

Initial Analysis of 2013 Virginia Statewide and House of Delegates Elections

Below is an initial analysis of the results of the Virginia Statewide and House of Delegates elections held on November 5th. Democratic candidates took the top two statewide offices, while the Attorney General's race is too close to call and almost certainly headed to a recount, the results of which may not be known until December. In addition, there follows a brief discussion of how these results may impact policy decisions that will be heard during the 2014 Virginia General Assembly.

Governor of Virginia:

With all precincts now reporting, Democrat Terry McAuliffe has been elected Governor over Republican Attorney General (and Tea Party favorite) Ken Cuccinelli by a narrow margin of 47.7% to 45.3%. Independent Robert Sarvis, an unknown private businessman, also received 6.5% of the vote, an indication of the voters' dissatisfaction with the major party candidates. Sarvis ran as a Libertarian, but it was felt that his supporters pulled support equally from the two main candidates and his presence in the race did not change the outcome.

Although it was thought that McAuliffe enjoyed a comfortable lead in the polls in the weeks leading up until Election Day, and he was outspending Cuccinelli by record margins, the Republican was able to close the gap substantially by election day. Early analysis seems to point to the shift in Cuccinelli's strategy in the final weeks to make the race a referendum on Obamacare and remind voters that he was the first state Attorney General to file suit against it after it was passed. It was an effective strategy and had the race lasted another week, he may have been able to close the gap completely and won the election. Turnout was also a factor that worked in Cuccinelli's favor, as only 39% of Virginia's voters participated, down from the 62% who came out last November in the Presidential elections.

Governor-Elect McAuliffe will be faced with the immediate challenge of trying to govern while dealing with a state legislature controlled overwhelmingly in the House by a very conservative Republican majority of 67-33. The Senate was split 20-20 prior to the election, but the outcomes in the Lieutenant Governor's and Attorney General's races will create vacancies in the Senate that will necessitate special elections that could swing the balance of power to the Republicans in that body.

Lieutenant Governor of Virginia

In a race that was never really in doubt from the moment the Republicans chose their controversial nominee, Democratic State Senator Ralph Northam comfortably defeated his Republican opponent, Bishop E. W. Jackson, by a margin of 55.1% to 44.5%. Lieutenant Governor-Elect Northam is a doctor from the Eastern Shore of Virginia and is considered moderate to conservative on most issues. While he will have the potential to now break the 20-20 tie in the Senate in favor of the Democrats, which could lead to new Democratic committee chairs, his State Senate seat is considered a swing district that is not guaranteed to remain in the Democratic column. So Northam could conceivably preside over a Republican controlled Senate (21-19, or 22-18, depending on the results of the AG's race). This development also has major policy implications for the incoming McAuliffe Administration, already facing a Republican roadblock in the House of Delegates.

Attorney General of Virginia

By the end of the evening on Election Day, the race for Attorney General was the only one still very much in doubt. As of 5:00 p.m. on Thursday, November 7, with all precincts reporting in, Republican State Senator Mark Obenshain of Harrisonburg is holding a razor slim 681 vote lead over Democratic State Senator Mark Herring of Leesburg, or a margin of 49.90% to 49.87%. However, these numbers continue to fluctuate, as local voting registrars recheck their totals and correct transcription errors. This race will most certainly head for a recount; however that action cannot happen until after the State Board of Elections certifies the election results on November 25. After that, the candidate behind may formally request the recount. Eight years ago, current Governor Bob McDonnell was declared the winner in the Attorney General's race by 323 votes, six weeks after the election was held.

In the closing weeks of this campaign, Republican donors poured huge amounts of cash into Obenshain's campaign in an effort to salvage one of the three statewide offices. During that time, Obenshain outraised Cuccinelli at the top of the Republican ticket by a 10-1 ratio, an unheard of development in Virginia politics. Whichever candidate eventually wins, their election will open up another Senate seat – Obenshain currently holds a reliably Republican seat, while Herring's district is considered a toss-up. So theoretically, should Herring win the AG's race, the Democrats could wind up sweeping the three statewide races, but lose two Senate seats and potential control of that body. If Obenshain wins this race, he will immediately become the front-runner for the 2017 Republican nomination for Governor (presumably lined up against Lieutenant Governor Northam on the Democratic side).

House of Delegates Races

All 100 seats in the House of Delegates were up for election on Tuesday, although only 55 of those were contested at all, either by a candidate of the opposite party or an independent. As mentioned earlier, the Republicans will maintain an overwhelming 67-33 majority in that body. In the actual results, Democrats lost no incumbents (but did lose one open seat), while the Republicans did lose two incumbents (but picked up one D open seat and an open seat previously held by an Independent).

Conclusions

One issue sure to be impacted by yesterday's results is the fate of Medicaid expansion in Virginia. At the end of the 2013 General Assembly, a trigger mechanism was agreed to which would have allowed expansion to take place should certain Medicaid reform measures be put in place. These triggers were to be certified by a commission of ten legislators, five from the Senate and five from the House (with a majority of three from each body needed to vote affirmatively). Although the state Medicaid agency feels that these triggers have now been met, there is serious doubt that three House members on the reform commission will agree.

Had Cuccinelli won, Medicaid expansion would be dead in Virginia for the foreseeable future, as he spent a great deal of effort as Attorney General trying to have the commission's authority declared unconstitutional. With McAuliffe's victory, expansion at least still has a pulse, but it should be considered on life-support for right now. After yesterday's results and Cuccinelli's ability to nearly pull off a last minute upset, Republicans have discovered a very effective political tool in exploiting the troubled rollout of the ACA.

Until these problems are fixed at least in the public's mind, there is no way the House members of the reform commission will certify that reform triggers have been met. If Democrats maintain the 20-20 split in the Senate, they will probably be able to get expansion back into their version of the state budget and try to prevail in conference with the House at the end of the Session in March. But if the ACA difficulties have not be addressed sufficiently by then, or if the Republicans pick up a Senate seat in the special elections leading up to the 2014 Session, it will be unlikely to see the expansion enacted in the near future.

It is too early to tell if McAuliffe's election is likely a positive development for our interests in Virginia. He is at his core a businessman and a dealmaker, so in that sense he has an appreciation for the needs of business. He has also been clear in his support of mental and behavioral health issues and campaigned in support of the expansion of Medicaid. In terms of appointments to his Administration, he has expressed the desire to operate in a bi-partisan manner. There is certainly the possibility that he will retain current Secretary of Health and Human Resources Bill Hazel in his Administration (while Cuccinelli most certainly would not have); if not, another name mentioned prominently in the early stages of speculation for that position is former State Health Commissioner Karen Remley, who resigned that position earlier this year in protest over AG Cuccinelli's role in forcing through the stricter regulations for abortion clinics.

In the next few weeks, we will be working with the Governor-Elect's transition team to make sure our interests are protected and to make sure we have access as needed. In the meantime, please do not hesitate to contact me if you have questions then.