

This election has produced a stunning result surprising the pundits, pollsters and many Americans. Despite the often bitter campaign, the tradition in this country is to come together and pledge to work together for the benefit of the country. That has happened very quickly with President-elect Trump, President Obama, and Hillary Clinton pledging, the day after the election, to work together and help in the transition to a new Administration.

I expect that the agenda proposed by President-elect Trump in the campaign will provide a roadmap for the issues he will send to Congress in the early days of next year. Repairing our nation's infrastructure with legislation that will put people back to work and boost the economy will likely be one of his first initiatives. There will be disagreements between the political parties about both the size and the funding source for the proposal, but it is likely that there will be some bipartisan cooperation to enact this legislation.

In addition to that, there will likely be work to reform our tax code by broadening the base and lowering the individual and corporate tax rates. It is difficult but not impossible to make progress on tax reform. There will be vastly different proposals for reform, but the American people are demanding reform and both political parties have promised to get make an effort to do comprehensive reform. Even if the tax reform falls short of being "comprehensive," some smaller adjustments could be made that would improve the fairness of the tax code.

Legislation will undoubtedly be offered to repeal the Affordable Care Act and I expect the new President to stop work on the Clean Power Plan. Both actions will be controversial and it's not certain how and when the new Administration will fulfill these campaign promises.

This election has displaced the status quo in Washington in a very fundamental way. While political alignments in the Senate and House were largely undisturbed, the replacement of the current progressive Administration with an insurgent populist presidency with potential differences with their own congressional party will scramble traditional calculations. The Trump Administration will be under enormous pressure to deliver early results, both symbolic and substantive, to fulfill their commitment to change Washington.

The new White House will need to move fast to solidify their coalition in Congress, build channels to negotiate support from the Democratic minority, and launch an agenda built around a claimed electoral mandate. The new regime will likely move to enlist the public behind a center-right reform agenda that speaks to voter discontents with both policy and procedure, incorporating issues touched upon during the campaign: tax reform, health care, trade policy, and immigration. This White House, like its predecessor, will ramp up aggressive regulatory initiatives where legislation bogs down, many of them rolling back Obama initiatives.

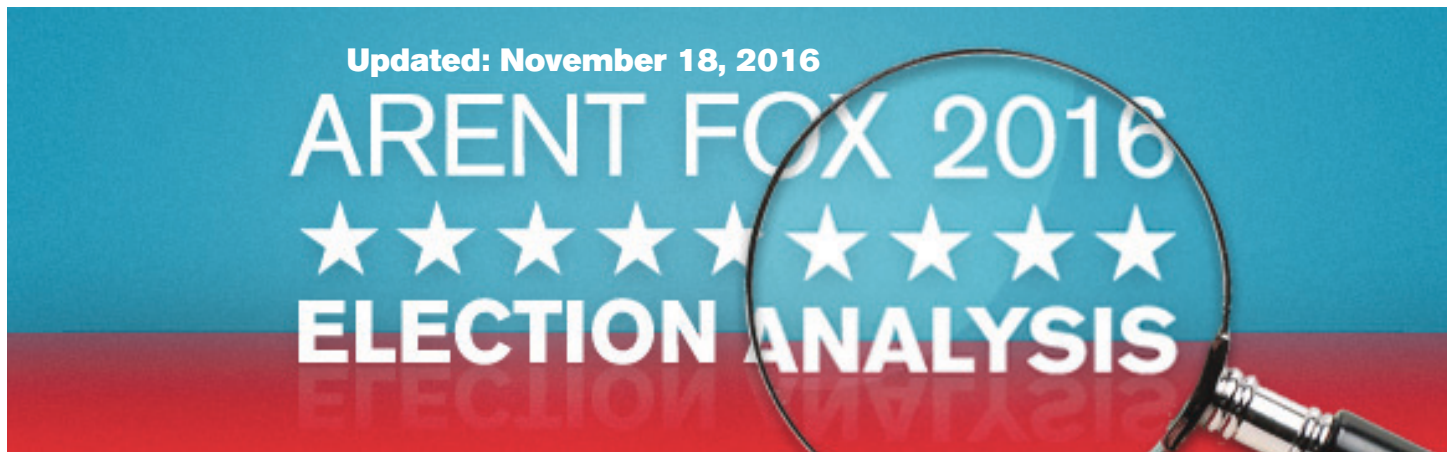


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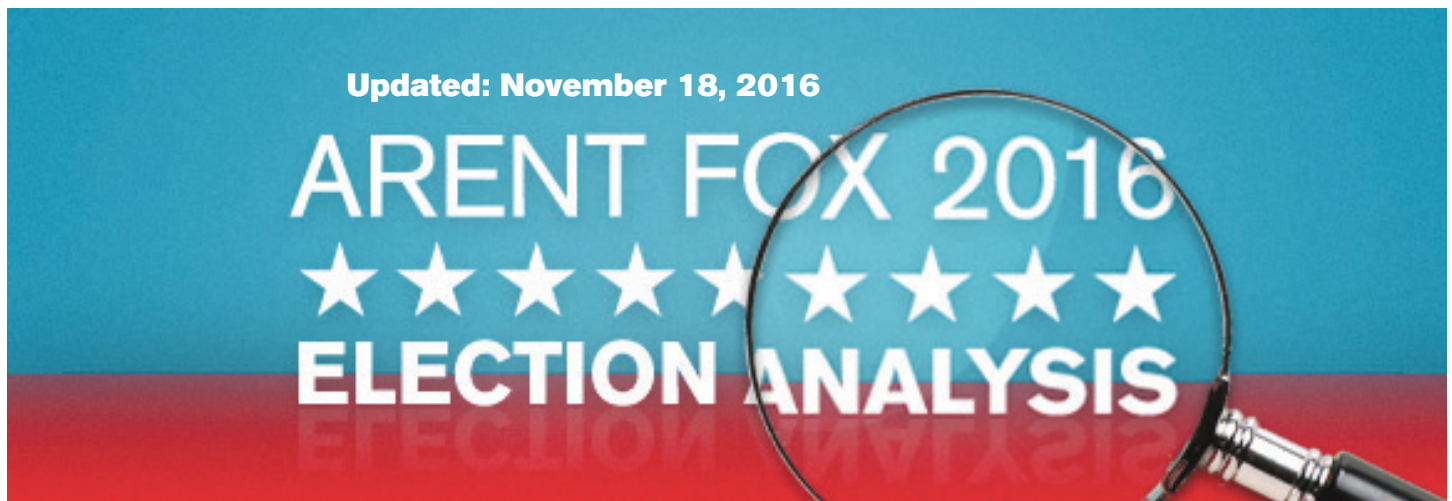
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2016 Election Overview

The election of Donald Trump to be the 45th President and the retention of majorities in the House and Senate by the Republican Party were a surprise to most, but in the tradition of our country, the days after are a time for organizing to do the people's business.

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 2016 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 between the new Administration and the current one.

As described below, we expect the Republican Administration and the majorities in Congress to focus on domestic issues like tax reform, health care policy, and infrastructure spending and, in some cases, to find common ground with House and Senate Democrats. Trade policy is a question mark at the moment given statements on the campaign trail by the President-elect and many Congressional candidates, but its overall importance to the US economy and our trading partners suggests that it may be considered in the next Congress in some form. Some controversial issues also will be on the front burner, as the President-elect likely will pull the plug on the Clean Power Plan formulated by the Obama Administration and will propose repealing or substantially modifying the Affordable Care Act. Both of those actions will receive major pushback from the Democrat minority, but the specifics of the parliamentary rules associated with the legislative process will help determine the efficacy of the Administration's efforts and of the minority party.

2016 By the Numbers

As of this writing, President-elect Trump garnered an Electoral College majority but still trails in the popular vote. This will not stop him from considering his victory a mandate for "change" and, when coupled with the preservation of the Republican majorities in Congress, he will be able to develop and lay out an agenda that counts upon unified government and substantial popular support. As noted below, however, Senate parliamentary rules that protect the minority party will provide much-desired leverage to Senate Democrats and will afford them the opportunity to



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exert some influence on legislation under consideration in the 115th Congress.

As of November 17, the House of Representatives next year will have a party split of 239 Republicans to 193 Democrats, with three races still too close to call. This total reflects a small reduction in the size of the majority in the current Congress, where the split is 246 Republicans, 186 Democrats and three vacancies. Accordingly, Democrats had a net gain of nine seats so far. There will be more than 50 new Members of the House of Representatives, which means that public policy advocates will have to spend considerable time briefing this new audience on their key priorities. Seven incumbent members of the House were defeated, with six of them Republicans:

- John Mica (R-FL 7th) by Stephanie Murphy
- David Jolly (R-FL 13th) by Charlie Crist
- Robert Dold (R-IL 10th) by Brad Schneider
- Cresent Hardy (R-NV 4th) by Ruben Kihuen
- Frank Guinta (R-NH 1st) by Carol Shea-Porter
- Scott Garrett (R-NJ 5th) by Josh Gottheimer
- Brad Ashford (D-NE 2nd) by Don Bacon

The Senate tally as of this writing shows 51 Republicans and 48 Democrats/Independents, with the election in Louisiana not yet finalized. Louisiana will host a December 10 runoff between the top two vote getters, a Republican and a Democrat, but it is expected to be a safe Republican seat based on the total votes cast for multiple candidates of each party and the fact that the seat currently is held by a Republican. Accordingly, a likely scenario will be that the Republicans have retained a majority of 52-48, which is a relief to them given that many polls predicted that they would lose the majority. The final party makeup in the Senate reflects the loss of an Illinois Senate seat held by Mark Kirk (beaten by Representative Tammy Duckworth) and unexpected strength for Republican Senators like Ron Johnson (WI), Pat Toomey (PA), Richard Burr (NC), and Roy Blunt (MO), who were viewed by some observers as “dead men walking” within a week of the elections.

As of now, in addition to Senator-elect Duckworth, there are four new Senators: Kamala Harris (D-CA), who will replace Senator Barbara Boxer, Representative Todd Young (R-IN), who is replacing Senator Dan Coats, Catherine Cortez Masto (D-NV), who is replacing Senate Minority Leader Harry Reid, and Gov. Maggie Hassan (D-NH), who is replacing Senator Kelly Ayotte.

Senate and House General Overview

While many will focus on the “end of divided government,” a new President with his party’s control of the House and Senate could provide some opportunities and difficulties. The Senate, with 48 Democrats and the threat of the use of the filibuster rule, will still require the President and Congress to reach compromises on a variety of legislation to be successful.

A significant test of cooperation between the President and Congress will come quickly when the need to increase the debt ceiling will face a deadline as early as the end of March. This is an issue that requires enactment of specific legislation and it is always hard to find the votes for an increase in the debt ceiling. It is the type of issue that will require much planning and cooperation between the leadership of Congress (both Democrats and Republicans) and the White House. In addition, debt ceiling legislation often has carried with it other unrelated legislative priorities, such as agreements on the level of annual appropriations spending, and could help create an early flurry of legislative activity.



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Senate Republican Leader Mitch McConnell (R-KY) will continue in his role and will be joined in leadership by essentially the same team of Republican Senators. Committee chairmanships will be kept in the Republican fold as well, giving Finance Committee Chairman Hatch more time to work on trade and tax policy and HELP Committee Chairman Alexander more time to continue FDA reforms and addressing health care and higher education policy, for example. Maintaining the majority in the Senate means less disruption at the staff level and solid institutional memory going into the 115th Congress in January.

The new Senate Democratic Leader will be Chuck Schumer of New York. Our colleague, Senator Byron Dorgan, served with Senator Schumer in the Democratic leadership for many years and knows him to be someone who wants to make deals and reach compromises to move legislation ahead. According to Senator Dorgan, while there is a recent history of gridlock in the Congress, the potential of a new Republican President working with a new Democratic Leader in the Senate could develop opportunities for movement on some key issues that have been unresolved for a long time. Senator Richard Durbin (D-IL) will serve as Minority Whip and Senator Patty Murray (D-WA) will be Assistant Democratic Leader. The ranking member position on Senate Appropriations, now that Senator Barbara Mikulski (D-MD) is retiring, will be filled by Senator Pat Leahy (D-VT), the ranking member slot on the Judiciary Committee will be filled by Senator Diane Feinstein (D-CA), and Senator Bernie Sanders (I-VT) will be top Democrat on the Budget Committee.

There will be a very vocal progressive/liberal group of Senators, including Elizabeth Warren (D-MA) and Bernie Sanders (I-VT), who will want their views heard and acted upon within their caucus and on the Senate floor. It is also worth noting that 25 Senate Democrats/Independents will be on the 2018 ballot if they choose to run for re-election, as compared with eight Republicans, meaning that part of Senator Schumer's task will be to protect his colleagues and enhance their chances of electoral success in the midterm elections.

In the House of Representatives, the Republican sweep helped Speaker Paul Ryan preserve his position in leadership. Although Speaker Ryan will have a smaller majority to work with, last week's results were better than the potential loss of as many as 15 to 20 net seats that some observers expected. With the narrower majority, the leverage enjoyed by the insurgent Freedom Caucus will grow within the House Republican party caucus and Speaker Ryan will have to continue to find a balance in how he moves legislation through Congress. With the end of the Obama Administration and the loss of Secretary Clinton, the energy devoted by many in the House Republican majority to near-constant oversight and investigations will be redirected to the passage of positive legislation and rethinking some federal programs. There will still be investigations of agencies like the VA, but committees will have less incentive to haul Administration witnesses from their own party before their panels.

The House Democratic Caucus has delayed its leadership elections until the week after Thanksgiving. The top-three Democratic leadership positions are expected to remain the same, while Representative Xavier Becerra has met his term limit for service and Democratic Caucus Chair. He will likely be replaced by Democratic Caucus Vice Chair Representative Joseph Crowley of New York. Both Reps. Barbara Lee and Linda Sanchez of California have expressed interest in running to replace Representative Crowley as the Vice Chair.



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What the 2016 Election Means for the Health Care Industry

We expect substantial activity on issues related to health care, both in terms of individual medical insurance, entitlement programs such as Medicaid, drug pricing, stimulation of medical innovation, and possibly marijuana reforms.

It is not easy to predict with much certainty what Donald Trump's health care policy would look like now that he has been elected, but his statements and issue papers released by his campaign offer some insight as to his main priorities.

Repeal the Affordable Care Act

The US House of Representatives voted more than 50 times in the last two years to repeal President Obama's signature legislation, the Affordable Care Act (ACA). President-elect Donald Trump has said during his campaign that he would immediately repeal the ACA, if elected. He has suggested that there are potential reforms ready for implementation that "follow free market principles and that will restore economic freedom and certainty to everyone in this country." He has called for eliminating the individual mandate, modifying existing law that "inhibits the sale of health insurance across state lines." He also suggested full deductibility of health insurance premium payments and broader use of Health Savings Accounts. He called for price transparency from all health care providers, especially hospitals, so that individuals can "shop to find the best prices" for medical procedures and exams. At least one study suggested that many Americans who received new Medicaid coverage under the ACA would lose such benefits under the Trump plan. Nonetheless, Trump has stated that all Americans should have health insurance. While Congressional Republicans and Trump have been very vocal in their desire to repeal the law, it is not clear how they would succeed in repealing a law that currently provides healthcare coverage to more than 20 million individuals, many of whom receive coverage through the expansion of Medicaid in 31 States and the District of Columbia, without immediately replacing it with a similar healthcare plan. Republicans will face difficulty with some of the more popular features of the law, such as the prohibition on insurance companies denying coverage to people with pre-existing conditions and closing the Medicare doughnut hole for drug coverage. Nonetheless, with Republicans in control of both chambers in Congress, Trump will have a platform to make significant changes to the law.



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The new Administration will lead with an effort to roll back the Affordable Care Act, pitching repeal while seeking to define an acceptable replacement. Ultimately they will need to define common ground with Congress on how to deal with cost issues, funding problems, and trained professional shortages that have put our system at risk. A Trump Administration will be compelled on day one to revisit key Obamacare implementation decisions and move fast to offer a practical alternative paradigm, and address legacy issues such as Medicare solvency and prescription drug pricing.

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President-elect Trump and Congressional Republicans can use a process known as a budget reconciliation to push through changes, or repeal portions of, the ACA. The reconciliation process allows for expedited consideration in the Congress of certain tax and spending bills. In the Senate, reconciliation bills are not subject to a filibuster and there are limitations on how the bill could be amended, giving this process a real advantage for enacting controversial spending (and tax) measures.

Speaker Ryan (R-WI) and House Republicans released a blueprint for healthcare reform in June that includes a number of proposals that President-elect Trump could draw on to replace some or all aspects of the ACA. Speaker Ryan's health care blueprint, titled *A Better Way: Our Vision For a Confident America*, was included as part of his legislative platform. It includes proposals that are aimed at preserving the Medicare program by tying reimbursement to quality, allows insurance companies to compete against each other to offer lower-cost health care options to consumers, and supports portable insurance plans. Most notably, the blueprint also would provide a refundable tax credit for individuals/families not covered by employer-based coverage, repeal the medical device tax, expand the use of Health Savings Accounts (HSAs) tied to high-deductible health plans, and empower States to regulate health insurance with minimal involvement from the federal government. The Speaker's plan also would preserve two critical aspects of the ACA that are targeted at protecting vulnerable consumers in ensuring patients with pre-existing conditions and complex medical needs have access to high-quality, affordable coverage.

While Congressional Republicans provide the President-elect with policy options on how to overhaul the ACA, it is unclear how much, if any, direction Trump will take from them given that his path to victory was built on an anti-establishment theme and he has a contentious relationship with a number of Congressional Republicans throughout his campaign. While it is possible that he will seek ideas and leadership from Congressional Republicans on developing and advancing health care policies, it also is possible that he may consult with others outside of Washington (such as business leaders or governors) to construct legislative proposals in this area. Additionally, Trump could task Vice President-elect Mike Pence to work closely with Congressional Republicans to construct and advance a legislative strategy that will allow them to claim victory on pairing back or repealing the ACA.

NIH and other Health Care Appropriations

Compared to Sec. Clinton and many members of his own party, Donald Trump has not been a cheerleader for NIH. Trump has made philanthropic gifts for prominent diseases like Alzheimer's, showing an interest in medical research, but when it comes to NIH, his position has been unclear and he has suggested that the agency has severe problems, making disparaging statements like: "Because I hear so much about the NIH, and it's terrible." It will fall to his first Budget (likely to be released in March, 2017) to inform us of his views regarding the current level of NIH funding.

It is unlikely that there would be significant increases in annual appropriations on many health care stakeholder priorities under a Trump Administration. With respect to overall federal spending, it is difficult to assess Trump's plan, but some observers have noted that his tax reform proposals could cost the Treasury billions of dollars if economic growth does not make up the difference and would need to be offset by significant reductions in overall federal spending. (By comparison, observers have said that Sec. Clinton's proposals to increase federal spending on health, education, and other priorities, would cost less because she would impose higher taxes on the wealthy and generate additional revenue by closing certain tax loopholes.) With Republican majorities in the House and Senate, a Trump Administration could press for overall reductions in federal spending and then leave it to the appropriators in Congress to figure out how best to



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prioritize such cuts. It will be imperative for stakeholders to be very active in early 2017 to generate maximum support for favored programs given the pressure to cut spending that some Republicans intend to impose on their Congressional colleagues. As noted above, Senate Democrats have some leverage over the appropriations process, but one can't rely solely on an obstructionist effort to preserve (or increase) much-needed discretionary appropriations for NIH, HRSA, GME, and other health care programs.

Block Grant the Medicaid Program

Congressional Republicans have long supported efforts to block grant the Medicaid program to reduce the cost to the federal government and to provide States greater flexibility in managing their programs. We anticipate that President-elect Trump will support this effort and will make this a central focus of his health care legislative agenda. During the campaign, Trump called for block granting Medicaid, stating that nearly every state already offers benefits beyond what is required by federal law. He wants to curtail CMS management of Medicaid. His campaign platform mentions the CHIP program (described below) but only as an example of how he wants to lower dependence on Medicaid and CHIP by creating more American jobs.

Congressional Democrats, led by Senators Chuck Schumer (D-NY) and Ron Wyden (D-OR) and Representatives Nancy Pelosi (D-CA) and Frank Pallone (D-NJ), will vehemently oppose any efforts to block grant Medicaid. There will be a large number of left-leaning advocacy organizations that will join Democrats in their opposition to the block grant. Congressional Democrats, however, ultimately will not have enough votes in the Senate or the House to block such a policy if it were advanced in Congress as part of the aforementioned budget reconciliation process unless stakeholders are able to create such grassroots opposition that Republicans get skittish about outright block grants. At this early stage, we believe it is likely that Trump will move forward with this initiative as part of a larger overhaul of the ACA.

Reauthorization of the State Children's Health Insurance Program and Graduate Medical Education Programs

Congress is likely to quickly focus their attention on reauthorizing the State Children's Health Insurance Program (CHIP) program, which has broad bipartisan support in the Senate and the House. The legislation, which is scheduled to expire on September 30, 2017, will be developed and debated in the House in the first quarter of 2017. Based on our conversations with senior Congressional staffers, we believe that this is one of the few bipartisan efforts that Republicans and Democrats can get done fairly quickly in the first half of 2017. It is not clear if the Trump victory and his desire to immediately overhaul or repeal the ACA will undermine the long-standing bipartisan spirit on CHIP and/or delay consideration of CHIP reauthorization.

The Teaching Health Centers Graduate Medical Education program is scheduled to expire on September 30, 2017. This program, which also enjoys bipartisan support, will very likely be reauthorized as part of the package that reauthorizes the CHIP program, along with funding for the National Health Service Corps. It is not clear whether the Trump Administration would support increased funding in either program and how other, broader budget pressures stemming from other priorities might affect the ability to get an additional investment in these programs.



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Transparency and Oversight of Drug Pricing

On the pharmaceutical front, during his campaign, President-elect Trump called for removing barriers to less expensive products, including imported drugs. Meanwhile, there has been, and will continue to be, a great deal of bipartisan interest conducting oversight on the cost of prescription drug price for consumers. In June, the Senate Judiciary Committee held a hearing stopping anti-competitive pay-for-delay deals between brand and generic drug companies. Senate Judiciary Chairman Chuck Grassley (R-IA) introduced legislation, the CREATES Act, with Senators Patrick Leahy (D-VT), Mike Lee (R-UT), and Amy Klobuchar (D-MN) to target the delay tactics of brand name companies who refuse to share samples and also refuse to agree on shared safety protocols. These Senators believe that such tactics keep prescription drug costs high for patients, insurers, and government programs. It is unlikely the Senate will consider the bill during the lame-duck session. This bill likely will be reconsidered for reintroduction in the next Congress as part of its broader interest in this area.

It is unclear what kind of impact will be felt from the failure of a California proposition to receive voter approval last week that would have tried to rein in drug prices in the state. (It failed by a 46-54 percent margin, due to heavy pharmaceutical industry campaigning.)

We also anticipate that Congressional Republicans, particularly in the Senate, will continue to investigate Mylan Pharmaceutical's decision to increase the cost of Epi-Pens, which has practical benefits and possible political benefits as well.

Reform the Food and Drug Administration Approval Process

The Food and Drug Administration (FDA) has heard a great deal of bipartisan criticism for the slow and expensive approval process for new drug applications. The FDA will continue to receive criticism from Congress on the pace of new drug applications. It is not clear how the US Department of Health and Human Services (HHS) under Trump might address the drug application process, approval times, and the application backlogs. The health policy blueprint from Speaker Ryan and House Republicans blueprint includes proposals that would incentivize the innovation in the area of new drugs and medical treatments. Some of the proposals are included in the 21st Century Cures Act legislation that is pending in Congress. It is not clear if Congress will complete work on the 21st Century Cures Act during the lame-duck session, or if the bill will be reconsidered in the next Congress when the Republicans will have control over both chambers and the White House.

Use of Marijuana for Medical Research Purposes

There is bipartisan support in the House and the Senate to amend the Controlled Substances Act and ease federal obstacles for medical research to conduct clinical studies on the medical benefits of marijuana. Earlier this year, Senators Orrin Hatch (R-UT), Brian Schatz (D-HI), Thom Tillis (R-NC), and Chris Coons (D-DE) introduced the Marijuana Effective Drugs Studies (MEDS) Act to create a faster process for obtaining approval from the US Drug Enforcement Administration to conduct research on the use of marijuana. Similar bipartisan legislation was introduced in the House. Congress will not complete consideration of this bill in the lame-duck session.

It is worth noting that, in addition to the Congressional support for research using cannabis, four States – Arkansas, North Dakota, Florida, and Montana – had ballot initiatives on Election Day to regulate the production and use of medical marijuana. Voters approved each of the ballot measures, with voters in Florida, North Dakota and Arkansas approving medical marijuana initiatives, and voters in Montana approving a measure that will loosen restrictions on an existing medical marijuana law.



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A Trump Administration could undermine the federal support for the use and production of medical marijuana. The Obama Administration largely took a hands-off approach to state-level legalization efforts. It is unclear how the incoming Administration would approach this issue, particularly in light of the prospect of the appointment of Rudy Giuliani or another conservative as the US Attorney General. It is unclear how an anti-drug approach by the Trump Administration would reconcile with Congressional interest in this area.



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The new Administration and the Congress recognize the need to reform our tax code, and I expect the new President to begin laying plans to find some common ground on this issue as well. Reforming the tax code is a difficult assignment, but I think there are some areas in which both political parties could find common ground.

Sen. Byron Dorgan
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What the 2016 Election Means for Tax Policy

The new Administration will face immediate challenges in advancing its tax priorities with a deeply divided Congress marred by significant ideological divisions as well as the continuing fallout from a bitter election. The new team at Treasury will face deep resistance to many of the President-elect's campaign tax proposals, which lack a political mandate and will face serious headwinds in the tax writing committees. However, there does appear to be a window for movement – specifically on repatriation of foreign earnings by US companies, international and business tax reforms, including an “innovation box” that deals with research and development and intellectual property generation.

Tax Reform

The growing demand for reform within an uncompetitive tax code, coupled with continuing base erosion, expiring provisions, and the cost of new programmatic initiatives will drive Congressional tax reform advocates to undertake fundamental reform early in the process. A new Treasury Secretary will have a brief honeymoon in a short time frame (constrained by high stakes off year Congressional elections) to work with established tax reform advocates (Senator Schumer, Speaker Ryan, Senator Wyden, Chairman Brady, Chairman Hatch, Senator Portman, among others) to seek common ground for an early breakthrough. This middle ground will be challenging to define in the yawning gulf between the two chambers, and their politically charged conferences. The close partisan division in the Senate, coupled with rules that empower the minority, will guarantee that Senate Finance Democrats will play a significant role in any successful tax reform.

Repatriating profits by US companies held overseas and revamping the corporate tax rules will continue to be viewed as a source of revenue, as well as a necessary step as the impact of the OECD's Base Erosion and Profit Shifting package (BEPS) is fully realized. However, the argument for funding the nation's growing infrastructure priorities – estimated to be more than \$1 trillion in unfunded need over the next decade – with this repatriated revenue will be bolstered by President-elect Trump's support. Previous attempts to tie repatriation to infrastructure (Speaker Ryan during negotiations on the five-year transportation reauthorization pushed the linking with little success) is likely to run into opposition from Republican leaders keen on moving a tax reform package that follows the framework laid out in June, which would reserve



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The election results have produced one surprise: a White House and Congressional majorities committed to fundamental tax reform, if not representing a consensus on its design. The new Congress will face a broad demand to tackle this issue early and aggressively, albeit in the face of a Populist headwind. Tax reform advocates will seek common ground for a tax regime that promotes growth, improves international competitiveness, and reduces the cost of capital.

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revenue from any repatriation to lower corporate tax rates. Labeled “A Better Way,” it provided a framework on which candidate Trump based his tax plan. Although President-elect Trump does not go as far as the Republican proposal does, preferring to make adjustments under the current structure, there does appear to be some common ground which may lead to tax reform on a larger scale early in 2017.

For instance, under President-elect Trump's plan, the corporate income tax rate would be cut from the current 35% to 15%, the foreign credit would be preserved while the deferral of income from controlled foreign subsidiaries would be eliminated. Included is a one-time deemed repatriation tax of 10% on all foreign profits currently deferred. Pass-through businesses would be taxed at the 15% corporate rate as well. His plan would also eliminate the estate tax.

On the individual side, the President-elect consolidates brackets and reduces rates while eliminating the individual AMT, eliminates the personal AMT, eliminates the Net Investment Income Tax of 3.8% (included in the ACA), and most notably taxes carried interest at ordinary income tax rates instead of capital gains and dividends tax rates.

“A Better Way” GOP Tax Blueprint

Business

- 20% flat tax rate on businesses;
- 100% immediate expensing on investment costs (tangible and intangible) while eliminating carryback provisions;
- 25% rate for business “pass through” income;
- Repeals the Alternate Minimum Tax (AMT)
- Moves the tax code toward a territorial tax system with 100% exemption for dividends paid from future earnings on foreign subsidiaries;
- 8.75% tax rate on previous accumulated foreign cash or cash-equivalent earnings;
- 3.5% on all other accumulated foreign earnings payable over 8 years.

Individual

- Consolidates brackets with new rates at: 12%, 25% and 33%;
- 50% deduction of net capital gains, dividends and interest income;
- Repeals individual AMT and estate tax;
- Eliminates all itemized deductions except mortgage deduction and the charitable contribution deduction; and
- Consolidates the family tax benefits into a standard deduction and a larger child and dependent care credit.

Of particular interest to private nonprofit organizations is that the House Republican tax blueprint recommends preserving the charitable and mortgage interest deductions while eliminating most other itemized deductions. However, the Republican plan will likely include some modifications to the current charitable deduction since the summary states that the Ways and Means Committee “will develop options to ensure the tax code continues to encourage donations, while simplifying compliance and record-keeping and making the tax benefit effective and efficient.” Legislative language is not yet available.

At the end of the day, there appears to be an opening early in 2017 for movement on tax reform which at the very least would include significant international and business tax provisions.



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What the 2016 Election Will Mean for Technology and Communications

One of the major issues facing our country is the cyber-warfare and cyber-attacks that are threatening our government agencies, and our major businesses. We expect the new President to reach out to Congress to formulate bipartisan plans for new protections and defenses against these attacks.

President-elect Trump has not expressed a comprehensive technology agenda, but has offered some insight into his position on a number of issues including cybersecurity, encryption, Net Neutrality, government surveillance, and online speech. In addition, his positions on education, immigration, regulatory reform, taxation, and trade, discussed in further detail elsewhere in this memo, may directly affect the technology industry.

While Trump's stances on reducing corporate taxes and regulation could be of some benefit, the majority of his positions are in conflict with the technology industry's longstanding policy goals. These positions coupled with Republican retention of both the House and Senate, particularly the reelection of Senate Homeland Security Chairman Ron Johnson (R-WI) and Senate Intelligence Committee Chairman Richard Burr (R-NC), could portend a number of legislative initiatives moving early in the Trump Administration.

The technology leader for the Trump transition team is Jeffrey Eisenach, a former official at the Federal Trade Commission and the Office of Management and Budget and currently a scholar at the American Enterprise Institute, who will likely take a senior White House role and be intimately involved in setting the Trump technology agenda.

Cybersecurity

Trump's candidacy was notable for its strong emphasis on law and order as well as government incompetence. Regarding cybersecurity, Trump has repeatedly argued that the United States lacks strong cybersecurity and while he has not articulated a clear strategy to address this weakness, he has pledged to "crack down" on nation-state sponsors of cyber espionage and crime. We expect to see legislation



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to increase criminal penalties for hacking, which enjoys wide Congressional support, and aggressive diplomatic posturing against suspected state sponsors of cybercrime and espionage in the first year of the Trump Administration.

Encryption and Law Enforcement Access to Data

Trump expressed strong support for a court order attempting to force Apple to access an encrypted iPhone belonging to one of the San Bernardino terrorists and called on his supporters to boycott Apple. (Apple did not comply with the law enforcement request.) Trump's statements during the campaign indicate that he would support the legislative proposal put forth by Senate Intelligence Committee Chairman Burr that would force companies to provide access to encrypted devices and effectively outlaw end-to-end encryption in the United States.

Trump also has expressed support for restoring the Patriot Act and increasing government surveillance of Syrian refugees and mosques. While these initiatives are unlikely to garner wide support in Congress, increased surveillance could be enacted by the Executive Branch without requiring Congressional preapproval.

Net Neutrality and FCC

Trump has been openly hostile to the FCC's Open Internet Order and in a tweet, he likened Net Neutrality to the Fairness Doctrine, which he claimed would target conservative media. As the President chooses the Chairman of the FCC, we do not expect the current Chairman, Thomas Wheeler, to continue in his post. Accordingly, it is likely that the Open Internet Order will be rescinded or modified by the incoming Chairman, most likely current Commissioner Ajit Pai. Most Republicans would like to rescind Net Neutrality, but the process would require extensive public comments and would pit Internet activists against the Administration and Congressional Republicans. President-elect Trump will also have the opportunity to appoint two new commissioners in both 2017 and 2018, which could dramatically alter the makeup of the Commission.

Online Speech

Trump has repeatedly called on the technology industry to limit online recruiting by ISIS and other terrorist organizations, and has been extremely dismissive of free speech arguments. While he has not fully explained his desire to "close areas (of the Internet) when we are at war with someone," such a stance could indicate increased public law enforcement and possibly Congressional pressure on online platforms and Internet Service Providers to monitor the activity of those using their services.



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What the 2016 Election Will Mean for Transportation and Infrastructure Policy

For the time being, transportation policy in the 115th Congress will be largely shaped by the Fixing America's Surface Transportation Act (FAST Act), which was signed into law last December by President Obama. After years of short term, stop-gap funding for federal transportation programs, Congress and the President worked to craft the FAST Act which funds transportation programs for five years at \$305 billion. The FAST Act largely set transportation agenda for the next few years and new programs within FAST Act are seeing their second rounds of funding. State and local governments have more opportunity to benefit from FAST Act programs, such as Transportation Infrastructure Finance and Innovation Act (TIFIA) Loans, the Surface Transportation System Funding Alternative Program, and Transportation Investment Generating Economic Recovery (TIGER) Grants.

As a result, in terms of potentially expiring program funding authority, Congress and the Trump Administration do not have to face a transportation funding fight until the FAST Act expires in December, 2020 – the end of Trump's first term in office. However, as noted below, we expect transportation infrastructure spending to be front and center in the 115th Congress as Members and the new Administration look to spend far more than the FAST Act provided.

Trump's Infrastructure Plans

While the FAST Act is implemented in 2017, there is likely to be renewed focus on this area of federal policy. During his campaign, President-elect Trump promised to invest \$500 billion in infrastructure if elected. Trump said that his spending will focus on projects that have the potential for revenue generation – roads, bridges, water utilities, airports, etc. He also plans to leverage more public-private partnerships and provide "maximum" flexibility to states. While his proposal did not list specific programs for which he will increase funding, Trump has signaled that he will focus on business-oriented infrastructure spending. He will likely prioritize projects that show potential for easing commerce and creating jobs. We expect this infrastructure plan to be a significant element of the first year of his Administration and expect stakeholders to engage in advocacy to the transition team and to newly ensconced agency officials early in the new year.



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Both sides would like to begin repairing our country's infrastructure. I think that might be one of the first attempts for the Congress and the new Administration to fashion a compromise bill that could be signed into law. There will be negotiations on the scope of the bill and how to fund it, but this could be an opportunity to prime the pump for progress on other issues.

Sen. Byron Dorgan

*Co-Chair, Government
Relations Practice*

Congressional Players

With Republicans keeping control of both the House and Senate, there will be few changes in leadership for transportation policymakers. The Senate Environment and Public Works Committee, which has jurisdiction over most transportation policy in the Senate, saw the retirement of Ranking Member Barbara Boxer (D-CA). She will be replaced by Senator Tom Carper (D-DE). Senator John Barrasso (R-WY) is likely to become Chair.

House Transportation and Infrastructure Committee leaders Reps. Bill Shuster (R-PA) and Pete DeFazio (D-OR) both easily won their reelections. Transportation appropriators in both chambers will likely remain the same as well, with the exception of Senate Appropriations Committee Ranking Member Senator Barbara Mikulski (D-MD) who retired.

National Infrastructure Bank

Incoming Senate Minority Leader Charles Schumer (D-NY) has eyed the creation of a national infrastructure bank as a possible compromise to advance international tax reform. He has suggested that the creation of an infrastructure bank, which would match federally backed loans with private sector investments, could bring Democrats to the table in order to discuss international tax reform. While President-elect Trump has voiced his opposition to an infrastructure bank, he has proposed leveraging private funds and changes to international tax law to pay for his infrastructure projects, so he may be amenable to Schumer's proposal.

Schumer has said that House Speaker Ryan would be open to the deal, but success rides on the cooperation of the chairs of the House Ways and Means and Senate Finance Committees, as the compromise would involve a major tax reform component. Senator Ron Wyden, top Democrat on the Senate Finance Committee, has already said he sees international tax reform and infrastructure spending going hand-in-hand. However, Ways and Means Chairman Kevin Brady (D-TX) views the compromise as a "last resort."

FAA Reauthorization

While the 114th Congress saw success in passing a long-term transit reauthorization bill, they were unable to pass a long-term reauthorization for the Federal Aviation Administration. This past year, FAA funds were set to expire and Congress passed a short-term extension authorizing funding until September 30, 2017. Reauthorization of the FAA will likely be the major "must pass" transportation legislation to face the 115th Congress.

In the first negotiations of the extension, House Transportation Committee Chairman Shuster had proposed to spin-off air traffic control operations into a non-profit entity. This proposal was met with opposition in both chambers, but it could come up again when the 115th Congress looks at reauthorization in September. Shuster may tie the spin-off to a provision streamlining FAA's aircraft component approval process, which is another provision left on the table last year. The likelihood of passing a long-term FAA hinges on Shuster's attachment to the spin-off provision, which will still see opposition in both chambers.

Public Buildings

President-Elect Trump likely will take a special interest in public buildings and General Services Administration (GSA) issues because of his decades of experience with real estate and real estate finance. It remains to be seen whether the president-elect will support current Republican and Administration efforts to reduce the size of the federal buildings footprint, make federal buildings more efficient, reduce the cost of expensive leases and sell off under-utilized assets. President-Elect Trump has recent, first-hand experience working with the GSA, having negotiated the lease for the Old Post Office building on Pennsylvania Avenue in Washington, DC. The building, which now houses a Trump International Hotel, opened last month.



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What the 2016 Election Will Mean for Energy Policy

Donald Trump's stunning victory, combined with a still Republican Senate and House of Representatives, dramatically changes the energy policy landscape.

Consistent with his campaign promises and his electoral strength in regions producing and using fossil fuels, President-elect Trump will attempt to revive the coal industry, abrogate the Kyoto and Paris climate agreements, and terminate or at least scale back the EPA Clean Power Plan and numerous other clean air and other environmental initiatives. He will open up public lands for energy development. During the campaign, he repeatedly expressed skepticism about the efficacy of renewable energy.

Companies in the energy space must reconsider long-held assumptions. For oil, natural gas and coal, the Trump presidency and Republican control of Congress present a new opportunity for more production, better infrastructure, and new markets, both here and abroad. Their opponents in the "leave it in the ground" environmental movement will face new challenges on the federal level, but they remain a potent force in many of the blue states.

For the renewable sector, the Trump presidency requires emphasizing its role in creating new high-paid American jobs, enhancing US energy security, increasing state and local tax revenue, and helping farmer and ranchers diversify their businesses. Renewable energy production and related manufacturing is an increasingly important part of the economy in many of the swing states that President-elect Trump won and are represented by Republican legislators, and that factor may constrain efforts by renewables opponents to hinder the sector's growth. Another factor favoring renewables is their strength at the state and regional level as indicated by recently increased renewable generation requirements.

We expect President-elect Trump and the Congressional Republicans to work together to use the appropriations and authorization process to modify environmental laws. They, of course, will encounter the Senate's 60-vote rule, but the number of Democratic Senators up for re-election in purple and red states dependent on fossil fuel energy and traditional manufacturing industries may make it more difficult for environmental groups to resist those efforts.



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The President-elect's focus on infrastructure may become an area of common ground. Strengthening electrical transmission and related infrastructure is necessary for both system reliability and renewable energy growth. Federal, state and local governments, business, and environmentalists can work together. Congress can play an important role in expediting siting and providing tax incentives.

With the Trump victory, another interesting question is what, if anything, in the energy policy space will make it across the finish line during the "Lame Duck" session beginning next week and wrapping up before Christmas.

Senate and House conferees are working to hammer out an agreement reconciling the Senate-passed and House-passed energy bills, which differ significantly, as indicated by the Senate bill passing on a bipartisan basis by an 85-12 vote and the House bill passing mostly on a partisan basis by a 241-178 vote. The changed dynamic in 2017 may make bipartisan compromise in 2016 impossible.

Senate Finance and House Ways and Means members may also consider a broad tax extenders package that could include incentives for innovative "orphan technologies" (fuel cells, etc.) left out of the comprehensive tax and spending bill enacted in late 2015. Also in the mix are several bills providing incentives for coal, nuclear, and energy storage that could conceivably become part of any final extenders package. We could see some old-fashioned "horse trading" among legislators looking to close out 2016 with something tangible helping their states and districts.



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The election results will profoundly shake the foundations of the international trading system, and require a fundamental recalibration of trade policy in the United States.

A Trump trade policy will require new negotiating objectives, a new style of engagement, and a new emphasis on enforcement and outcomes. American leadership in the area of global economic policy will be shifted to reflect a different paradigm in managing trade relations with China, North America and Europe, as well as its profile in international institutions. Rumors of protectionism will abound, but the real test will be whether the United States continues to drive the effort to create a rules based global trade regime.

Rep. Philip S. English

*Co-Chair, Government
Relations Practice*

What the 2016 Election Means for Trade Policy

The fallout from the election injects great uncertainty into national trade policy. The campaigns of both parties reflected skepticism of existing trade agreements and suggest a departure from policies pursued by the outgoing Obama Administration. In the aftermath of the election, traditional Congressional advocates of free trade will face a shifting calculus as the new Administration struggles to define how to shape a trade agenda that factors populist impulses in their own coalition.

A Trump trade policy will require an early definition, given the centrality of the issue in the campaign and its resonance with key elements and communities in the winning coalition. Issues like China currency policy, intellectual property rights, and trade remedies for impacted domestic industries will be pushed to the forefront. The design and future of NAFTA and other existing trade agreements will be revisited, and have deep consequences for relations with Canada and Mexico. Existing trade negotiations will be put in doubt, while the Trans Pacific Partnership (TPP) and the flagging Transatlantic Trade and Investment Partnership (TTIP) round will be sidelined, if not shelved. The trade agenda in Congress will likely encompass new trade negotiating objectives, and possibly trade law reform and worker safety net programs.

Efforts to pass TPP during the lame duck session of Congress, which would have been an uphill battle with Secretary Clinton as President, are a non-starter with a Trump Administration set to be sworn in January. President-elect Trump has repeatedly voiced his opposition to TPP and that likely makes passage highly unlikely in a Republican-controlled Congress.

The leadership of the trade policy arms of Congress- the Senate Finance Committee and the House Ways and Means Committee will play a strategic role in framing the trade policy options in the new regime, and will play an enhanced role in reframing relations with trading partners. As a legacy of new powers under Trade Promotion Authority (TAA), the International Trade Commission (ITC) will also play an enhanced and visible role in the trade policy array.



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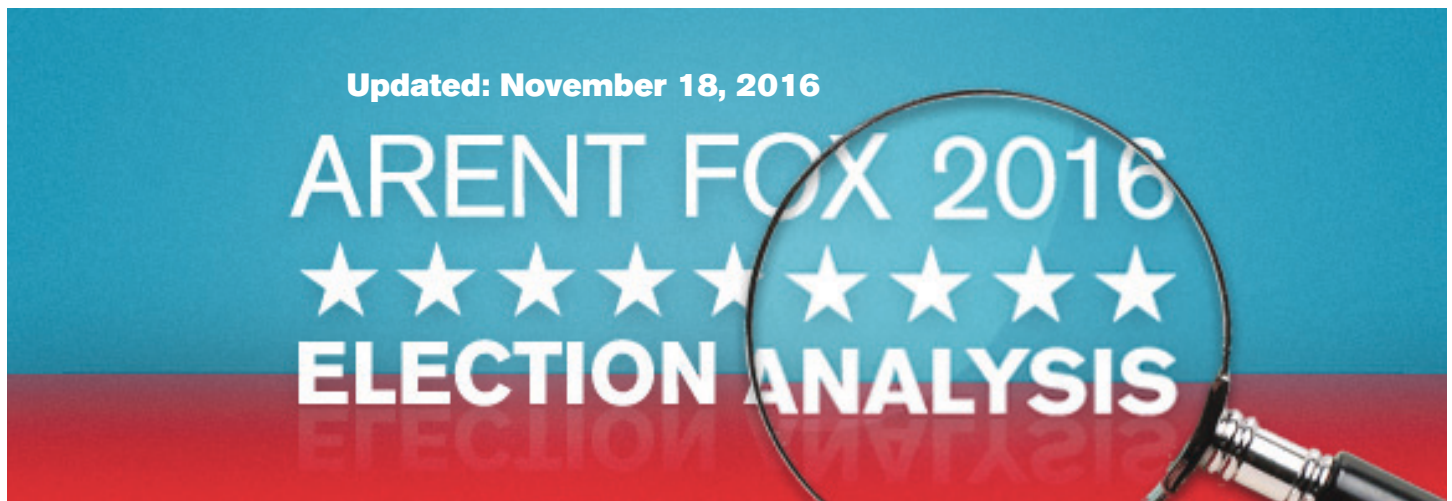
Apart from trade agreements and trade policy, it is worth noting that the Export-Import Bank, while reauthorized in 2015, has lacked sufficient Board members for a quorum required to approve transactions greater than \$10 million. It may be that the lame duck session will permit confirmation of a third Board member, a Republican held up by his own party, but supporters of the Bank have failed to dislodge that nomination for months notwithstanding a robust grassroots campaign. Conservatives who oppose the Bank may look to a Trump Administration as a chance to shackle the institution further.

On trade matters, I don't expect the new President will move precipitously to scrap existing trade agreements, but I think he will, true to his word, want to begin searching for new approaches and to begin new discussions with countries where he thinks our current agreements do not represent fair trade. He may find some bipartisan agreement in Congress for those efforts.

Sen. Byron Dorgan

*Co-Chair, Government
Relations Practice*





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What the 2016 Election Will Mean for Campaign Finance and Election Law:

Business as Usual in an Unusual Year

The big difference between this year and prior election cycles is not how the money was spent, who spent it, or where it came from, but that there was more of it everywhere.

As of this writing, the following figures are known, courtesy of Bloomberg:

- Outside money poured \$52.3 million in the final week before the election in just five Senate races. The two biggest states are Wisconsin and Pennsylvania.
- The Pennsylvania Senate race shattered campaign finance records with \$113 million spent so far in just the general election.
- The biggest Super PACs making expenditures in these races are closely associated with House and Senate leadership, with a total of \$532 million spent on Senate races and \$266 million spent in House general elections. The biggest source of money in the Pennsylvania Senate race was the Democratic Senate Majority Fund which has pumped in \$19.9 million.

All Super PAC activity is estimated to be \$1.4 billion, or three times the amount the candidates' committees have spent. While final data is not yet available, it appears that Super PACs will account for over 51 percent of money spent in key Senate races. The top three Senate contests – Pennsylvania, Nevada, and New Hampshire – will each account for \$100 million in spending.

The growth of Super PACs has prompted a new legal challenge to their activity by several Members of Congress. A different lawsuit by newly elected US Senator Chris Van Hollen (D-MD) challenging disclosure and coordination rules was unsuccessful. In a related case, the Supreme Court has let stand contribution limits to traditional PACs.



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On the presidential level the statistics through the last week, courtesy of the Center of Responsive Politics, are as follows:

Hillary Clinton

\$497,000,000 campaign money
\$189,000,000 outside money
\$686,000,000

Donald Trump

\$247,000,000 campaign money
\$59,000,000 outside money
\$306,000,000

All the numbers above will increase dramatically when the end-of-campaign reports are filed in mid-December. If present trends continue, Secretary Clinton will continue her 2 to 1 advantage over Donald Trump in campaign resources. The final total should be over \$1.6 billion for the presidential race. If turnout remains steady at 125 million voters, that equals approximately \$12.50 per voter.

Breaking campaign finance PAC contributions by business sector shows the following:

Agribusiness:	\$25 million
Communications:	\$28 million
Construction:	\$14 million
Defense	\$16 million
Energy/Resources:	\$31 million
Health:	\$54 million
Ideological:	\$59 million
Labor:	\$48 million
Lawyers/Lobbyists:	\$12 million
Misc. Businesses:	\$42 million
Transportation:	\$27 million

When one compares the above to Super PACs, one sees that the over 2,000 traditional PACs raised \$336 million while nearly the same number of Super PACs raised \$1.5 billion. But Super PACs are not easily grouped by industry sector, as they are more readily defined as liberal or conservative, Republican or Democratic, or related to Congressional leadership. By the end of the cycle, Democratic giving will outpace Republicans.

In the final analysis, the numbers got bigger and the laws stayed the same. The more interesting analysis will be done next year as we examine how these candidates and committees spent their money and what was viewed as the best way to spend it. The 30 second ad, social media, microtargeting, get-out-the-vote activities, events, and polling will all have major shared of the money.

Efforts will be made to continue to disclose where all the money has come from, but many donors give to 501(c)(4)s that in turn contribute that money to Super PACs, keeping the donations undisclosed. Given the scandals at the IRS, no reform is possible in the foreseeable future at the federal level. Instead, we should watch state-based actions by the California and New York State Attorneys General.

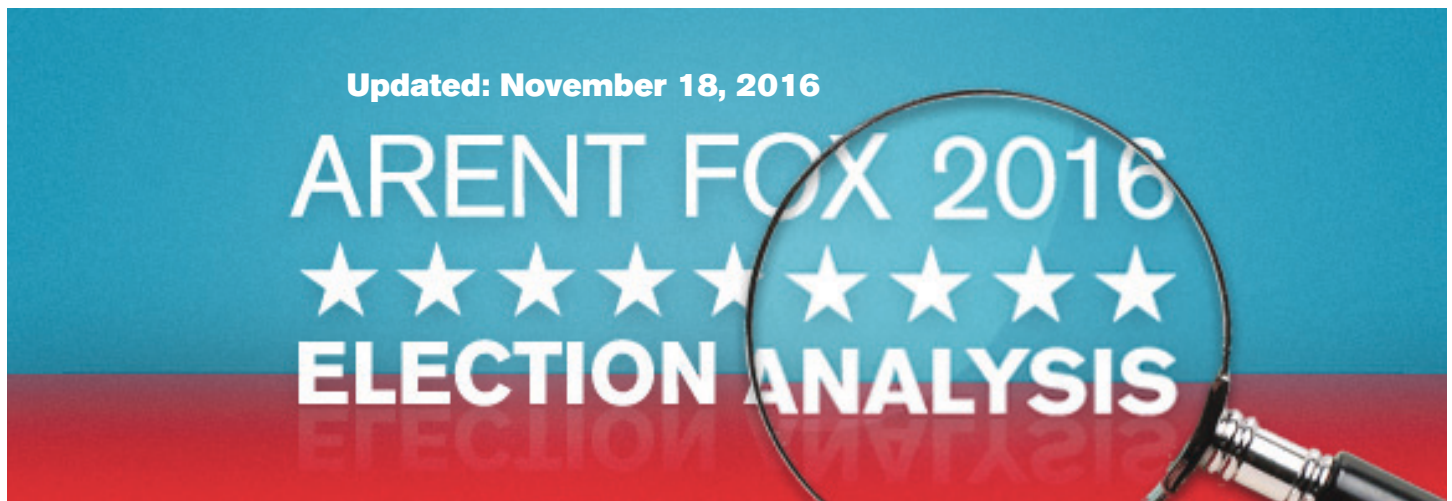


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What do these statistics mean for corporations, trade associations and their advisors? Despite the rise in Super PAC activity, we expect traditional PACs are still the way to go for most donors. Traditional PACs make contributions – contributions that the candidates see and feel and appreciate – because they get to spend those contributions on their own race as they see fit. Super PACs only make independent expenditures – and those are not always to a candidate's liking. And it takes large sums of money to operate an effective Super PAC: typically more than \$1 million. A traditional corporate PAC can be effective with a budget of just \$200,000 a cycle. So – the lesson we take from this cycle is this: Super PACs are fine, but they create a lot of noise. Corporate and association political activity via their own PACs remain a more effective approach in our view.





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Snapshot on Results of 2016 DC Elections

President and Vice President of the United States

As expected, the District overwhelmingly supported Hillary Clinton and Tim Kaine by a vote of 90 percent. The question now becomes, with Secretary Clinton's loss, whether a Trump Administration will involve itself actively in local issues such as statehood, voting rights, and local autonomy. A Trump Administration is expected to oppose DC statehood and local rights.

Delegate to the US House of Representatives

Congresswoman Eleanor Holmes Norton (D-DC) was returned to the House for a 14th term by a vote of 85 percent. She will continue to be a champion for DC rights, economic development, and will continue to play a lead role on DC and national public buildings issues as a senior Democrat on the Transportation Committee and Public Buildings Subcommittee.

At-Large Members of the Council of the District of Columbia

After his stunning defeat of long-time incumbent Vincent Orange (D-At Large) in the primary and subsequent appointment to his seat following Orange's controversial early departure from the Council to lead the Chamber of Commerce, former Norton staffer Robert White (D-At Large) won a four-year term by a margin of 38 percent. In addition, incumbent Councilmember David Grosso (I-At Large) won the second at-large seat by a vote of 18 percent, which translated to 102,000 votes (the most votes ever received by a non-Democrat in local DC elections). White and Grosso, who are friends, ran together in the closing months of the campaign and are expected to be allies on the Council in support of progressive initiatives, such as paid family leave. However, both White and Grosso have supported economic development initiatives, particularly those that are projected to produce jobs for District residents and tax revenue for the city. Grosso will continue to chair the Education Committee.

Wards 2, 4, 7, and 8 Members of the Council

The longest serving member of the Council, Jack Evans (D-Ward 2), was returned to his seat by an 85 percent vote. He will continue to chair the powerful Finance and Revenue Committee. Ward 4 Councilmember Brandon Todd (D-Ward 4), a reliable vote for



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and supporter of the Mayor's initiatives, was re-elected by a vote of 85 percent. Todd likely will get the opportunity to chair a committee during the upcoming Council period. Former Mayor Vince Gray (D-Ward 7), defeated his former protégé Councilmember Yvette Alexander (D-Ward 7) in the primary and easily won the general election by a 84 percent vote. Now that the US Attorney has closed the investigation against Gray's first mayoral campaign without filing charges against Gray, the former Mayor may feel empowered to take on Mayor Muriel Bowser and her policies from his new position on the Council. It is widely speculated that Gray may seek to run against Mayor Bowser again in two years. Finally, Ward 8 also will get a new Councilmember in Trayon White (D-Ward 8), who defeated freshman Councilmember LaRuby May (D-Ward 8) in the primary. White won the general election with 93 percent of the vote. White is expected to be a reliable vote for progressive causes, particularly those that will benefit economically the residents of Ward 8, the most disadvantaged Ward in the city. The elections of Robert White, Vince Gray, and Trayon White were seen by some local commentators as a repudiation of Mayor Bowser's political power, after she strongly supported each of their opponents. The Mayor likely will face an even more emboldened Council next year, led by Council Chair Phil Mendelson, with whom she continues to clash on many issues. The Mayor also likely will face a spirited re-election campaign in two short years with potential candidates including: Former Mayor Vincent Gray, Attorney General Karl Racine, Councilmember Kenyan McDuffie (D-Ward 5) and others.

It will be critical for those with matters before the Council to cultivate the seven members of the progressive bloc of the Council, who likely will drive the Council's agenda going forward. These members include Councilmembers David Grosso (I-At Large), Elissa Silverman (I-At Large), Robert White (D-At Large), Brianne Nadeau (D-Ward 1), Mary Cheh (D-Ward 3), Charles Allen (D-Ward 6) and Trayon White (D-Ward 6). Ideally, organizations should seek to win as many champions as possible from within this group.

Advisory Referendum on DC Statehood

The Statehood vote overwhelmingly passed by a vote of 79 percent, which will allow the Mayor and the Council to present a statehood admissions package to the new President and Congress early in January. The District plans a robust push for statehood, but faces an uphill battle without the White House and majorities in the House and Senate to support the Admissions Act introduced by Congressman Norton.

