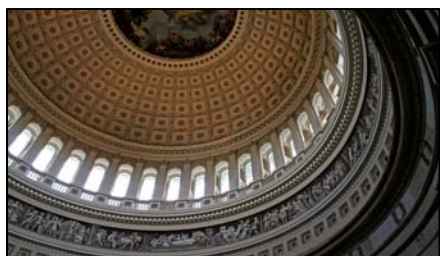


# ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS CONSULTANTS



## ELECTION 2016: RESULTS AND ANALYSIS

### PRESIDENT

Donald J. Trump will be the nation's 45th President, defeating Hillary Clinton in one of the most surprising presidential election upsets in recent history. In a decisive victory that undoubtedly helped down-ballot Republicans retain control of the House – a stretch for the Democrats in any event - and Senate, Trump has accumulated 290 electoral votes, putting him well beyond the minimum 270 electoral votes required for victory and far ahead of the 232 electoral votes won by Clinton. At the time of this writing, vote counts are still being finalized in Michigan, although Trump looks likely to carry Michigan as well which would bring him to 306 total electoral votes. The victory shocked many from both parties (including in both campaigns!) and many in the media, as nearly all public polling data modeling had anticipated a victory for Secretary Clinton. At this time, Clinton is expected to retain her lead in the popular vote (approximately 200,000 votes), making Trump the fifth President to win the Electoral College vote while losing the popular vote.

The Trump campaign's victory can largely be attributed to decisive wins in the key battleground states of Florida, North Carolina and Ohio - all states President Obama carried in both his elections (*with the exception of North Carolina, which Obama won in 2008 but narrowly lost in 2012*). Perhaps the most damaging to Clinton's election hopes were Trump's victories in the key Democratic firewall (or "blue wall") rust belt states, where Democrats have enjoyed significant success in the past several presidential elections. Among Trump's inroads in these blue states was a win in Pennsylvania, a solid "blue state" for more than two decades, having last selected a Republican in 1988. Also of considerable importance was Trump's surprise wins in the traditionally "blue" states of Wisconsin, which has not voted for a Republican since Ronald Reagan, and Michigan, which like Pennsylvania has voted for Democrats in every presidential election since 1988. This election certainly revealed the changing demographics in the American

electorate and may dramatically shift party attention and targeting of certain states that each may have previously thought to be “untouchable” in a presidential election.

Among the policy and legislative items Trump has outlined as priorities for his administration are the repeal and replacement of the Affordable Care Act (ACA, or Obamacare), the construction of a wall along our Southern border with Mexico, and a revenue-neutral infrastructure plan that would seek to leverage public-private partnerships and private investments through tax incentives, to spur \$1 trillion in infrastructure investments over ten years. While at least some of these proposals are likely to garner significant opposition from Congressional Democrats, and even some Congressional Republicans, President-elect Trump will have the benefit of his party controlling both chambers of Congress; however, the slim Republican majority in the Senate will allow Senate Democrats, namely incoming Minority Leader Chuck Schumer (D-NY) to use the filibuster and parliamentary maneuvers to slow or even halt the progress of legislation deemed unacceptable by Democrats. With Senate Democrats facing a perilous election cycle in 2018 (23 seats up for re-election, including several in red states), the extent to which the Democratic caucus will be able to obstruct Trump’s legislative agenda remains unclear. And measures included in a reconciliation measure require only a simple majority to pass. Majority Leader Mitch McConnell (R-KY) has already indicated that a full repeal of Obamacare will be at the top of the Congressional agenda when the 115th Congress convenes in January, and this is something that could happen as part of reconciliation. Of course, it will be incumbent on the President and Congress to determine what will succeed the ACA. President-elect Trump is also expected to nominate a candidate to replace the late Antonin Scalia on the Supreme Court. The pending nomination could trigger a confirmation fight between Democrats and Republicans in the Senate, as many Senate Democrats remain upset that Senate Republicans refused to consider President Obama’s nominee, Merrick Garland, as they sought to hedge their bets that a Trump election would yield a more conservative pick.

## **U.S. SENATE**

With Senate Republicans expected to win the runoff in Louisiana to determine the state’s open Senate seat, Republicans are projected to control 52 seats in the 115th Congress, leaving Democrats with 48 (*this total includes two independent senators, Bernie Sanders of Vermont and Angus King of Maine, who both caucus with Senate Democrats*). The projected seat totals are the result of another surprise of the 2016 election cycle, in so much as Senate Republicans were able to secure enough victories in difficult elections to retain their majority by a slim margin. Of particular note, Senate Republicans won key

races in states where just a few weeks ago polling suggested the races were toss-ups (Indiana, Missouri and North Carolina) or leaning Democrat (Pennsylvania and Wisconsin), and hold on to seats in races previously considered challenging. Of the five open senate seats this election, Democrats were able to secure victories in three states (California, Maryland and Nevada, all seats previously held by Democrats), while Republicans won in Indiana and are projected to win in Louisiana (both currently held by Republicans).

Democrats were only able to flip two Republican-held seats, with Democratic Congresswoman Tammy Duckworth soundly defeating incumbent Republican Mark Kirk in Illinois, and Democratic Governor Maggie Hassan narrowly edging out incumbent Republican Senator Kelly Ayotte in New Hampshire by 700 votes.

<b>Party</b>	<b>Current # of Seats</b>	<b>Incoming # of Seats</b> <i>(pending runoff, final counts)</i>	<b>Net Gain/Loss</b> <i>(pending runoff, final counts)</i>
Republicans	54	52	-2
Democrats	46*	48	+2

*\*Includes two Independents who caucus with the Democrats.*

As previously noted, the only other Senate race that remains undecided is in Louisiana, where Senator David Vitter (R) chose not to seek re-election for his seat following his failed bid for Governor last year. With no candidate garnering 50 percent of the vote in Tuesday's election, a state-wide runoff will be held on December 10, 2016, between the top two vote-getters: State Treasurer John Kennedy (R) and Public Service Commissioner Foster Campbell (D). The latest projections suggest Republican voters in the state, split among several nominees in Tuesday's election, will likely unite behind Kennedy in the runoff, thereby allowing Republicans to retain the seat.

## **U.S. HOUSE OF REPRESENTATIVES**

As expected, Republicans will retain their majority in the House, with races still to be decided in California and Louisiana. In Louisiana, the two outstanding races will be decided by a district-level runoff election scheduled for December 10, 2016; however, two Republicans will vie for the state's 3rd district, ensuring Republicans retain that seat, and they are heavily favored to also hold the state's 4th district.

As charted below, the current vote tally would reflect a net gain of 6 seats for House Democrats, falling short of the 10-15 seats they were expected to pick up. Meanwhile, Republicans remain well short of the 290 seats needed to overturn a Presidential veto,

although that margin becomes less significant with an incoming President from their own party.

<b>Party</b>	<b>Current # of Seats</b> <i>(currently 3 vacancies)</i>	<b>Incoming # of Seats</b> <i>(pending runoff, final counts)</i>	<b>Net Gain/Loss</b> <i>(pending runoff, final counts)</i>
Republicans	246	238	-6
Democrats	186	193	+6

*\*Final numbers pending final vote counts.*

The House Majority is expected to remain mostly unchanged, although leadership elections are currently scheduled for November 15, 2016, just one day after Congress returns to Washington following the seven-week recess leading up to the elections. Of particular note, House Speaker Paul Ryan (R-WI) has said he will seek to retain his role in the 115th Congress, although the reported tension with Trump throughout the campaign, as well as with some of the more conservative members of his own party (notably, those within the Freedom Caucus), could potentially hurt his chances of being re-elected.

What is more likely than an attempt to unseat Speaker Ryan at the outset of the upcoming lame duck session, is a move to seek changes to existing House rules and procedures that many in the Freedom Caucus view as limiting the power of rank-and-file members of the caucus. Among the potential changes reportedly being discussed is a modification to the process for selecting committee chairmen, allowing committee members to select their own chairs instead of relying on steering committees comprised of leadership and more senior caucus members. Freedom Caucus members are reportedly waiting to see how Speaker Ryan fares during the lame duck session, and whether he is willing to negotiate a deal that could cede more power to their members, before agreeing to fully support Ryan's bid to retain his position.

## **EXPECTED COMMITTEE CHAIRMAN & RANKING MEMBERS**

Continued Republican control of Congress with only marginal net losses in each chamber (two in the Senate and six in the House) is expected to leave many senior Committee leaders in place. Nonetheless, intraparty divisions within the GOP reflecting practical approaches to the Trump agenda and conservative ideology more generally will loom large—particularly in the House.

As noted above, the 40 members of the Republican Freedom Caucus in the House are reportedly seeking several changes to House rules and procedures to not only modify the process for selecting committee chairs, but also dramatically dilute the traditional power of Committee chairs by creating a new sponsorship “threshold” to guarantee a vote on legislation.

Pending any potential changes to the selection processes, both parties’ Steering Committees will work to finalize Committee assignments by the time the new Congress convenes in January. Below is a preliminary outlook for the expected Congressional leadership, as well as the Chairs and Ranking Members for Committees of particular importance.

#### *CONGRESSIONAL LEADERSHIP*

- Expected Senate Majority Leader – Mitch McConnell (R-KY)
- Expected Senate Minority Leader - Chuck Schumer (D-NY)
- Expected Speaker of the House – Paul Ryan (R-WI)
- Expected House Majority Leader - Kevin McCarthy (R-CA)
- Expected House Majority Whip - Steve Scalise (R-LA)
- Expected House Minority Leader - Nancy Pelosi (D-CA)
- Expected House Minority Whip – Steny Hoyer (D-MD)

#### *EXPECTED SENATE LEADERSHIP OF COMMITTEES OF INTEREST*

##### **Appropriations**

- *Chairman:* Senator Thad Cochran (R-MS) is expected to remain as Chair.
- *Ranking Member:* Senator Patty Murray (D-WA), Senator Leahy D-VT (perhaps more likely to keep his position on the Judiciary Committee), Senator Feinstein (D-CA) or Senator Richard Durbin (D-IL) is expected to become Ranking Member.

##### **Budget**

- *Chairman:* Senator Mike Enzi (R-WY) is expected to remain as Chair.
- *Ranking Member:* Senator Bernie Sanders (I-VT) may remain Ranking Member, although he may pursue the comparable leadership position on the Health, Education, Labor and Pensions (HELP) Committee should Senator Patty Murray (D-WA) move to assume retiring Senator Barbra Mikulski’s role as Ranking Member of Appropriations. Sheldon Whitehouse (D-RI) is also reportedly interested in the post if Senator Sanders moves to HELP.

## **Commerce**

- *Chairman:* Senator John Thune (R-SD) is expected to remain as Chair.
- *Ranking Member:* Senator Bill Nelson (D-FL) is likely to remain the Ranking Member.

## **Environment and Public Works (EPW)**

- *Chairman:* Senator James Inhofe (R-OK) has served on EPW for a full six years, and is expected to be replaced as Chair by Senator John Barrasso (R-WY).
- *Ranking Member:* Current Ranking Member Barbara Boxer (D-CA) is retiring at the end of the year; she is expected to be replaced by Senator Tom Carper (D-DE).

## **Finance**

- *Chairman:* Senator Orrin Hatch (R-UT) is expected to remain as Chair.
- *Ranking Member:* Senator Ron Wyden (D-OR) is expected to remain as Ranking Member.

## **Health, Education, Labor, and Pensions (HELP)**

- *Chairman:* Senator Lamar Alexander (R-TN) is expected remain as Chair.
- *Ranking Member:* Senator Murray (D-WA) may remain Ranking Member of HELP or seek the same position on the Appropriations Committee. If she moves, Senator Bernie Sanders (I-VT) is expected to leverage increased visibility from the Democratic primary in pursuit of the position. Senator Bob Casey (D-PA) is another possibility as Ranking Member.

## **Homeland Security and Governmental Affairs**

- *Chairman:* Senator Ron Johnson (R-WI) is expected to remain as Chair.
- *Ranking Member:* Senator Claire McCaskill (D-MO) will likely become the next Ranking Member.

## **Veterans' Affairs:**

- *Chairman:* Senator Johnny Isakson (R-GA) is expected to remain as Chair.
- *Ranking Member:* Senator Richard Blumenthal (D-CT) is expected to remain as Ranking Member.

## ***EXPECTED HOUSE LEADERSHIP OF COMMITTEES OF IMPORTANCE***

## **Appropriations**

- *Chairman:* Current Chair Harold Rogers (R-KY) is termed out. His successor is likely to be either Robert Aderholt (R-AL) or Rodney Frelinghuysen (R-NJ).

- *Ranking Member:* Nita Lowey (D-NY) is expected to continue in this role.

### **Budget**

- *Chairman:* Representative Tom Price (R-GA) is expected to remain as Chair.
- *Ranking Member:* Representative Chris Van Hollen (D-MD) has been elected to fill retiring Senator Barbara Mikulski's seat in the Senate. Potential replacements as Ranking Member are John Yarmuth (D-KY) or Bill Pascrell (D-NJ).

### **Education and the Workforce**

- *Chairman:* Representative John Kline (R-MN) is retiring after three terms chairing the Committee. Representative Virginia Foxx (R-NC) has been a leading candidate to replace him for some time, though Representatives Phil Roe (R-TN) and Joe Wilson (R-SC) are also possibilities.
- *Ranking Member:* Congressman Bobby Scott (D-VA) is expected to continue as Ranking Member.

### **Energy and Commerce**

- *Chairman:* Current Chair Fred Upton (R-MI) is relinquishing the chair after three terms, leaving a wide range of possibilities that include Representatives Greg Walden (R-OR), Tim Murphy (R-PA), and Marsha Blackburn (R-TN).
- *Ranking Member:* Congressman Frank Pallone (D-NJ) is expected to continue as Ranking Member.

### **Homeland Security**

- *Chairman:* Current Chairman Michael McCaul (R-TX) has one term remaining as chair and is expected to continue in this role.
- *Ranking Member:* Congressman Bennie Thompson (D-MS) is expected to continue in this role.

### **Transportation and Infrastructure**

- *Chairman:* Current Chairman Bill Shuster (R-PA) has one term remaining as chair and is expected to continue in this role.
- *Ranking Member:* Congressman Peter DeFazio (D-OR) is expected to continue in this role.

### **Veterans' Affairs**

- *Chairman:* Representative Jeff Miller (R-FL), who is retiring at the end of the year, has chaired this Committee for three terms; his likely replacements include Representatives Doug Lamborn (R-CO), Gus Bilirakis (R-FL) or Phil Roe (R-TN).

- *Ranking Member:* Acting Ranking Member Paul Takano (D-CA) is expected to formalize his role; Representative Tim Walz (D-MN) is also a possibility.

### **Ways and Means**

- *Chairman:* Chairman Kevin Brady (R-TX) is likely to continue in this role.
- *Ranking Member:* Congressman Sander Levin (D-MI) is expected to continue in this role.

## **LAME-DUCK CONGRESSIONAL FORECAST**

The House and Senate will return to Washington next week for the final weeks of the 114<sup>th</sup> Congress. With a Republican entering the White House in January, the Republican Party's leadership will likely avoid most major policy disputes during the lame duck. Instead, they are likely to push most such issues into next year, when circumstances will be more favorable to the Party.

These circumstances notwithstanding, summarized below are a few issues of particular importance that are likely to be addressed during the upcoming lame duck session.

### **FY 2017 APPROPRIATIONS**

Congress returns to Washington next week to face tough decisions about the remaining 11 spending bills that must be passed to keep the federal government programs up and running beyond the December 9 expiration of the current Continuing Resolution (CR).

House Appropriations Chairman Harold Rogers (R-KY) who has not made any decisions on process, timeline, or compilations of bills, has indicated his committee continues to do the background work necessary so that quick progress can be made when Congress returns. Senate Appropriations Chairman Thad Cochran (R-MS), who led the negotiations on the short-term CR that passed in September, said his committee was making good progress on the remaining bills, and that he would continue talks once lawmakers return to the Hill.

The first hurdle determining whether a handful of appropriations bills should move on a few legislative vehicles, known as minibuses, or if the remaining 11 spending bills should move on one vehicle, known as an omnibus. Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Paul Ryan (R-WI) prefer a series of minibuses, but they have yet to convince Democrats. Top congressional aides have already warned



that a short-term extension may be necessary to allow for continued negotiations, likely pushing the end of the session closer to Christmas.

Many Republicans, including most from the Freedom Caucus, believe that a CR should be passed that would keep the government running until sometime next year when they have a Republican in the White House and a debt ceiling increase that must be passed which can be used as leverage to insist on budget cuts they would be seeking.

### *Supplemental Appropriations*

In addition to trying to reach a consensus on final FY 2017 spending and sorting out potential policy riders, many in Congress expect that a supplemental spending bill could surface to address requests from Southeastern states affected by severe flooding, most recently from Hurricane Matthew. Coupled with further investments sought for overseas military activities and assistance relating to the Flint Michigan water crisis (which Republicans have committed would be forthcoming), a potential supplemental appropriations measure could total \$20 billion. The supplemental could move on its own or be attached to a catch-all spending bill.

### **WRDA REAUTHORIZATION**

The federal government undertakes substantial activities constructing and maintaining water resources and infrastructure through the U.S. Army Corps of Engineers. These activities are primarily: constructing and maintaining navigable channels, providing flood control protection, restoring aquatic ecosystems, and providing shoreline protection. Corps activities are authorized by Congress in Water Resources Development Acts (WRDAs) and funded annually in appropriations bills. The last water resources bill, the Water Resources Reform and Development Act was signed into law in 2014.

Congressional leaders in both chambers have been working throughout the year on their respective versions of measures to reauthorize WRDA.

The House WRDA (H.R. 5303), passed on September 28, 2016, builds on the more-comprehensive WRDA enacted in 2014, and demonstrates the commitment of Congress to return to the routine of reauthorizing WRDA every two years. The Senate bill (S. 2848), approved September 15, 2016, contains substantive provisions in regard to drinking water infrastructure and environmental restoration through new activities housed in the Environmental Protection Agency (EPA) and other agencies.

Differences between the measures, though substantial, should be resolved in the coming weeks and Congressional leaders are optimistic that an agreement will be reached and a bill sent to the President by the end of the year.

### **ENERGY BILL CONFERENCE NEGOTIATIONS**

Also on the lame-duck agenda is a bipartisan effort to reconcile the House and Senate's competing energy bills, which, if fruitful, would result in enactment of the first major energy bill since 2007.

The Senate bill (S. 2012) passed in April 2016, while its companion legislation H.R. 8, passed in December 2015. A Conference Committee met in early September, however talks were delayed primarily by electoral activities. There also remain significant divisions on issues including reauthorization of the Land and Water Conservation Fund, drought protection. There is greater agreement on provisions to promote energy efficiency and to expedite liquefied natural gas exports. Those areas where there is more agreement may be peeled off as separate legislation in hopes of passing it during the lame duck session. Only 16 days remain, however, where both chambers are in session and further conference meetings could be scheduled. Some members are questioning whether it is worthwhile to even pursue such a reduced bill, the details of which must be negotiated in an increasingly compacted timeline, or if it is more advantageous to seek a better deal in the next congress.

### **TAX EXTENDERS**

Last year, the Protecting Americans from Tax Hikes (PATH) Act made permanent a number of expiring tax provisions. Despite these efforts, more than 30 other tax provisions are due to expire at the end of this year. Lawmakers from both parties have expressed interest in passing a balanced, end-of-year tax package. However, due to the short time frame remaining in the 114th Congress, leaders would most likely only be able to clear a PATH Technical Corrections bill instead. When recently asked about the fall tax schedule, Senate Finance Committee Chairman Orrin Hatch (R-UT) continued to be noncommittal about a specific plan. Similarly, fellow Committee member John Thune (R-SD) commented that it was highly unlikely that the tax-writing panel would be able to produce any tax vehicle this year due primarily to the fact that neither of the tax-writing panels have proposed an extenders package.

A comprehensive list of expiring tax provisions for 2016 - many addressing energy, the deduction for mortgage insurance premiums, and Medical expense deductions among others can be found [here](#).

We hope you will let us know if you have any questions or concerns related to any aspect of this memorandum.