

# THE TRUMP ADMINISTRATION AND THE 115<sup>TH</sup> CONGRESS

KEY POLICY ISSUES AND A LOOKAHEAD TO  
THE 2018 MIDTERM ELECTIONS

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**KELLEY DRYE AND WARREN LLP  
GOVERNMENT RELATIONS AND PUBLIC POLICY PRACTICE GROUP**



# Table of Contents

• <b>Overview</b>	<b>Page</b>
▪ The Big Picture	5
• <b>Issue Outlook</b>	25
▪ Budget and Appropriations	26
▪ Taxes	30
▪ International Trade	34
▪ Financial Services	39
▪ Healthcare	43
▪ Energy and Environment	49
▪ Transportation and Infrastructure	58
▪ Judiciary and Immigration	64

# Table of Contents, cont'd

	<b>Page</b>
• <b>Issue Outlook, cont'd</b>	
▪ Communications and Technology	68
▪ Maritime and Fisheries	74
▪ Food, Nutrition and Agriculture	76
• <b>2018 Midterms</b>	78
▪ Overview: Balance of Power	79
▪ Outlook and Historical Trends	80
▪ House Elections	83
▪ Senate Elections	87
▪ Gubernatorial Elections	88
▪ Key Questions	89

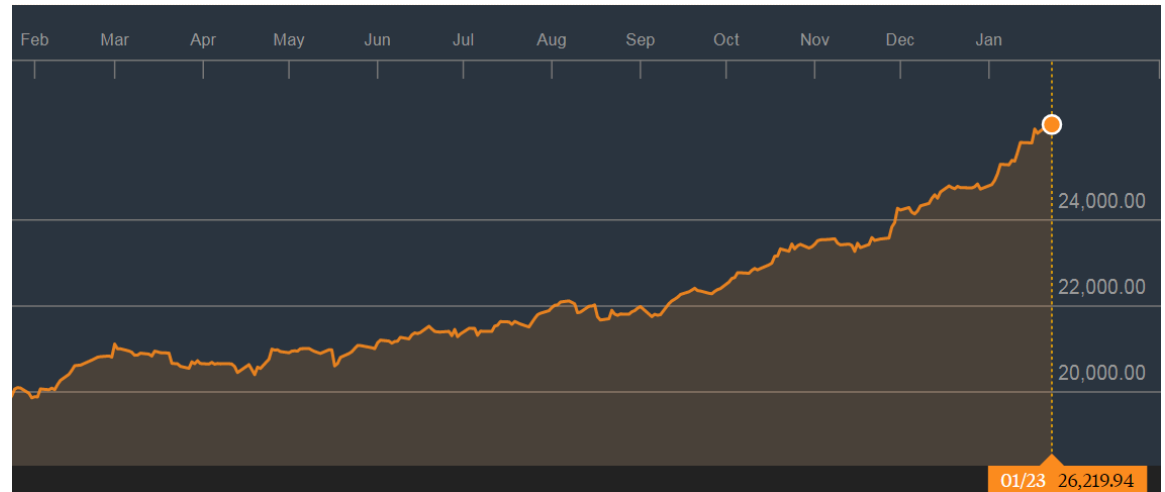
# OVERVIEW

# The Big Picture

- The U.S. economy is strong
  - Market highs: Dow, S&P, NASDAQ at record levels
    - ◆ Dow had its biggest one-year post-election performance (+28.5%) since 1945 – has since increased 3,000 points
  - Q4 earnings season off to a good start
  - Unemployment at 16-year low (4.1%), could fall below 4%
  - Economists predicting economy could grow 2.5% this year
  - According to a recent WSJ / NBC News poll, 69% of Americans are satisfied with the economy – highest level since 2001
    - ◆ 78% of respondents expect the economy to get better (35%) or stay about the same (43%) over the next year
  - Consumer sentiment has slipped – many waiting to see impact of new tax law
  - Strong economy / risk of inflation could lead the Fed to raise interest rates, which might temper growth

# The Big Picture

Dow at an all-time high....



US UNEMPLOYMENT RATE



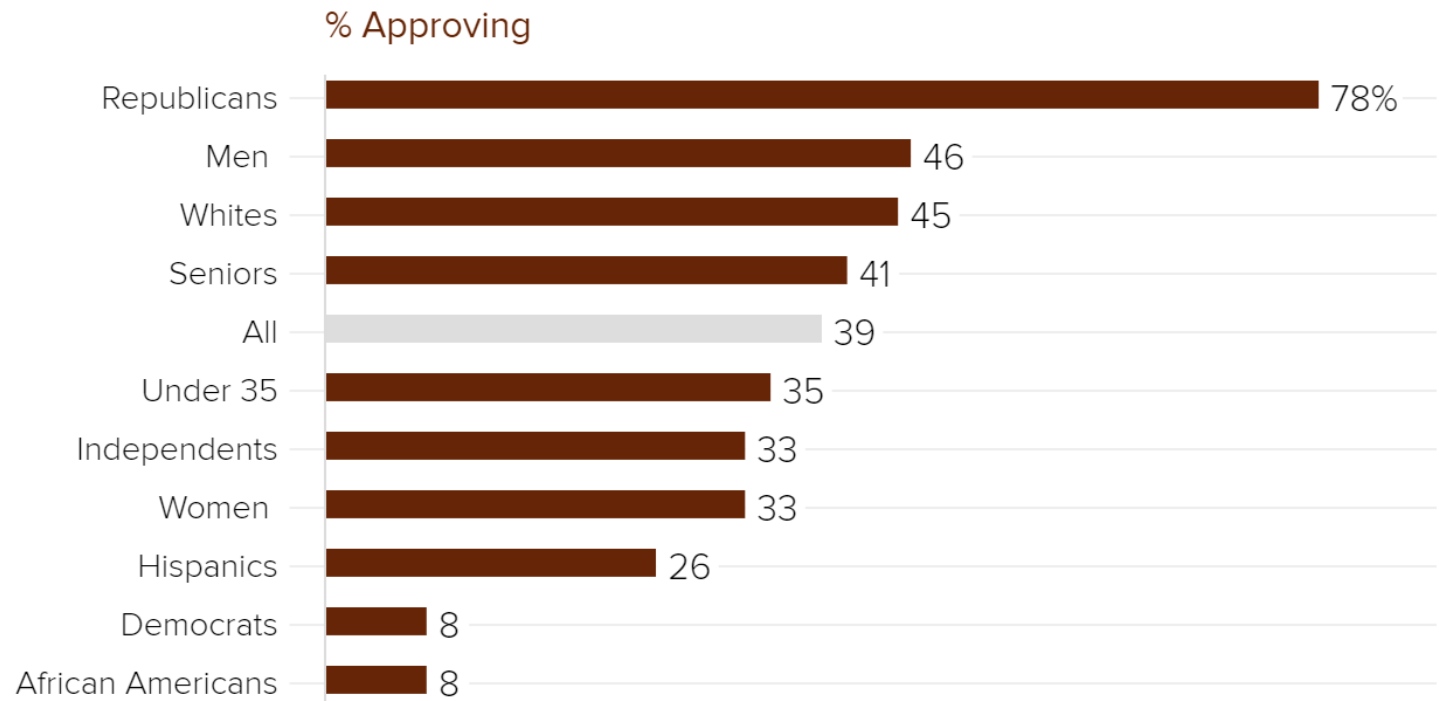
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Unemployment at a 16-year low



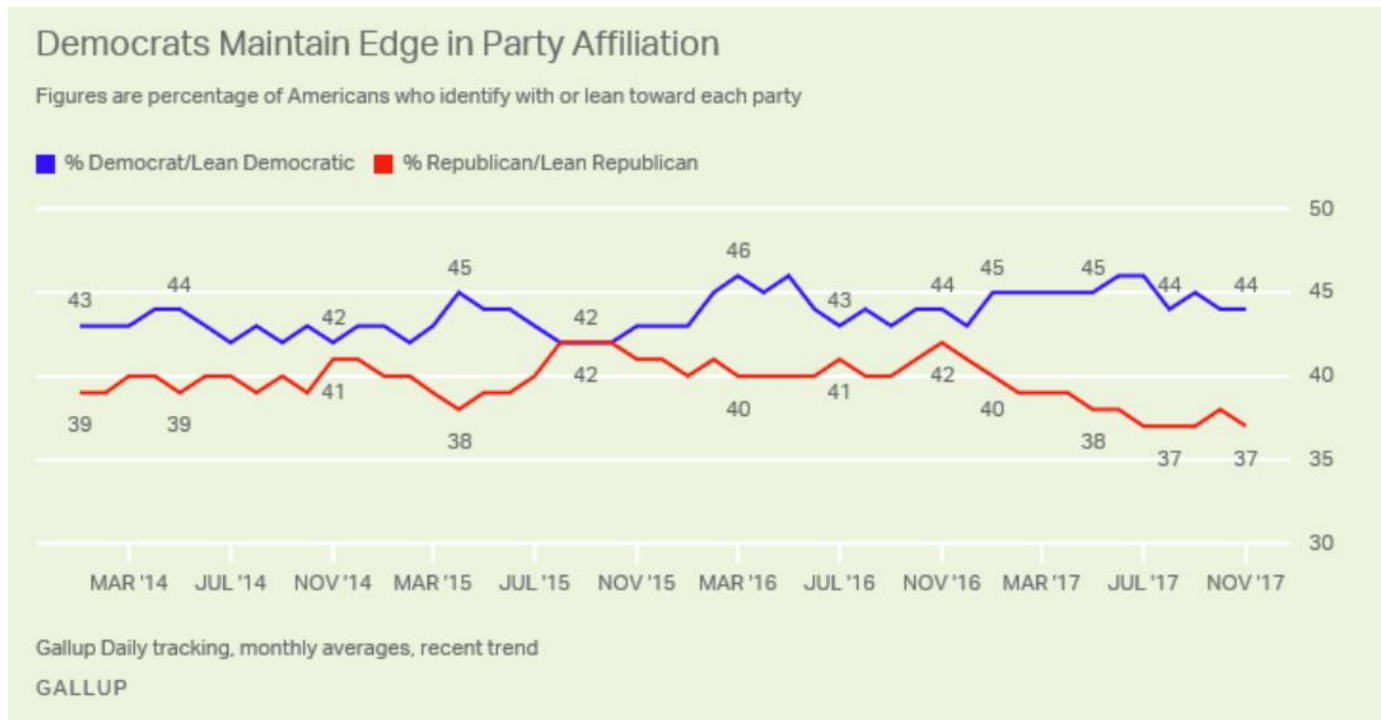
# The Big Picture

- President Trump's Approval Rating
  - At the one year mark, his approval rating stands at about 40%
    - ◆ Began his term in the mid-40s and has been as low as the mid-30s
  - He remains popular with his base, but deeply unpopular with other segments of the population:



# The Big Picture

- Party Affiliation
  - Much of the President's approval rating driven by party affiliation
    - ◆ Roughly 80% approval rating among Republicans vs. 8% among Democrats
  - Over the past year, while the percentage of Americans identifying as Democrat/Lean Democratic has not changed much, the percentage identifying as Republican/Lean Republican has dropped





# The Big Picture

- Since 1945, the average approval rating at a president's one-year mark is 62% (without President Trump included)

PRESIDENT	INAUGURATION YEAR	APPROVE	DISAPPROVE	NET APPROVAL
John Kennedy	1961	79%	10%	+69
George W. Bush	2001	81	13	+68
George H.W. Bush	1989	78	11	+67
Lyndon Johnson	1963	74	15	+59
Dwight Eisenhower	1953	71	18	+53
Richard Nixon	1969	60	23	+38
Jimmy Carter	1977	55	27	+28
Bill Clinton	1993	57	34	+22
Harry Truman	1945	50	35	+15
Ronald Reagan	1981	49	40	+9
Barack Obama	2009	50	43	+7
Gerald Ford	1974	44	39	+5
<b>Donald Trump</b>	<b>2017</b>	<b>40</b>	<b>55</b>	<b>-15</b>
Average without Trump		62	26	+37

# The Big Picture

- President Trump's Agenda
  - "America First" approach
    - ◆ Retreat from multilateralism, particularly trade agreements viewed as unfavorable to U.S. manufacturers and the economy at large (e.g., focus on trade deficits)
    - ◆ Nationalist vs. Globalist tension within administration
      - Global views on trade, economy, international affairs tamping down populist instincts
  - Stimulating the domestic economy through tax reform and deregulation
  - Despite the domestic focus, world affairs continue to dominate
    - ◆ North Korea, Russia, Middle East
    - ◆ And sometimes foreign policy goals (e.g., engaging China to contain North Korea's nuclear ambitions) conflict with domestic goals (e.g., cracking down on China's trade practices)

# The Big Picture

- President Trump's Messaging
  - Use of Social Media
    - ◆ President Trump has maintained his personal Twitter account and continues to use the platform to energize his followers
      - His tweets often drive the news cycle, for better or worse
    - ◆ "I doubt I would be here if it weren't for social media, to be honest with you." (President Trump, in an October 2017 interview with Fox Business News)
  - Playing to the Base
    - ◆ The President continues to capitalize upon economic anxiety, concerns about globalization, and frustration with Washington and "the establishment"
      - NAFTA and immigration as prime examples
    - ◆ At the same time, working with Congress to appeal to traditional Republican values like low taxes and reducing government regulation

# The Big Picture

- President Trump's Leadership Style
  - Sets overarching policy goals, but provides broad latitude to cabinet agencies when it comes to policymaking
    - ◆ So while distractions remain a constant presence, agencies continue to press forward with their deregulatory agendas
  - On the legislative front, despite some unpredictability, President Trump has proven helpful in "rallying the troops" to move the GOP agenda
    - ◆ Because of supportive base, often looked at to bring along conservatives
    - ◆ Much like on the campaign trail, feels comfortable in rally-style settings to build support for initiatives (e.g., tax reform)
    - ◆ Maintains close contact with House Majority Leader McCarthy
    - ◆ Vice President Pence continues to play an important role in coordinating with House and Senate Republicans

# The Big Picture

- While the President has made some attempts at bipartisan overtures, few successes
  - ◆ Struck 3-month government funding / debt ceiling deal with Democratic leadership in September
  - ◆ Little goodwill between the President and Congressional Democrats since then
- While a bipartisan infrastructure bill remains a priority, election year politics may interfere
  - ◆ Grassroots anger / frustration increasingly affecting leadership's willingness to negotiate
  - ◆ So far, despite differences between Democratic moderates and progressives, the party has largely stuck together on major votes
  - ◆ Will that continue to be the case, particularly with many Democratic Senators running in Trump states in November – and others with their eyes on 2020?

# The Big Picture

- President Trump's First Year Accomplishments
  - Enactment of comprehensive corporate and individual tax cut legislation, which also:
    - ◆ Eliminated the Affordable Care Act individual mandate
    - ◆ Opened up ANWR for oil exploration and drilling
  - Reshaping the Courts
    - ◆ Confirmation of Supreme Court Justice Neil Gorsuch
    - ◆ 12 circuit court judges confirmed – a record number for a president's first year
    - ◆ 10 district court judges confirmed
  - Providing Regulatory Relief: More than 100 Obama-era rules targeted by Congress and the White House

# The Big Picture

## Regulatory Relief, cont'd

- 15 rules overturned by Congressional Review Act
  - ◆ SEC Disclosure Rule for Resource Extraction
  - ◆ Interior Stream Buffer Rule
  - ◆ Social Security Administration's 2nd Amendment Restrictions
  - ◆ Federal Contracts Blacklisting Rule
  - ◆ Bureau of Land Management Planning 2.0 Rule
  - ◆ Education Department's Accountability Rule & Teacher Preparation Rule
  - ◆ DOL Unemployment Insurance Drug Testing Rule
  - ◆ Interior National Wildlife Hunting and Fishing Rule
  - ◆ OSHA Injury and Illness Reporting Rule
  - ◆ FCC Broadband Privacy Rule
  - ◆ HHS Title X Abortion Funding Rule
  - ◆ DOL's Local Retirement Plan Rule & State Retirement Plan Rule
  - ◆ CFPB Arbitration Agreements Rule
  - ◆ A resolution targeting BLM's Waste Prevention Rule was passed by the House but failed in the Senate

# The Big Picture

## Regulatory Relief, cont'd

- Cabinet-level decisions and Executive actions have rolled back other regulations
  - ◆ Agencies issued 67 deregulatory actions, while imposing only three new regulatory actions
  - ◆ Additionally, the Administration has delayed, withdrawn, or made inactive 1,579 planned regulatory actions
  - ◆ Environmental regulations a top focus – efforts also cover labor and finance, health care, immigration, government reform, civil rights
- 55 Executive Orders issued
  - ◆ Some addressing specific regulations (ACA, WOTUS), others requesting reports / advancing policy priorities (trade deficits, Buy America, domestic energy production, infrastructure permitting)
  - ◆ In his first 100 days in office, Trump signed more executive orders than any president since Harry Truman



# The Big Picture

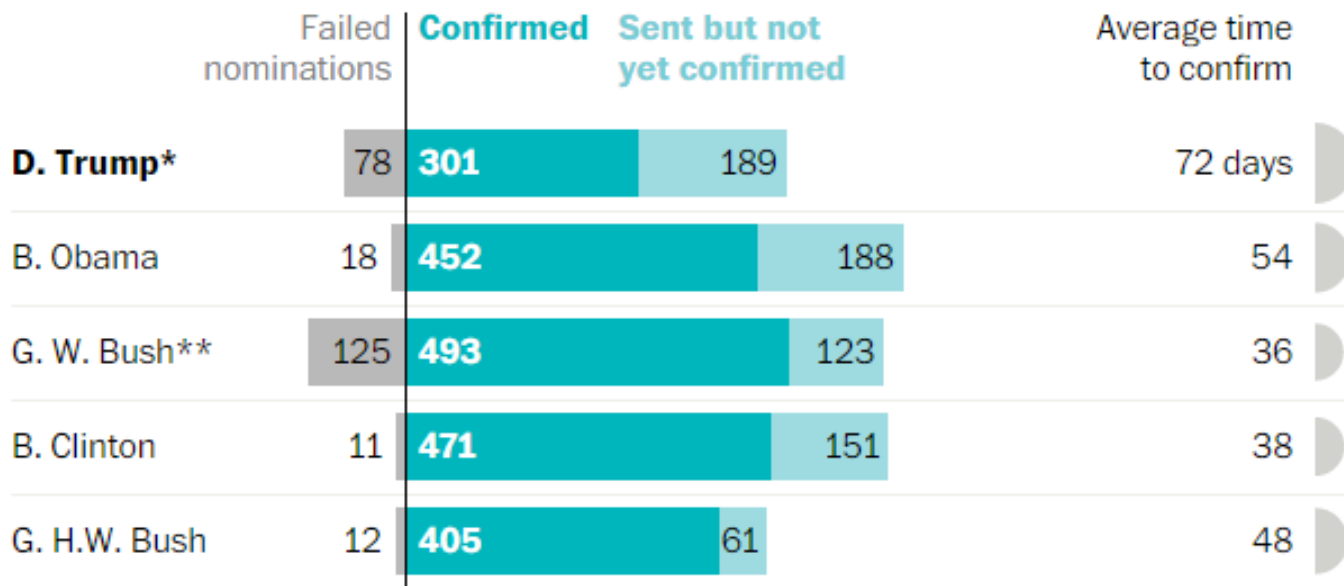
- President Trump's Cabinet
  - President Trump's cabinet secretary nominees all confirmed by April 27, 2017 – just shy of the 100 day mark
    - ◆ Of the 5 most recent administrations, only President Obama took longer (one day) to fill his cabinet
  - Early Turnover
    - ◆ Trump's 2<sup>nd</sup> Secretary of Homeland Security Kirstjen Nielsen was confirmed in December
      - Replaced John Kelly, who stepped down in July to become the President's Chief of Staff
    - ◆ Alex Azar was confirmed this month as President Trump's 2<sup>nd</sup> Secretary of Health and Human Services
      - Azar replaced Tom Price, who stepped down in September
  - More Cabinet-level and White House senior staff changes expected in 2018

# The Big Picture

- Filling Key Positions

- Overall, President Trump has submitted fewer nominations than his recent predecessors – and those he has submitted are taking longer to confirm (judicial and military nominees excluded)

## Presidential appointments sent to Senate by Jan. 18



\*Failed nominees for Presidents Trump and Bush include nominations returned by the Senate; the vast majority were subsequently re-nominated

# The Big Picture

- With vetting / paperwork delays, procedural maneuvers by Senate Democrats, and a focus on judicial nominees, many key agency positions remain unfilled
  - Many delays due to FBI security checks; White House process improving
  - Some positions intentionally unfilled as part of the President's effort to "drain the swamp"
  - Treasury, Commerce, and Labor Departments all without a Deputy Secretary
  - State Department has fewer than ½ of Senate-confirmed positions filled
  - EPA is without a Deputy Administrator and several Assistant Administrators
- Independent agencies also affected
  - Consumer Product Safety Commission (CPSC) operating with a 3-1 Democratic advantage (should be a 3-2 GOP advantage) and no permanent chair
  - Federal Trade Commission (FTC) operating with 1 Republican and 1 Democratic Commissioner (should be a 3-2 GOP advantage)
  - Federal Energy Regulatory Commission (FERC) was without a working quorum for 6 months, until 2 Commissioners were confirmed in August
  - The Securities and Exchange Commission (SEC) has not had a full five-member commission since 2015

# The Big Picture

- Major Legislation Enacted in President Trump's First Year
  - PL 115-44 / H.R. 3364 - **Countering America's Adversaries through Sanctions Act**, targeting Iran, Russia, and North Korea (8/02/2017)
  - PL 115-52 / H.R. 2430 - **FDA Reauthorization Act of 2017** (8/18/2017)
  - PL 115-56 / H.R. 601 - **Supplemental Appropriations for Disaster Relief Requirements Act** (09/08/2017), as part of short-term CR
  - PL 115-72 / H.R. 2266 - **Additional Supplemental Appropriations for Disaster Relief Requirements Act** (10/26/2017)
  - PL 115-91 / H.R. 2810 - **FY18 National Defense Authorization Act** (12/12/2017)
  - PL 115-97 / H.R. 1 - **Tax Cuts and Jobs Act** (12/22/2017)
  - PL 115-118 / S. 139 - **FISA Amendments Reauthorization Act** (1/19/2018)
  - PL 115-120 / H.R. 195 - **Children's Health Insurance Program Reauthorization** (6-years), as part of short-term CR (1/22/2018)

# The Big Picture

- What Didn't Get Done?
  - FY18 spending bills and lifting budget caps
  - Additional supplemental appropriations for disaster relief
  - Affordable Care Act "repeal and replace" – *but* individual mandate eliminated, several ACA taxes delayed, executive action underway
  - Immigration (Dreamers, border security)
  - Dodd-Frank / financial services reform
  - Infrastructure package
  - Tax extenders
  - Medicare extenders
  - Energy and environmental legislation
  - Miscellaneous Tariff Bill
  - Generalized System of Preferences renewal (expired 12/31/2017)
- Many remain on the agenda for 2018 – but a truncated election year calendar means most heavy lifting will need to be done by summer, or in a post-election lame duck session

# The Big Picture

- Key Dates: Legislative Deadlines
  - February 8: Short-term FY18 CR expires
  - February 8: National Flood Insurance Program expires
  - February/March: Treasury's "extraordinary measures" exhausted, debt ceiling will need to be raised or suspended
  - March 5: DACA phase-out deadline set by President Trump
  - March 31: Federal Aviation Administration authorization expires
  - September 30: Farm bill expires
  - September 30: FDA animal user fee programs expire
  - September 30: Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA) expires
  - September 30: FY19 funding

# The Big Picture

- Key Dates: Congress
  - January 30: State of the Union
  - February 12 (earliest): President Trump's FY19 Budget to Congress
  - March 6: First Primary (Texas)
  - July 26: House scheduled to adjourn for August recess
  - August 3: Senate scheduled to adjourn for August recess
  - September 30: End of current Fiscal Year 2018
  - October 12: House scheduled to adjourn for midterm elections
  - October 26: Senate scheduled to adjourn for midterm elections
  - November 6: Election Day

# The Big Picture

- Key Dates: International Affairs
  - Summit of the Americas: April 13-14 in Lima, Peru
  - G7 Leaders' Summit: June 8-9 in Charlevoix, Quebec
  - NATO Summit: July 11-12 in Brussels, Belgium
  - G20 Leaders' Summit: November 30 – December 1 in Buenos Aires, Argentina
  - APEC Summit: November 12-18 in Port Moresby, Papua New Guinea
  - International Elections:
    - ◆ Italian General Election: March 4
    - ◆ Russian Presidential Election: March 18
    - ◆ Iraqi Parliamentary Election: May 12
    - ◆ Mexican Presidential Election: July 1
    - ◆ Pakistani General Election: July 15



# ISSUE OUTLOOK

# Budget and Appropriations

- Fiscal Year 2018 Funding
  - Key Deadline: Current FY18 continuing funding resolution (CR) expires February 8, 2018
    - ♦ Current CR follows a series of short-term resolutions enacted since the end of the Fiscal Year (September 30) – and ended a temporary government shutdown this month
    - ♦ Growing frustration with CRs, particularly among defense hawks who are concerned about the impact on military readiness

CR	Date Signed into Law	Expiration
H.R. 601	September 8, 2017	December 8, 2017
H.J. Res 123	December 8, 2017	December 22, 2017
H.R. 1370	December 22, 2017	January 19, 2017
<b>January 20-23, 2018: Government shutdown due to lapse in appropriations (19<sup>th</sup> time since 1976)</b>		
H.R. 195	January 24, 2018	February 8, 2017

# Budget and Appropriations

- Fiscal Year 2018 Funding

Regular Funding Bills	House		Senate		Conference	Enacted
	Committee	Floor	Committee	Floor		
Agriculture-FDA	7/12: Approved <a href="#">H.R. 3268</a> by voice vote	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	7/20: Approved <a href="#">S. 1603</a> 31-0			
Commerce-Justice-Science	7/13: Approved <a href="#">H.R. 3267</a> 31-21	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	7/27: Approved <a href="#">S. 1662</a> 30-1			
Defense	6/29: Approved <a href="#">H.R. 3219</a> by voice vote	7/27: Passed under <a href="#">H.R. 3219</a> 235-192*	11/21: <a href="#">Draft bill</a> released			
Energy and Water	7/12: Approved <a href="#">H.R. 3266</a> by voice vote	7/27: Passed under <a href="#">H.R. 3219</a> 235-192*	7/20: Approved <a href="#">S. 1609</a> 30-1			
Financial Services	7/13: Approved <a href="#">H.R. 3280</a> 31-21	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	11/20: <a href="#">Draft bill</a> released			
Homeland Security	7/18: Approved <a href="#">H.R. 3355</a> 30-22	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	11/21: <a href="#">Draft bill</a> released			
Interior-Environment	7/18: Approved <a href="#">H.R. 3354</a> 30-21	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	11/20: <a href="#">Draft bill</a> released			
Labor-HHS-Education	7/19: Approved <a href="#">H.R. 3358</a> 28-22	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	9/7: Approved <a href="#">S. 1771</a> 29-2			
Legislative Branch	6/29: Approved <a href="#">H.R. 3162</a> by voice vote	7/27: Passed under <a href="#">H.R. 3219</a> 235-192*	7/27: Approved <a href="#">S. 1648</a> 31-0			
Military Construction-VA	6/15: Approved <a href="#">H.R. 2998</a> by voice vote	7/27: Passed under <a href="#">H.R. 3219</a> 235-192*	7/13: Approved <a href="#">S. 1557</a> 31-0			
State-Foreign Operations	7/19: Approved <a href="#">H.R. 3362</a> by voice vote	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	9/7: Approved <a href="#">S. 1780</a> 31-0			
Transportation-HUD	7/17: Approved <a href="#">H.R. 3353</a> 31-20	9/14: Passed under <a href="#">H.R. 3354</a> 211-198	7/27: Approved <a href="#">S. 1655</a> 31-0			

# Budget and Appropriations

- Sequestration
  - Bipartisan Budget Act of 2015 raised the budget caps for FY 2017, bringing the baseline defense budget to \$551 billion, and the non-defense baseline to \$519 billion
  - The caps for FY 2018 are \$549 billion and \$516 billion, respectively
  - Each FY18 CR has included a tiny percentage reduction, just enough to bring both defense and non-defense spending under the sequester caps
  - Republicans are pushing for increased defense spending while Democrats are pushing for an equal increase in non-defense programs
  - Agreeing to new caps is part of what has delayed an FY18 spending agreement
- Debt Limit
  - Timeline: Treasury Department will no longer meet federal government's financial obligations in full and on time sometime in March 2018
  - On September 8, 2017, President Trump signed a bill temporarily increasing the debt ceiling to December 8, 2017
  - Treasury's extraordinary measures will be exhausted in March
  - Expect the debt limit to be addressed in the final FY18 appropriations bill (with one more CR likely before then)

# Budget and Appropriations

- FY19 Budget and Appropriations
  - Timeline: Spring 2018
    - ♦ White House expected to deliver its FY19 budget to Congress on or after February 12 – at least a week late (not unusual)
    - ♦ Strong desire to finalize FY18 and FY19 topline numbers, return to “regular order”
    - ♦ If there is an agreement on FY19 numbers, the House and Senate Budget Committees could approve their budget resolutions in early Spring
      - April 15th deadline for completed action on a concurrent resolution rarely met
      - Senate Budget Chairman Enzi stated publicly that he is working on the FY19 budget resolution and doesn’t see Congress using a reconciliation measure to achieve any further changes to taxes or mandatory spending programs this year
        - Congress used both an FY17 and FY18 budget resolution in 2017 to utilize the reconciliation process for ACA repeal (failed) and tax reform (enacted)
      - New House Budget Committee Chairman Womack (R-AR) – the Committee’s third chair in 3 years – will draft the House’s budget resolution
      - Womack is a member of the Tuesday Group, a group of 43 typically center-right fiscally conservative Republicans
    - ♦ Regardless of whether a joint budget resolution is agreed upon, Congress will begin agency budget hearings this Spring
    - ♦ Formal consideration of FY19 spending bills to begin in May

# Taxes

- On December 22, President Trump signed into law H.R. 1, the Tax Cuts and Jobs Act (TCJA) – a top White House and GOP Congressional priority
  - The comprehensive bill was the product of months of intense negotiations among Congressional leadership and the White House – not to mention years of groundwork laid by House Ways and Means and Senate Finance Committee Republicans
  - Notably, most tax changes on the individual side are set to expire in 2025, while the corporate changes are permanent
- On the personal side, the law:
  - Maintains 7-bracket structure, but lowers rates to: 10% (taxable income up to \$19,050); 12% (\$19,050 to \$77,400); 22% (\$77,400 to \$165,000); 24% (\$165,000 to \$315,000); 32% (\$315,000 to \$400,000); 35% (\$400,000 to \$600,000); 37% (>\$600,000)
  - Raises Alternative Minimum Tax thresholds / permanently adjusts them for inflation
  - Allows individual taxpayers with “pass-through” businesses to deduct 20% of their pass-through income (with certain limitations)
  - Essentially eliminates the “marriage penalty” (except for couples making more than \$400,000)
  - Nearly doubles the standard deduction to \$12,000 and \$24,000 for individuals and married couples, respectively
  - Caps the state and local tax deduction at \$10,000
    - ♦ The so called “SALT” provision was one of the most divisive issues – and the primary reason for 12 “no” Republican votes in the House (mainly Members from New York, New Jersey, and California)

# Taxes

- Personal highlights, cont'd:
  - Caps mortgage interest deduction at \$750,000, down from \$1 million – but only applies to mortgages taken after 12/15/2017
  - Doubles the child tax credit to \$2000 and increases refundable amount to \$1400
  - Raise the estate tax exemption to \$11.2 million for individuals and \$22.4 million for married couples (rate stays at 40%)
  - Repeals the Affordable Care Act individual mandate
  - Short-term capital gains still taxed as ordinary income
  - Maintains most major tax breaks (e.g., charitable, retirement incentives, medical expenses, student loan interest)
- On the corporate side, the new law:
  - Permanently lowers corporate rate from 35 to 21%, effective December 31, 2017
  - Permanently repeals the corporate AMT effective December 31, 2017
    - ◆ Corporations can continue to use AMT credits to offset regular tax liability
  - Disallows a business's deduction of net interest expense in excess of 30% of adjusted taxable income (EBITDA for tax years 2018-2021 and EBIT for subsequent years)
    - ◆ Allows for indefinite carryforward of interest amounts greater than 30%
    - ◆ Businesses with average annual gross receipts under \$25 million are exempt from the limitation

# Taxes

- Corporate highlights, cont'd
  - Allows companies to fully and immediately deduct the cost of their spending on new equipment for a period of five years
    - ♦ Expensing phased down to 80% in 2023, 60% in 2024, 40% in 2025, 20% in 2026, and zero in subsequent years
  - Eliminates net operating loss (NOL) carrybacks and allows for indefinite carry forwards, limited to 80% of taxable income for losses arising in taxable years after 12/31/2017
  - Increases Section 179 limitation from \$500,000 to \$1 million and increases phase-out threshold amount to \$2.5 million (both amounts indexed for inflation)
  - Fully repeals Section 199 Domestic Production Activities Deduction
  - Moves U.S. regime closer to a territorial system – after 2017, foreign income earned by U.S. companies will be tax-free upon repatriation
    - ♦ Foreign-source portion of dividends paid by a foreign subsidiary to its U.S. parent company would be tax-exempt, provided the parent owned at least 10% of the subsidiary's voting stock
  - To prevent income shifting between foreign related entities, the bill imposes a base erosion anti-abuse tax (BEAT) on deductible payments made by certain corporations
    - ♦ Applies to corporations, including foreign, with average annual gross receipts of at least \$500 million and that have made related party deductible payments totaling 3% or more of total deductions
  - New minimum tax on U.S. companies' foreign earnings (Global Intangible Low-Taxed Income or "GILTI")



# Taxes

- Corporate highlights, cont'd
  - Taxes companies' repatriated earnings at 15.5% for cash and 8% for non-cash positions
  - Requires certain research and experimental expenditures to be capitalized and amortized over 5 years if conducted domestically and 15 years if conducted abroad
    - ◆ Applies to amounts paid or incurred in taxable years beginning after 12/31/2022
  - Maintains tax-exempt status of private activity bonds (PABs)
  - Does not change the allowance of Last-In-First-Out (LIFO) inventory accounting
- Looking ahead
  - Given law's January 1, 2018 effective date, watch for implementation issues as Treasury drafts rules and guidance
    - ◆ Technical glitches will need to be worked out
    - ◆ Democrats unlikely to cooperate, making any legislative fixes difficult (60 votes needed in the Senate)
  - In states hit hard by SALT provision, watch for continued state-level efforts to reduce burden on taxpayers
  - Expect both sides to campaign on the law, which passed with no Democratic support
    - ◆ Republicans will tout what they view as its positive economic impact, allowing businesses to invest and hire more in the U.S.
    - ◆ Democrats will paint the law as friendly to corporate America and the wealthy
  - Separate from the new law, Congress may also address a host of expired tax provisions ("extenders") in 2018

# International Trade

- Trade enforcement and “leveling the playing field” to bring back / create manufacturing jobs in the United States remains a key theme for President Trump
  - Major actions in 2017 included taking steps to begin renegotiating two trade agreements (and withdrawing from one altogether) and directing his administration to conduct several investigations into suspected unfair trading practices of foreign trade partners
  - Despite tough rhetoric, however, it was primarily more a year of behind-the-scenes studies and investigations than trade enforcement per se – setting the administration up for an active 2018

2017	
January 23	Withdrew from Trans-Pacific Partnership
January 24	Signed Presidential Memorandum Regarding Construction of American Pipelines
March 31	Issued Executive Order Regarding Omnibus Report on Significant Trade Deficits
March 31	Issued Executive Order Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Custom Laws
April 3	Commerce Published Notice of Initiation of Inquiry Into the Status of the People’s Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws
April 6	Established 100-Day Action Plan of the U.S. – China Comprehensive Economic Dialogue
April 18	Issued Executive Order on Buy American and Hire American
April 19	Commerce Initiated 232 Investigation Into Steel Imports and Threats to National Security
April 26	Commerce Initiated 232 Investigation Into Aluminum Imports and Threats to National Security
April 29	Issued Executive Order on Addressing Trade Agreement Violations and Abuses
May 18	USTR Notified Congress of its Intent to Renegotiate North American Free Trade Agreement
July 12	USTR Notified Republic of Korea of Intent to Update U.S.-Korea Free Trade Agreement
July 21	Issued Executive Order on Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States
August 28	USTR Initiated a Formal 301 Investigation Regarding China’s Intellectual Property Policies
December 20	Issued Executive Order on Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals

# International Trade

- In October, the Commerce Department announced the results of an investigation reaffirming that China is a non-market economy country for purposes of antidumping analysis – continuing the agency’s longstanding practice
- Already in 2018, the President has approved safeguard measures in two separate 201 investigations brought by domestic industries
  - President Trump officially approved recommendations to impose safeguard tariffs on imported solar cells and modules and imported large residential washing machines
  - Remedies in both cases were below what petitioners sought
- Also this month, Commerce delivered to the White House the results of its (separate) 232 investigations into imports of steel and aluminum and their effects on national security
  - If Commerce found imports pose a threat to national security, the delivery of the reports triggers a 90 day window during which the President must determine if he agrees
    - ♦ In both cases, an affirmative finding would allow the President to decide whether to adjust or modify the volumes or prices of imports in the United States – he could impose new tariffs, import quotas, or a combination of the two
    - ♦ Presidential decisions are expected no later than mid-April – the Commerce reports will not be made public until after the Presidential decisions are made public
- Separately, while a 301 investigation into China’s IP practices need not be concluded until August, there are rumors USTR could finalize results as soon as this month
  - If results are affirmative, United States could take unilateral action (e.g., tariffs) or pursue a case through the World Trade Organization

35 In all cases, watch for potential challenges at the WTO

# International Trade

- With respect to action on trade agreements, the administration's major motivation has been its view that, in many cases, existing agreements are unfavorable to U.S. manufacturers and the economy at large (e.g., focus on trade deficits)
- The administration continues to pursue modernization of the 24-year old North American Free Trade Agreement (NAFTA) in negotiations with Canada and Mexico
  - While working toward a self-imposed deadline of March 31, major differences remain and negotiations are contentious – making that goal somewhat uncertain
    - ◆ Deadline driven in part by political considerations, with Canadian provincial elections in June, the Mexican presidential election in July, and U.S. midterm elections in November
    - ◆ Notably, the administration must notify Congress 90 days before signing an updated agreement and must publish the text 60 days before signing
  - Particularly difficult areas in the negotiations include: Rules of Origin, the Investor-State Dispute Settlement (ISDS) system, a potential “sunset “ clause, and procurement
- The administration is also working to modify the U.S.-Korea Free Trade Agreement (KORUS)
  - U.S. and Korean officials are preparing for their 2<sup>nd</sup> meeting this month to discuss potential modifications and amendments to the KORUS FTA
  - The United States continues to press for “free and reciprocal trade in key industrial goods sectors” (primarily autos and auto parts)
  - USTR has not provided Congress 90 days formal notice of its intent to renegotiate the agreement – meaning it may not anticipate that the effort will result in any changes to U.S. law

# International Trade

- Trade Promotion Authority (TPA)
  - If trade agreement negotiations result in updates that require changes in U.S. law, Congress must pass implementing legislation – expected with the NAFTA update
  - TPA (aka “fast track”) provides for expedited procedures for such implementing legislation (i.e., an up-or-down vote with no amendments)
    - ♦ TPA is set to expire July 1; however, if the President requests an extension by April 1 and Congress does not pass a disapproval resolution, TPA authority would be extended to July 2021
      - Specifically, by April 1, the President must report to Congress on the status and progress of current negotiations and why the extension is needed
      - By June 1, input is also required from the Advisory Committee on Trade Policy and Negotiations as well as the International Trade Commission
    - ♦ Expect the extension request, particularly given the uncertainty with respect to finalizing a revised NAFTA agreement by the end of March
- Congressional Dynamics
  - President’s trade agenda creating some divisions within the Republican party
    - ♦ Generally not critical of administration, but pushing for “do no harm” approach, particularly with respect to NAFTA
  - Many of the President’s early trade promises attracted Democratic support
    - ♦ Toward the end of 2017, the lack of action had left them critical – actions this year could reverse that

# International Trade

- What else can we expect from Congress?
  - In January, the House unanimously passed the bipartisan/bicameral H.R. 4318, the Miscellaneous Tariff Bill Act of 2017, and Senate action is expected soon
    - ♦ The bill – the first MTB legislation in more than 7 years – temporarily reduces tariffs on nearly 1700 different products not otherwise available domestically
    - ♦ The MTB was vetted and created through a new administrative process led by the USITC
  - A three-year Renewal of the Generalized System of Preferences (GSP) program, which expired in December, is likely
  - Anxious about a growing wave of Chinese investment, Congress is moving quickly on bipartisan legislation to revamp the Committee on Foreign Investment in the United States (CFIUS) – with the support of the White House
    - ♦ S. 2098 / H.R. 4311, the Foreign Investment Risk Review Modernization Act (FIRRMA), would modernize and strengthen the process by which CFIUS reviews acquisitions, mergers, and other foreign investments for national security risks; specifically it would:
      - Expand jurisdiction to include certain joint ventures, minority position investments, and real estate transactions near military bases / sensitive national security facilities
      - Update the definition of “critical technologies” to include emerging technologies
      - Allow foreign investors to submit “light filings” to CFIUS for certain types of transactions
      - Add new national security factors for CFIUS to consider in its analyses
      - Authorizes CFIUS to exempt certain otherwise covered transactions if all foreign investors are from a country that meets certain criteria

# Financial Services

- With a strong focus on deregulation, addressing the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act has been a priority for Republicans
- Early last year, the President took some initial steps:
  - Issued an Executive Order (1) laying out the administration’s “Core Principles” for a financial system and (2) directing Treasury to review existing laws and regulations and report back on steps to bring system in line with these Core Principles
    - ◆ Treasury has since released several reports in response to the EO
  - Issued a memorandum directing the Department of Labor to examine the Dodd-Frank fiduciary duty rule – and, if deemed necessary, to rescind or revise the rule
    - ◆ In November, DOL announced an 18-month delay to consider possible changes
- In February, Congress passed a Congressional Review Act (CRA) resolution nullifying an SEC rule on resource extraction payments established under Dodd-Frank
- In October, Congress passed a CRA rolling back the Consumer Financial Protection Bureau’s (CFPB’s) “Arbitration Rule,” which would have banned the use of class action waivers in arbitration agreements
- In November, Trump named Budget Director Mulvaney acting director of the CFPB after Obama-appointed Director Cordray stepped down
  - The Bureau (established under Dodd-Frank) has long been a target of Republicans
  - Mulvaney has begun shifting the agency’s approach toward deregulation – moving to delay/revisit new CFPB rules and lessening enforcement
- 39 ▪ When a permanent director is appointed, expect a continuation of the new approach

# Financial Services

- Republicans in Congress focused on Dodd-Frank reform more broadly
  - When passed by Congress 8 years ago, the law was widely-opposed by Republicans: it received only 3 Republican votes in the Senate and 3 in the House
  - While full repeal would be difficult, particularly given the slim Republican majority in the Senate, we could see some reforms and easing of regulations this year
- House Financial Services Chairman Hensarling's (R-TX) H.R. 10, the Financial CHOICE Act, is the vehicle for reform in the House
  - The House passed H.R. 10 last June by a vote of 233-186, with no Democratic support
- Key provisions from H.R. 10:
  - Providing an “off-ramp” from the post-Dodd-Frank supervisory regime and Basel III capital and liquidity standards for banking organizations that choose to maintain high levels of capital
  - Ending “too big to fail” and bank bailouts – “too big to fail” would be replaced with a new sub-chapter of the bankruptcy law
  - The bill would repeal the authority of the Financial Stability Oversight Council to designate firms as systematically important financial institutions (SIFIs)
  - Repealing Dodd-Frank provisions that limit capital formation (e.g., Volcker Rule)
  - Converts the CFPB into the Consumer Law Enforcement Agency, allowing the President to remove the director without cause – and subjects the agency to Congressional appropriations



# Financial Services

- H.R. 10 provisions, cont'd:
  - Repealing Dodd-Frank disclosure requirements related to conflict minerals and mine safety (Sections 1502 and 1503); the bill also repeals the extractive industries provision (Section 1504) overturned via CRA
  - Reauthorizing the SEC with funding, structural, and enforcement reforms
  - Demanding greater accountability and transparency from the Federal Reserve
- H.R. 10 would face an uphill battle garnering the required 60 votes in the Senate
- Instead, Senate Banking Committee Chairman Crapo (R-ID) is working with moderate Democrats on a more tailored bill focused primarily on smaller / community banks
  - S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act (which includes reforms to Dodd-Frank) was approved by the Banking Committee in December, with Democrats Tester (MT), Warner (VA), Heitkamp (ND) and Donnelly (IN) joining all Republicans in voting yes
  - Ranking Member Brown (D-OH) and other Democrats are concerned the bill doesn't focus enough on consumer-oriented reforms / includes too much deregulation
- Key provisions from S. 2155:
  - For community banks and credit unions:
    - ◆ Exempt banks with less than \$10 billion in total assets from the Volcker rule
    - ◆ Provides relief from Home Mortgage Disclosure Act reporting requirements
    - ◆ Extends qualified mortgage safe harbor status to loans held by small lenders
    - ◆ Simplifies capital regime for highly-capitalized community banks

# Financial Services

- S. 2155 provisions, cont'd:
    - For mid-size and regional banks, the bill tailors regulations and prudential standards by changing the \$50 billion Systemically Important Financial Institution (SIFI) threshold
    - Requires several studies, including a Treasury report on cyber risk and an SEC study on algorithmic trading
    - The bill also requires credit bureaus to provide customers with one free credit freeze per year and provides additional consumer protections for veterans and seniors
  - The bipartisan Crapo bill is expected to be considered on the Senate floor early this year – more changes (with bipartisan agreement) are possible
  - The National Flood Insurance Program was set to expire in September 2017, but has been reauthorized as part of several continuing resolutions
    - The program is more than \$25 billion in debt, and the nation continues to experience massive flood events
    - Reform and reauthorization has been priority in both Chambers, but reaching consensus on what that might look like has proven difficult
      - ◆ Desire on the part of some fiscal hawks to scale back the program and include some privatization
      - ◆ Concerns of coastal lawmakers who want to protect homeowners
  - This month, the Senate confirmed Jay Powell as Fed Chair – may not see a major departure from the policies of current Chair Yellen
  - Two SEC nominees – Republican Hester Peirce and Democrat Robert Jackson
- 42 – have yet to be considered by the full Senate

# Healthcare

- New Secretary of Health and Human Services Alex Azar confirmed this month
  - During his confirmation hearing, Azar outlined his four key priorities for the Department:
    - ♦ Addressing high drug prices while allowing for innovation
      - “There is no silver bullet...there must be incentives.” - Azar
    - ♦ Making healthcare more affordable and available
    - ♦ Harnessing the power of Medicare to shift from paying for sickness to paying for outcomes
    - ♦ The opioid epidemic
  - Azar will also continue the Trump administration’s efforts to dismantle the Affordable Care Act (ACA)
- Food and Drug Administration Commissioner Scott Gottlieb has also outlined his priorities:
  - Reduce the cost of drugs by encouraging competition
  - Spur innovation across medical products
  - Give consumers access to clear and consistent nutrition information
  - Create greater regulatory efficiencies in bringing products to market work to address the opioid addiction crisis

# Healthcare

- From Day 1, the administration has taken steps to dismantle the ACA
  - January 20, 2017: President Trump issued an Executive Order directing federal agencies to use their administrative powers to begin dismantling the ACA “to the maximum extent permitted by law”
  - March: The Trump administration sent a letter to governors signaling its openness to considering Medicaid waiver proposals
  - April: The administration finalized a rule allowing individual-market insurers to offer plans with higher deductibles and out-of-pocket costs, but lower premiums
  - May: President Trump’s FY18 budget request included 21% less funding to administer the federal marketplace in 2018 than President Obama requested for 2017
  - October: The administration announced it would allow employers to opt out of covering contraception based on a moral or religious objection
  - October: The administration announced it would stop making cost-sharing reduction (CSR) payments to insurers
  - October: President Trump issued an EO directing relevant agencies to consider ways for more people to buy health coverage that is exempt from many standards of the ACA — e.g., the requirement that health plans cover a package of “essential health benefits”
  - January 2018: The administration proposed a new rule to dramatically broaden enrollment in association health plans, coverage offered by trade and professional associations; proposes allowing AHPs that enroll small businesses and self-employed people to be treated as large employers

# Healthcare

- Congress was not successful in passing a wholesale “repeal and replace” bill; however, Republicans made progress in securing other changes to the ACA
  - New tax law repealed the ACA’s individual mandate beginning in 2019
  - Most recent FY18 continuing resolution included:
    - ◆ 2-year delay of tax in high-cost employer sponsored health plans (the Cadillac tax)
    - ◆ 2-year delay of medical device tax
    - ◆ 1-year delay of health insurance provider tax
  - Leader McConnell indicated the Senate will likely not consider “repeal/replace” legislation in 2018 unless there are 60 votes
- Separate from a total repeal, Senate HELP Chairman Alexander (R-TN) and Ranking Member Murray (D-WA) have been working on an ACA market stabilization proposal; the bill would:
  - Fund key payments to insurers known as cost-sharing reductions that President Trump cancelled last year – the payments helped prevent premium increases
  - Help low-income Americans pay for co-pays and deductibles
  - Establish a new catastrophic insurance policy to attract younger, healthier people into the insurance markets
  - Provide states waiver authority to develop ideas to reduce premiums, and provide \$10 billion for invisible risk pools or reinsurance to help states
  - Negotiations between Alexander and Murray continue and Alexander is hopeful that it could be part of the FY18 omnibus funding bill

# Healthcare

- Senators Collins (R-ME) and Nelson (D-FL) have introduced legislation that would provide reinsurance funding to bring down premiums
  - Would provide \$4.5 billion in federal reinsurance funding to help insurers cover most expensive patients
  - Designed to help address the premium increase expected when people drop out of the market without the individual mandate
- During the debate on tax reform, Senate Leader McConnell gave Senator Collins a commitment to allow votes on the two ACA fixes
  - Their prospects are uncertain in the Senate and even more so in the House
- Committees of jurisdiction spent much of 2017 working on the bipartisan H.R. 2430, the FDA Reauthorization Act of 2017, which was enacted in August
  - The bill reauthorizes the FDA's user fee programs for prescription drugs, generic drugs, biosimilars and medical devices for a period of 5 years
    - ◆ User fees from industry help support the review of marketing applications
  - The bill also included provisions to modify the drug and device regulatory process to facilitate the development of drugs and devices for pediatric use
  - The bill contained drug provisions related to supply chain security, pediatric labeling, and expanded access, and also modifies the device inspection and approval process
  - The bill also included the Over-the-Counter Hearing Aid Act which requires the FDA to develop regulations for OTC hearing aids (for mild to moderate hearing loss)

# Healthcare

- Entitlement Reform
  - In late December, Speaker Ryan indicated that in 2018 he would like to use an expedited legislative procedure (budget reconciliation) to address “entitlement reforms”
    - ◆ Subsequently, both Ryan and Senate Majority Leader McConnell indicated they didn’t expect it on the agenda for 2018 given the lack of bipartisan consensus
  - President Trump, during his campaign, promised not to support large reform of Social Security or Medicare
- 340B Program
  - Last fall, the administration announced reduced reimbursements to hospitals that participate in the 340B drug discount program
    - ◆ Program requires drug makers to offer discounts of up to 50% on medicines sold to safety net hospitals and health centers that serve low-income populations
  - Congress is interested in reforming the program in light of government reports showing that the program is not working as intended
    - ◆ The House Energy and Commerce Committee issued its own report earlier this month highlighting weaknesses in program administration and oversight
    - ◆ Senator Cassidy (R-LA) introduced legislation that would create a two-year moratorium on new hospitals participating in the 340B prescription drug discount program
    - ◆ Senate Finance Committee Chairman Hatch sent a letter to HHS Secretary Azar saying that HHS should consider moving the 340B drug discount program under the authority of CMS to improve oversight

# Healthcare

- Other priorities
  - Congress passed several issued-specific bipartisan bills last year, including the Early Hearing Detection and Intervention Act and the National Clinical Care Commission Act (focused on diabetes and other complex metabolic or autoimmune diseases)
  - Already this year, the House Energy & Commerce Health Subcommittee has approved:
    - ♦ Pharmaceutical Information Exchange (PIE) Act of 2017, designed to give drug and medical device companies more freedom to discuss off-label information
    - ♦ The Over-the-Counter Monograph Safety, Innovation, and Reform Act would overhaul how the FDA regulates over-the-counter (OTC) drugs
  - Congress will have to reauthorize two outstanding user fee programs in 2018: the Animal Drug User Fee Act (ADUFA) and the Animal Generic Drug User Fee Act (AGDUFA), which will both expire September 30
  - The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA) will be up for reauthorization in September 2018 as well
    - ♦ Senate HELP Committee has held two hearings this month on PAHPRA
- Also of note, several key committees of jurisdiction have seen changes in 2018
  - With Congressman Tiberi's (R-OH) January resignation, Congressman Roskam (R-IL) has taken over as Ways and Means Health Subcommittee Chair
  - In the Senate, Senator Whitehouse (D-RI) joined the Finance Committee and newly-elected Senators Jones (D-AL) and Smith (D-MN) joined the HELP Committee



# Energy and Environment

- Since Day 1, the administration has been focused on regulatory reform in the energy sector
  - According to the U.S. Chamber of Commerce, energy-related actions taken by President Trump include 8 executive orders, 4 presidential memoranda, and provisions in 4 public laws
  - For example:
    - ♦ Climate change – withdrawal from Paris Accords, repeal of Clean Power Plan and methane rules, repeal of Climate Action Plan, withdraw of mandate to use Social Cost of Carbon, and OMB NEPA guidance on climate change
    - ♦ Access – increased onshore and offshore leasing; ANWR; withdrawal of coal lease moratorium; withdrawal of restrictive DOI policies; etc.
    - ♦ Pipelines – approval of Keystone and Dakota Access pipelines; NEPA streamlining, etc.
  - The Chamber estimates there are currently 16 energy-related regulatory/policy reforms initiated or under review, 7 reforms formally proposed, and 17 reform actions that have been finalized or completed

# Energy and Environment

- EPA Deregulatory Actions
  - EPA is undertaking several initiatives to implement the President's March 2017 EO on Energy Independence:
    - ◆ Task force dedicated to reviewing and simplifying the New Source Review application and permit process
    - ◆ Streamlining the National Ambient Air Quality Standards State Implementation Plan approval process
    - ◆ Conducting evaluations of the potential employment effects that may result from the implementation of five environmental statutes
  - Additionally, EPA proposed repeal of the Obama-era "Clean Power Plan"
    - ◆ The administration estimates that repealing the Clean Power Plan could eliminate up to \$33 billion in compliance costs in 2030
    - ◆ Earlier this month, Administrator Pruitt said EPA's proposed rule and final rule to replace CPP will be issued in 2018
  - EPA also acting to review the Waters of the United States (WOTUS) rule following President Trump's February Executive Order
    - ◆ Rulemaking efforts to repeal the Obama-Era WOTUS definition and to develop a narrower definition of WOTUS that preserves more state autonomy

# Energy and Environment

- EPA Deregulatory Actions, cont'd
  - EPA Administrator Pruitt launched a task force to provide recommendations on how to streamline and improve the Superfund program; the task force released 42 detailed recommendations with five goals in mind:
    - ♦ Expediting cleanup and remediation; re-invigorating responsible party cleanup and reuse; encouraging private investment; promoting redevelopment and community revitalization; and engaging partners and stakeholders
  - “Once-in-always-in”: Withdrew policy which prevents major sources of toxic air pollutants from removing pollution control devices after emissions fall below a certain threshold; instead, those facilities can now be reclassified as smaller “area” sources that are subject to less stringent requirements
  - Ozone NAAQS: Intends to complete attainment designations for the 2015 ozone standard by the end of April
  - Risk Management Program regulations final rule: Revised effective date of the rule is February 2019, allowing EPA to review
  - CAFE standards: EPA and NHTSA reopened the comment period for rewriting of standards for GHG emissions for cars and light trucks for MY 2022-2025
    - ♦ NHTSA is ready to release its proposals for revising CAFE levels on March 30

# Energy and Environment

- Implementation of TSCA Reform
  - EPA listed several items in the most recent Unified Agenda
    - ◆ The reporting of “active” substances by chemical manufacturers and importers to EPA must be completed by early February; EPA hopes to publish a final list sometime in Q4 2018
    - ◆ Reporting Requirements for the TSCA Mercury Inventory Final Rule expected in late June 2018
    - ◆ Proposed Rule on limiting the reporting requirements for manufacturers of inorganic byproducts that are subsequently recycled by late June 2019
- Also this year, EPA is expected to propose changes to the rules governing lead levels in drinking water
  - A proposed rule to update the Lead and Copper Rule is expected in August
  - The issue is a priority for Administrator Pruitt – could we see a push to include provisions in any infrastructure package?
- EPA has re-launched the Smart Sectors Program to partner with the private sector to achieve better environmental outcomes
  - EPA officials who oversee and regulate a wide range of industry sectors will serve as ombudsmen within the EPA, conduct educational site tours, and host roundtables

# Energy and Environment

- DOE Deregulatory Actions
  - Secretary Perry recommended the following actions to implement the President's Energy Independence Executive Order
    - ◆ Streamline Natural Gas Exports
      - On September 1, 2017, DOE announced a proposed rule to provide faster approval of small-scale natural gas exports, including LNG
    - ◆ Review NEPA regulations
    - ◆ Review existing NEPA policies to assess whether DOE should grant more categorical exclusions
    - ◆ Review DOE appliance standards program
      - Review Process Rule
      - Reduce burden of serial rule making
      - Improve cost-benefit analysis

# Energy and Environment

- Secretary Perry's Grid Resiliency proposal
  - In September, DOE proposed the "Grid Resiliency Pricing Rule," invoking authority that allows DOE to propose a rule under the Federal Power Act
  - The rule would have required wholesale electricity market operators to amend their rules to provide for a special rate for generators that have a 90-day fuel supply and can meet other qualifications (coal-fired and nuclear)
  - Earlier this month, the Federal Energy Regulatory Commission, by a vote of 5-0, rejected the proposal to provide cost recovery to coal and nuclear plants
  - Instead, the commission asked grid operators (RTOs/ISOs) to suggest their own ideas to make the system more resilient
  - In the new order, the RTOs/ISOs are directed to provide responses to the Commission by March 9, 2018 (60 days from order); interested entities may submit reply comments by April 8 (30 days from RTOs/ISOs deadline)
- Recent DOI Deregulatory Actions
  - Bureau of Ocean Energy Management proposed 2019 - 2024 Outer-Continental Shelf oil and gas leasing program
  - BLM finalized proposal to repeal regulations pertaining to hydraulic fracturing on federal lands (current subject of litigation)
  - Bureau of Safety and Environmental Enforcement proposed to revise or eliminate a number of regulations regarding offshore drilling equipment
  - BLM finalized proposal to delay implementation of venting and flaring rule until January 2019 (current subject of litigation)

# Energy and Environment

- Many energy/environment provisions could be folded into an infrastructure package – e.g., streamlining permitting processes for pipelines and other energy projects; increasing the use of categorical exclusions; giving Interior authority to approve rights of way for natural gas pipelines to cross national park lands
- Congress included a provision in the tax reform legislation authorizing oil and gas leasing in section 1002 of ANWR, a long time goal of Senate Energy Committee Chair Murkowski (R-AK)
- Chairwoman Murkowski is also hopeful that a bipartisan comprehensive energy bill can get across the finish line this year after stalling out in the previous Congress
  - S. 1460, the Energy and Natural Resources Act, focuses broadly on efficiency, infrastructure, supply, accountability, conservation, federal land management, National Park System management, sportsmen’s issues, water infrastructure, natural hazards, and Indian energy
  - Leader McConnell has used expedited procedures (Rule 14) to bypass the committee process and place the energy bill on the Senate floor calendar
  - Murkowski has spoken with both Energy & Commerce Chairman Walden (R-OR) and Natural Resources Chairman Bishop (R-UT)
- House Republicans advanced several energy bills in 2017 with bipartisan support:
  - H.R. 2883, Promoting Cross-Border Energy Infrastructure Act (passed 254-175)
    - ♦ Replaces the Presidential Permitting approval needed before constructing an oil and gas pipeline or electric transmission line that crosses a border with Canada or Mexico
  - H.R. 2910, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act (passed 248-179)
    - ♦ Encourages concurrent reviews of permit applications by the multiple federal and state agencies involved in project reviews

# Energy and Environment

- The House Energy & Commerce Committee has approved several other energy / environmental bills addressing ozone regulations, hydropower, Brownfields, energy security, pump storage, and nuclear waste – all await House floor consideration
  - Energy & Commerce has also held hearings and will likely soon markup LNG and pipeline reform proposals:
    - H.R. 4605, Unlocking Our Domestic LNG Potential Act
    - H.R. 4606, Ensuring Small Scale LNG Certainty and Access Act
    - H.R. 4476, PURPA Modernization Act of 2017
  - The Energy and Commerce Committee is also interested in reauthorizing the Department of Energy for the first time since its creation
  - The House Natural Resources has already approved bills related to both onshore and offshore oil/gas development
  - Natural Resources Chairman Bishop (R-UT) continues to work on the following priorities for his committee:
    - Restoring access to federal lands (review of Antiquities Act); promoting sound management of federal lands; making the Federal Government a good neighbor to local communities; and creating jobs in rural communities (with a focus on domestic energy production)
    - The committee is considering legislation to “update and improve” the Endangered Species Act and to review the effectiveness of the National Environmental Policy Act
      - ♦ ESA and NEPA have been frequent targets of Republicans and those in industry frustrated with impact of regulations on economic development
- 56
- Examination of Lacey Act restrictions is also a priority



# Energy and Environment

- Renewable Fuels Standard
- EPA maintained the status quo when it issued the 2018 RFS blending levels in November
  - EPA had originally proposed a lower blending requirement that sparked criticism from several pro-ethanol Senators and resulted in some Republican Senators placing holds on certain nominees
  - EPA Administrator Pruitt met with pro-ethanol Senators and ultimately gave them assurances that the Agency would maintain expected blending targets, rather than a reduction
  - While EPA's move mostly assuaged the concerns of pro-ethanol Senators, EPA's decision to not change the "point of obligation" was criticized by Senators with refineries in their states – they requested a meeting with the administration
    - ◆ Refiners argue that the mandate forces them to buy expensive renewable identification number credits (RINs)
    - ◆ While the meeting did take place, no agreement on the RFS was reached
      - Sen. Cruz (R-TX) was tasked with circulating proposals that would overhaul the RFS and have support from both sides; Cruz suggested a 10-cent cap on RINs
      - Sen. Grassley does not support the cap saying it will decrease the incentive to blend the volume of biofuels specified in the RFS into the fuel supply
  - Senator Cornyn (R-TX) is drafting an RFS overhaul bill
- In January, AFPM and other energy companies filed suit against the EPA on the mandate

# Transportation and Infrastructure

- Consensus now building around a comprehensive infrastructure package as the White House and Congress's next big policy priority
  - Focused broadly on highways, bridges, rail, tunnels, airports, ports, transit, water systems, pipelines, broadband, etc.
  - Despite being a major campaign priority for President Trump, the issue took a back seat to other GOP priorities in 2017 – primarily healthcare and tax reform
- The White House is expected to unveil a detailed infrastructure plan in the coming weeks and it was a central theme of the President's State of the Union address
  - Administration has indicated it will propose \$200 billion in federal funding to leverage investments from state and local governments as well as the private sector – in total, it expects to spur up to \$1.5 trillion in total spending
  - In mid-January, a leaked document purporting to include details of the President's plan highlighted both funding principles as well as principles for infrastructure improvement
    - ◆ The leaked plan would rely heavily upon grants as well as tax incentives (e.g., Private Activity Bonds) to spur investment
    - ◆ Calls for major investments in rural infrastructure and "Transformational Projects"
  - Several administration officials have stated that the plan will include environmental permitting reforms to speed infrastructure projects

# Transportation and Infrastructure

- The House Transportation and Infrastructure Committee and the Senate Commerce and Environment and Public Works Committees have been holding hearings on a variety of topics to inform the drafting of a bill
  - An infrastructure bill is a top priority for House T&I Chairman Shuster (R-PA) who is retiring at the end of this term and would like to see another major bill enacted under his chairmanship
- Additionally, Committees with jurisdiction over less traditional components of a potential bill (e.g., energy and broadband) have also held hearings and moved smaller pieces of legislation that could eventually be incorporated into a broader bill
- In the past, President Trump has been a proponent of “Buy America” provisions requiring that materials used in federal infrastructure projects be made in the United States
  - Such provisions have typically attracted bipartisan support in Congress
- Unlike other 2017 Republican-driven efforts, an infrastructure package has potential for bipartisanship – but there are still political considerations:
  - Are Congressional Democrats willing to cooperate with the administration and Congressional Republicans, handing them a potential election year win?
  - Will fiscally-conservative Republicans be able to stomach a major spending bill, particularly after tax reform (\$1T+ impact on deficits) and pending votes on spending bills and the debt ceiling?

# Transportation and Infrastructure

- As always, how will Congress pay for it?
  - Gas Tax Increase
    - ♦ Hasn't been raised in a quarter century and would be a tough vote
    - ♦ Many in the business community support an increase – the Chamber of Commerce is pushing for a 25 cent per gallon increase
    - ♦ Bipartisan House “Problem Solvers Caucus” included it in a range of potential pay-fors
    - ♦ The White House hasn't completely ruled it out
  - Private Investment
    - ♦ The administration is expected to rely heavily upon the private sector to meet its \$1+ trillion target – whether through public-private partnerships or other incentives
      - Presents challenges for rural states/districts where private investment would prove more difficult
      - Democrats in particular remain skeptical – last year, Senate Democrats released an infrastructure proposal that included \$1 trillion in direct spending over 16 categories of infrastructure
  - Federal Grants
    - ♦ Depending on the federal match – which could be as low as 20% - states and localities would be hard-pressed to finance the remainder on their own
    - ♦ States and Members on both sides of the aisle have expressed concerns about moving toward “devolution”
  - In the past, the White House has said it would rely on cuts to other federal programs to help fund its planned \$200 billion investment

# Transportation and Infrastructure

- Federal Aviation Administration (FAA) Reauthorization
  - A 6-month short-term FAA authorization is scheduled to expire March 31 – it was enacted when leaders could not come to agreement on a long-term bill before the September 2017 deadline
  - While the House Transportation and Infrastructure and Senate Commerce Committees passed reauthorizations prior to the September expiration, neither made it to the floor
    - ♦ The House’s 21<sup>st</sup> Century AIRR Act was reported out of Committee in September, but has been stalled in part due to bipartisan opposition to Chairman Shuster’s proposal to privatize certain air traffic control operations
    - ♦ The Senate’s FAA Reauthorization Act was reported out of Committee in June – it does not include privatization, but does include a controversial provision easing pilot training requirements
  - Given the limited time as well as competing priorities, we could see another short-term reauthorization
- Water Resources Development Act
  - Congress authorizes new Army Corps of Engineers water resources and infrastructure projects through WRDA authorizations – WRDA is also often a vehicle for public water systems legislation
  - There is a strong desire in Congress to get back to biennial WRDA bills: Congress passed WRDA bills in 2014 and 2016, both with strong bipartisan backing
  - Committees of jurisdiction have recently held hearings to begin work on a 2018 bill

# Transportation and Infrastructure

- Drinking Water Systems
  - Last summer, the House Energy and Commerce Committee approved by voice vote the bipartisan Drinking Water System Improvement Act (H.R. 3387) to reauthorize the Safe Drinking Water Act (SDWA) – last reauthorized in 1996
  - Among other things, the bill would:
    - ◆ Authorize \$8 billion over 5 years for the Drinking Water State Revolving Fund (DWSRF)
    - ◆ Authorize \$750 million for the Public Water System Supervision grant program
    - ◆ Open eligible uses of the DWSRF to cover costs associated with preconstruction activities and replacing or rehabilitating aging treatment, storage, or distribution facilities
    - ◆ Amend the SDWA to improve accuracy and availability of compliance data, enhance management practices used by public water systems, and take steps to ensure the integrity of community water systems

# Transportation and Infrastructure

- In 2017, the House and Senate took action on legislation regarding autonomous vehicles
  - On September 6, 2017, the House passed by voice vote H.R. 3388, the SELF DRIVE Act
    - ♦ The legislation, which incorporates some provisions recommended in two DOT reports, would preempt state regulation of some aspects of autonomous vehicle deployment, while providing new regulatory tools to NHTSA
  - In October, the Senate Commerce Committee approved by voice vote S. 1885, the AV Start Act, which is similar in many ways to the House bill
    - ♦ Approaches to state preemption, new safety standards, exemption authority, consumer information, cybersecurity, and privacy are similar, though not identical
    - ♦ Sen. Thune (R-SD) has been pushing for a floor vote, but has run into opposition from Senators Feinstein and Blumenthal over concerns about safety
- In September, DOT and NHTSA released new federal guidance for Automated Driving Systems (ADS): A Vision for Safety 2.0; the new voluntary guidance:
  - Focuses on SAE International Levels of Automation 3-5
  - Clarifies the guidance process and that entities do not need to wait to test or deploy their ADSs
  - Revises unnecessary design elements from the safety self-assessment
  - Aligns Federal Guidance with the latest developments and industry terminology
  - Clarifies Federal and State roles going forward
- Earlier this month, DOT Secretary Chao announced additional efforts for stakeholder input to help DOT develop and update its AV guidance
  - NHTSA, FHWA and FTA all soliciting input

# Judiciary and Immigration

- Immigration reform has been a large focus of the Trump administration, and it appears that will continue into 2018
  - Actions to date:

2017	
<b>Jan</b>	Executive orders on sanctuary cities, border wall, refugee admission and immigration bans
<b>Mar</b>	Executive order temporarily suspending immigration from six countries
<b>Apr</b>	Buy American, Hire American executive order - directing changes in the process for issuing H-1B visas, which are visas for skilled foreign workers.
<b>Jun</b>	DHS withdraws Deferred Action for Parents of Americans (DAPA) policy
<b>Jul</b>	DHS delays implementation of International Entrepreneur Rule
<b>Sept</b>	Trump administration ends DACA (effective March 2018); U.S. State Department outlines new requirements for visa holders
<b>Nov</b>	Trump calls on Congress to end Diversity Lottery after NYC terrorist attack
<b>Dec</b>	Trump calls for end to chain migration after NYC Port Authority terror attack

January 2018	
<b>Jan 5</b>	Wall Street Journal reports Trump outlines priorities for immigration in return for DACA fix <ul style="list-style-type: none"> <li>• Construction of wall along Southern border</li> <li>• End to chain migration</li> <li>• End to lottery system</li> <li>• Mandate that U.S. businesses use E-verify for employee immigration status</li> <li>• Additional spending on other border security measures</li> </ul>
<b>Jan 9</b>	<b>Judge ordered administration to keep renewing DACA applications; DOJ has appealed the ruling</b>
<b>Jan 20</b>	Senate Democrats demand DACA fix be part of continuing funding resolution resulting in government shutdown.
<b>Jan 23</b>	Democrats agree to reopen government after Senate Leader McConnell agrees to have the Senate consider a yet to be agreed upon DACA compromise bill
<b>Jan 25</b>	President Trump formally released his immigration framework which includes DACA as well as border security



# Judiciary and Immigration

- The administration has asked the Supreme Court to overturn the lower court's ruling and allow the President to end DACA protections on March 5
  - Senate Democratic Leader Schumer strongly criticized the President's January 25 immigration framework as a non starter, while some Republicans criticized the inclusion of providing a path to citizenship for DACA recipients
  - Senators Graham (R-SC), Durbin (D-IL), and Flake (R-AZ) are pushing their proposal to provide funding for border security improvements, eliminate the visa lottery, make permanent the DACA program, and provide a pathway to citizenship
    - ◆ The White House called the proposal "dead on arrival"
  - Leader McConnell will not bring a bill to the floor unless the President supports it
  - No indication the House would consider a Senate bill that does not eliminate family migration, include mandated e-verify, and provide funding for a border wall
- In January, Judiciary Chairman Goodlatte (R-VA) introduced the Securing America's Future Act with Representatives Labrador (R-ID), McCaul (R-TX), and McSally (R-AZ); the bill:
  - Eliminates the visa lottery green card program
  - Eliminates green card programs for relatives (other than spouses and minor children)
  - Authorizes border wall construction
  - Makes E-Verify mandatory
  - Makes illegal presence a federal misdemeanor

# Judiciary and Immigration

- Perhaps in light of the debate over DACA, Congress has been hesitant to consider stand alone proposals to reform other aspects of immigration (i.e. worker visa programs), but members have introduced bills:
  - House Judiciary Chairman Goodlatte (R-VA): AG Act
    - ♦ Creates new H-2C guest worker program to be administered by USDA and covers year-round employers, like dairies, aquaculture operations, food processors, and others
  - Rep. Issa (R-CA): Protect and Grow American Jobs Act
    - ♦ Would raise the minimum salary of an H1B visa holder to \$90,000 per year
    - ♦ Would prohibit American companies with at least 20 percent comprised of H1B visas holders from replacing American workers with foreign workers
  - Sens. Grassley (R-IA) and Durbin (D-IL): H-1B and L-1 Visa Reform Act
    - ♦ Would require employers to make a good faith effort to recruit and hire American workers before bringing in foreign workers
    - ♦ Would prohibit employers from replacing American workers with H-1B and L-1 workers or giving preference to H-1B visa holders when filling open positions
  - Sens. Hatch (R-UT) and Flake (R-AZ): Immigration Innovation Act
    - ♦ Would increase annual quota of H-1B visas from 65,000 to 85,000 and make other reforms to the H1-B visa system, student visas, and employment-based green cards

# Judiciary and Immigration

- Patent Reform
  - Reps. Stivers (R-OH) and Foster (D-IL) are working on a bipartisan product similar to Senator Coons' (D-DE) Stronger Patents Act – could come as soon as February
  - Stronger Patents Act:
    - ♦ Would require the PTAB to give claim terms their ordinary meaning, in contrast to the “broadest reasonable interpretation” in keeping with USPTO rules
    - ♦ Would require that patent challengers prove invalidity by “clear and convincing” evidence, in contrast to the “preponderance of the evidence” standard that currently applies
    - ♦ Would limit use of IPR proceedings to individuals and enterprises with a demonstrated adverse relationship to the challenged patent
  - Timing on any patent reform legislation is uncertain
    - ♦ Supreme Court’s TC Heartland decision (patent venue) slowed legislative momentum
    - ♦ House Judiciary Committee Chairman Goodlatte and Rep. Issa, who have been leading efforts on patent reform, are retiring – and are also focused on immigration issues
    - ♦ Senate Judiciary Committee is focused on judicial and executive nominations and immigration reform
  - USPTO nominee Andrei Iancu was unanimously reported out of the Senate Judiciary Committee in late 2017 and awaits full Senate confirmation

# Communications and Technology

- FCC presently operating with all 5 confirmed commissioners
  - Whether that remains the case will depend on the reconfirmation of GOP Commissioner Brendan Carr and timing of the anticipated departure of Democratic Commissioner Mignon Clyburn
  - Chairman Ajit Pai was confirmed last year to his second 5-year term with the support of four Democrats: Sens. Manchin (D-WV), McCaskill (D-MO), Gary Peters (D-MI), and Jon Tester (D-MT)
  - Democratic Commissioner Jessica Rosenworcel was also confirmed for a 5-year term; however Democrats struck a deal guaranteeing Commissioner Carr only one year, speculating there will be a Democratic seat to replace with the intent of securing a Republican pairing
- Chairman Pai's top issues continue to be:
  - Closing the digital divide between those who have broadband and those who do not
  - Emphasizing the need for increasing facilities-based broadband infrastructure deployment in rural communities
  - Enacting sweeping deregulatory reforms, including net neutrality, media ownership and record keeping requirements
  - Pai has also prioritized making more high-frequency spectrum available for 5G use, but has flagged an obstacle to FCC auctions citing the agency's inability to deposit up-front payments in banks
    - ♦ Draft FCC Reauthorization marked up by the Energy & Commerce Communications Subcommittee includes a fix to address this issue

# Communications and Technology

- Net Neutrality and the FCC's Restoring Internet Freedom Proceeding will likely continue to dominate headlines throughout the year with Republicans – including Senate Commerce Chairman John Thune (R-SD) and Energy & Commerce Subcommittee on Communications and Technology Chairman Marsha Blackburn (R-TN) – hoping to legislate on the matter
  - Rep. Blackburn has introduced net neutrality legislation in the House: H.R. 4682, the Open Internet Preservation Act
  - Democrats who see net neutrality as a key midterm election issue are seeking to use the Congressional Review Act to roll-back the FCC's repeal
    - ♦ Democrats have gained momentum in numbers to force a floor vote – even if they are successful, however, the strategy faces problems passing the House and securing President Trump's signature
  - Senator Thune is urging Democrats to negotiate, but the latter have drawn a line on paid prioritization, and have said Rep. Blackburn's bill does not clearly prohibit the practice
  - Chairman Pai for the moment appears to be willing to stand on the sidelines until Congress can make a decision
  - Also in the mix is a state attorney-general lawsuit filed in the D.C. Circuit Court of Appeals challenging the FCC's reversal of Obama FCC's rule

# Communications and Technology

- Russia Interference with 2016 Election
  - Last fall Social media companies Google, Facebook and Twitter came under fire as lawmakers investigated how Russian agents used their online tools to manipulate voters in the run-up to the 2016 Presidential election
  - Members have introduced bipartisan and bicameral legislation, the Honest Ads Act (S. 1989 and H.R. 4077)
    - ◆ Would subject social media companies to the same political ad disclosure requirements as television and news media outlets
    - ◆ Lawmakers also continue information gathering efforts, with review efforts underway of responses from social media companies to questions raised last year in Senate Intelligence and Senate Judiciary committee briefings
- Mobile, 5G and Spectrum
  - Pressure is on the U.S. to remain a leader in the 5G deployment race
  - Anticipate legislative focus on bills that would pave the way for and support innovation including: making 500 megahertz available, speeding up 5G infrastructure, and identifying spectrum assessments in the 3 GHz band and millimeter wave frequencies, all of which are necessary for 5G development and addressed in Sen. Thune's (R-SD) and Sen. Bill Nelson's (D-FL) MOBILE NOW Act
  - Sen. Gardner's (R-CO) and Sen. Hassan's (D-NH) AIRWAVES Act would support the initiative by requiring the FCC to identify spectrum for unlicensed use and free up mid-band spectrum for wireless industry purchase by means of a future FCC auction

# Communications and Technology

- Rural Broadband Access
  - Expanding access to broadband internet services in rural areas is a top priority of not only FCC Chairman Pai, but also several Members of Congress with constituencies in those areas, including Rep. Blackburn and Senator Thune
  - Telecommunications infrastructure (e.g., broadband access) has been flagged for potential inclusion in an infrastructure package
  - Additionally, President Trump's recently issued an Executive Order to expand broadband in rural areas by including access to tower facilities and other infrastructure managed by the Department of Interior
    - ♦ In early January, individual Energy & Commerce Members introduced a package of bills complimenting the President's approach that similarly aim to eliminate regulatory barriers to building out broadband infrastructure on federal property
  - Several bipartisan, bicameral bills introduced in 2017 aimed at incentivizing (through federal grants and tax benefits) or eliminating barriers to rural broadband deployment, including the Rural Wireless Act of 2017, B-CROP, and the Gigabit Opportunity Act
  - Funding, likely the primary impediment to broadband expansion, remains unclear
    - ♦ FCC Chairman Pai is working on an agency proposal to provide \$500 million in funding for rural deployment, potentially through the universal service high cost fund, but this falls several billion dollars short of the anticipated need
    - ♦ Members of Congress have called on the administration to include specific funds for broadband deployment in unserved and underserved areas in its pending infrastructure proposal

# Communications and Technology

- Cybersecurity, Data Security and Internet Privacy
  - Issue guaranteed to remain front and center with more high-profile breaches last year – Yahoo, Uber, and Equifax (which compromised the personal information of up to 143 million Americans)
    - ♦ Breaches driving more oversight hearings and the introduction of numerous bills by Members of key committees
      - Members from Senate Commerce, Senate Banking, House Financial Services, House Energy and Commerce have introduced legislation
      - Senate Commerce and Judiciary Chairs have called for legislation and House E&C Chairman working on a bill
      - House Financial Services Committee leaders working on legislation, coordinating with E&C leaders
      - Bipartisan Senate working group
    - ♦ As in past Congresses, major sticking points for data breach legislation:
      - What constitutes a breach? What's the standard for notification?
      - Scope of federal pre-emption (current patchwork of state laws)
      - Jurisdiction and enforcement authority of FTC and FCC
      - Treatment of the retail industry vs. the financial services industry
    - ♦ Will new EU regulations (coming in May) drive further consideration?



# Communications and Technology

- Expect Congress to also spend time examining how to best protect users' information on the internet
  - ♦ Public opinion was not generally on the side of the FCC's rollback of Obama administration privacy protections
  - ♦ Various members of Congress have expressed an interest in legislating in an area where both the FCC and FTC have somewhat overlapping jurisdictions
  - ♦ Rep. Blackburn has introduced the BROWSER Act, which would require sites to obtain a user's consent before collecting and selling their information for marketing purposes
  - ♦ Senators Mike Lee (R-UT) and Steve Daines (R-MT) have also expressed interest in considering other legislative proposals to address internet privacy concerns
- Internet-of-Things
  - The pace of technology advancements continues to present a challenge to lawmakers and regulatory overseers alike who must protect the public interest without stifling innovation
  - Key policy issues related to IoT include a focus on good governance and the development of a national strategy on IoT that includes the creation of a framework for interagency consultation and action to address developing and emerging technologies (DIGIT Act)
  - Congress is also considering bills aimed at specific technologies already being deployed in the private sector, such as automated vehicles (see slide 63)

# Maritime and Fisheries

- Trump administration is continuing the former administration's efforts to combat illegal, unreported, and unregulated (IUU) foreign fishing, as well as fighting seafood fraud
  - Rationale revolves more around creating a "level playing field" from U.S. seafood producers
- A marine debris bill is likely to see House and Senate action this year and could very well pass
  - Vast, nearly untold amounts of plastic waste are found in the oceans, particularly the Pacific
- Elimination of the "consumptive demand" exception provides more leverage for the private and public sectors to combat forced and trafficked labor in the international seafood industry
- Issues regarding the siting of offshore renewable energy projects (particularly wind farms) are rapidly emerging
- President may scale back offshore marine monument designations
- Administration taking an aggressive position on Arctic Ocean resource access, and also a broader look at potential oil and gas development along the entire U.S. coastline

# Maritime and Fisheries

- Consideration of legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act is likely to continue, but the potential for final congressional enactment remains at least somewhat remote
  - A bill is before the House, and could very likely pass – but would also likely face significant Senate opposition
  - Senator Sullivan (R-AK), Chairman of the Senate Commerce Committee’s Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee, has held a series of reauthorization hearings, though no “committee legislation” has yet emerged
- The Coast Guard reauthorization bill and the Vessel Incidental Discharge Act (VIDA) have been combined into one Senate bill – while the bill is “hotlined” in the Senate, opposition exists, and the House has yet to act
  - The VIDA provisions include important, but controversial, provisions to establish a federal ballast water treatment standard, especially key to the Great Lakes states, including that of Senate Subcommittee Ranking Member Peters (D-MI)
  - The Coast Guard bill contains a permanent nationwide permit for fishing vessel grey water discharge, another chronic concern resulting from litigation
- Documented declines in Northwest Atlantic right whale populations will generate significant controversy, especially relating to the Northeast lobster industry and fishery

# Food, Nutrition and Agriculture

- The current Farm Bill is set to expire September 30
  - In January, Agriculture Secretary Perdue announced USDA's Farm Bill and Legislative Principles for 2018
    - ♦ The principles cover: Farm Production & Conservation; Trade & Foreign Agriculture Affairs; Food, Nutrition & Consumer Services; Marketing & Regulatory Programs; Food Safety & Inspection Services; Research, Education & Economics; Rural Development; Natural Resources & Environment; and Management
- On the minds of those along the food/ag value chain are some overarching issues:
  - Will the Farm Bill cross the finish line in 2018? Will the partnership between farm groups and the nutrition community hold through another Farm Bill?
    - ♦ Implications for production agriculture of the Trump administration's trade efforts
    - ♦ FDA's 2018 Strategic Policy Roadmap puts a spotlight on nutrition. What will it mean for consumers, manufacturers, production agriculture to "Empower consumers to make better and more informed decisions about their diets and health; and expand the opportunities to use nutrition to reduce morbidity and mortality from disease"?

# Food, Nutrition and Agriculture

- Food Safety Modernization Act (FSMA) Update
  - FDA announced on January 4, 2018 in a twenty-page guidance document that it will exercise “enforcement discretion” for these FSMA provisions:
    - ♦ Certain facilities conducting farm-related activities that are subject to the preventive controls (PC) requirement
    - ♦ Written assurance in the “customer provisions” (i.e. commercial customers, not consumers) in the PC Human Food, PC Animal Food, Foreign Supplier Verification Programs (FSVP) & Produce Safety Rules
    - ♦ Importation of food contact substances under FSVP
    - ♦ Certain manufacturing/processing activities for human food by-products for use as animal food
    - ♦ FDA intends to do a further rulemaking, but the new enforcement discretion policy will be in place until further Agency action occurs
  - FDA issued draft guidance documents on January 24, 2018 to help importers and food producers meet FSMA requirements:
    - ♦ Two documents are to help industry – including small businesses – meet the FSVP requirements ensuring that foreign suppliers provide at least the same level of public health protections, that food is not adulterated or misbranded with respect to allergen labeling
    - ♦ Draft guidance addressing the term “same level of public health protection” found in both the FSVP and the Produce Safety regulations by providing a framework to determine adequacy of actions for produce and for human or animal food
    - ♦ Draft guidance to help food facilities comply with the supply chain program for human food products

# 2018 MIDTERMS

# Overview: Balance of Power

- Senate
  - 51 Republicans, 49 Democrats, and 2 Independents who caucus with the Democrats
    - ♦ Down to one-seat majority following election of Democrat Doug Jones in December Alabama special
    - ♦ Vice President Pence cast the most tiebreaking votes of any Vice President in his first year in office (6) – and has already cast 2 more early in his 2<sup>nd</sup> year
- House
  - 238 Republicans, 193 Democrats
  - 4 vacancies:
    - ♦ Murphy (R-PA-18) resigned 10/21 – special election 3/13
    - ♦ Conyers (D-MI-13) resigned 12/5 – vacant until general election (11/6)
    - ♦ Franks (R-AZ-08) resigned 12/8 – special election 4/24
    - ♦ Tiberi (R-OH-12) resigned 1/15 – special election 8/7
- Gubernatorial
  - 33 Republicans, 16 Democrats, 1 Independent
    - ♦ GOP advantage is one-shy of historic high

# Outlook and Historical Trends

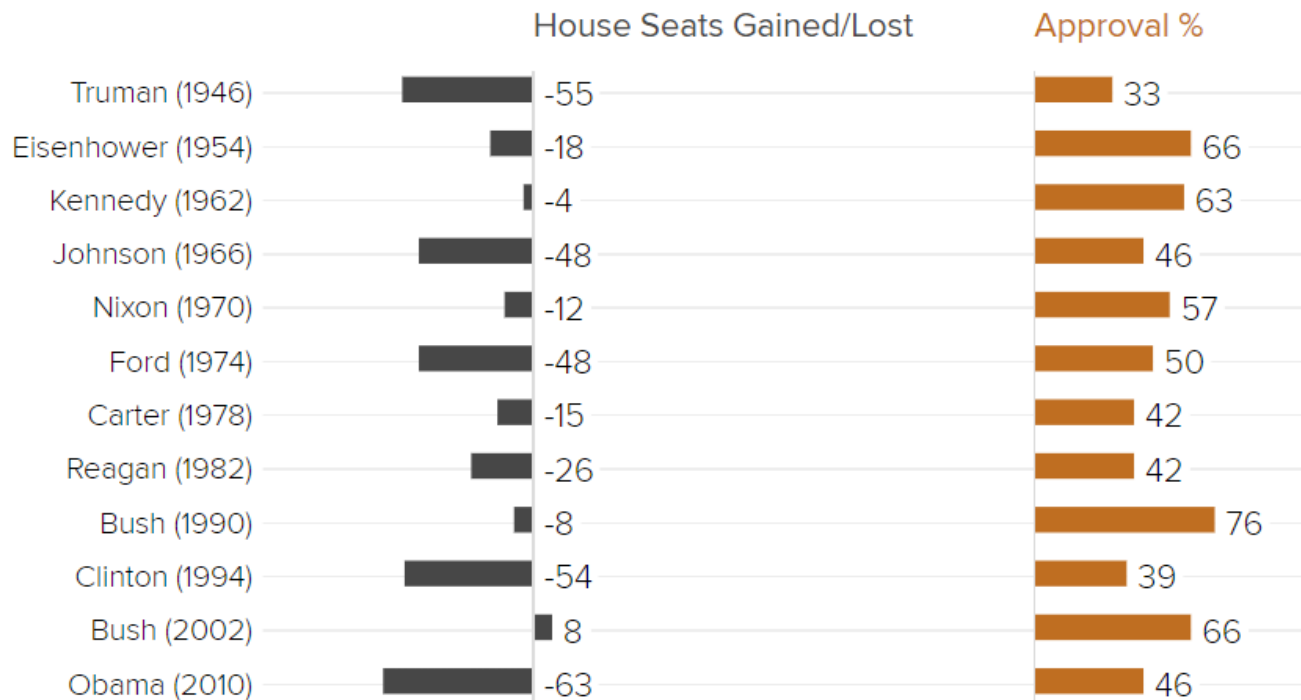
- Speculation we could be headed for a “wave” election
  - “Generic ballot” polling has been fluctuating, but Democrats have been consistently ahead
    - ◆ Real Clear Politics polling average as of 1/23: Democrats +8 points
      - Recent Quinnipiac and ABC News / WaPo polls had the Democratic advantage at 13 and 12 points, respectively – a CNN poll had the advantage closing to 5 points
      - Dems have a large lead among women (+35 points) and minorities (+59 points) – and a 14 point lead among Independents (ABC / WaPo)
  - President’s party typically does poorly in mid-terms – Trump’s popularity (around 40%) could be a drag
  - Democrats have “enthusiasm” edge (but Republicans are narrowing the gap)
    - ◆ A mid-January CNN poll found 51% of Democrats to be enthusiastic about voting in this year's midterm elections
    - ◆ 43% of Republicans / Republican-leaning independents feeling extremely or very enthusiastic about casting a ballot this fall – compared to 32% last month
  - Recent “bellwether” races in Alabama, New Jersey, Virginia
  - If one chamber flips, expect major policy and political battles and intense oversight of the Trump administration



# Outlook and Historical Trends

- Only 3 midterm elections in the last century when the President's party didn't lose House seats: 1934, 1998, 2002
- Since 1946, regardless of the President's approval rating, average seat loss for President's party in his first midterm: 28
  - Average seat loss for President's party when approval rating is below 50%: 43.5

## House Seats Gained/Lost by September midterm approval



# Outlook and Historical Trends

- At the same time, the maps – and a few other factors – favor Republicans
  - 26 of 34 Senate races in states currently held by Democrats or Independents
    - ◆ 10 Democrats running in states won by President Trump
    - ◆ In 5 of those, Trump won by double digits
  - Few pickup opportunities for Senate Democrats
  - Most Republican House districts are perceived safe
    - ◆ According to the Cook Political Report (January 24), 175 GOP seats are “solid” and another 46 are “likely/lean” Republican – with only 16 as “toss up or worse”
  - Democrats need to flip 24 seats to win the House; need to run the tables, particularly in moderate / suburban districts
  - If the December tax bill gains in popularity – e.g., voters begin to see its effects in their paychecks – that could boost vulnerable Republicans

# House Elections

- House Retirements

- Incumbent retirements: 33 Republicans and 16 Democrats... so far

## Republicans Retiring / Seeking Other Office

Barletta (R-PA) (Senate)  
Barton (R-TX)  
Black (R-TN) (Governor)  
Blackburn (R-TN) (Senate)  
Dent (R-PA)  
DeSantis (R-FL) (Governor)  
Duncan, John Jr. (R-TN)  
Farenthold (R-TX)  
Frelinghuysen (R-NJ)  
Goodlatte (R-VA)  
Gowdy (R-SC)  
Harper (R-MS)  
Hensarling (R-TX)  
Issa (R-CA)  
Jenkins, Evan (R-WV) (Senate)  
Jenkins, Lynn (R-KS)  
Johnson, Sam (R-TX)

Labrador (R-ID) (Governor)  
LoBiondo (R-NJ)  
McSally (R-AZ) (Senate)  
Meehan (R-PA)  
Messer (R-IN) (Senate)  
Noem (R-SD) (Governor)  
Pearce (R-NM) (Governor)  
Poe (R-TX)  
Reichert (R-WA)  
Renacci (R-OH) (Senate)  
Rokita (R-IN) (Senate)  
Ros-Lehtinen (R-FL)  
Royce (R-CA)  
Shuster (R-PA)  
Smith, Lamar (R-TX)  
Trott (R-MI)

## Democrats Retiring / Seeking Other Office

Brady (D-PA)  
Conyers (D-MI) [vacant]  
Delaney (D-MD) (President)  
Green, Gene (D-TX)  
Gutierrez (D-IL)  
Hanabusa (D-HI) (Governor)  
Kihuen (D-NV)  
Levin (D-MI)  
Lujan Grisham (D-NM) (Governor)  
O'Rourke (D-TX) (Senate)  
Polis (D-CO) (Governor)  
Rosen (D-NV) (Senate)  
Shea-Porter (D-NH)  
Sinema (D-AZ) (Senate)  
Tsongas (D-MA)  
Walz (D-MN) (Governor)

\*List does not include 8 Republicans and 1 Democrat who have already resigned and whose seats have been / will be filled before the November election

# House Elections

- Notable House Retirements

- Committee Chairmen

- ◆ Leaving after this term:

Appropriations – Rep. Frelinghuysen (R-NJ)	Judiciary – Rep. Goodlatte (R-VA)
Financial Services – Rep. Hensarling (R-TX)	Oversight – Rep. Gowdy (R-SC)
Foreign Affairs – Rep. Royce (R-CA)	Science – Rep. Smith (R-TX)
Administration – Rep. Harper (R-MS)	T&I – Rep. Shuster (R-PA)

- ◆ Already stepped down:

- Budget – Rep. Price (R-GA) (took administration post in 2017)  
Rep. Black (R-TN) (running for Governor; finishing House term)
      - Oversight – Rep. Chaffetz (R-UT) (resigned)
      - Joint Economic – Rep. Tiberi (R-OH) (resigned)

- 10 of 23 GOP Members on Judiciary (includes Reps. Chaffetz & Franks who left earlier this Congress)
  - 8 of 24 GOP Members on Ways and Means (includes Rep. Tiberi who left earlier this Congress)
  - 8 of 36 Members of the Texas delegation (6 Republicans, 2 Democrats)
  - 6 of 18 Members of the Pennsylvania delegation (5 Republicans, counting Rep. Murphy, who resigned in late 2017; 1 Democrat)
  - 3 of 9 Members of the Tennessee delegation (all Republicans) – and Senator Corker (R) is also retiring

# House Elections

- Some Key House Races to Watch
  - Republican-held open seats
    - ◆ While not all open seats will be competitive, many will
      - Open seats currently held by Republican Reps. Issa (CA-49), Frelinghuysen (NJ-11), LoBiondo (NJ-02), McSally (AZ-2), Meehan (PA-07), Reichert (WA-08), Ros-Lehtinen (FL-27), among others
    - ◆ Watch this year's "special elections" in Arizona, Ohio, Pennsylvania
  - Republicans running in moderate and suburban districts
    - ◆ 23 House Republican-held seats in districts won by Clinton
      - California: Currently 7 GOP-held House seats won by Clinton
        - Reps. Knight (CA-25), Denham (CA-10), and Rohrabacher (CA-48) could see tough races
      - Some other GOP incumbents in Clinton districts include Reps. Coffman (CO-06), Comstock (VA-10), Curbelo (FL-26), Hurd (TX-23), Katko (NY-24), Lance (NJ-07), Paulsen (MN-3), and Roskam (IL-06)
    - ◆ Additional potential swing districts: Faso (NY-19), Lewis (MN-02)
  - Will we see any primary surprises?

# House Elections

- Some Key House Races to Watch, cont'd
  - Democratically-held open seats
    - ◆ Seats currently held by Democratic Reps. Shea-Porter (NH-01) and Walz (MN-01) will be competitive
      - NH-01 has changed hands in 5 of the last 6 elections
    - ◆ Two competitive open seats in Nevada: NV-03 (Rosen) and NV-04 (Kihuen)
  - Democrats running in moderate / swing districts
    - ◆ 12 Democratically-held seats in districts won by Trump
      - Reps. Nolan (MN-08) and Gottheimer (NJ-05) in close races
    - ◆ Other potential swing districts include Reps. Bera (CA-07), O'Halleran (AZ-01), and Murphy (FL-07)
- Redistricting Challenges
  - This month, the Pennsylvania Supreme Court threw out the state's Congressional map – GOP legislature ordered to redraw the map ahead of May 15 primary
  - Also this month, a federal court ruled that North Carolina Republicans had gerrymandered districts and ordered a substitute map – but a Supreme Court stay makes it likely that the current maps will be in place in November
  - The Supreme Court is currently considering two gerrymandering cases (Maryland and Wisconsin)

# Senate Elections

- Senate Races to Watch

- 10 Senate Democrats running in states carried by President Trump
- Newly-appointed Senator Smith (D-MN) may also have a tough race
- Republican-held Senate seats in Arizona (open), Nevada, and Tennessee (open)

## 24 Democrats Up for Re-Election

Tammy Baldwin (D-WI)\*  
Sherrod Brown (D-OH)\*  
Maria Cantwell (D-WA)  
Ben Cardin (D-MD)  
Tom Carper (D-DE)  
Bob Casey (D-PA)\*  
Joe Donnelly (D-IN)\*\*  
Dianne Feinstein (D-CA)  
Kirsten Gillibrand (D-NY)  
Martin Heinrich (D-NM)  
Heidi Heitkamp (D-ND)\*\*  
Mazie Hirono (D-HI)  
Amy Klobuchar (D-MN)  
Joe Manchin (D-WV)\*\*  
Claire McCaskill (D-MO)\*\*  
Robert Menendez (D-NJ)

Chris Murphy (D-CT)  
Bill Nelson (D-FL)\*  
Tina Smith (D-MN) **SPECIAL**  
Debbie Stabenow (D-MI)\*  
Jon Tester (D-MT)\*\*  
Elizabeth Warren (D-MA)  
Sheldon Whitehouse (D-RI)  
Tim Kaine (D-VA)

## 2 Independents

Angus King (I-ME)  
Bernie Sanders (I-VT)  
*Both caucus with the Democrats*

\*Indicates states won by President Trump

\*\*Indicates states won by Trump by 15 points or more

## 8 Republicans Up for Re-Election

John Barrasso (R-WY)\*\*  
Bob Corker (R-TN)\*\* **OPEN**  
Ted Cruz (R-TX)\*  
Deb Fischer (R-NE)\*\*  
Jeff Flake (R-AZ) **OPEN**  
Orrin Hatch (R-UT)\*\* **OPEN**  
Dean Heller (R-NV)  
Roger Wicker (R-MS)\*\*

# Gubernatorial Elections

- Gubernatorial Races to Watch
  - 9 Democratically-held seats
    - ◆ Open seats in Minnesota, Connecticut, and Colorado will be competitive
    - ◆ Pennsylvania Governor Wolf is also expected to have a close race
  - 26 Republican-held seats
    - ◆ Open seats in Florida, Maine, Michigan, Nevada, New Mexico, and Ohio could all be competitive
    - ◆ Republican incumbent Governors Rauner (IL), Sununu (NH), and Walker (WI) facing strong challengers
  - Alaska Governor Walker (I) is also expected to have a competitive race
- Governors elected this year will have an impact on 2020 redistricting
- More Democratic governors could mean more state-based legal challenges to Trump administration policies



# Key Questions

- How will Congress address the next government funding deadline?
- In FY19, will we see funding for the long-promised defense build-up?
- Will a major bipartisan infrastructure bill make it across the finish line?
- Will the White House and/or Congressional agenda be slowed by the Mueller investigation?
- Will Senate Democrats continue to stick together on key votes, particularly with 10 running in states won by President Trump?
- Will Democrats continue to hammer the tax law as benefitting only the wealthy? Alternatively, will voters begin to see changes in their pocketbooks, providing a boost for Republicans?
- Will the President maintain his America-first trade agenda while also welcoming international cooperation, as in his Davos speech? How will the world react?
- Will the gravity of world events change the focus here at home?
- Will we continue to see the impact of the #metoo movement in Washington? Can we expect more investigations / retirements?
- Will social media and “fake news” again be an issue in this year’s election?
- Will an unanticipated pre-election event (an “October surprise) – and Washington’s reaction to it – solidify or sway public opinion and voter reaction one way or the other?

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