain Reagan and the Icebergs," the New York *Times* editorial board sought to put it all in perspective:

Pain is being felt around the country, even as the impression mounts that Mr. Reagan has a vision but not a program. Even ignoring the economic iceberg, the political iceberg lies dead ahead. Republicans are scrambling for ways to put daylight between themselves and their President. Democrats are groping for ways to let him sink without taking the country down, too.

With such broad opposition, Mr. Reagan will have to make substantial concessions: why not sooner, when they will help more, politically and economically? He may think it's reasonable to wait but the politicians of both parties know they don't have time. Their alarm bell, for the Congressional election in November, is already ringing. But the President's alarm doesn't go off until 1984. He stands unmoved on the bridge. Facing north.

Well, the story turned out a little differently. Two and a half years later, President Reagan was re-elected in a landslide. Second acts are indeed possible.

As President Obama prepares to pursue the agenda he laid out last night, he will now face 41 Republican Senators. He and the Democratic Congressional Leadership know that Reagan's popularity dipped into the low forties by November 1982 and that the Republican Party suffered

substantial losses at the polls. They also know that world events beyond his control could have a profound and unexpected impact on his agenda. Where do they go from here?

With 59 potential Democratic and Independent votes in the Senate, President Obama will continue to enjoy a wider majority in that chamber than President Reagan had in pursuing his vision or that Presidents George H.W. Bush, Bill Clinton, and George W. Bush enjoyed when they achieved significant legislative victories. When President Reagan, for example, successfully pushed through a major rewrite of the tax code in 1986, Republicans held only 53 seats. When President Clinton persuaded Congress to enact a major overhaul of the welfare system in 1996, Democrats controlled only 47 seats in the Senate. And just last year, when President Obama won approval of the \$787 billion stimulus bill, Democrats held only 58 seats.

What does it mean not to have 60 Democratic and Independent seats? It means you have to forge alliances and to compromise to get anything done in the Senate. The President may no longer have 60 votes for a comprehensive health care bill, but he may have a better chance of advancing his agenda now that he will have to work with Republicans to get anything done in the Senate. On most issues, a Senator's home matters more than party affiliation. On energy policy, for example, a Senator's position on an issue will likely depend more on whether he or she is from an oil and gas state than whether he or she is a Democrat or a Republican. For most issues, then, 59 votes are enough to get things done. In fact, now that the country is fed up with partisan gridlock, it may be better to have 59 votes than 60 votes because even the most partisan of President Obama's supporters will have to concede that he cannot overcome Republican opposition without agreeing to compromise. Both parties will need to meet in the center to get things done. In this environment, the President may find it easier to get things done in the Senate if he can show that he can work with Republicans in the House as well.

Like President Reagan, President Obama will likely seek to go over the head of Congress by appealing directly to the public. During the campaign, he mastered the use of new technology to make a direct connection with voters and demonstrated how new social networking tools could be used to build communities of supporters. (When President George W. Bush was finishing his first term six years ago, YouTube, Facebook, and Twitter didn't even exist.) Those same tools that allowed candidate Obama to bypass the filter of the press during the campaign will provide a means unavailable to President Reagan for President Obama to take his message directly to the public. Building on his Administration's open government efforts and an expanded use of these tools, he has the means to bypass Congress in getting his message out.

Like President Clinton, he will push smaller programs that resonate with the public. In the run up to the State of the Union address, he had already begun touting smaller-scale initiatives that would appeal to the Middle Class (*e.g.*, expanding the child-care tax credit, limiting student loan payments, and expanding assistance for elder care). Thus, in addition to advancing major initiatives (such as deficit reduction), he will be able to better micro target groups with new initiatives, using new technology to deliver his message directly.

As the President puts forth new initiatives, Republicans may dig in, with the goal of blocking action on most fronts. Were they to further block the confirmation of Administration nominees, they could weaken the President's ability to govern (which will be further strained as current senior policy makers leave the Administration over the course of the year). But should Republicans choose to pursue this course, they risk opening themselves to attack, as they did in 1995 when they were blamed for shutting down the government.

In our November 5, 2008 election analysis, we noted that the President and the Democratic Congressional Leadership enjoyed a base of power not seen since 1964 and 1974, when sweeping changes occurred in Congress. Notwithstanding the commanding majorities Democrats would enjoy in the 111<sup>th</sup> Congress, we pointed out that on many issues “the new-found Senate Democratic majority will be no more likely to succeed in overcoming a filibuster than in the 110<sup>th</sup> Congress if it pushes proposals that tilt towards the extreme.” We concluded: “To be successful, the new president and the next Congress need to govern from the center of the country, not from the center of the Democratic Party.”

The President and the Democratic Party have the votes to accomplish much of the President’s agenda, but only if they reach across the aisle and move towards the center. In the pages that follow, we offer our perspective on major issues likely to be considered this year. We conclude with observations about the impact of the Supreme Court’s decision in *Citizens United v. Federal Election Commission* on the President’s agenda in the remaining session of the 111<sup>th</sup> Congress now that corporations and labor unions may make unlimited independent expenditures to directly advocate the election or defeat of specific federal candidates, and do so right through Election Day.

### **Major Legislative and Regulatory Initiatives**

*Financial Services Reform.* The Administration proposed comprehensive financial services regulatory reform in 2009, including creation of a Consumer Financial Protection Agency (CFPA), more regulation of banks, hedge funds, and derivatives, and creation of a mechanism for the government to monitor systemic risk in the financial markets and to take over systemically significant financial and non-financial companies. Late last year, the House passed legislation in a form very similar to the framework proposed by the President. The Senate proposal advanced by Chairman Dodd in November for negotiation purposes has a number of provisions that were not part of the White House’s initial proposal or the House-passed bill. For example, the inclusion of a Prudential Banking Regulator, a much wider Resolution Authority to wind down firms that pose “systemic risk,” and the stripping of the Federal Reserve Board’s banking regulatory responsibilities are all proposals that could be part of any Senate bill and that would need to be negotiated with the House before a final bill is sent to the President. Until recently, creating the CFPA had been the most controversial item in the Administration’s proposal, with Republicans generally opposed to the creation of a new government agency, but that has changed in the past week.

The special election in Massachusetts has led some in Congress to conclude that demonizing banks and Wall Street firms can be good politics. This is particularly true of the firms that received TARP funds and other government support at the height of the credit crisis, some of which have already announced large bonuses as part of their compensation plans. The Administration recently announced a program to raise nearly \$100 billion over ten years through the imposition of a “Financial Responsibility Fee” to be charged to the 50 largest banks that are presumed to have benefited the most from the government response to the credit crisis.

The Administration also just announced its support for a plan to place limits on the ability of banks to engage in proprietary trading and other risk taking perceived to put banking businesses receiving government backing at greater risk. The latter issue can be expected to be discussed in the context of the Senate’s consideration of the regulatory reform bill. The proposed bank “fee” will likely be considered in the congressional tax writing committees, potentially as part of the debate on a jobs bill.

The hostility toward banks and Wall Street firms does not fit into any particular partisan pattern. While Republicans tend to oppose over-regulation of markets and risk-taking, the strong “populist” theme of attacking Wall Street has bipartisan appeal. Other issues to watch in 2010 include the future of the government sponsored enterprises and potential additional action by the Administration and Congress on the mortgage foreclosure crisis.

*Health Care.* The election of Republican Scott Brown to the Senate brought the Democratic agenda, particularly health care reform, to a halt. During last year’s unofficial address to Congress in February, the President recognized the difficult legislative hurdles that stood before him and Congress. He stated: “I suffer no illusions that this will be an easy process. It will be hard. That nearly a century after Teddy Roosevelt first called for reform, the cost of our health care has weighed down our economy and the conscience of our nation long enough. So let there be no doubt: health care reform cannot wait, it must not wait, and it will not wait another year.” He urged Congress to address the crushing cost of health care, guarantee choice of doctors and health plans, invest in prevention and wellness, improve patient safety and quality of care, and end barriers to coverage for people with pre-existing medical conditions.

In recent days, the White House has confirmed that the President’s preference is to pass a bill that meets the principles he laid out months ago. He recently stated that he “didn’t take up this issue to boost [his] poll numbers or score political points” and that he is “not going to watch more people get crushed by costs, or denied the care they need by insurance company bureaucrats, or partisan politics, or special interest power in Washington.” Last night, President Obama confirmed that he will work with Democrats and Republicans and will not give up the fight for health reform. Democrats are undecided on how to proceed and at a minimum have decided to take their time on choosing the best path forward. During his remarks last night, the President signaled that it is still his desire to make health reform a priority. He urged “everyone to take another look at the plan we’ve proposed [and] find a way to come together and finish the job for the American people.” However, the speech also indicated a shift in priority of the President’s goals, with health care remaining an important objective, but a less significant one.

*Climate Change and Energy Policy.* In December, the Administration had hoped that the 193 nations meeting in Copenhagen would reach consensus on how to address climate change. But after two weeks of failed negotiations, the United States worked with China, Brazil, India, and South Africa to salvage what it could: a 12-paragraph document that essentially sets forth a statement of intentions, not a binding commitment to do anything. Given the lack of meaningful progress in Copenhagen, Democratic Senators from Red States, Coal States, and Rust Belt States will be even more reluctant to vote for a cap-and-trade climate change bill now--especially one that would be portrayed by Republicans as a “jobs-killer” that will leave other major countries free to continue to pump carbon dioxide into the atmosphere. Moreover, Republicans who otherwise might have been inclined to vote for the bill will be more reluctant to do so now.

Notwithstanding the odds, the President expressed again last night a desire to move forward with his broad climate change agenda, pitching it in terms of jobs and echoing the “more of the above” mantra of many Republicans: “[T]o create more of these clean energy jobs, we need more production, more efficiency, more incentives. And that means building a new generation of safe, clean nuclear power plants in this country. It means making tough decisions about opening new offshore areas for oil and gas development. It means continued investment in advanced biofuels and clean coal technologies. And, yes, it means passing a comprehensive energy and climate bill with

incentives that will finally make clean energy the profitable kind of energy in America. I am grateful to the House for passing such a bill last year. And this year I'm eager to help advance the bipartisan effort in the Senate.”

We continue to believe climate change legislation will be enacted into law, but we see no chance of the Senate agreeing to an economy wide cap-and-trade bill this year. Instead, we anticipate the Senate will take up a narrower energy bill that has the potential to create jobs, leaving the President's larger climate change agenda for another day.

Given the stalemate on Capitol Hill, the locus of activity will soon shift to the Environmental Protection Agency, which believes it has the authority to address climate change under the Clean Air Act of 1990. It intends to now start using it. With action stalled in Congress late last year and facing increased pressure from the environmental community, EPA and other agencies began to put in place the legal building blocks to construct a new regulatory regime to reduce greenhouse gas emissions. Through a series of coordinated actions, EPA set the legal framework for regulating GHG tailpipe and stationary source emissions in the absence of action by Congress. With little prospect for action in Congress, EPA will now begin to implement the President's green energy agenda, starting with new corporate average fuel economy standards in March. For the first time, the standards will be set in both miles per gallon and carbon dioxide per mile. With those standards in place, the agency will move to regulate GHG emissions from smokestacks and other stationary sources. By next year, climate change legislation might look pretty attractive to the business community.

*Pension Reform.* Businesses that fund single-employer pension plans and multiemployer pension plans and the unions whose active and retired workers are covered by those plans spent the better part of 2009 trying to persuade Congress to address the challenges they face in keeping the plans solvent in the aftermath of the meltdown in the stock market in 2008. Major retailers, for example, have made it clear to Congress that they soon may be forced to close stores to generate the savings and the revenues necessary to meet their pension obligations. Many companies in the trucking industry and food industry have made it clear that their survival will depend in part on Congress addressing the particular challenges they face because of the operation of laws enacted decades ago. Plan sponsors and labor unions have identified a variety of modest steps that Congress could take to help get their multiemployer plans on a sounder footing. Remarkably, there is broad consensus about what needs to be done, with the U.S. Chamber of Commerce and major labor unions in agreement. But Congress has done nothing to address their concerns.

As Congress now begins to focus on the near-term need to address jobs, we anticipate that it will finally take action on urgently needed pension reform measures. If it fails to complete action by April, it could well put even more jobs at risk.

*Tax Reform.* While broad-based tax reform could be introduced in 2010, it is unlikely to receive significant attention until after the midterm elections. Many issues must be addressed in 2010, but there is great hesitation to consider legislation that could undermine the economic recovery. With the “Bush tax cuts” slated to expire at the end of this year, Congress will face decisions with respect to future tax policy in general. This could involve a more comprehensive view of tax fairness, deductions, demographic income distributions, and tax rates. But given the current jobs situation, it will be hard to deal with such issues in a permanent manner.

Among the tax issues with which Congress can be expected to deal in 2010 are the estate tax, expiring tax provisions (including those from the 2009 stimulus bill), and tax incentives for jobs creation (as part of a new jobs bill). Although normally the pay as you go (“PAYGO”) rule would be expected to be applied to such tax changes, this year there is potential for certain tax proposals to be exempted. For example, under the theory that the economic recovery is still in its early stages, lawmakers may exempt from PAYGO the continuation of the Bush capital gains and income tax cuts. This is a markedly different tone than a year ago on the Bush tax cuts. Further, there is potential that an estate tax fix could also be exempted from PAYGO.

In instances in which PAYGO will apply, Congress will have to choose among potential revenue raisers, including how to tax private equity firms (*e.g.*, carried interest), bank and Wall Street taxes, “excessive” executive compensation, and other issues. Of course, enacting any major revenue raiser, particularly one that would be a major policy change (*e.g.*, carried interest or the treatment of capital gains), would bar its use as a revenue raiser for broad-based comprehensive tax reform in future years. Notably, President Obama’s Fiscal Year 2011 Budget is again anticipated to include a proposal to restrict the corporate tax deferral of foreign source income, even though the business community has pointed out this would only weaken U.S. competitiveness.

*Trade Policy.* The Administration did not make trade policy a high priority in its first year. Indeed, there seemed to be an aversion to highlighting any mention of the Administration’s trade policy or its trade agenda. Consequently, the three Free Trade Agreements (FTAs) that were negotiated by the Bush Administration but not yet approved by Congress--Korea, Colombia, and Panama--continued to languish. The Administration voiced support for the FTAs in principle, *i.e.*, once some outstanding issues were resolved, but no serious effort appears to have been undertaken as yet to address them. Moreover, the Democratic Congressional Leadership to date has shown little interest in moving forward on the agreements anytime soon. Given that 2010 is an election year, we don’t expect the leadership to force Democratic Members to take a difficult vote in the near term. On the other hand, it is entirely possible that the White House could decide to focus on the jobs-creating aspects of the FTAs and their ability to promote increased exports of American manufactured goods, which would alter the political equation significantly.

The President’s emphasis last night on export growth and his specific reference to Korea, Colombia, and Panama may be the first sign that the Administration is now ready to move forward on the FTAs, with an emphasis on their export/job creating potential. His reference to the WTO Doha Round may also signal a willingness to take the initiative to break the logjam in Geneva. This could be the first signal that the U.S. Trade Representative is now getting the go ahead to take a more pro-active stance with our trading partners.

Our trading partners have become increasingly frustrated with what they view as a passive U.S. trade policy, and this frustration will be vocalized at various economic summits throughout the year. Given its economic clout, the Government of China could have a substantial near-term impact on the economy, which then might lead to a reaction in Congress. Ultimately, the White House must make a political judgment as to when it is prepared to move forward on trade policy and what it might look like, especially in an environment in which it will have reduced leverage.

The Obama Administration did live up to its promise to emphasize vigorous enforcement of existing U.S. trade laws, and the imposition of additional tariffs on Chinese tires surprised many in that the new duties were quite a bit higher than expected. On the other hand, the Administration has not taken an overtly protectionist trade policy, and its broad pronouncements take on an

internationalist tone. Nevertheless, we do not expect any major trade policy initiatives or new legislation, other than the Administration's support of the Trans-Pacific Partnership talks and Congressional enactment of trade preference reform.

*Transportation and Infrastructure.* Transportation is among the most bipartisan of major policy areas in Congress. Politicians in both parties often equate public infrastructure spending with job creation. While job growth and economic recovery remain critical national goals, efforts to enact major long-term surface transportation legislation to restore the Nation's deteriorating infrastructure, serve 21st century freight and passenger needs, and promote economic development are proceeding slowly. Congress and the Administration are beginning the second year of debate over the structure and details of reauthorizing the nation's surface transportation programs. In the House, Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) continues to aggressively pursue an ambitious reauthorization plan that would significantly increase federal investments in highways, transit, and safety programs. The problem remains finding the funding as revenue from the Highway Trust Fund is insufficient to meet current demand and there is little political appetite for tax increases before Election Day. While the key Senate authorizing committees (Environment and Public Works; Banking, Housing and Urban Affairs; and Commerce, Science and Transportation) are drafting and expected to introduce legislation this year, they too face the problem of how to pay for what they want to do. While it is possible that the House may pass a bill before the election, the most likely scenario for enactment of a reauthorization bill in 2010 is in a post-election lame duck session. Otherwise, the process will have to begin anew in the 112<sup>th</sup> Congress.

Democratic leaders continue to believe public works spending can be a leading indicator for a broader economic recovery. The jobs bill that passed the House in December includes \$27.5 billion for highways and \$8.4 billion for transit spending. The Senate is expected to take up its own jobs bill shortly. There is a strong likelihood of major funding for ready-to-go transportation projects. However, the jobs bill squeaked through the House and, given the current dynamic, Senate passage is uncertain. If a jobs bill with major transportation spending becomes law in 2010, it could relieve the short-term pressure to pass surface transportation reauthorization this year.

President Obama is expected to release his Fiscal Year 2011 Budget next week, reaffirming the Administration's policy initiatives: promoting livability and sustainability; harmonizing federal transit and housing policy and investment to promote environmentally friendly, economically sound urban communities; investing in the development of high-speed rail to leverage the \$8 billion provided in the 2009 stimulus bill; and streamlining the evaluation process for federal transit investment so more projects are eligible for future funding. Later today, the President will announce the recipients of the High Speed Rail stimulus funds in Tampa. As he put it last night, "[t]here are projects like that all across this country that will create jobs and help move our nation's goods, services, and information." Today's visit soon will be followed by announcements of the 2009 TIGER stimulus grant recipients, setting the stage for an economic recovery agenda in 2010.

*Telecommunications Policy.* Consistent with President Obama's view that technology development and improved broadband access are two important and long-term drivers of economic growth, his Administration and Congress commenced work in 2009 on a number of initiatives to advance technology development and broadband access. Much work remains to be done. As a result, 2010 will be a busy year--on broadband issues in particular. President Obama's goal is to make high-speed Internet access available to all Americans, specifically focusing on rural and

unserved areas, schools, libraries, local governments, low-income households, hospitals, and the disabled. There are a variety of major initiatives underway to advance this goal.

The Recovery Act, for example, set aside \$7.2 billion in broadband stimulus funding to support building broadband infrastructure, funding public computer centers, and supporting programs for sustainable broadband adoption. The Rural Utilities Service and the National Telecommunications and Information Administration held one funding window in 2009 and a second window is set for February 2010. All \$7.2 billion must be committed by September 2010. To date, the agencies have awarded just \$570 million in broadband loans and grants. When the full \$7.2 billion is committed, we expect a significant boost for the communications and technology sector.

The Recovery Act also required the Federal Communications Commission to develop a National Broadband Plan. The report was due to be delivered to Congress in February, but has been delayed until mid-March. In keeping with the President's vision, the goal of the National Broadband Plan is to ensure that all Americans have access to broadband and to establish benchmarks for meeting that goal. The FCC issued an interim report in December 2009 and identified reform options in 10 key areas: (1) reforming Universal Service; (2) improving infrastructure access; (3) improving access to spectrum; (4) serving Tribal Lands; (5) innovating set-top boxes to increase broadband access and adoption; (6) providing consumers with accurate information regarding broadband access, speeds and competition; (7) ensuring that new media benefits all Americans; (8) improving adoption of broadband; (9) improving accessibility for persons with disabilities; and (10) providing broadband to public safety. In our view, four areas merit particular attention as part of any plan: establishing meaningful and achievable benchmarks for expanding the availability of high-quality broadband services, revising the universal service program (covered below), innovating and integrating the set-top box market, and allocating more spectrum for wireless broadband services.

Before he was elected, President Obama identified reform of the Universal Service Fund (USF) as a key enabler of national broadband policy. In his view, the USF should support not just universal service for voice, but also universal access to affordable broadband. Congress also has reform of this program on its agenda. Several key legislators are promoting initiatives to ensure that a sustainable USF continues to provide basic, affordable telephone service for Americans, while expanding its contribution base and designated uses. Most prominent is a draft proposal by Chairman Rick Boucher (D-VA) and Representative Lee Terry (R-NE). Among other improvements, the Boucher/Terry bill would cap the total amount of universal service support, other than support for schools, libraries, rural health care, lifeline, link-up and toll limitation programs, and would expand use of the fund for build out of broadband lines, requiring USF recipients to offer broadband service with downloads of 1.5 mbps or greater within five years of the law's enactment.

As part of the debate over various broadband-related initiatives, Congress and the Administration also are focused on addressing net neutrality. The FCC, for example, is considering codifying rules based on six Internet policy principles, such as ensuring that consumers have access to lawful Internet content of their choice; can run applications and use services of their choice, subject to the needs of law enforcement; and can connect their choice of legal devices that do not harm the network. The rules would be subject to reasonable network management practices, and could potentially be applied to all platforms for broadband Internet access, wired, wireless and satellite. Congress also is considering bills that are both for and against net neutrality.

## Impact of *Citizens United v. FEC*

Last week, the U.S. Supreme Court released its landmark ruling in *Citizens United v. Federal Election Commission*--a ruling with the potential to alter the political landscape for the 2010 midterm elections.

Citizens United had challenged on constitutional grounds the provision in McCain-Feingold (the campaign finance reform law bearing the names of its chief sponsors) that prohibits corporations and unions from sponsoring radio, satellite, and television advertisements referencing federal candidates in close proximity to federal elections (so-called "electioneering communications"). The Court ruled in favor of Citizens United, holding that the McCain-Feingold electioneering provision violated the First Amendment's free speech guarantees. The Court also went a step further by holding that the ban on corporate and union campaign advertisements that advocate the election or defeat of a federal candidate (so-called "express advocacy advertisements") also runs afoul of the First Amendment. The Court, however, upheld the disclaimer and disclosure provisions in current law. This means that corporations and unions sponsoring candidate advertisements may be required to file reports with the Federal Election Commission. Even after the decision, corporations and labor unions are still prohibited from making campaign contributions to federal candidates, leadership PACs, national party committees such as the RNC and DNC, and the "hard money" accounts of state and local party committees.

The Administration and congressional Democrats immediately condemned the Court's decision. White House officials held meetings with the leaders of the Democratic Party committees in an effort to develop a legislative response. Some of the proposals under consideration include requiring shareholders to pre-approve any political spending from a corporation's general treasury funds on political advertisements, requiring corporate executives to appear in political advertisements with a "stand-by-your-ad" disclaimer, and increased disclosure requirements. In doing so, the Administration and congressional Democrats are striking a populist tone that is at odds with their previous bipartisan statements.

With respect to the FEC, the decision emphasizes the importance of the coordinated communications rulemaking currently pending before the agency. Communications that are coordinate with candidates or political parties are considered contributions and prohibited if sponsored by a corporation or union. The regulatory line between independent and coordinated expenditures is the next fault line in this ongoing battle.

In addition, the *Republican National Committee v. Federal Election Commission* case will now move to the front of the line in terms of campaign finance cases to watch. The RNC is challenging McCain-Feingold's soft money ban on constitutional grounds in the hope that it may participate in state elections and engage in issue advocacy on the same terms as other groups. In its view, political parties need to raise money in the same amounts and from the same sources as outside groups if they are to compete in the political market place with corporations and unions after the *Citizens United* decision.

## Conclusion

We look forward to the challenges that lie ahead this year. As a firm with deep public policy roots, we are proud of our ability to help clients exercise a right enshrined in the U.S. Constitution by petitioning their government. We have been at it since 1965, when Jim Patton encouraged a

young White House aide named Tom Boggs to help him build a different kind of law firm, one that understood that all three branches of government could provide solutions to challenging problems. By combining political know-how, legislative experience, and substantive knowledge of the law, they had a vision for helping clients achieve success. For our paying and pro bono clients alike, we look forward to helping them achieve their legislative objectives this year as the President seeks to achieve the goals he laid out last night.