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Checks & Balances: What the 2004 Election May Mean by Sean. D. Shields

When America's forefathers drafted the Constitution, they built a governmental system dependent on inefficiency. Judging by the speed at which your building permits are approved and your tax returns are likely filed, you probably feel that was a really bad idea. However, the inefficiency I'm referring to is called "separation of power," and was intended to prevent any one branch of our government from becoming too powerful. Also referred to as "checks and balances," the Constitution lays out how each of the three branches—executive, legislative and judicial—limit the power of the others.

Yet, in the wake of the 2004 General Election, it appears some of the checks and balances may be softened a bit over the next few years. This fact may translate into a relatively easy road for Bush as he endeavors to enact his policy initiatives. According to his website, www.georgewbush.com/Agenda, that agenda includes further reforms to our tax code, partial privatization of social security, additional options for affordable health care through association health plans, and changes to the welfare system.

Before getting into specifics, it's important to look at the outcome of the election. First, President George Bush, a Republican, was re-elected to his second term of office. He captured the popular vote by over 3.5 million and won the Electoral College even though it came down to a narrow margin of victory in the swing state of Ohio. Second, the Re-publicans succeeded in maintaining their majority in the House of Representatives at 30 votes (232-202-1). In the Senate, Republicans unseated Tom Daschle, the leader of the Senate Democrats for over 11 years, and expanded their hold to 11 votes (55-44-1).

On the surface, little appears to have changed. The Republican Party controlled both chambers of Congress during roughly two and a half years of Bush's four-year term. The only interruption occurred in May 2001, when Republican Senator James Jeffords renounced his party affiliation. Since the Senate was evenly split at the time, the Democrats took control with a 50-49 majority. However, while Republicans still lack the 60-seat majority they need to eliminate the threat of a Democrat filibuster, Senate Leadership is no longer as dependent on arm-twisting to keep all their members in line with the party's legislative agenda.

Third, the judicial branch exists to interpret the laws passed by Congress, a process called "judicial review," but many of its most influential members are appointed by the President. During his two terms, Reagan appointed 357 federal judges and three Supreme Court justices. Clinton appointed 367 judges and two Supreme Court Justices. With hundreds of federal judgeships opening over the next four years and 201 appointments already under his belt, it appears as though President Bush will exceed both of these two-term Presidents.

There is also considerable speculation that up to three spots on the nation's most prominent bench may open up during Bush's second term. Only one justice, Clarence Thomas, is younger than 65. William Rehnquist, who turned 80 in October and is battling thyroid cancer, John Paul Stevens, who is 84, and Sandra Day O'Connor, 74, are all considered possible candidates for retirement.

With the stage set, let's visit a couple of the more prominent checks and balances established by the Constitution and look at how some of them may be affected. Congress can enact legislation, but the President has the final say in the form of his signature or veto. Congress can overturn a veto, but it takes an unusual super-majority (two-thirds) in both chambers.

Over the last 36 years, arguably the modern age of politics in the country, only nine have witnessed a Presidency, Senate and House controlled by the same party (four under Carter, two under Clinton and three under President George W. Bush). During those nine years, only 26 pieces of legislation were vetoed by the President, all by Carter. During the other 27 years, 250 vetoes were issued, 30 of them were overturned by Congress. It stands to reason that legislation passed by a Congress controlled by the same party as the President is likely to fit the President's ideological agenda, and not receive a veto.

While the President does not have the authority to make law, he does have the power to nominate candidates for over 300 positions in 14 cabinet agencies (the Department of Commerce, for example) and more than 100 positions in other agencies that regulate existing laws. The Senate is given authority by the Constitution to grant approval to the President's nominations.

Historical and anecdotal evidence suggests that this process goes significantly smoother when the President and Senate majority are from the same party, and subsequently, share a similar ideological base. This can prove advantageous during the nomination process of a Supreme Court justice. Due to their potential length of service, such justice nominations are heavily scrutinized. Over the next four years, the potential for Bush to nominate a conservative judge, and for the Senate to approve that nomination, is vastly improved.

Subsequently, the successful nomination and appointment of anywhere between one and three conservative judges to the 11 current positions on the Supreme Court, will likely turn the tide toward a more conservative interpretation of our nation's laws. This paves the way for the laws passed over the next four years to be upheld by a more conservative-leaning judicial branch.

In the end, the 2004 General Election bodes well for the GOP and the conservative movement in this country. It also likely translates into a more employee, business and taxation friendly approach by the federal government over the coming years.

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