



November 7, 2018

Top Story

Most Incumbents Survive in General Assembly; Braun Pulls Off Big Senate Win

Indiana didn't see a blue wave like other parts of the country, but there was enough upheaval and uncertainty that a few state Republican incumbents found themselves on the short end of the vote tally. Indiana's U.S. Senate battle proved to be not much of a tossup, with the outcome decided earlier than expected.

Below is Indiana Chamber analysis of the midterm highlights. Additional commentary and a full results recap of every legislative, statewide and congressional office is available at www.indianachamber.com/2018election. This report will be updated throughout the day to reflect final vote counts.

STATE: Near Status Quo

The top line for the Indiana General Assembly: Nothing changed significantly as both the House and Senate remain firmly in Republican hands – with the supermajorities still intact. Yet, there were some close calls and a few incumbent defeats.

Below are among the most noteworthy and hard-fought races for incumbents, with the winners bolded (* = Indiana Chamber endorsement):

- Sen. Mike Delph (SD 29 – Boone, Hamilton and Marion counties)
- **Sen. Jon Ford (SD 38 – Clay and Vigo counties)***
- **Sen. Ron Grooms (SD 46 – Clark and Floyd counties)***
- Senate Minority Leader Tim Lanane (SD 25 – Delaware and Madison counties)
- **Sen. Jim Merritt (SD 31 – Hamilton and Marion counties)***
- **Rep. Steve Bartels (HD 74 – Crawford, Dubois, Orange, Perry and Spencer counties)***
- **House Speaker Brian Bosma (HD 88 – Hamilton, Hendricks and Marion counties)***
- **Rep. Martin Carbaugh (HD 81 – Allen County)***
- **Rep. Dale DeVon (HD 5 – St. Joseph County)***
- **Rep. Rep. Todd Huston (HD 37 – Hamilton County)***
- **Rep. Cindy Kirchhofer (HD 89 – Marion County)***
- **Rep. Julie Olthoff (HD 19 – Lake and Porter counties)***
- **Rep. Sally Siegrist (HD 26 – Tippecanoe County)***
- **Rep. Hal Slager (HD 15 – Lake County)***
- **Rep. Ed Soliday (HD 4 – Porter County)* (expected winner)**
- **Rep. Jerry Torr (HD 39 – Hamilton County)***
- **Rep. Joe Taylor (HD 7 – St. Joseph County)**

The Indiana Chamber is pleased so many business champions came through in the end. In particular, Rep. Carbaugh in Fort Wayne and those in the suburbs around Indianapolis all faced formidable opponents in districts where the demographics are more challenging.

Conversely, we are sorry to see Rep. Siegrist in Tippecanoe County defeated and Reps. Julie Olthoff and Hal Slager in northwest Indiana likely to lose their seats. We say likely for Olthoff because Porter County still had not counted all its votes as of 8:30 a.m. EST, while Slager is on the wrong end of a thin vote margin – around 50 votes; that may put the outcome in doubt, especially if there is a provisional ballot battle. With Porter County still up in the air, that also means victory cannot yet be confirmed for Rep. Soliday, though it's expected.

If you didn't hear much about open seat races in the General Assembly, there's a reason for that. There were so few this election, especially competitive ones; that's not happened in over a decade.

Of note: Mike Gaskill did come through in SD 26, while Linda Rodgers took SD 11; both were Chamber-backed candidates.

The Indiana Chamber's political action group, Indiana Business for Responsive Government (IBRG), was actively involved – in time, strategy and financial support – in most of the above races.

The stakes in this election were very high for employers across our state. Currently, Indiana is a good place if you want to create, launch or grow a business – and it needs to stay that way. The state's transformation didn't happen by accident. It took leadership, risk-taking, policy advocacy and, most importantly, winning elections to put pro-jobs, pro-economy legislators in office.

Since 1990, IBRG has notched an impressive win rate of over 85%, helped to unseat more than 40 business-hostile incumbents and aided in the election of scores more who champion free-enterprise issues.

FEDERAL: Braun Flips Indiana Red

Many eyes – both locally and nationally – were on Indiana's Senate race, where Republican challenger Mike Braun of Jasper defeated Sen. Joe Donnelly by a surprisingly comfortable margin.

Republican turnout was heavy and more than counteracted Democrat intensity and independents voting for the incumbent. Another bonus for Braun: President Trump came to Indiana twice the week leading up to the election to further enthuse the Republican base – already galvanized to a large degree following the Supreme Court hearings and vote for Justice Brett Kavanaugh.

In terms of messaging, Braun spent much of his time in the waning days and weeks tying Donnelly to Senate Minority Leader Chuck Schumer and the more liberal policies and actions of the Democratic Party. Coupled with a desire to keep the Senate in Republican control, this was a winning combination that seemingly pushed the bulk of even the more moderate Republicans to Braun.

The Indiana Chamber, which did not make an endorsement in this contest, enjoyed a good working relationship with Braun when he was in the state Legislature. We expect that to continue in the U.S. Senate, and Braun has pledged to work closely with us on issues impacting the business community and its workers.

As for the U.S. House races, there were no surprises for Indiana. All the incumbents won and the two open-seat races in IN-04 and IN-06 went to Republicans Jim Baird and Greg Pence, respectively – both of whom the Indiana Chamber endorsed in the general election.

With the Senate remaining in Republican control and the House flipping to the Democrats, let's hope that signals a noticeable return to working together and searching for common ground.

IN OTHER NEWS

Taxation and Public Finance States' Reactions to *Wayfair* Only Just Beginning

For a little over a month now, Indiana has officially required out-of-state, online sellers to collect Indiana sales tax. Many states, including Indiana, anticipated the U.S. Supreme Court decision in *Wayfair v. South Dakota*, handed down this summer, and began planning for it long ago. Indiana passed legislation modeled after the South Dakota law that was sanctioned by the Court in its landmark decision. Translation: The Indiana Department of Revenue (IDOR) was pretty much ready to roll.

After the Court's decision, IDOR issued a notice to online retailers that they would start collecting sales tax from their Indiana customers effective October 1. Consequently, if retailers transact more than 200 sales or \$100,000 in Indiana sales they needed to start collecting and remitting the tax, regardless of whether the sellers have any physical presence in Indiana or not. See the IDOR release at <https://calendar.in.gov/site/dor/event/sales-tax-in-effect-for-out-of-state-sellers/>.

Ten other states began collection requirements when Indiana did, while a handful are applying even earlier start dates. A few more were effective November 1, a couple others will be in December and a half-dozen or so as of January 1, 2019. Almost all the states (except those few that don't have a sales tax) are considering legislation of some kind to require such online sellers to collect their state sales tax.

Not everybody, however, will be on as solid legal ground as Indiana. The Court blessed South Dakota's law and recognized that it had a number of safeguards to reduce the administrative burden on these remote, out-of-state sellers. A close reading of the decision suggests that those protections may be needed before a state can impose a collection obligation on sellers that have no physical presence in their state.

Indiana meets all the implied tests: We are a member of the Streamlined Sales Tax program like South Dakota; our statute has same thresholds as the South Dakota law; and we will not be implementing it retroactively. Again, these factors were all seemingly relevant to the Court decision. Nevertheless, a lot remains unsettled for Indiana companies. There is, unfortunately, much inconsistency in what states are choosing to do in reaction to *Wayfair*. Whatever the particulars, one thing is certain: States will be continuing their efforts to require online sales tax collection.

Some are hopeful that Congress will step in and provide some uniformity and simplicity. However, this doesn't appear too likely. Although federal legislation has been introduced, the many political forces that prevented any consensus on legislation prior to *Wayfair* remain in place. The reality is that Congress had every opportunity to act before *Wayfair*. In fact, Congress was implored by many to resolve the issue for years prior to *Wayfair*. Simplicity and uniformity would be welcomed, but most

observers indicate that until much more agreement exists among the states and various interested parties, Congress is less likely than ever to step in now that the Court has ruled.

Many well-intended parties are trying to work on all the litany of issues. But nothing will slow or deter the states. They will keep moving forward and their actions are likely to generate even more new questions. They will not only be passing more laws to require collection from the sellers, but another wave of legislation is anticipated – with provisions focused beyond the sellers themselves to those who facilitate the transactions. These entities are referred to as “marketplace facilitators.” They are the people who provide online forums and platforms for the sellers, aka the means for sellers and buyers to connect.

As a practical matter, states realize what’s most desirable is for the taxes to be collected at the point of the mouse click/sale. States will be looking for ways to get these marketplace facilitators to collect and remit the sales tax. This new world of online sales tax collection, and the myriad of laws governing those transactions, is really only just beginning.

For more detail on what’s happening in other states, see this article from the Tax Foundation at <https://files.taxfoundation.org/20180904165435/Tax-Foundation-FF6091.pdf>.

Resource: Bill Waltz at (317) 264-6887 or email: bwaltz@indianachamber.com

Energy and Environment Chamber Meets With EPA Regional Administrator

On October 30, the Indiana Chamber – along with nearly 50 members (and a couple of other trade associations) – met in Chicago with Environmental Protection Agency (EPA) Region V Administrator Cathy Stepp, Indiana Department of Environmental Management (IDEM) Commissioner Bruno Pigott and their staffs to discuss environmental issues that impact the Indiana regulated community.

Chamber member Skipp Kropp of Steptoe & Johnson coordinated setting up the meeting with the agencies. EPA and IDEM presented recent developments in all of their major program areas. During the Q&A session, a few members discussed issues that they were experiencing with EPA’s implementation of the Clean Air Act and asked for clarification. Region V Administrator Stepp agreed to investigate the issues.

Stepp also offered to visit Indiana and meet with Chamber members in the future – and we intend to take her up on that offer, so stay tuned.

The agenda and handouts from the meeting are available to view at <https://www.indianachamber.com/wp-content/uploads/2018/11/EPA-Mtg-10-30.pdf>.

Resource: Greg Ellis at (317) 264-6881 or email gellis@indianachamber.com

Health Care and Labor Relations Chamber Testifies Against Medical Marijuana in Study Committee

Last month, the Indiana Chamber weighed in on the General Assembly's public hearing on legalizing the use of marijuana for medical purposes, stating:

"The Indiana Chamber opposes the legalization of marijuana in any form for recreational use. The Chamber is opposed to medical or therapeutic use until consistent safety and effectiveness in clinical trials exists, as indicated by the Federal Drug Administration (FDA). The Chamber supports the use of isolated components of marijuana, cannabinoids or similar extracts for solely medicinal purposes if approved by the FDA for specific illnesses and diseases."

Guidelines from the FDA regarding medical marijuana are yet to be issued. The Chamber believes the longer Indiana waits on legislation, the more useful clinical data will be available to make sure that the state gets this right.

It's worth mentioning that of the 31 states that legalized marijuana for medicinal purposes, eight quickly opted to also approve it for recreational use.

Before the Interim Study Committee on Public Health, the Chamber also talked about the drug's impact on job performance and the ability of companies to find workers. Employers use drug screenings in hiring, random testing, for cause and as follow-up to treatment. Therefore, we believe legalizing medicinal marijuana will increase access and increase the number of positive drug tests, further negatively impacting Indiana's workforce.

In submitted testimony, the Chamber noted how important the effects of marijuana are to job performance and employers. Objective and measurable consequences of use include decreased complex motor skills, interference with attention span, loss of efficiency of short-term memory and cognitive impairment (inability to think effectively).

In closing, the Chamber's Mike Ripley stated, "It comes down to whether individual benefits are worth the tradeoffs. Some of you (legislators on the committee) are convinced that they are worth it; some of us are not."

Despite robust and impassioned discussions by committee members, no consensus was reached on the matter. That means there will be no formal recommendation on legislation for the 2019 session. However, the Chamber fully expects there will be a number of bills introduced surrounding medical marijuana and will be prepared to advocate in opposition.

Resource: Mike Ripley at (317) 264-6883 or email: mripley@indianachamber.com

Workforce

Now Open: Important Chamber Survey on Substance Misuse in Workplace

The Indiana Workplace Substance Use & Recovery Survey is underway, and we urge you to take the time to complete it: <https://www.surveymonkey.com/r/WorkplaceSubstanceUse>.

The online survey will assess business perceptions, attitudes, knowledge and current practices as they relate to addressing and preventing substance abuse in the workplace.

In February, the Indiana Chamber and the Wellness Council of Indiana announced Indiana Workforce Recovery, a strategic partnership with Gov. Eric Holcomb and his administration to combat the opioid epidemic. This survey is a key component in Indiana Workforce Recovery being able to provide the best possible assistance to businesses.

The anonymous survey – open through December – will take approximately 15 minutes to complete.

For more information about the survey or Indiana Workforce Recovery, contact Mike Thibideau at mthibideau@indianachamber.org or (317) 264-2166.

Chamber Event

Rebranded Legislative Dinner Offers Great Connections, Visibility

Our annual Legislative Dinner has a new name: The Chamber Day Dinner will bring together more than 700 influential business leaders, organizations and legislators to discuss the issues vital to employers and their workers. The 2019 Chamber Day Dinner takes place March 13 at the Indiana Roof Ballroom.

The keynote speaker is Arthur C. Brooks, who is the president of the American Enterprise Institute, best-selling author of 11 books (including *The Conservative Heart*) and a regular contributing opinion writer for the *New York Times*.

You can reserve your ticket or table today at <https://www.indianachamber.com/event/2019-chamber-day-dinner/>.

We also want to invite your company to consider being a sponsor for this premier legislative event. By taking advantage of this opportunity now, your organization will gain visibility with a prestigious business audience and legislators through invitations, email promotions, the Indiana Chamber web site and on-site promotional materials.

Sponsorship opportunities are limited for this event and will sell out quickly. Please review the benefit options (https://www.indianachamber.com/wp-content/uploads/2018/10/SponsorPkgs_ChamberDay19.pdf) and contact Jim Wagner at jwagner@indianachamber.com with questions or to finalize your sponsorship.