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Election Analysis



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From the Left



Sen. Byron L. Dorgan
Co-Chair, Government
Relations Practice

The two political parties will no doubt continue to have difficulty agreeing on some major issues. But that doesn't mean there won't be any opportunities to advance legislation on important matters. Even as the parties battle over some big issues, the Congress will still have to enact appropriation and authorization legislation and that always provides opportunities for legislative accomplishments. In addition, there will be other deadlines (debt ceiling and more) that will require the Congress to act. When they act, there is an opportunity to write new or improve existing legislation on many issues. So, there will be talk about "gridlock," but even in that climate, there are opportunities to get things done. Fixing bad legislation, improving existing legislation, and writing new legislation ... all of these actions are possible, even when the political parties don't get along. But it requires skilled strategy and advice from those who know how the system works and how to get things done during a challenging time. That is what our Government Relations Practice is able to do for our clients.

A handwritten signature in black ink that reads "Byron L. Dorgan". The signature is written in a cursive, flowing style.

Our Washington Insiders React

From the Right



Rep. Philip S. English
Co-Chair, Government
Relations Practice

The midterm election leaves neither party with a political mandate or firm domination over either chamber in Congress. In a polarized political system with a shrinking ideological center, the primary likely outcome involves concentration on less divisive issues.

While the struggle between the parties will continue around tax reform, healthcare and immigration issues, there is still a common interest in moving forward on infrastructure programs, opioid abuse prevention, some more consensus-driven healthcare programs, appropriations, and national defense. The Administration will continue to pursue its trade agenda with or without congressional engagement. The public will not tolerate inertia, and lawmakers will find that voters will lose patience with continued infighting.

The Republican Senate and Democratic House will need to find common ground fast before the malaise of the Presidential election cycle kicks in.

A handwritten signature in black ink that reads "Philip S. English". The signature is written in a cursive style and is positioned above a thin horizontal line.

A large American flag is prominently displayed in the foreground, curving from the bottom left towards the top right. The flag's stars and stripes are clearly visible. In the background, a crowd of people is gathered, with several other American flags waving. The scene is outdoors under a bright sky with some clouds. The word "Contents" is overlaid in white text on the left side of the image.

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Election Overview

As the dust settles on a campaign cycle that was unprecedented in many ways, we have composed this biennial post-election analysis to assist our clients in assessing the potential impact of the elections on their organizations and their industries. From large corporations to small nonprofits, from urban centers to rural communities, the 2018 elections will have an impact across all sectors of the economy and globally as well.

We expect robust legislative activity as well as significant attention to regulatory agencies, given the philosophical differences among the new Democratic majority in the U.S. House of Representatives, the Republican majority in the U.S. Senate, the Senate Democrats (who can use parliamentary procedures to assert themselves each day), and the Trump Administration.

There was a mixed bag of results, with both sides claiming to have succeeded. The President touted his role in expanding the Senate Republican majority, while Democrats celebrated winning back the House and praised the effort to defend 26 Senate seats, including several in red states, without greater losses. Earlier in the cycle, some Republicans had commented about the possibility of hitting the magic 60 vote filibuster-proof majority in the Senate, so that is the backdrop against which we should look at the final results. (We note that in the next cycle, Senate Republicans will have to defend 22 seats, compared with 12 for the Democrats.)

General Overview

The President has already contacted House Democratic Leader Nancy Pelosi (D-CA) to congratulate her. There may be opportunities for collaboration on issues such as infrastructure spending, drug pricing, and raising the debt ceiling. Democrats will be keen on maintaining their new majority status in the House so they will look for ways to deliver on what they've promised and to demonstrate why they should also have the Senate majority. At the same time, we expect them to launch numerous investigations via House committees regarding specific areas of policy and issues of conduct by the Administration. There will be a need for the House and Senate to collaborate on the annual budget process and several other must-pass bills, so there will be a need to balance the partisanship that always occurs as a new Presidential election campaign gears up with the need to actually conduct the people's business.

Senate

As of 2:00PM November 7, Senate Republicans have maintained their majority and are poised to expand it. There were 35 contested seats, with Democrats defending 26 of them. Democratic hopes to regain the majority were dashed when Democratic incumbents were defeated in Indiana, Missouri, and North Dakota and when Rep. Beto O'Rourke (D-TX) lost a close race against Sen. Ted Cruz (R-TX). Republican Senator Dean Heller was defeated in Nevada. It is worth noting that the three Republican challengers who won in Indiana, Missouri, North Dakota campaigned closely with President Trump.

There are 51 Republican Senate seats confirmed at this hour, there are two Senate races that are too close to call and one that is headed to a run-off (Mississippi) with a very likely Republican victor. The two pending races are Arizona, and Florida, where Republicans have very narrow leads as the votes are counted.

The tentative results suggest that Senate Majority Leader Mitch McConnell may have as many as 54 Senators of his party starting in January. The total is significant for two primary reasons: 1) With Cabinet secretary confirmations and judicial nominations requiring only a simple majority under current Senate rules, Trump Administration nominees will have a clearer pathway to confirmation than when the margin is 51-49; and 2) the frequent parliamentary requirement of a 60-vote supermajority for many pieces of legislation will still be out of reach for the Majority Leader. While the option of using the Budget Reconciliation process to reform Medicaid and other entitlements and to enact new tax reform legislation still exists because it only requires a simple majority,

with the House under Democratic leadership, it is far less likely that such legislation will have the same potential for enactment as in the past two years.

House

As of 2:00PM, Democrats have won enough seats to take back the majority. With 222 races declared in favor of Democrats, they eclipsed the 218 they needed to have majority status in a 435-seat body. There are fewer than 15 House races that have not been settled, so that margin (222-199) is expected to continue to grow. Needing a gain of 23 net seats to win the majority, the Democrats won in a number of suburban districts that Hillary Clinton won in 2016 and flipped those seats in Northern Virginia, Philadelphia, Chicago, Miami, and Denver from Republican to Democrat.

It was a historic night in several contexts. A record 95 women will have been elected to the House this year, far more than then current record of 84. In addition, for the first time, two Muslim women were elected, Massachusetts elected its first African American woman, and the first Native American women were elected to the House as well.

Minority Leader Nancy Pelosi has made it clear that she anticipates becoming the next Speaker of the House. Some Democratic House candidates stated publicly that they did not intend to vote for Rep. Pelosi for Speaker, but we continue to expect her to prevail, especially given the likely size of the final total of Democratic Members. Less known is how the House Democratic leadership races will play out, given the influx of so many younger, more liberal Members. There may be an attempt to preserve the leadership positions of Representatives Steny Hoyer (D-MD) and James Clyburn (D-SC) for the next Congress but also to augment current leadership with one or two more junior Members.

Governing the House won't be easy, as only around half the current House Democrats ever served in the majority and most of the incoming committee chairmen have never chaired a full committee. As the entire institution may have between 20 and 25% turnover from 2017 to 2019, it may take some time for the legislative process to jell for both sides.

The Republicans will cast their votes to replace Speaker Paul Ryan (R-WI) with a new party leader. It has been expected that current Majority Leader Kevin McCarthy (R-CA) would become Minority Leader if the Democrats took the majority back, but it is too early to tell how the Republicans will approach this next phase of their political effort. 🇺🇸





Health Care

**What the 2018
Election Means for
Health Policy**

Health care policy will continue to draw substantial attention from both sides of the aisle and the Administration in the next Congress. Healthcare providers, medical device manufacturers, pharma and biotech companies, nonprofit stakeholders such as patient advocacy organizations, and state and local governments all will have much to digest in the coming weeks as legislative and regulatory priorities become more visible.

In the interim, we have provided some initial thoughts below as to what we are expecting in this area of policy now that we have the overall shape of the new Congress in mind.

Key Players

There will be turnover in terms of who wields the gavel in the House. Representative Frank Pallone (D-NJ) will become the Chairman of the House Energy and Commerce (E&C), while Representative Anna Eshoo (D-CA) will lead the E&C Health Subcommittee. That Committee has jurisdiction over aspects of the Affordable Care Act (ACA), Medicaid, NIH, FDA, and CHGME, among other programs. Representative Pallone has been a strong ranking Democrat and we can expect him to work hard to prevent efforts to repeal the ACA and to block grant or otherwise cut Medicaid. Representative Richard Neal (D-MA) will become the Chairman of the Ways and Means Committee and Representative Mike Thompson (D-CA) will likely chair the Ways and Means Subcommittee on Health, which has Medicare program jurisdiction. Republican ranking members on these two committees are likely to be the current chairmen.

There will be a new Senate Finance Committee Chairman (Medicaid and Medicare jurisdiction) due to Senator Hatch's retirement. We anticipate Sen. Chuck Grassley (R-IA) will take over the Committee. We note that in prior years, he has instituted investigations of nonprofit hospitals on issues such as executive compensation and management of their budgetary resources, questioning their ongoing tax exempt status. There will be no changes in the leadership of the Senate Health, Education, Labor, and Pensions (HELP) Committee with Senator Lamar Alexander (R-TN) retaining his role as Chairman and Senator Patty Murray (D-WA) continuing to serve as the Ranking Member.

Policy Implications

The ascension of House Democrats means less of a threat to the Medicaid program from Congressional action, such as we saw in early 2017. The new majority status also reduces the likelihood of repeal of the ACA. However, with the Senate Republicans expanding their majority and with President Trump still running an Administration committed to repeal and replace, as well as block granting Medicaid, we can expect Senate Republicans to float legislation via the annual budget process that is consistent with those positions. Even if they know the House Democrats will block their passage, many in the GOP will want to show where they stand on such issues.

We do expect opportunities for bipartisan action around drug prices, including price transparency and generic alternatives, as well as new proposals to address the ongoing opioid epidemic. And, Democrats will float their own health care policy proposals to achieve progress in expanding access to care, especially in underserved areas. Reauthorization of Community Health Centers' funding, for example, will be a priority, as will the annual HHS appropriations bill.

Drug Pricing

House Democrats are likely to prioritize on their agenda lowering the costs of prescription drugs on their agenda. Minority Leader Nancy Pelosi mentioned it last night in her post-election speech. To lower drug prices, Democrats will likely advance proposals that allow the Medicare Part D program to negotiate prices, exercise greater enforcement against price gouging, and move towards policies that will increase the transparency of drug price for consumers. Pharmaceutical companies in particular will find themselves the targets of Democratic oversight hearings

and activities as they advance proposals to address rising drug prices. Reducing drug prices is already a priority for the current Administration, so there could be opportunities for consensus around bipartisan bills such as the Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act (Senator Leahy D-VT), which allows generic drug manufacturers to sue drug companies for product samples in order to develop biosimilar or generic options.

340B Program

Congressional Committees with jurisdiction over the 340B program spent considerable time this year conducting oversight, with a specific focus on cuts proposed by Centers for Medicare & Medicaid Services for adult hospitals in the Medicare program and recommendations from the Government Accountability Office (GAO) on HRSA authority and patient eligibility. It is difficult at this point to see how a major 340B reform bill will see floor action, but Congress will continue to pressure the Health Resources and Services Administration to finalize and enforce regulations to promote transparency within the program.

ACA Repeal/Replace and Health Insurance Market Stabilization Legislation

We note that Senate Majority Leader McConnell expressed interest in October in pursuing a new attempt to repeal the ACA, which could include some iteration of GOP replacement proposals such as the Graham-Cassidy bill which had the support of swing voters like Senator Lisa Murkowski (R-AK). Typically such legislation would be part of a Budget Reconciliation bill that enjoys parliamentary protections in the Senate, including a simple majority vote instead of the 60 vote hurdle that is typically required. If the Senate opts to use the Budget Reconciliation process to pass legislation to repeal the ACA or institute Medicaid reforms in the 116th Congress, House Democrats will likely ignore the Senate's overture.

As of now, it remains to be seen whether Senate HELP Committee Chairman Alexander and Ranking Member Murray will resume negotiations to revive their efforts to pass bipartisan legislation to stabilize the health care marketplace and keep health insurance premiums. The Alexander-Murray agreement would have appropriated funding for the ACA cost-sharing reduction payments, restored the Trump Administration's cuts to the ACA marketplace outreach and enrollment assistance program, expanded eligibility for catastrophic plans, and allowed states to modify certain ACA provisions under limited circumstances. Alexander and Murray agreed on the deal after Republican efforts to repeal the

ACA stalled, but their agreement received a lukewarm reception among Senate Republicans leadership. There has not been an effort by Senate Republicans to resume the discussion and Senate Democrats do not have plans to revive the negotiations. In July, Representative Pallone called on Republicans to hold a hearing on insurance marketplace stabilization. Pallone may move to hold such hearings in the Energy and Commerce Committee when he assumes the role as Chairman.

Use of Administrative Authority to Weaken the ACA

The Administration will continue to use its administrative authority to weaken the ACA and curtail Medicaid expansion where it can, including approving Section 1115 Medicaid waivers that impose work requirements in exchange for program benefits, requiring a copay for services, and permitting residents to buy health insurance plans that provide less coverage than outlined under the ACA. House Democrats will challenge the Administration on the approval of these waivers but will be limited in stopping these policy changes from happening in some States.

Representative Pallone recently criticized the Administration's use of its administrative authority to change the tenets of the ACA, declaring "...the Trump Administration is finding a way to unravel protections for people with pre-existing conditions, pushing Americans into insurance that provides less coverage at a higher cost ... As Republicans keep trying to chip away at the ACA, they are putting the most vulnerable Americans at risk of buying an inadequate plan or being priced out of coverage altogether. Democrats will continue to fight against GOP health care sabotage."

Medicare-for-All

With a considerable number of Progressive Democratic candidates having been elected, there will be pressure on the House Democratic leadership from their base to consider Medicare-for-All proposals. Legislative proposals on health care initiatives considered by House Democrats could also set priorities for Presidential hopefuls in 2020. Such proposals could suck much of the air out of health policy discussions on other topics and distract from other stakeholder priorities in this area.

FDA Oversight

Congressional Democrats have expressed confidence in Food and Drug Administration Commissioner Gottlieb, who has collaborated well with Members of Congress on both sides of the aisle since his appointment. There are a number of issues that House Democrats will seek to highlight as part of

their legislative agenda, including issues related to electronic tobacco products and opioid imports. We can expect attention to be paid to cosmetics reform legislation that did not move in this Congress since it has been a Pallone priority. We do not anticipate a major shift in the oversight of the FDA when Representative Pallone becomes Chairman of Energy and Commerce nor that the Senate HELP Committee will shift its own efforts on oversight and legislation in this area.

NIH Funding

NIH has long enjoyed broad bipartisan support from Members on both sides of the aisle. For FY 2019 Congress has provided the agency with \$39.1 billion, a \$2 billion increase over FY 2018. We do not anticipate any changes in the broad support for the agency in the next Congress.

Incoming Energy and Commerce Chairman Pallone called for hearings as recently as July that could focus on NIH research, including a review on maternal mortality, health disparities, and gun violence. He may move to hold such hearings when he assumes the role as Committee Chairman. The amounts available for NIH will be a function of the overall budget picture and whether the House and Senate can come up with a bipartisan budget deal that passes muster with President Trump and continues the heavy spending on domestic non-defense priorities that we've seen for the past few years.

Graduate Medical Education Programs

Children's Hospital Graduate Medical Education (CHGME) was recently reauthorized for five years at an increased funding level of \$325 million per year, which is subject to the annual appropriations process. The reauthorization did not include substantive policy changes. CHGME will receive \$325 million in FY2019. The program has broad, bipartisan support in the House and Senate. House Democrats will likely push to authorize the program at the highest funding levels possible in the 116th Congress and it remains to be seen whether they would seek to go above the authorized level when developing the FY2020 Labor, HHS, Education Appropriations bill.

The Teaching Health Centers Graduate Medical Education (THCGME) program was reauthorized for FY2018 and FY2019 earlier this year as part of the Bipartisan Budget Act of 2018. The current funding authorization expires on September 30, 2019. The THCGME program also enjoys bipartisan support in the House and Senate. House Democrats might seek to increase funding for this program in a new authorization bill even beyond

the recent reauthorization bill that doubled the funding for the program and provided money for the creation or expansion of new teaching health centers. Whether the Republican Senate majority would go along remains to be seen.

Autism

We anticipate that the House will work in bipartisan fashion advance legislation reauthorizing the Autism Collaboration, Accountability, Research, Education and Support (Autism CARES) Act, which expires on September 30, 2019. Representatives Mike Doyle (D-PA) and Chris Smith (R-NJ) are working with their Senate counterparts on a bill to reauthorize funding for the program before it expires. We have been told by a well-placed Democratic source that the legislation is on incoming Chairman Pallone's list of items that need to be addressed in 2019. This assertion is way too aggressive. 🐻



Tax

**What the 2018
Election Means for
Tax Policy**

With the signing of H.R. 1, *Tax Cuts and Jobs Act* (PL 115-97), at the end of 2017, Republican House and Senate Leaders managed what many deemed impossible – enactment of significant tax reform without being able to rely upon a single Democratic vote in favor. The question now seems to be whether those tax changes will stand or whether the new Democratic majority in the House will look to make modifications?

A longtime and highly respected member of the Ways and Means Committee and the current Ranking Member, Representative Richard Neal (D-MA), will likely take over the Chairmanship in the 116th Congress. Under his leadership, House Democrats will undoubtedly try to repeal those provisions which they argued were most skewed toward higher income taxpayers as well as corporations.

It is widely expected that either Senator Chuck Grassley (R-IA) or Senator Mike Crapo (R-ID) will replace retiring Chairman Hatch at the helm of the Senate Finance Committee. Sen. Grassley has chaired Finance previously and has served as the ranking minority member, so taking the lead would not be new to him. It would mean giving up the Judiciary Committee chairmanship that permits him to oversee federal judicial nominations, which has been a high priority for the Senator.

It is worth noting that as then-chairman of the Finance Committee in 2001 and 2003, Sen. Grassley helped secure Congressional approval of the landmark tax relief laws that lowered marginal tax rates, creating a first-ever 10 percent bracket. Senator Grassley is known for taking on tax avoidance schemes and he loves to initiate investigations across multiple subjects. Sen. Grassley has previously called for repealing the estate tax entirely. His strong endorsement of the 2017 tax reform law was a feature of his recent op-ed in an Iowa publication, in which he wrote:

“Now, for the first time in a long time, people in Iowa and throughout the country are optimistic about the future thanks to the commonsense reforms passed in the Tax Cuts and Jobs Act. But, this economic turnaround is just getting going. In order for Iowa families to really enjoy the benefits of a renewed path to long-term prosperity, we can’t stop now.”

Senator Ron Wyden (D-OR) is poised to remain in his position as Ranking Member. His view on the President’s recent call for additional tax cuts was reflected in his statement in late October, when Trump floated the notion, with Wyden saying, “This empty rhetoric is an admission by Donald Trump that his tax law only helps corporations and the donor class. The middle class will see straight through this scam just like they did with Trump’s broken promise to deliver \$4,000 wage increases.”

With Republicans in control of the Senate and the White House, they will seek to protect key provisions from the tax bill, most notably the individual and corporate rate reductions and the international tax reforms that they feel have jumpstarted the economy. Any efforts in the tax arena are likely to not be successful without bipartisan, bicameral support.

What to Expect from the Ways and Means Committee

President Trump’s Tax Returns

Under Democratic leadership, the House Ways and Means Committee will actively pursue the disclosure of President Trump’s personal tax returns, and this is likely to become a political flashpoint in the new Congress.

ERISA Tax Changes

Rep. Neal and his staff have been forthcoming about his desire to make retirement savings a priority in the new Congress if the Democrats take control. Neal has long advocated for changes in ERISA to narrow the gap in retirement plan coverage with nearly a

third of the private sector workforce currently not having access to workplace retirement benefits. Acknowledging that it has been 12 years since the Pension Protection Act of 2006 was signed into law, Neal will look to improve the current retirement system and close the gap. With Neal's Automatic Retirement Plan Act, as well as momentum from the bipartisan, bicameral Retirement Enhancement and Savings Act (RESA) likely to be a starting point, expect to see the Committee take up retirement issues early in 2019.

Modifications to the Tax Bill

As Ranking Member, Representative Neal has been extremely critical of the Committee process under Chairman Brady in advance of the tax bill and has since vowed to look more closely at the provisions ultimately included with Committee hearings and a push for modifications to some of the more unpopular provisions passed despite Democratic objections. Revenue raising provisions that are sure to be addressed are the restoration of the full deductibility of state and local taxes, the excise tax on endowments, and provisions that impacted charitable giving, all of which were lobbied heavily against during passage of the bill.

House Democrats will likely propose higher individual tax rates for the wealthiest Americans, with the possibility of a surtax on the highest income earners. There may also be efforts to rollback revisions in the estate tax, with lower exemption for high income couples as well as a possible rate increase. The Committee will face the task of drafting legislation which appeases the pragmatic policy makers as well as the more progressive Caucus members who have been advocating punitive rates on the campaign trail. The leverage that will exist for the Democrats will be the need to pass a technical corrections bill to fix the problems with the tax bill. This vehicle will give them the opportunity to include additional provisions. The Senate Finance Committee will likewise be open to addressing issues with tax bill while making some features permanent and entertaining ways to expand incentives for charitable giving. Either way, Ways and Means will play a central role in balancing these perspectives behind a common Democratic agenda if there is any possibility for a compromise bill that the President will sign.

Corporate Tax

On the corporate tax side, there is likely to be debate over reducing the accelerated cost recovery policy in the new code (although this will prove to be controversial), diluting the stepped up basis for certain investments, and an increase in corporate tax rates. Democrats may also pursue a \$1 trillion transportation and

infrastructure bill, which has been a priority of the Administration but will insist that it be offset in part by a potential increase in the corporate tax rate. Energy tax provisions, long treated as extenders, will attract bipartisan support with real opportunities for extending tax preferences for the biofuels industry and expanding tax preferences for renewable energy sources (ethanol, biodiesel and more) possibly at the expense of incentives for traditional energy production. This will be a major change from the former Chairman, who has historically opposed the Renewable Fuel Standards (RFS).

Regardless of whether Senator Grassley or Senator Crapo become the next Senate Finance Chairman, it is fairly certain that the Committee will remain focused on maintaining the architecture of tax reform while remaining open to incremental changes and refinements.

International Tax

International tax policy will certainly attract serious review, but any efforts to make changes to the territorial treatment will run into significant challenges. Instead, expect a bicameral effort to strengthen base erosion standards and oversee Treasury's enforcement efforts in regard to international taxpayers. Senate Finance will likely oppose any efforts to roll back provisions in this space and will aim to protect pro-growth tax reform provisions in current law.

Addressing the Growing Deficit

Both the Senate Finance Committee and the House Ways and Means Committee will undertake a review of new tax structures to generate sustainable and predictable revenue to address budgetary concerns. One of these is a possible carbon tax. The new Chairman and Committee Democrats generally support legislation and tax policy that will advance efforts to address climate change. That is also a change in direction for the Committee.

A carbon tax is viewed as a tool to address climate change and therefore might find more support with the new majority. There is some precedent for a carbon tax given legislation previously enacted establishes a price on carbon for the purpose of direct air capture of carbon is now subject to efforts and technology to reduce carbon overall. Additionally, Ways and Means is likely to favor closing loopholes that encourage U.S. companies to shelter income overseas, a move that will meet resistance from the upper chamber. 🇺🇸

In the aftermath of tax reform, a newly divided Congress will face heavy political and fiscal pressure to modify the tax code. House Democrats will encounter irresistible pressure to roll back the Trump tax cuts. However, in the face of a divided Senate and a Presidential veto, new revenue initiatives and ideological imperatives will give way to incremental changes.

The Ways and Means Committee under Chairman Neal will be a creative and aggressive adversary for the Administration, as it incubates fresh revenue sources to fund new legislative initiatives and seeks to roll back features of the Republican tax blueprint. Look for a struggle that defines both parties and shapes the landscape for the 2020 presidential election—with the possibility of a few bicameral breakthroughs.



Rep. Philip S. English

Co-Chair, Government Relations Practice

The new Democratic Chairman and members of the Ways and Means Committee will assume control in January and I expect them to seek to modify the recently passed tax cut bill that they view as very unfair. They will have the votes to move some of their legislation through the U.S. House, but much of it will be blocked by the Senate and the President. Look for the new Committee majority to be less interested in tax policy that helps the oil and gas industry and more interested in favorable tax policy that helps build renewable energy and renewable fuels industries. They will also be required to find additional sources of revenue to deal with the skyrocketing budget deficits. One candidate for that additional revenue will be a carbon tax that could be embraced by a committee majority that is interested in addressing climate change.



Sen. Byron L. Dorgan

Co-Chair, Government Relations Practice



Trade

**What the 2018
Election Means for
Trade Policy**



The election results could lead to changes in U.S. trade policy, particularly in the area of free trade agreements. As noted below, a Democratic majority in the House of Representatives means that they will have greater leverage on the terms of the implementing legislation, which will be noted first in the context of the new version of NAFTA that the Administration is finalizing this month.

A hallmark of the past two years is that the President has many tools at his disposal to initiate trade actions and that he has taken a very broad view of what situations require his involvement. In some ways, this was easier to accomplish with Republican majorities in Congress. It will be worth monitoring how a new majority in the House decides to use its authority to circumscribe Trump trade policies that have raised Congressional objections in 2017 and 2018. In the meantime, we expect the Administration will continue to use existing trade laws in an aggressive manner to coerce trading partners, leading to a rising interest in trade law reform. It will be important for stakeholders who support pending FTAs to advocate for their finalization and approval in order to ensure that they receive priority attention in Congress.

Free Trade Agreements

The effort to revise NAFTA and secure approval of the United States-Mexico-Canada Agreement (USMCA) is now the highest profile trade policy issue and its completion has meant the Administration can again turn to possible free trade agreement with the European Union. On October 16, the U.S. Trade Representative sent formal notification letters to Congress of the President's intention to negotiate FTAs with the EU, the UK, and Japan and negotiations will be front burner for the Administration. (Note that the timing of Brexit could complicate progress for both the EU and UK negotiations because they are still working on refining their own relationship and trade rules.)

The recently concluded negotiations on USMCA shed some light on how our Administration and Congress could handle trade policy issues for the next two years. It is highly unlikely that Congress will vote on this new FTA before adjournment in

December due to various procedural requirements and timelines. Senior Congressional leaders like Senate Majority Leader McConnell have indicated that House and Senate consideration in early 2019 using an expedited procedure known as Trade Promotion Authority (i.e., "fast track") would be more likely.

House of Representatives

Of course, a shift to a Democratic majority in the House could complicate the USMCA trade agreement and other FTAs given the historic concerns that Democrats in Congress have had with some of the policies associated with NAFTA and other FTAs. They have often favored stronger requirements on labor and environmental standards for our trade partners and we can expect House Democrats to increase pressure for trade agreements to contain enhanced standards. It is worth recalling that current House Minority Leader Pelosi essentially killed the Colombia Free Trade Agreement when she was Speaker and George W. Bush was President by indefinitely postponing consideration of it due to concerns about labor issues in Colombia. It is highly unlikely that she would be quick to accept without change the Trump Administration's negotiated text for USMCA early in her tenure as Speaker if she is selected. She has already said that the text deserves close scrutiny and consultation with stakeholders. Further, new agreements that contemplate multilateral regulatory coordination, such as an EU FTA, will be even more difficult to achieve, given ideological resistance from progressives. As part of the House Democrats' strategy, we expect them to seek concessions and to hold out the threat of suspending fast track authority for trade agreements under Trade Promotion Authority as a way to influence negotiations. Further, we would not be surprised if House Democrats didn't demand

In the new Congress, trade policy will become a battleground with shifting coalitions as the Trump Administration pursues confrontational policies that straddle the divide between trade skeptical House Democrats and free trade Republicans. The challenge will be for the Administration to navigate signature initiatives like the USMCA through a divided and polarized Congress while trying to maximize pressure on China and lay the groundwork for fundamental changes in the WTO.

With looming challenges in negotiating trade agreements with the EU, UK and Japan, the House Ways and Means Committee and Senate Finance Committee will be forces for the Administration to reckon with as it promotes its new managed trade paradigm. Expect a bicameral demand for closer consultation with Congress, as critics demand transparency and increased public engagement.



Rep. Philip S. English

Co-Chair, Government Relations Practice

a restoration and expansion of Trade Adjustment Assistance for displaced workers, which has been tied to trade agreement consideration in Congress in the past. The most likely Democrat to chair the Ways and Means Committee, which oversees trade policy, is Rep. Richard Neal (D-MA). He has publicly stated that the bar for supporting a new NAFTA like the USMCA agreement “will be high.”

An indication of Rep. Neal’s approach to trade policy comes from his statement in reaction to the notification letters announcing that the U.S. will

now initiate FTA negotiations with the EU, UK, and Japan. His approach was fairly balanced, but as with most Democrats, he highlighted worker rights, environmental protections and enforcement provisions as key focal points. Reflecting Rep. Neal’s concerns about the Trump trade policy approach, which often antagonizes friendly nations, the Congressman commented: “With many sectors of the U.S. economy seized with anxiety over the impact of the President’s trade policies, perhaps these notices indicate that the Trump Administration will finally try to create new economic opportunities for U.S. workers and

businesses through constructive engagement with important U.S. trading partners and allies.”

Further evidence of a shift in approach from majority Republicans to majority Democrats is found in looking at public comments by Rep. Bill Pascrell (D-NJ), the most likely new chairman of the House Trade Subcommittee on Ways and Means. His stated philosophy is that the decline of American jobs is intimately tied to U.S. international trade policy. He has been outspoken in support of trade policies that will increase exports of American products. Pascrell led efforts against Congressional approval of most-favored nation trade status for China in 2000, and fast-track trade negotiating authority in 1998 and 2002. He has argued that these trade agreements, along with others such as NAFTA and CAFTA, encourage environmental exploitation and a global race toward the bottom for labor standards in sweatshops overseas and in the U.S. Clearly, the Administration will need to satisfy the new Democratic majority in the context of USMCA and subsequent FTAs negotiated in the next two years so that trade barriers can be eliminated in these key markets.

Senate

A continued Senate Republican majority will take on an increasingly larger role in terms of helping achieve the Administration’s trade priorities, since they will be negotiating with their House counterparts to approve implementing legislation for any FTAs formally submitted for Congressional acceptance. The Senate Finance Committee will have new leadership due to the retirement of Chairman Orrin Hatch (R-UT). The two main candidates are Senator Chuck Grassley (R-IA), who has seniority but might favor remaining at the helm of the Judiciary Committee, where he can continue to lead the confirmation process for judges, and Senator Mike Crapo (R-ID), who is next in line.

Senator Grassley’s statement after the USMCA deal announcement focused on the potential benefits for Iowa’s agriculture interests and noted the new intellectual property protections negotiated by the three countries. He had previously commented on the “sting” of increased Mexican tariffs on Iowa pork and cheese. Senator Crapo’s reaction to the USMCA was that he hoped it will provide enhanced access to Mexican and Canadian markets for Idaho’s dairy and agriculture producers and he termed the announcement of a deal as “welcome news.”

In the Senate, the expedited procedures under Trade Promotion Authority mean that a filibuster of an FTA is not possible and that a simple majority vote is all that is needed. Nonetheless, given how an FTA can affect industrial sectors on a nonpartisan

regional basis, the Senate Republican leadership will have its hands full when any FTA implementing legislation is transmitted by the President.

So far, the two leading Democratic Senators on trade issues, Minority Leader Schumer and Ranking Democrat on the Finance Committee Ron Wyden have both been non-committal on USMCA. Schumer did say that the new agreement takes large steps towards improving NAFTA and says President Trump “deserves praise” for the deal. Senator Wyden is very focused on trade enforcement provisions of USMCA and will continue to analyze trade policy from the standpoint of the American worker. Senator Wyden’s general view on the Trump Administration’s trade policy is that it overhyped and under-delivered. Reflecting some of the tension between the two branches, Senator Wyden also said recently: “Under the Constitution, it’s the Congress that’s in charge of trade and tariffs. In the absence of real strategy and tangible wins on trade, perhaps it’s time for the Congress to think about reclaiming that authority.”

Tariff Issues (Section 232 and Section 301)

On the Section 232 tariffs on steel, aluminum, and other products, this Administration interpreted “national security” very broadly in deciding to utilize that statutory provision to go after foreign products. We have represented many foreign and U.S. companies on the Section 232 and China 301 tariffs and have been troubled by the exclusion process from the beginning. While we have helped some companies get exclusions, it is a cumbersome process and could use more transparency and efficiency. It remains unlikely that Congress will act to amend the statutes themselves, but we could see continued pressure on the Administration to administer the two tariff provisions more effectively and to remove large groups of products from the lists subject to the tariffs. Steel tariff policies will continue to be divisive, with Congressional support increasingly breaking on geographical lines. While it is possible for Congress to utilize the appropriations process to cut off the ability of Commerce and USTR to implement the existing tariff decisions by the President, Congress has not yet shown a willingness to legislate in this manner. Since many Members are, in fact, very concerned about Chinese exports to the U.S., it would not be likely that an early legislative priority would be to undercut the Section 232 and Section 301 tariffs as a whole. 🇺🇸

A photograph of two wind turbines on a rolling green hillside under a cloudy sky. The turbines are white with three blades each. The hills are covered in lush green grass, and the sky is filled with soft, white clouds. The overall scene is bright and natural.

Energy & Environmental

**What the 2018
Election Means
for Energy &
Environmental Policy**

The Democrats' victory in the House of Representatives changes the energy policy landscape even though Republicans are expected to strengthen their Senate majority further and, of course, President Trump remains the president. House Democrats likely will battle the President and the Senate in an effort to hold back what they view as the Administration's ill-advised efforts to promote coal and undermine former President Obama's clean energy legacy.

Energy

Expect House Democrats to aggressively investigate the administration's deregulatory agenda and use committee subpoena power to compel high-ranking officials like Interior Secretary Ryan Zinke to testify.

In particular, Democrats will try to use the appropriations process to protect the former president's signature Clean Power Plan (CPP) reducing greenhouse gas emissions, while Republicans and President Trump will move forward on its replacement, the Affordable Clean Energy (ACE) plan. In addition, expect House Democrats to help Democratic attorneys general that bring legal challenges to this and other deregulatory rules. Just on October 31, 19 AGs filed comments opposing the ACE plan, which the Trump administration expects to finalize within a year.

Democrats will likely try to block the Administration's effort to roll back corporate average fuel economy (CAFE) standards – another signature Obama legacy. The CAFE debate is especially complex, with the auto sector wanting some, but not as much, relief from the previous Administration's mandates, the electric utility sector worried about the proposed rule's effect on electric vehicle (EV) development, and California and allied states wanting to maintain their own mileage standards.

Democrats, with important exceptions based on their state's priorities, generally are skeptical of President Trump's efforts to restore the coal sector and slow down the transition to renewable energy. An added complication is that environmentalists largely have adopted a "leave it in the ground" stance opposed to the use of natural gas for electric generation which remains necessary for system reliability as use of wind and solar generation increases, while Republicans generally support more production of natural gas, enhanced

pipeline infrastructure, and use of natural gas both in the U.S. as an economical, reliable fuel source and abroad as an important foreign policy tool to lessen dependence of EU countries on Russian natural gas. In fact, this week DOE Secretary Perry travels to Ukraine, Poland, and the Czech Republic to discuss agreements to purchase liquefied natural (LNG) from U.S. companies.

Despite all these partisan differences, the House, the Senate and the Administration may find common ground on strengthening energy infrastructure, including electric transmission, necessary to expand the use of increasingly competitive renewable energy, electric vehicles and other innovative technologies and for overall system reliability, an increasing bipartisan concern. Incoming House E&C Chair Pallone has specifically supported "more federal funding to help offset the lack of investment from the private sector in electricity storage research, development, and demonstration" and the need to develop a "federal energy storage roadmap, similar to those established by some states, in order to increase coordination among the various private initiatives, the national labs, and other federal agencies."

Although opposition remains, especially in some of the deeply conservative red states with strong fossil fuel production, many Republicans are beginning to embrace renewable energy for contributing to U.S. national security, helping farmers and ranchers diversify their businesses, increasing state and local tax revenues, and promoting economic growth. The Trump Administration has been helpful in accelerating the development of offshore wind, a key priority for both Republican and Democratic governors and federal legislators from those states.

Senate Energy and Natural Resources Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) have long worked together on energy



The Democratic House and the Republican Administration will find little common ground on energy policy, but expect legislative efforts to challenge fossil fuels and promote renewables, especially through the tax code. The shale energy industry will be under fresh scrutiny, from drilling to pipelines.

Rep. Philip S. English

Co-Chair, Government Relations Practice



issues and forged bipartisan, consensus legislation. The House Energy and Commerce Committee, under the leadership of outgoing Chair Greg Walden (R-OR) and incoming Chair Frank Pallone (D-NJ), has had similar successes right before the recent election. Last month President Trump signed into law a two-year reauthorization of the Water Resources Development Act which authorized wastewater and drinking water infrastructure and streamlined hydropower development projects, and which will need reexamining in 2020. We could also see bipartisan energy legislation next Congress as Senators Murkowski and Cantwell have expressed an interest in reintroducing their energy package that fell short of passage this Congress and which included various energy efficiency measures.

Another interesting question is what, if anything, in the energy policy space will make it across the finish line during the lame duck session wrapping up before Christmas. Most notably, tax incentives for energy storage, based on legislation introduced by Senators Dean Heller (R-NV) and Martin Heinrich (D-NM), could be in the mix.

Environment

As part of the House Democrats' overall oversight agenda, we expect investigations into the EPA, Interior, and DOE, as well as messaging bills or Congressional Review Act (CRA) resolutions to reverse Administration rollbacks of Obama-era policies regulating emissions as well as policies related to offshore drilling and public lands.

One of the top environmental policy priorities for House Ways and Means and House Energy and Commerce Democrats is developing new federal legislation to address the impacts of climate change, likely with a focus on a carbon tax or a carbon cap and trade system. Incoming Chair of the Environment Subcommittee, Paul Tonko (D-NY), has been hosting roundtables with various stakeholders including labor, power sector, think tanks, and nonprofit organizations to brainstorm what legislation would look like. Minority Leader Nancy Pelosi (D-CA) also recently expressed an interest in reviving the House Select Committee on Energy Independence and Global Warming that Republicans eliminated in 2011. The House Climate Solutions Caucus, which focuses on market-based solutions including carbon fee-and-dividend policies, has grown to 90 bipartisan members in recent years, evenly split between the parties. The Senate Environment and Natural Resources Committee will include leading advocates on climate change legislation as well, some of whom may emerge as Presidential contenders.

As we've seen in the past with divided government, the Administration will continue to advance energy industry

priorities including expanding offshore drilling and completing the offshore report (done every five years), while the House Democrats use their oversight powers to push back. The Democrat controlled House may try push back against the authorization for drilling in the Arctic National Wildlife Refuge (ANWR) which was included in the 2017 tax reform bill. The provision passed with assurances that concerns regarding impacts to the environment would be met but many interested parties are not convinced that drilling in ANWR can be done without irreversible harm to the environment.

At the same time, the incoming House Natural Resources committee majority will focus on strengthening environmental protections including the Endangered Species Act and National Environmental Policy Act, as well as continue to develop legislative text to extend the drilling moratorium in the Gulf of Mexico, which expires in 2021, but is a priority for Democrats and Florida members. We will continue to see bipartisan interest in strengthening the EPA's Renewable Fuel Standard, which incoming House E&C Chair Pallone has suggested has been undermined by EPA Administrator Scott Pruitt, who may have intentionally misused small refinery waiver authority to manipulate the RIN market. 🇺🇸



Transportation & Infrastructure

**What the 2018
Election Means for
Transportation &
Infrastructure**

With the Democrats newly back in control of the House we can expect to see the Administration resurface plans for a comprehensive infrastructure bill. This has remained one area for possible cooperation between Congressional Democrats and the Trump Administration. President Donald Trump said in October that “infrastructure is going to be starting after the midterms and we think that’s going to be an easy one.”

While cooperating with the White House may not be high on the list of many Congressional Democrats, the country’s aging infrastructure is desperately in need of help. In October, House Democratic Leader Nancy Pelosi (D-CA) stated that in the new Congress, Democratic priorities include cleaning up government, lowering health care costs, reducing the price of prescription drugs, and increasing paychecks by building the infrastructure of America.

Addressing aging infrastructure has been a priority for both parties in Congress, as well as the Trump Administration, as a much needed upgrade and modernization is critical to a healthy and robust economy. Incoming House Energy and Commerce chairman Frank Pallone (D-NJ) is rumored to be planning to roll out an infrastructure bill early next year. The 115th Congress passed one important piece of infrastructure legislation earlier this year, the Water Resources Development Act (WRDA), which deals with various aspects of water resources, including environmental, structural, navigational, and flood protection. There is much left to be done, however, to deal with America’s infrastructure issues – including how to pay for it. For many years, surface transportation programs were funded mostly from taxes on motor fuels deposited in the Highway Trust Fund. The tax rates, however, have not been increased since 1993 and increased fuel efficiency has resulted in this revenue being insufficient to support the surface transportation program. Adequately funding the Highway Trust Fund is extremely difficult politically, leaving Congress to consider alternative options.

New leadership is coming to the House Transportation and Infrastructure Committee as well. Rep. Bill Shuster (R-PA) is retiring. The ranking member of the committee, and likely incoming chair, is Peter DeFazio (D-OR), who has been vocal about the need

for investment in transportation and infrastructure in order to sustain a strong U.S. economy, stating last month that “it is well past time for Congress and the Trump Administration to get serious about our infrastructure needs.” Congressmen Sam Graves (R-MO) and Jeff Denham (R-CA), whose race is still too close to call, have been jockeying for leadership roles on the Republican side.

Rep. Graves has stated that his priorities for the new Congress include “finding a long-term and sustainable solution to funding infrastructure projects, an area where I have been an outspoken leader for years... I would also prioritize effectively incorporating technology into our infrastructure network like autonomous vehicles and drones. This will revolutionize how we move people and goods.” Rep. Denham has said “as we put together the next highway bill I will expand infrastructure investment in the United States with an independent non-partisan Infrastructure Bank, continue our work to make Amtrak run more like a business, continue to leverage federal resources to spur private sector investment, build and improve our water infrastructure and bring our air traffic control system into the 21st Century.” Whoever ends up taking over leadership of the Committee will be busy in the 116th Congress working to pass a highway bill and figuring out how to fund it. Democrats want to spend more federal government dollars on infrastructure than Republicans, who prefer private-sector investment.

If Congress focuses on infrastructure legislation, chances are high that there will be significant discussion around technology as a form of infrastructure. Municipal, state, and federal government efforts are already examining how emerging technology can improve community development across the country. Devices – including sensors, tracking systems, connected technologies, and data visualizations for

traffic, weather, energy, and health services – and new, faster connectivity solutions like 5G and mesh networks offer ample opportunities for communities to improve their ability to manage and respond to events of all kinds. With the Democrats in control of the House we may also see an increase in green tech, such as environmental monitoring and improved energy conservation. Climate change legislation may be too controversial to move forward in a divided Congress but there could be opportunities to incentivize renewable energy and green technology designed to improve sustainability.

Demand for broadband is continuing to rise as its availability and connectivity grows and improves. Both Congress and the Administration have pushed to improve across all parts of the United States, particularly in rural communities, which have been largely excluded, and to increase U.S. competitiveness with China and other nations in key areas. Senate Commerce Committee chairman John Thune (R-SD) has held multiple hearings and events on this issue, stating that “the race has begun. The race to lead the world in 5G, with gigabit speeds, low latency, and connection to a tremendous number of devices, is upon us.”

Senator Wicker (R-MS), the likely new chair of the Senate Commerce Committee, has expressed enthusiasm for the President’s support of programs to rural areas and concern over their exclusion from access to broadband. Much of the recent dialogue around broadband has centered around 5G, which describes an evolving set of technologies that represent the newest and fastest wireless connectivity. None of this will be possible, however, without the wired broadband networks that make this technology work. This wired infrastructure, essentially the internet’s backbone, is critical for the ultra-fast speeds that will be brought by 5G – so unless the wired infrastructure is spread throughout the country, particularly to remote areas, the benefits will mostly be felt by those living in cities. The House Energy and Commerce Committee and Senate Commerce Committee leadership has demonstrated bipartisan, bicameral cooperation in moving these initiatives forward in the 115th Congress and we can expect to see cooperation on these issues continue in the new Congress, even with the chambers split. 🇺🇸

A hand holding a smartphone with a bokeh background of colorful lights. The phone is held in the lower right, and the background is a dark, out-of-focus scene with vibrant, circular light spots in shades of purple, blue, green, and orange. The overall mood is futuristic and tech-oriented.

Technology

**What the 2018
Election Means for
Technology**

Joseph Schumpeter called it “creative destruction” – the process by which innovators are completely remaking the way we carry out our daily lives – changing, and even toppling, entire industries in the process. America just experienced a reminder of the level of influence technology plays in our lives through the midterm elections.

Newer, faster, better, and cheaper ways to communicate have made it easier for information to be distributed and consumers are able to access it more easily than ever before through their phones, tablets, watches and computers. Innovators have changed the way we work, travel, shop, socialize, and even eat. Innovators are chasing ways to make our lives more convenient – therefore faster and simpler – and the government is playing catch up to determine how to best protect citizens in this age of rapidly advancing technology. The divided Congress will increase the chance of progress on technology-related legislation in areas where the two parties tend to agree on the need for, and contours of, policy in relation to data security, privacy and cybersecurity.

In the rush to embrace fast, convenient, and inexpensive forms of communication and data sharing, and to enable and encourage access for everyone, many questions and concerns surrounding consumer data, privacy, and security were raced passed and ignored. Now that Americans have experienced multiple, high-profile data breaches of well established companies (and federal agencies), state, and federal governments in the United States, as well as governments abroad, are beginning to question the implications of consumer privacy and the safety of online information. In the spring of this year, the European Union implemented its General Data Protection regulation and California’s recently passed privacy law goes into effect in 2020. Others are sure to follow.

In the past several years, we have seen examples of foreign governments attempting to meddle in U.S. elections through social media and a U.S. President who has a preference for Twitter as his primary source of communication with the world. We have seen the CEOs of the biggest technology companies in the world come before Congress to answer questions about data

security and privacy. In this divided Congress, we will likely continue to see further hearings held and questions raised around censorship, free speech, anti-trust, and consumer safety. It appears that Senator Bill Nelson (D-FL) may lose his re-election in a very close race, which means Nelson’s role as ranking member of the Senate Commerce Committee may transfer to Senator Amy Klobuchar (D-MN) or Richard Blumenthal (D-CT), both of whom have been tough critics of the tech industry. In addition, newly-elected Republicans Marsha Blackburn (R-TN), Josh Hawley (R-MO) and re-elected Ted Cruz (R-TX) also have been vocal critics. Senator Maria Cantwell (D-WA) has also been suggested as the possible new ranking member of the Senate Commerce Committee. She has been actively supportive of promoting the development of Artificial Intelligence and other tech innovation.

Moving legislation through Congress, particularly in the lead up to a presidential election, is extremely challenging even when one party controls both chambers, so we can expect that in this divided Congress any legislation that is considered even somewhat partisan and controversial will be particularly challenging to move. Privacy and cybersecurity, however, not only have supporters from both sides of the aisle and the Administration (President Trump’s Commerce Department said in July that it was working to develop policy on data privacy) but tech companies also have signaled support of a federal bill (with some drafting their own versions) now that states are starting to act. Commerce Committee Chairman John Thune (R-SD) stated in September that “we have arrived at a moment where, I believe, there is a strong desire by both Republicans and Democrats, and by both industry and public interest groups, to work in good faith to reach a consensus on a national consumer data privacy law that will help consumers, promote innovation, reward organizations with little to hide, and

force shady practitioners to clean up their act.” This cooperation makes sense. It will be significantly simpler for companies to navigate a Federal rule rather than trying to comply in varying rules across fifty states.

The focus for Democrats will be consumer centric, especially around giving consumers control over their own data, such as the ability to see, edit and delete information about themselves that exists online and setting up more stringent rules around how companies can profit from the use of consumer data. House Democratic Leader, and likely incoming Speaker, Nancy Pelosi (D-CA) has made it clear that she hopes to address online privacy if she becomes speaker in the new Congress. She has committed to introducing an internet “Bill of Rights” to codify how data is used and collected from Americans and increase consumer control over their own data. Rep. Ro Khanna (D-CA), whose district houses many major companies including Apple and Intel, has taken a leading role spearheading these efforts. Republicans will focus on keeping the playing field fair for businesses and ensuring the regulations are not overly burdensome. Senator Thune has brought tech and telecom industry experts before the committee in preparation for a legislative push in the 116th Congress. Mississippi Senator Roger Wicker, who may replace Thune as chairman should Thune move up in GOP leadership, has said there needs to be a federal privacy law in place by the end of 2019. Overall, the central mission of both sides is the same: better protection of data and privacy in an age when everything is available online.

Another technology area the U.S. (and the rest of the world) is trying to contend with is the ultra-fast pace at which advancements are being made in AI. The United States is investing about three times as much as Europe, which plans to boost investment in AI by about 70 percent by 2020 to catch up with the United States and Asia. China has publicly declared its goal to lead the world in AI strategy by 2030. The United States, however, does not have a clear national strategy for AI. The Administration and Congress have taken little action in this area thus far. Some bills on AI, such as the FUTURE of Artificial Intelligence Act, have been introduced in the House and Senate and referred to committee, but have not progressed further. The Administration has invested in unclassified research and development for AI and directed agencies to focus on emerging technologies including machine learning and autonomous systems. In the divided Congress, we may see more support in the Administration towards AI, but it will likely be slowed down by Democrats in Congress as questions are raised around how to regulate AI technology and protect the safety of Americans (as well as their jobs). 🇺🇸



Anti-Poverty

What the 2018
Election Means for
Anti-Poverty Policy

Policy proposals centered on spending on federal entitlement and safety-net programs will see a renewed focus in the 116th Congress as Democrats take control of the House. While Democrats will place greater emphasis on increasing federal spending to support programs targeted to assist low-income and working families, they will encounter considerable resistance from the Republican-led Senate and the Trump Administration.

House Speaker Paul Ryan (R-WI) has long championed reducing funding for Social Security, Medicare, and Medicaid as part of his effort to pursue entitlement reform. In the fall, Speaker Ryan noted the prospects of entitlement reform will hinge on the ability of Republicans to retain control of the House and increase their vote margin in the Senate. Faced with the growing pressure to reduce the deficit, Senate Majority Leader McConnell also shared his interest in cutting mandatory spending in Medicare, Medicaid, and Social Security. However, he also has conceded that it will not be easy to achieve given the heightened political sensitivity surrounding any effort to make changes to entitlement programs, stating last month, “I think it’s pretty safe to say that entitlement changes, which is the real driver of the debt by any objective standard, may well be difficult if not impossible to achieve when you have unified government.”

The Trump Administration also has called on Congress to cut “welfare spending” after the passage of the 2017 tax bill, which nonpartisan analysts predict will add additional pressures on the federal deficit. The Administration has not clarified which specific programs would be part of the welfare reform proposal. However, House Republicans have aimed to impose work requirements in the Supplemental Nutrition Assistance Program (SNAP), while the Administration recently released a proposed rule that would discourage legal immigrants from using entitlement benefits for which they are eligible. House Democrats will fervently oppose any efforts to reduce entitlement spending and will use their newfound leverage to limit the Administration’s proposal to cut benefits to non-citizens.

We anticipate House Democrats will prioritize the following initiatives as part of their effort to counter efforts to cut the following entitlement and safety-net programs:

SNAP

We anticipate that conference negotiations on the Farm Bill will continue during the Congressional lame duck session after discussions stalled this fall due to a disagreement over controversial work requirements for SNAP recipients that was included in the House version of the bill. Congressional Democrats are opposed to the inclusion of work requirements in the Farm Bill.

Medicaid

Congressional Republicans were unsuccessful in their efforts to cap spending in the Medicaid program as part of their pursuit to pass legislation to repeal the Affordable Care Act. Since then, the Administration has used its administrative authority to curtail Medicaid expansion in states and to reduce spending, including approving the use of Section 1115 Medicaid waivers that impose work requirements in exchange for program benefits and/or requiring a copay for services. House Democrats will challenge the Administration on the approval of these waivers but will be limited in stopping these policy changes from happening in some States.

Federal Assistance to Immigrants and Refugees

Last month, the U.S. Department of Homeland Security published its long-anticipated proposed rule, “Inadmissibility on Public Charge Grounds,” which makes changes to existing “public charge” policies that govern how use of government benefits may affect an individual’s immigration status. Specifically, the proposed rule would bar immigrants from obtaining green cards if they use certain government benefits, including cash assistance Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicare Part D Low Income Subsidy, SNAP,

and Section 8 Housing benefits. The Administration will not need Congressional approval to implement these changes, but House Democrats could use legal and procedural tools such as Congressional Review Act resolutions to try to reverse any final rule on the proposal. House Democrats have longed opposed any cuts to federal benefits for legal immigrants.

Democrats taking control of the House next year will require changes to the leadership of the key Congressional Committees that have jurisdiction over entitlement and anti-poverty programs. Representative Richard Neal (D-MA) will become the Chairman of the Ways and Means Committee and Representative Kevin Brady (R-TX) will assume the role as Ranking Member. Representative Pallone (D-NJ) will become the Chairman of the House Energy and Commerce Committee, while Representative Greg Walden (R-OR) will become the Ranking Member. We anticipate a change in the leadership of the Senate Finance Committee, which has jurisdiction over entitlement programs and a number of anti-poverty programs. Senator Chuck Grassley (R-IA) is expected to become the Chairman of the Senate Finance Committee with the retirement of Senator Orrin Hatch (R-UT) at the end of this Congress. Senator Grassley has the option to leave his current position as the Chair of the Judiciary Committee to Chair the Finance Committee for two years, due to term limits that Senate Republicans imposed on their Committee Chairs. Next in line for Chair of the Senate Finance Committee is Senator Crapo (R-ID). 🇺🇸



Campaign Finance

What the 2018
Election Means for
Campaign Finance &
Election Law

2018 experienced significant changes from past midterm elections. There was record turnout – The New York Times estimates that approximately 114 million ballots were cast this year, well above the 83 million votes cast in 2014. In Fairfax County, Virginia, for example, 45 percent of voters turned out in the 2014 midterm and 70 percent did yesterday. Voters across the country waited in long lines and some states ran out of ballots.

America may have voted for a split decision – but they were not apathetic. Pew Research found that voter enthusiasm was 67 percent higher among Democratic voters and 59 percent higher among Republican voters than during any midterm election in more than 20 years. These midterms were also the most expensive in U.S. history, with \$5.2 billion spent. To put that number in some context, however, please note that America just spent \$8.0 billion on Halloween candy, costumes, and decorations.

This was probably the most diverse field of candidates in American election history. Over 250 women were on the ballot in federal elections. We saw a record number of women running as congressional candidates, record money donated to congressional candidates by women, and a record number of women as major party nominees. Women in office could surpass the current record of 107 voting members, according to the Center for American Women and Politics at Rutgers University. According to the *Washington Post* the Democratic Party may set the record for women elected. Democrats account for 80 of 95 women set to serve in the House, including 27 of the 28 first time House members and represent two-thirds of the districts that Democrats flipped.

Colorado's Jared Polis became the first openly gay man elected governor, and Democrats elected two Muslim women (Michigan's Rashida Tlaib and Minnesota's Ilhan Omar) and two Native American women (Kansas's Sharice Davids and New Mexico's Deb Haaland), among other firsts.

Due to positive changes in election security initiatives, including new paper-based voting methods, updated machines, provisional balloting and election integrity programs, it appears that the 2018 elections will be only contentious in the campaigning and not the counting of the results. DHS Secretary Kirstjen

Nielsen declared these will be the most secure elections in U.S. history, which was echoed in a recent column in the *Washington Post*. It also appears as though social media websites have done a good job of policing the political advertisements, trying to prevent false advertising and ensuring commercials have proper disclaimers. This has helped bolster American's confidence in our election system which the over half a million election-day volunteers and professional administrators take very seriously.

A majority of the House Districts the Democrats picked up were in urban areas – in cities that traditionally lean Democratic. And despite the Republicans losing the House, we saw several examples of President Trump's relentless campaigning proving helpful, including his visit to Boone County Missouri at the end of the campaign, which was important in Senator McCaskill's defeat, and personal appearances for Senator Cruz in Texas. In these states and others, voters overlooked the President's abrasiveness and voted their approval of the economy.

In addition to candidates on the ballot, there were several ballot measures of note: Amendment 4 passed in Florida, restoring voting rights for convicted felons. *The Washington Post's* analysis is that this is particularly important from a civil rights standpoint (because it takes 60 percent of the vote to pass an initiative like this) and also from an electoral standpoint (because approximately nine percent of the voting-age population in Florida is composed of felons), and many of them are racial minorities which some believe could change elections in the Democrats favor.

On the West Coast, Californians rejected Proposition 10, a ballot measure that would have allowed more rent control in an effort to ease the state's housing crisis. The measure was one of the highest-profile and

most expensive issues on the ballot. On the opposite side of the issue, Oregon Measure 102, which removes rent control on Affordable Housing Projects Funded by Municipal Bonds, was approved as a legislatively referred constitutional amendment with over 55 percent of the vote. Sanctuary Cities were also on the ballot in Oregon. In 1987 Oregon became the first state in the nation to be a sanctuary state when it adopted a law preventing law enforcement from detaining people who are in the United States illegally but have not broken other laws. Measure 105 sought to repeal that law but it failed by a wide margin.

Medicaid expansion ballot initiatives passed in three deep-red states — Nebraska, Idaho and Utah — to expand Medicaid eligibility under Obamacare, and a fourth state — Kansas — elected a Democratic governor who replaces a Republican opposed to expansion even though its legislature supported it. This means four states are set to join the 33 that have already expanded Medicaid. 🇺🇸



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