Podcast Transcript

The Cloakroom with Peter Roskam: 2024 Elections: What Happened and How the New Washington Will Impact Your Company

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Rubenking: Welcome to The Cloakroom with Peter Roskam. Former Congressman Peter Roskam leads BakerHostetler's Federal Policy team. On today's podcast, Peter dissects the 2024 election results. How did Donald Trump win every swing state? How big will the Republican Senate Majority be? Will the GOP also hold the House? Peter is joined by his BakerHostetler colleague, former Democratic Congressman Heath Schuler, and Jim Ellis, a veteran of federal politics and election forecasting. Jim is the founder of Ellis Insight, a nonpartisan firm that tracks campaigns and elections. Let's listen in to The Cloakroom with Peter Roskam.

Roskam: Well, welcome. I'm Peter Roskam. I lead BakerHostetler's Federal Policy team and we're really pleased to be able to engage with you today to talk about last night's election results. I know I speak on behalf of our firm's leadership, Paul

Schmidt, the chairman of the firm, and Jeff Paravano, who leads our tax practice in Washington office, and on behalf of the entire leadership, we're really, really pleased to be here.

I'm joined by my colleague, Heath Schuler. Heath and I were classmates in Congress. We came in together in 2006. We represent both sides of the aisle, and we've been at BakerHostetler together now in our Federal Policy practice. And we're joined by Jim Ellis, who is president of Ellis Insight, who we were teasing before. He's probably been up all night because his job is to know what is going on and to know what happened. And so, Jim, what happened? What is going on? How are people to understand these numbers? And one other point, lots of folks were saying flip of the coin on all of this going in, myself included, and yet it was a, it is a very definitive win right now for President Trump and for Senate Republicans. We'll see where the House ends up. That is still an open question. But, Jim, what happened?

Ellis: Well, and thank you, Peter, Heath. It is great to be with you. It is, it was a very stunning night last night. It really could have gone any way. Everybody was thinking, well, this could be a coin flip, or it could be a landslide either way and I think the, once again we saw the pattern that we had talked about before on the podcast about the Trump under-poll, and it was again evident. And I do have to stand up for the pollsters to some degree, and they were taking a lot of heat last night on TV. Oh, they missed it again. Missed it again. No, they didn't. They didn't really miss it. I'm, missing it to me means you missed who won. There were plenty of polls that showed Donald Trump actually winning the national count and winning all of those states. But the margin they missed. So, the margin of one or two points, he did better than that, and that has been a consistent pattern in all three times that Trump has run. And so, I thought overall I don't think you can say, oh, the pollsters missed this one again, but it was a great victory for Trump, and it looks like when we finally get the final numbers from Michigan and Arizona and Nevada, he may win all of the battleground states. And I was told that on the 26 of October at an event by Trump's Midwest director, and he says I think we're going to win all the ballot rounds. And he said I wouldn't be at this event if I didn't think that. And sure enough, he was right.

Roskam: Heath, you've been in a lot of Democratic caucus meetings and gatherings over the years. What is the level of self-reflection within the Democratic Party right now in the leadership? Is it reflective to say we need to move further to the center, we need to capture some of these things, will the progressives and the left within the party, will they say, hey, see this the problem we didn't go far enough. And what is that dynamic from your experience?

Shuler: Well, Peter, I can always say that it is easy to be the Monday morning quarterback, right? You can sit back, and you can say, hey…

Roskam: You of all people know that.

Shuler: … you can really look at it and say hey, here is what they should have. But I think self-reflection is going to be good, but the question is I think it still remains, who is going to be the leader of the Democratic Party. And I think that's been missing for quite some time. I think Obama, once he left, I think there was a big void there. And I think there is some things that needs to change within the party. I think unlike the Republicans who get their chairmanships and their leadership, and they have them, they're term limited, right, based upon the number of years they serve. The House doesn't necessarily do that. So, you end up getting a much older chairmanship and leadership group. So, they're going to have to find and identify themselves as which path would they follow, that they go back to that '06 class that you and I came into, Peter, and have the party of a very big tent that I think that Rahm Emanuel had that understanding of how to run the Democratic Party. I think the first thing they should do is to go knock on Rahm Emanuel's door again and say, Rahm, it is time for you to come back in the fold. It was great being ambassador, and now you come home from Japan and you need to figure out the solutions to make this work again, because, guess what? Since you've left, we've not figured it out.

Roskam: Yeah. Let me ask you this, does, every once in a while, when there is big swings in elections, both sides tend to say, well, this a realignment. You're looking at a whole new political landscape that has a generational impact. And obviously most times it is like no, that is not actually true. You know what I mean? It is, it, that doesn't explain it. Is this different? And here is what I mean by that. Donald Trump, notwithstanding all the criticisms of him, I mean very harsh criticisms of charges of racism and all these different things, did remarkably well comparatively with African American voters, did comparatively well with Hispanic voters, did comparatively well with young voters. And is there something new that is happening? Is it a, are people organizing and thinking to themselves in terms of economic status more rather than racial lines, or what, you've seen these things develop and ebb and flow over the years. What is your take?

Ellis: Oh, I think so. He seems to be able to connect with people and people that you wouldn't expect to be for him. And the, it looks like among African American men, young African American men, some of the exit polls, and sometimes those aren't too accurate, but show them around 20% in that group and overall, he is in double digits with African Americans, and that hasn't happened for anybody else. The only other person that do this well among Hispanics was George W Bush when he got 43% in 2004. Trump is around 40 or maybe a little bit higher. I mean, that is astonishing, really, for him running against a candidate, an opponent of color, and she just, she failed to connect with this group, and I think, Peter, you're absolutely right. I think it was the economic, the message that he has and the chance to move forward and people do remember when he was President. Hey, I had it better when he was President and some of the things he did. And I think the Democrats just went too far, particularly with the, certainly with the border and I thought the Republicans really did a pretty good job in exploiting that border and the legislation or the votes they took to house these illegals in these hotels and give them money that could have been going to veterans, for example. I thought they did that pretty well. And I think that hit home big time from what I've seen out there.

Roskam: Going back to Heath's admonition about Monday morning quarterbacking. It is so tempting to do. And so, I'm going to do a little bit of it right now, but it does seem that if President Biden had recognized earlier that he was not up to the task of running and had allowed a competitive primary, it would have been really, really healthy for the Democratic Party, but that didn't happen. Then the other thing that didn't happen and again, this just speculation, what would it have been like if Josh Shapiro, the Governor of Pennsylvania, had been on the ticket? His whole approach is different than Tim Walz. You know what I mean? Kind of a, savvy, and I mean that in, positively, like a centrist speaking to that, very popular in Pennsylvania. Would that have made a difference in some of these battleground states? You just, it seems so easy now and I know none of these questions are easy, but it is like, I don't know. I think that could have been a clearer path one way or the other. I know that those are two mutually exclusive events, but both of them could have been dispositive.

Ellis: I think particularly in Pennsylvania that you have to say that would be the case and that, I don't think that is Monday morning quarterback, Peter, because most people were saying at the time, why didn't she take Shapiro when she chose Tim Walz? So, yeah, we'll never know for sure, but it very well may have made a difference in Pennsylvania. That would have changed the whole outcome.

Roskam: So, Heath, you and I have been in Congress, and we know what a divided Congress is like, and I've experienced a unified Congress. What do you think is next? If there is a, if the GOP sweeps and picks up the House, by all accounts, it looks like it is going to be a razor thin margin, pretty significant margin in the Senate, razor thin in the House, and obviously Donald Trump in the White House. What do you anticipate looking forward that dynamic is like and then let's go to what it would be like if Hakeem Jeffries is Speaker of the House and dealing with the Trump presidency.

Shuler: Well, I, regardless of which political affiliation that you are, I always felt better when there was a, there was not unified, when one party didn't control all three, the presidential, the Senate and the House. But when it is unified, it becomes a problem. I watched the Democrats go through it and it was overreach votes after overreach votes after overreach votes, and then you get a swing back like happened in 10, 2010 and 2012. It is that overreach. They feel like they got to do everything in two years and then next thing you know, you're going to lose the House. You'll lose the Senate. And I love checks and balances. I feel like when you have at least one of the three having opposition that you have the guardrails up and you can't just pass at will. My problem that, and so, that is my concern and going in the future of this. Unless it is very narrow margins and then the question in the House is going to be is who is going to switch sides? Is it going to be those moderate, few moderate Democrats are left, they're going to vote in place of the far right seven to nine Republicans that are out there. Who are those individuals? Are they going to be, and maybe it is vice versa with Hakeem Jefferies. I mean, you're going to, they're going to be so slim margins that I hope that it, that the four-letter word, compromise, in Washington actually comes back into play. And I think that will serve our country really well.

Roskam: Look. Oh, go ahead, Jim.

Ellis: Speaking of the House, so I've got, done some cursory looks at the races that are outstanding, and you've got a lot in California and Arizona because of the way they count the ballots and all their mail, and it is going to be quite a while before we get to what is happening there. But there are approximately 25 uncalled races that are close enough where they could alter the outcome. And both parties have about half. I think the Democrats have, well currently have thirteen of those 25 and Republicans have 12. And if you look at what's already happened and already called, the Republicans are now up six. So, that means the Democrats would really have to win 20 of those 25 just to get a one-seat majority. So, I think it favors, clearly the numbers favor the Republicans hanging on, and in the California seats, there are nine in California that are up in the air, but three of those are Democratic seats right now and six are Republican. But the Republicans in all of, all six of theirs, they are ahead right now. All six of them. So, it, I think it, the pendulum is swinging their way to hold the House, but it will, but as Heath said, it is going to be very slim.

Roskam: So, it will, let's assume for the sake of argument, the first line of discussion, Republican sweep. That means they've got a decision to make. First of all, they're going to have leadership elections, sounds like next week, which is a pretty common leadership practice. Hey, get out, get it done. We don't want to have too many adventures. Not a lot of loose ends. Get these done.

Ellis: How do they do that if they've got as many as 13 or 15 members that aren't even elected yet?

Roskam: We were talking about that this morning and the way they do that is they can vote provisionally. It is just a, it is not a final vote. The only vote that they got to deal with in January is the Speaker vote. So, they can do it provisionally, etc. So, that is probably the way they do it. Then they've got a decision about what to do in the lame duck, because remember the continuing resolution comes up in, on December 20. So, the question is, do you, does Mike Johnson, the Speaker of the House, strike a deal with the Democrats to some sort of, push things out, or does he, does, meaning Trump gets a clean slate or does, do they wait until the Trump team is in place? And I don't think that decision's been made. In fact, I know I've been in touch with House leadership this morning and they've communicated to me that this really a question that they're waiting for guidance from President Trump. And once they do that, now there is, I will say that there is some risk for Mike Johnson to strike a deal, because he will have some conservatives in the House…

Shuler: Then he is gone.

Roskam: …that are not happy with him.

Shuler: Yeah, he is no longer Speaker.

Roskam: Well, but what he is going to have to do is basically say, hey, I've got a laminated hall pass here from Donald Trump. He's asked me to do this on his behalf. He would, if I'm the Speaker, I would insist that the President be very vocal, supportive and so forth because otherwise, there is no incentive for him to do that. No.

Shuler: And, Peter, that is by far the best plan. You would rather, I mean, if you're, if you, if you're in the House, you'd much rather in the Presidency, you'd much rather start with a clean slate instead of the, a very challenging January to get so much of this done, extend that as far as it possibly can to be able to reach an agreement with the Democrats and put all that issue back on to Biden.

Roskam: Exactly. And January is going to be challenging enough, even assuming a clean slate. Let's get to that. So, this, at Baker, we've got a one of the biggest tax practices in big law. And so, we've got a lot of tax partners whose clients are really, really tracking the whole tax dynamic. And so, there is a lot happening.

If the GOP, the first thing that's got to happen is Congress has to decide if it is going to use a reconciliation vehicle. That means bypassing the Senate filibuster rule on these narrow things. We don't have time to go into details on that, but a reconciliation vehicle. They've got to figure out what is the reconciliation number. So, how much money, in other words, can Congress borrow in the 10 year budget window? Is it a trillion dollars? Is it two? Is it a half a trillion? Is it three, because that becomes the four corners of any sort of negotiation. If you don't have that number, the whole process is just mush. You don't have to say no to anybody. But once you have that number, once that gets locked into the reconciliation vehicle, then that binds both the House and the Senate. And remember, this a Senate play, it binds both the House and the Senate to come up with a plan, and here is where it gets interesting for our clients and here is where it gets interesting for anybody in America that pays taxes.

Congress is going to be hungry for pay-fors, hungry for revenue. Remember that the debt has increased, what, $10 trillion, plus, in the last few years and there is no end in sight, and I know personally talking to members of Congress unsolicited, it is coming up that they're very, very concerned about the debt. So, what ends up happening is all kinds of pay-fors get identified. They may have been previously identified by some other tax plan or a White House plan, or a Senate plan, but it is written down somewhere, and it can be in estate planning, for example, it can be tightening trust rules, it can be dealing with things on making wealth more difficult to transfer from one generation to another, it could be the corporate tax rate. You remember, Heath, when we had Jason Smith, chairman of the Ways and Means Committee at the BakerHostetler legislative seminar and we were talking to him in front of the group and he said, hey, when I was whipping the Smith-Wyden bill, I had House Republicans asking me why I wasn't raising the corporate tax rate. Or, provisions within the Inflation Reduction Act that are very, very deeply entrenched in red districts, even though these are things that pass on a Democrat reconciliation process. Republicans didn't support the Inflation Reduction Act, but now a number of their own constituencies are benefiting from them.

And so, all of this pressure is coming and really, really grinding, and the direction of these legislative races is completely dispositive on where this going. So, Jim, how much of the campaign, Donald Trump was talking during the campaign in his, some of his events, hey, let's not tax tips anymore. Let's not tax overtime. Hey, you're a nice person riding a bicycle. Let's not tax your bicycle. I'm teasing, but you take my point. It was pretty expansive. Like pretty, very, very expansive. Did auto loans get in there? There was a lot of stuff.

Shuler: It was auto loans. Yeah.

Roskam: Okay. So, you're a former NFL quarterback. You don't pay any more taxes, Heath, etc. So, what is the, where, let me ask you a campaign question, Jim. How much of that will actually drive policy? How much will Trump feel bound to that? Will he be like, I said some stuff, we're not going to worry about that too much, and does that fade away, or does that become central to his Nevada strategy moving forward, in terms of reaching out to service workers and tips? What is your sense on how much Republicans in Congress are going to feel like they've got to deliver on that?

Ellis: I would think so. He went out on a limb on that, and he said it over and over and over. I think he used it in every rally he did that, that that was one thing he wanted to see happen. But, Peter and Heath, I would think the bigger thing and probably the biggest benefit of the Republican trifecta is they probably get to extend the Trump tax cuts now, wouldn't you think? The ones that expire in 2025?

Roskam: Yeah.

Ellis: I would think that is number one, wouldn't you think?

Roskam: Yeah, that is where they'll start for sure. And there is a lot of subtleties, though, with, on the international side, for example. We're in, we at the firm are in touch with a lot of folks who are saying, hey, these international tax rules, they're not particularly easy to understand. They're fairly esoteric and they're highly technical, but they have a huge impact on our business, and they've had a huge impact on American businesses being able to buy foreign companies and repatriate that. But that is a story that can get lost if it is not really well articulated and any host of other things.

The state and local tax deduction for example. President Trump has said, hey, we got to get rid of that thing. Well, it is a huge number to deal with and you've got most House Republicans that are from comparatively low tax states. They're not from California, they're not from New York ,they're, an overwhelming majority is from states that aren't impacted by the state and local tax deduction, and therefore they say, well, hey, I'm, I really don't care about this. But if you're in suburban New York, a Republican, if you're in Orange County as a Republican, you've got a real problem because now you're being asked to vote affirmatively on something that puts this thing into place. And I just think it is going to be really, really interesting to see where this shakes out.

Heath, let me ask you. You're living in Tennessee now most of the time. What is it, what was it like on the ground in Tennessee as you were out and about and how do you think a Trump presidency is going to be impactful on folks around you?

Shuler: It was unusual. Being in a swing state like North Carolina for so many years and to watch every television commercial two months out before the election, that is all you received was that. You had very little. I mean, you would see a lot more signage. You didn't see, and when I went in to West North Carolina to, after the floods, there were signs in all the rural areas. You just continue, it was a continuation that, yeah, there are signs, but in Tennessee, it wasn't a whole lot. I mean, it was, you just didn't have that, because I don't think felt like that that certainly wasn't a state that was going to be a swing state that you could change it. So, they don't run the commercials and they're not as, well let's just say they're not as active. I mean, they still voted extremely, the outpour of votes were just one of the largest ever, but it wasn't the same as I have seen in, and certainly in North Carolina being a swing state.

Roskam: It is interesting to look at what this new Congress will look like, and I think that there is a couple of things to point out. Number one, we're used to seeing a centrist, a couple of centrists be the focus of power, the balance of power, and that's been Joe Manchin and Kyrsten Sinema, who are no longer in Congress. Most eyes, I think up until last night, were turning to Susan Collins from Maine and Lisa Murkowski from Alaska, saying, okay, those are Republicans that are likely to be able to make a deal or hold up something that is particularly aggressive on the GOP side, but if the Senate Majority numbers land at, let's say 53 plus, all of a sudden Susan Collins and Lisa Murkowski don't play that role. Jim, is that where we're going? Where do you think we land? Is it 53 or 54?

Ellis: It could be 52, Peter, as well ,because they got the three for sure. They've got West Virginia, Montana, and Ohio, and you have David McCormick is, I think in the best shape of the remaining outstanding ones. But he, it is just razor thin, and those races have a tendency to go to the Democrats when they're in that situation. And the other two now that the Democratic incumbent, well, at least the incumbent in Wisconsin, Tammy Baldwin, now has a small lead. So, that's changed. And in Michigan, we have Alyssa Slotkin, the Democratic congresswoman, she is now taking about a 2,000 vote lead, and she was behind all night. So, if they both win, then the best Republicans can do is 53. And even that is not a guarantee. So, they got in 52, a lot. There is one other little angle that is going to happen here very, very soon and that is, excuse me, before January 20, JD Vance is going to reside to become vice president and then Governor Mike DeWine will appoint a new senator.

Roskam: Right.

Ellis: And I was thinking about that this morning. So, Bernie Marino, who just got elected last night, all of a sudden, he is going to be the senior senator from Ohio.

Roskam: That is right. What a country.

Shuler: But is that true, though? Because they'll be sworn in at the exact same time though.

Ellis: Well, yeah, you're right. Heath, maybe not, maybe the new, maybe the appointed senator would be the, yeah, that is a good point. Well, it depends on when DeWine makes the appointment, too.

Roskam: Yeah, that is right. It is up to him. It, there is another dynamic too, because if the House majority is as close as we think it is on the Republican side, there are very ambitious House Republicans who would love nothing more than to go into the administration. But they're going to be landlocked. They are not going to be able to go. Why? Because getting a new House member has to go through a special election according to the U.S. Constitution. There is no appointment to the House of Representatives, which means you could be the most talented person in the world, but they're going to say we can't wait 60, 90 days for this seat to be filled. You've got to stay. And the irony is, that if the House GOP falls short and the Democrats take control, then it is like everybody, it'll be like a jailbreak, people trying to get out and going into the administration. And to your point earlier, Jim, that doesn't become an issue for Senate Republicans so long as they have a Republican governor who will make the appointment. So, that frees up, there is talk about Tom Cotton, for example, being the Secretary of Defense ,or Marco Rubio, Secretary of State, or any number of these other people who could be looked at for these roles but that only happens if you've got a Republican. There is one other point that I think is…

Ellis: And, Peter, the other the additional term or an additional caveat there, it's got to be a Republican governor in a state where the governor makes it a point. Some states have a law that they immediately go to a special election for the Senate, too.

Roskam: Yeah. And let's not forget about that. Nobody is going to be playing that game.

Ellis: No, nobody is going to want to do that, yeah.

Roskam: There is another one other thing it we just have another minute left. There is another thing that is important to know and to observe closely and that is the Congressional Review Act. The Congressional Review Act as we know is a look-back procedure where it allows a new administration and a new Congress to look back at promulgated rules that happened at the end of the previous administration. And it is a privileged motion on the, in the Senate, meaning it only requires 51 votes. Last time Donald Trump signed 16, one six, 16 Congressional Review Act repeals, which is, you basically take something that is a final rule, and you say, nope, it is out. It is out of the federal record, and it is not as easy, I'm making it sound easier than it is. It is a big adventure to get it done, but it is something for sure across the entire spectrum. Financial services, taxes, healthcare, energy, you name it. These things are going to be subject to a lot of scrutiny.

So, well, for our purposes, we're going to stop now, and I want to say thank you to Heath Schuler and to Jim Ellis for joining us. And it is always a great conversation. And if you want to listen to this and other conversations like it that give you insight, please sign up and follow The Cloakroom with Peter Roskam.

Rubenking: Thank you. Peter, Heath, and Jim. If you have any questions for Peter, his full contact information is in the show notes. As always, thanks for listening to BakerHosts and The Cloakroom with Peter Roskam.