

## WASHINGTON, D.C. UPDATE



November 2016

This is an advertisement.

Defying all prognostications and polling, Donald J. Trump is President-elect of the United States. Fueled by his surprising strength in the industrial Midwest, Donald Trump was able to capture states that had voted Democrat in recent presidential elections, including Wisconsin, which had not voted for a Republican for President since 1984, and Pennsylvania, which last voted a Republican into the White House in 1988. Mr. Trump's victory pushes the country and the political system in a distinctly rightward direction.

The broader implications and effects of the election of Donald Trump will only reveal themselves over the coming weeks and months, but here are some of the takeaways:

- **Complete Republican Control** – Voters delivered complete control of both the legislative and executive branches to Republicans, who lost only a minimal number of seats in the House and Senate. This means that we should expect efforts to significantly roll back the Obama Administration's domestic and international policies, including the Affordable Care Act, the nuclear agreement with Iran, the climate agenda, Dodd-Frank, the Trans-Pacific Partnership and more.
- **Republican Efforts to Unify Behind a Legislative Agenda** – With Republican control of Washington for at least two years, intraparty debates over immigration, trade, fiscal policy and the role of the federal judiciary will dominate political discourse. Much hinges on whether Congressional Republicans and the incoming Trump Administration can reach a consensus on these and other issues.
- **Where Do Democrats Go From Here?** – In a year in which Democrats were optimistic about their chances of holding the White House, taking back the Senate and even had an outside shot at the House, the election results have given Democrats pause. Not only did Democrats pick up only two seats in the Senate and six seats in the House, Republicans took control of the governorships in New Hampshire, Missouri and Vermont, and increased their share of unified control of state governments to 25, compared to six for Democrats. Democrats are in for a long period of soul searching to figure out what went wrong and what to do next. Democrats, however, are not without recourse in Washington as they retain enough seats in the Senate to filibuster selected Republican proposals. Yet they risk losing this ability if they overplay their hand, given that 24 Democratic Senators are up for reelection in 2018 and Republicans can change the rules to require only a 51-vote majority for passage of legislation or confirmation of presidential appointees.

In this month's update we highlight the following issues:

- [Election Results](#)
- [Congressional Leadership Races](#)
- [Expectations for the Lame Duck Session of Congress](#)

Please feel free to reach out to me for additional information on these topics or other issues of importance.

[Sheila Burke](#)

Chair, [Government Relations and Public Policy](#)

Baker Donelson

# WASHINGTON, D.C. UPDATE

November 2016

This is an advertisement.

## **Presidential Election – Donald J. Trump Defeats Secretary Hillary Clinton 306 Electoral Votes to 232**

It is difficult to overstate the level of surprise many officials in Washington are experiencing with the election of Donald Trump as the next President of the United States. Even Speaker Paul Ryan (R-WI) expressed his surprise when he called Trump's election "the most incredible political feat I have seen in my lifetime ... He turned politics on its head."

However, now the hard work begins. President-elect Trump, who by all published accounts had very little interest in transition planning and took a mostly hands-off approach to the planning for the post-election time period, will now (with the help of his transition team) be faced with the task of identifying, selecting, nominating and getting congressional approval for some 4,000 presidential appointees. This process, who he selects and whether they can garner congressional support will have a significant impact on the President's ability to implement his policy objectives.

On the policy front, President-elect Trump released a video identifying withdrawing from the Trans-Pacific Partnership, canceling environmental restrictions on energy production, cutting regulation on businesses, establishing a cyber security review team, examining visa abuse and prohibiting government officials from becoming lobbyists for five years after leaving government as his priorities for his first 100 days in office. It is important to note that he did not include health care among his initial priorities. House and Senate Republicans added that they are looking forward to cutting taxes and scaling back regulations.

**Takeaway:** Donald Trump's election as President of the United States is a shock to the political system unlike anything in recent memory, comparable to the Gingrich Revolution of 1994 and the Reagan Revolution of 1980. The effects of it are vast and, frankly, unknown, as Donald Trump's policy priorities (outside of border security, trade, health care reform and infrastructure-driven job creation) remain unclear.

## **Senate Election – Republicans Hold Senate 52 to 48**

In a year in which Republicans defended 24 Senate seats (to Democrats' ten), Democrats only picked up two seats (New Hampshire and Illinois). Assuming Louisiana's December 10 Senate runoff is won by Republican John Neely Kennedy, Republicans will have a 52 to 48 seat majority (with two independents caucusing with the Democrats) in the 115th Congress. The Republican majority is expected to be relatively durable well into the future as Republicans will be defending only eight seats in 2018, while Democrats will have to defend 24, including a number of states won by President-elect Trump. Democrats had hoped to take seats in North Carolina, Pennsylvania, Wisconsin, Florida, Missouri and Ohio, but partly due to the rise of straight-ticket voting and partly due to Donald Trump's strong showing in each of those states, they were uniformly unsuccessful.

Republicans do not, however, have the 60-seat majority needed to invoke cloture and move legislation forward to a vote, which means that Senate Democrats under their new leader, Senator Chuck Schumer (D-NY), retain significant influence in the legislative process. However, should Senate Democrats adopt what Senate Republicans deem to be obstructionist tactics, Senate Majority Leader Mitch McConnell (R-KY) said he will consider utilizing the budget reconciliation process to approve some legislation with a 51-vote majority. Senator McConnell has also not ruled out the so-called "nuclear option" to change the Senate's rules to overcome Democratic filibusters with a 51-vote majority. It is also worth noting that a number of Democratic Senators up for reelection in 2018 represent states won easily by Donald Trump (Indiana, North Dakota, West Virginia, Missouri and Montana), while other Democratic Senators represent states that flipped from supporting President Obama in 2012 to supporting President-elect Trump in 2016 (Wisconsin, Ohio, Florida, Pennsylvania and Michigan).

**Takeaway:** With continued Republican control over the Senate (even with a slightly diminished majority) – and a Republican in the White House – expect to see long-stalled Republican policy objectives move forward, including repeal of the Affordable Care Act and tax reform.

# WASHINGTON, D.C. UPDATE

November 2016

This is an advertisement.

## House Election

As expected, the House remains under Republican control notwithstanding that Democrats are expected to pick up at least six seats. Though Republicans retain a comfortable 239 to 193 majority (with three seats outstanding, the California 49th congressional district and two Republican-held seats in Louisiana which will hold a run-off election in December), the continued presence of approximately 40 members of the House Freedom Caucus will present a challenge for Speaker Ryan who will be called upon to address the concerns of the caucus in addition to the priorities of President-elect Trump.

**Takeaway:** Emboldened by Donald Trump's win and experiencing only limited losses during what was expected to be a difficult year for House Republicans, expect to see Speaker Ryan try to align his "Better Way" agenda with that of President-elect Trump's.

## Leadership Races

Over the coming weeks, Congress will organize for the 115th Congress that convenes in January. This process includes internal party elections for Democratic and Republican leadership positions, committee chairmanships and ranking members. Leaders and chairmen have significant leverage to drive the policy agenda and advocate on behalf of priorities and constituents.

Traditionally, many committee chairmanships (and ranking member positions for the minority party) have gone to the most senior member of the committee. In recent years, this hierarchy has started to erode as younger members have begun to push for new blood in committee leadership positions. Additionally, for more than 20 years, House and Senate Republicans have elected to implement a three congressional cycle (six year) limit on serving as the chair of a particular committee or subcommittee – however there is a process by which a waiver can be sought. Democrats have no such provision in their by-laws.

## Senate Republicans

With a renewed mandate, Senate Republican leadership will stay primarily the same, with Senators McConnell and John Cornyn (R-TX) remaining as majority leader and majority whip, respectively. The only change to the leadership team is

the elevation of Senator Cory Gardner (R-CO) to replace Senator Roger Wicker (R-MS) as chair of the National Republican Senatorial Committee. Additionally, only a handful of Senate committee chairman positions are likely to change hands. However, it is important to remember that any shifting at the top of a committee or subcommittee has repercussions down the line as lower ranking members look to move up into previously occupied positions.

Senate Republicans chairmanship changes:

- Small Business & Entrepreneurship Committee – Senator David Vitter (R-LA) retiring
  - Likely to be replaced by Senator Jim Risch (R-ID)
- Banking, Housing, and Urban Affairs Committee – Senator Richard Shelby (R-AL) stepped down as a result of Republican term limits
  - Likely to be replaced by Senator Mike Crapo (R-ID)
- Environment and Public Works Committee – Senator Jim Inhofe (R-OK) stepped down as a result of Republican term limits
  - Likely to be replaced by Senator John Barrasso (R-WY)

## Senate Democrats

With the retirement of Democratic floor leader Senator Harry Reid (D-NV), Democrats have elected Senator Chuck Schumer (D-NY) to be their new leader. Senator Schumer currently occupies the chairmanship of the Senate Democratic Policy Committee, the number three ranking job in the Senate. Senator Richard Durbin (D-IL) will remain in the number two position for Democrats in the Senate, the Senate Democratic whip. Dispelling rumors, Senator Patty Murray (D-WA) elected not to challenge Senator Durbin for his position, instead assuming Senator Schumer's former position.

Another important position is that of the Democratic leader in the Senate Appropriations Committee. Retiring Senator Barbara Mikulski (D-MD) has led Democrats on the Appropriations Committee, which has oversight over all U.S. government discretionary spending, since 2012. Senator Pat Leahy (D-VT) will assume the position of ranking member of the committee, opening up his seat as ranking member of the Judiciary Committee and causing a number of changes for ranking member positions on other committees.

# WASHINGTON, D.C. UPDATE

November 2016

This is an advertisement.

Senate Democratic Ranking Member changes:

- Appropriations Committee – Senator Barbara Mikulski (D-MD) retiring
  - Succeeded by Senator Pat Leahy (D-VT)
- Environment and Public Works Committee – Senator Barbara Boxer (D-CA) retiring
  - Succeeded by Senator Tom Carper (D-DE)
- Ethics Committee – Senator Barbara Boxer (D-CA) retiring
  - Succeeded by Senator Chris Coons (D-DE)
- Judiciary Committee – Senator Pat Leahy (D-VT)
  - Succeeded by Senator Diane Feinstein (D-CA)
- Homeland Security and Government Affairs – Tom Carper (D-DE)
  - Succeeded by Senator Claire McCaskill (D-MO)
- Indian Affairs – Senator John Tester (D-MT)
  - Succeeded by Senator Tom Udall (D-NM)
- Intelligence Committee – Senator Diane Feinstein (D-CA)
  - Succeeded by Senator Mark Warner (D-VA)
- Rules Committee – Senator Chuck Schumer (D-NY)
  - Succeeded by Senator Amy Klobuchar (D-MN)
- Veterans Affairs Committee – Senator Richard Blumenthal (D-CT)
  - Succeeded by Senator Jon Tester (D-MT)
- Aging Committee – Senator Claire McCaskill (D-MO)
  - Succeeded by Senator Bob Casey (D-PA)
- Joint Economic Committee – Senator Amy Klobuchar (D-MN)
  - Succeeded by Senator Martin Heinrich (D-NM)

## House Republicans

Speaker Ryan had been expected to face a revolt against his continued speakership rooted in the House Freedom Caucus and outside groups. However, since the election, Speaker Ryan has been able to deftly reassert his position as the leader of the House Republican caucus and has seemingly repaired his famously rocky relationship with President-elect Trump.

Like Senate Republicans, House Republicans are term-limited to spending no more than six years as the chair of a committee. Because of this, a number of House committees will elect new chairs over the coming weeks.

House Republican chairmanship changes:

- Education and Workforce Committee – Rep. John Kline (R-MN) retiring
  - Likely to be succeeded by Rep. Virginia Foxx (R-NC)
- House Administration Committee – Rep. Candice Miller (R-MI) retiring
  - Likely to be succeeded by Rep. Gregg Harper (R-MS) or Rep. Rodney Davis (R-IL)
- Veterans' Affairs Committee – Rep. Jeff Miller (R-FL) retiring
  - Likely to be succeeded by Rep. Phil Roe (R-TN), Rep. Doug Lamborn (R-CO) or Rep. Gus Bilirakis (R-FL)
- Appropriations Committee – Rep. Hal Rogers (R-KY) forced from the position by Republican term limits
  - Likely to be succeeded by Rep. Rodney Frelinghuysen (R-NJ)
- Energy and Commerce Committee – Rep. Fred Upton (R-MI) forced from the position by Republican term limits
  - Likely to be succeeded by Rep. John Shimkus (R-IL), Rep. Greg Walden (R-OR) or Rep. Joe Barton (R-TX)
- Ethics Committee – Rep. Charlie Dent (R-PA) forced from the position by Ethics Committee term limits
  - Replacement unknown

## House Democrats

Minority Leader Nancy Pelosi (D-CA) is facing a challenge from Rep. Tim Ryan (R-OH) for the leadership of the House Democrats. Rep. Ryan is trying to seize upon Democrats' desire for change and is arguing that Leader Pelosi has had her turn, and it is time for some younger blood in caucus leadership. Leader Pelosi is currently expected to retain her position that she has occupied since 2003. Likewise, Reps. Steny Hoyer (D-MD) and Jim Clyburn (D-SC) are also expected to retain their positions as the number two and three Democrats in the House. However, some Democrats are bracing for change as the delay of leadership elections from November 15 to November 30 portends the possibility of additional challenges to the existing leadership team.

The only committee in which change is expected at the top is the House Budget Committee, where Democratic leader Rep. Chris Van Hollen (D-MD) has been elected to the Senate. Rep. John Yarmouth (D-KY) has expressed interest and is next in line, but Leader Pelosi has remained silent on who she considers a favorite.

# WASHINGTON, D.C. UPDATE

November 2016

This is an advertisement.

House Democratic ranking member changes:

- Budget Committee – Rep. Chris Van Hollen (D-MD)
  - Likely to be replaced by Rep. John Yarmouth (D-KY)

**Takeaway:** Given Republicans managed to maintain control of both the House and the Senate, relatively few committee leadership positions will change hands in January. The most impactful changes will be on the Appropriations Committees, where a Senator Pat Leahy (D-VT) will take on the ranking member role in the Senate, and Rep. Rodney Frelinghuysen (R-NJ) will likely become the new chairman in the House.

## Expectations for Lame Duck

Congress began its post-election lame duck session with a long to-do list headlined by the looming December 9 expiration of the current continuing resolution (CR). Other issues may enter the conversation, including finalization of the Water Resources Development Act (WRDA) and the 21st Century Cures. However, the election of Donald Trump to the presidency radically changes the political calculus for the outlook of various bills held over for a lame duck session that will now focus on ensuring the federal government does not close down on December 9 while pushing decisions on other issues into January when Republicans assume control over the White House. In all likelihood, Congress will elect to adopt only a CR keeping the government open until next spring and/or a limited number of appropriations minibuses incorporating multiple appropriations bills with broad bipartisan support. It is unlikely that any other measures (except possibly 21st Century Cures, WRDA or national defense-related items) will move forward.

## Appropriations

In the wake of the election of Donald Trump, Congress is expected to follow the incoming administration's lead on next steps for the appropriations process. News reports indicate that the Trump transition team has requested a CR until March 31, 2017, delaying final decisions on the regular fiscal year 2017 (FY17) appropriations until almost halfway through the fiscal year. This year, Congress was unable to pass 11 of the 12 regular appropriations bills that fund the federal government. With the exception of the Military Construction and Veterans Affairs Appropriations Act (which has been approved for the duration of FY17), Congress must either approve annual appropriations

measures or another CR by December 9, or the federal government (or the unappropriated portions thereof) will shut down until an agreement is reached.

There are a number of endgame possibilities for appropriations legislation, including:

- An omnibus appropriations bill enacting all 11 outstanding measures;
- Multiple “minibus” legislative packages combining two or more bill each;
- CR extending until early 2017 when a new Congress takes office;
- Full-year CR extending existing spending levels until the end of the fiscal year, September 30, 2017; or
- A combination measure that includes full appropriations for some of the 11 outstanding bills while extending 2016 spending levels for more contentious departments, known as a “cromnibus.”

Complicating the FY17 appropriations endgame is how Congress will handle the Obama Administration's \$11.6 billion budget amendment to its earlier \$73.7 billion Overseas Contingency Operation funding request. The amendment includes \$5.8 billion for the Department of Defense to increase troop levels in Iraq, slow a previously planned withdrawal of forces from Afghanistan and expand air operations to counter the threat of the Islamic State. The other \$5.8 billion would be split between the Department of State and USAID in order to support these missions. Further compounding the situation is pressure to appropriate additional emergency disaster assistance for Louisiana flooding and new funding to address the effects of Hurricane Matthew.

## National Defense Authorization Act

Congress is expected to pass the National Defense Authorization Act (NDAA) during the lame duck session. The NDAA has been approved by Congress every year for the past 55 years, and this year will be no different. Included in the NDAA is a House-Senate agreement to authorize \$9 billion in Overseas Contingency Operations funding. The House-passed version of the legislation included \$18 billion in Overseas Contingency Operations funding in order to pay for the base military budget, while the Senate-passed version did not.

# WASHINGTON, D.C. UPDATE

November 2016

This is an advertisement.

## Flint, Michigan Lead Abatement

As part of the September 30 CR agreement, Democrats and Republicans agreed to move forward with the funding for Flint, Michigan lead abatement as part of WRDA that is expected to be one of the top priorities of the lame duck session. The Senate-passed version includes \$220 million for lead contamination relief nationwide, of which at least \$100 million is expected to be spent in Flint, while the House-passed version included an amendment mandating \$170 million for Flint. The final amount will be a result of negotiations in the House-Senate conference committee. However, Flint lead abatement could be a victim of the November 8 election results depending on what is decided for the lame duck session.

**Takeaway:** Given the election outcome, there is a great deal of uncertainty as to the number of items Congress will address during the lame duck session. Expect the appropriations process to dominate the legislative wrangling during the lame duck congressional session with all other issues taking a back seat. Given President-elect Trump's victory and continued Republican control of the House and Senate, we expect decisions on some – if not most – legislation to be deferred until next year.

## Other Issues for the Lame Duck Session

Other issues that may move forward during the lame duck session include:

- More aid for the flood-ravaged Southeast;
- Action to extend expiring tax provisions;
- 21st Century Cures legislation;
- Comprehensive energy legislation;
- Criminal justice overhaul;
- Comprehensive energy bill; and
- Mental health reform legislation.

[www.bakerdonelson.com](http://www.bakerdonelson.com)