



October 30, 2012

Letter from Washington

With less than one week remaining before the Presidential election on November 6, the race has devolved into a virtual dead heat.

At our last writing, on the eve of the first debate, the race seemed to be slipping away from Romney as Obama had started to open up a several point lead nationally and most critically in the electoral college vote-rich battleground states. However, in that first debate Romney brought his A-game and Obama just showed up. It was a clear debate victory for Romney on substance, but more importantly a victory on style in that many of the undecideds could finally see him as a reasonable alternative to Obama, despite four months of battering by negative TV advertising.

In that first debate Obama appeared peevish, and you could almost see him thinking "I've gone mano a mano with Vladimir Putin, what am I doing on the stage with this bozo?" After the first debate rout, Obama overcompensated in the next two events by being overly aggressive and snarkily condescending. He may have scored narrow victories on substance but again lost the style contest, as Romney solidified the impression that he could be a viable choice for President. In order to accomplish that, Romney had to run away from much of the right wing ideology that he had been forced to adopt in the Republican primary season, which has led to many inconsistencies in past and present positions.

If Obama had been on top of his game he probably could have sealed the deal right then, but his lackluster performance brought an immediate halt to the slow drift of undecideds toward him.

Obama's signature accomplishment has been the passage of the Affordable Health Care Act, dubbed "Obamacare", which a plurality of Americans still oppose. The economy may or not be improving, depending on which set of vital signs you subscribe to each week, and there isn't much else for him to run on other than the idea that things could be a lot worse.

As a result, most of the Democrat-sponsored negative advertising has been focused on the traditional scare issues of privatization of social security, cuts to Medicare/Medicaid, and the "women's issues" of contraception and abortion. The Republican advertising has been somewhat less aggressive, recognizing that Obama is still personally popular despite the lack of

performance on key 2008 campaign issues, and has been based on affirming the decision to shift support to Romney.

Neither campaign has dealt in any substance with the key persistent issues of deficit reduction, entitlement reform and the overly complex tax code. Since his stunningly effective performance in the first debate, Romney's fortunes have revived and he has not only reversed the trend toward Obama but actually pulled ahead in some key areas. American electoral strategy is based on the anachronistic Electoral College, a system that many Americans don't really understand.

The President is not elected by direct popular vote but by a majority in the Electoral College, which was developed as a compromise during the Constitutional Convention in 1787. An emerging country with four million people spread over more than a thousand miles with no mass media available, could not effectively run a national campaign for President. The drafters of the Constitution had to balance the interests of the large-population states versus the small, property owners versus non-stakeholders, and the power of the federal government versus the rights of the individual states. The system they devised had the President selected by a group of electors who were elected by the states, the number of electors equaling the number of Senators and Representatives in the US Congress. The electors were supposed to be of such character that they would put the interests of the republic ahead of regional issues and vote for the best candidate for President. Since the number of Representatives is based on census head count, the system naturally favors the larger populous states.

The members of the Electoral College would meet after the election and cast their votes, with the runner up becoming the Vice President. This system worked for the first four election cycles, with the subsequent modification via the 12th Amendment that the votes for President and Vice President were taken separately so that the two officials were not of different parties. In the event of a tie in the Electoral College, the election of the President defaults to the House of Representatives.

With that history in mind, fast forward to 2012. In the latest tracking polls, Romney leads nationally by one to three points, with Obama maintaining a slight lead in the key high-electoral vote mid-West. If the election were held today, it is likely that Romney would win the popular vote, but Obama would eke out the required 270 electoral votes and be reelected. This has happened a handful of times in US history, most recently in 2000, Bush versus Gore. Abolishing the Electoral College and changing to a system of direct election by popular vote would take a constitutional amendment, not a short or easy process.

What has never happened in US history is for an incumbent President to be rejected for reelection by a majority of the voters but still be returned to office by the Electoral College mechanism.

Romney continues to make slight gains in the key states and had largely evened the race with seven days to go. What is not clear at this point is what effect the damage caused by Hurricane Sandy will have on the remaining week of politics. As of this morning, New York City is without electoral power from the tip of Manhattan to 39th Street, and the subway system is flooded with salt water. From North Carolina to Massachusetts along the eastern seaboard there are numerous widespread power outages, complicated even further by a blizzard in the Appalachian mountain states. 50 million Americans have been affected by the storm, and potentially many will be unable to cast ballots between now and COB Tuesday. The states control the manner and place of voting in federal elections, but only the Congress has the ability to delay the date, a highly unlikely prospect.

Both sides have suspended campaigning to a degree, with the pundits ridiculously trying to figure out which candidate benefits more from the storm.

Whichever candidate wins the election, there will undoubtedly continue to be divided government with the House remaining Republican and the Senate Democratic, although both by slightly smaller majorities. The fiscal cliff and sequestration issues remain unresolved, and will likely remain so until the new Congress and possibly new President are seated in January. The government is operating on a Continuing Resolution that will not run out until March, so it is entirely possible that sequestration will be allowed to take place on January 2nd since there is not a threat of an imminent government shutdown.

The Congressional Research Service has recently opined that the effects of the sequestration will be gradual and the full consequences won't be felt until later in 2013, so there is a belief in the Congress that things can be fixed retroactively without doing too much harm. This view is both naïve and reckless and does not take into account the devastating effect that sequestration will have immediately on DoD program management. All federal programs will be affected in ways that may take several years of consistent appropriations policy to fix.

In the last debate the President stated that sequestration "will not happen". That immediately led to speculation that there have been ongoing discussions between the White House and Congressional leaders. All involved quickly denied that idea, and the White House press secretary backpedaled quickly saying that Obama was expressing an opinion rather than stating a fact. In any case, his expressed desire for a deal may have given the Republican House some additional leverage. The Democrat leadership has adopted the "crazy man" strategy, indicating that they would take the country over the cliff rather than extend tax breaks for over-\$250,000 individuals. Sequestration and the extension of current tax rates are two separate subjects but both are part of the same problem and will

need to be addressed as a package in a grand bargain that deals with deficits and entitlements.

A this point, six days before the election, it is too close to call and will undoubtedly be a nail-biter with the final result maybe not known for 24 hours or more.

Based on the campaigns that they have run, neither candidate will have a mandate, especially if Obama loses the popular vote and is reelected via Electoral College math, and the winner will have to deal with an obstructionist half of the Congress. Clearly this is not a recipe for a serious or successful address of the systemic problems facing the country, but a continuation of legislative gridlock.