



Hogan
Lovells

U.S. Election 2016

Understand the Outcomes
and Anticipate the Change

November 18, 2016

Agenda

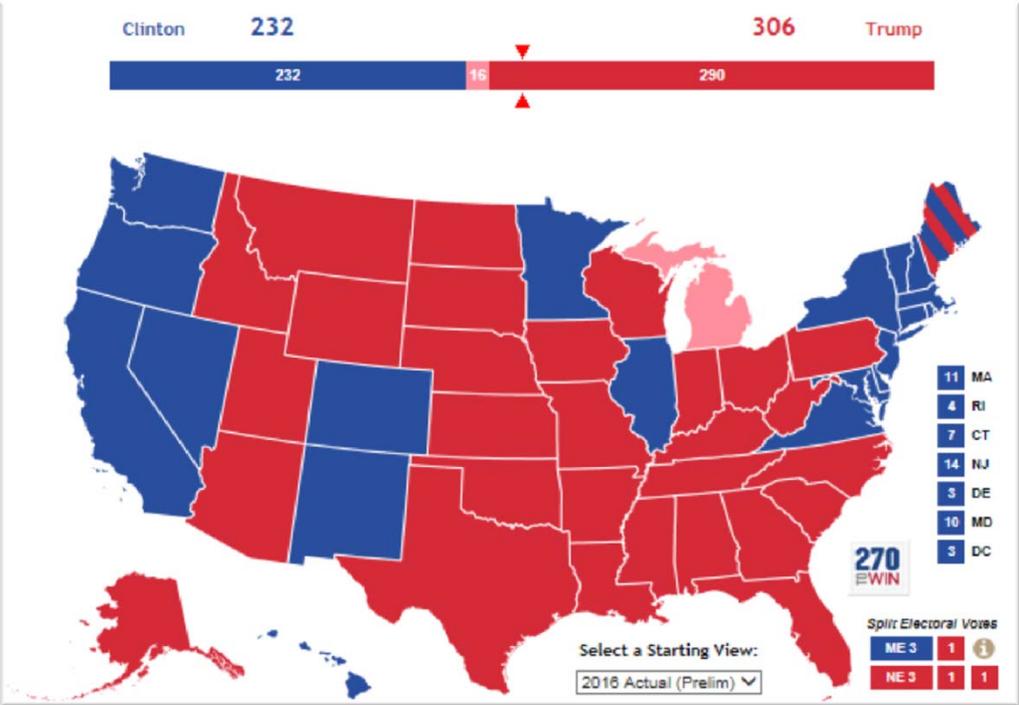
- The election results
- Analysis of election results: what really happened?
- How did the pundits get it so wrong?
- The Trump transition
- Trade and immigration implications
- Tax reform
- Environmental and energy policy
- Obamacare and implications for the health industry
- Financial services – the regulatory landscape



The results

Trump wins the presidency with 306 electoral votes

Hillary Clinton wins the popular vote



2016 Electoral College Map (As of Nov.16, 2016)



Hillary Clinton (D)

Running Mate: Tim
Kaine Popular Vote:
47.7%
States Carried: 20 + DC

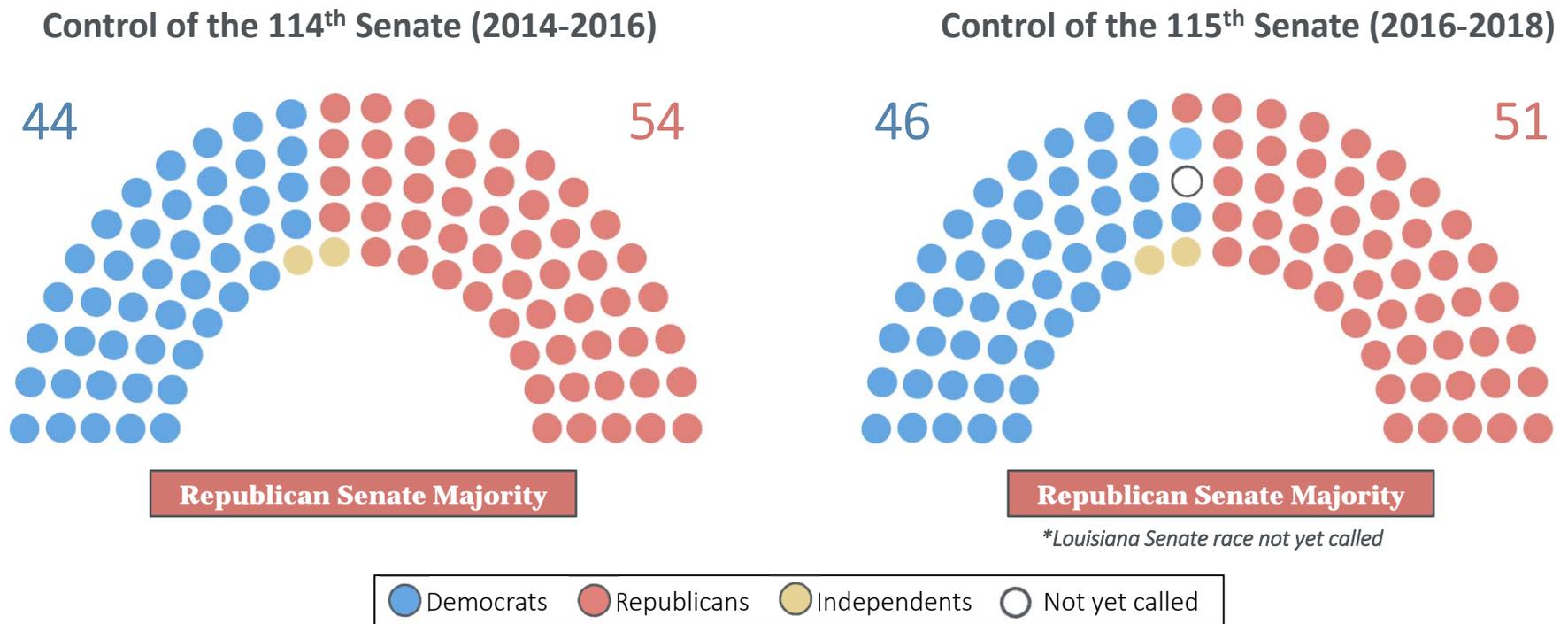


Donald Trump (R)

Running Mate: Mike Pence
Popular Vote: 47.5%
States Carried: 30

Republican party retains a majority in the Senate

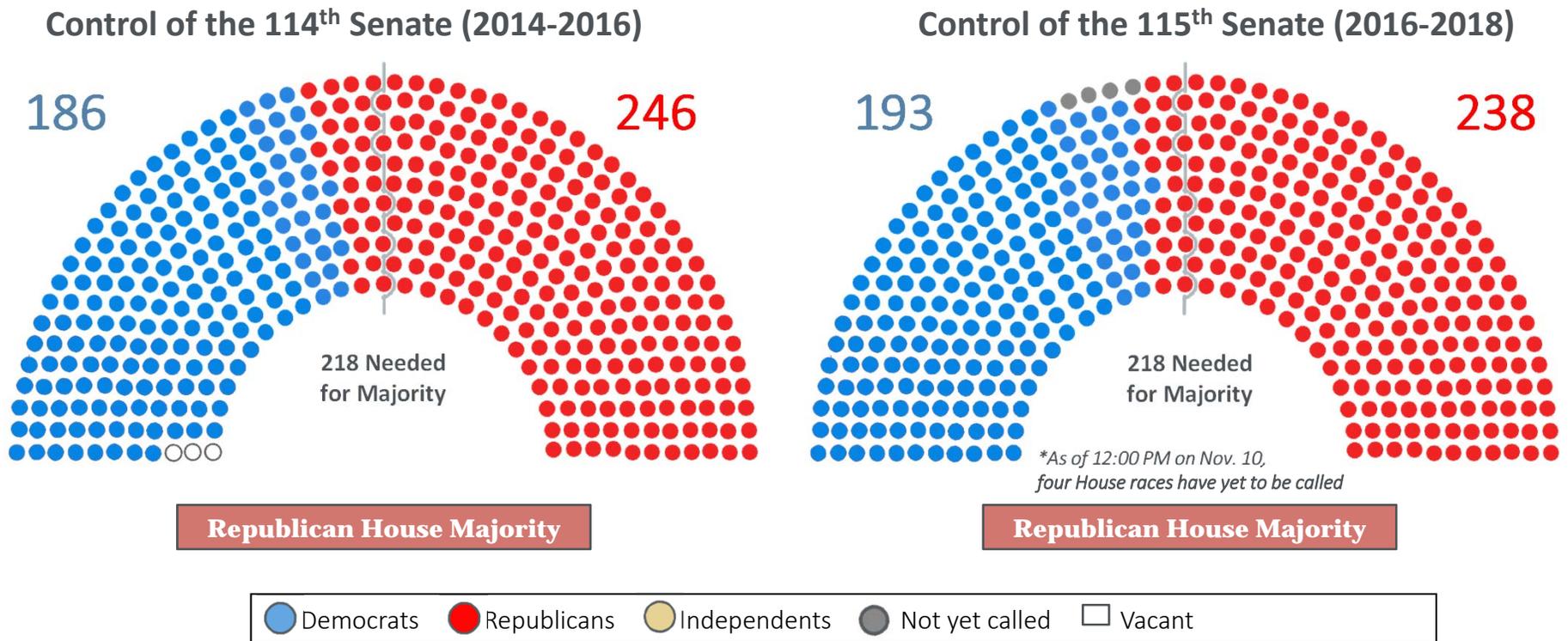
Control of the 114th vs. 115th Senate



Source: National Journal research, 2016.

Republicans retain control of House

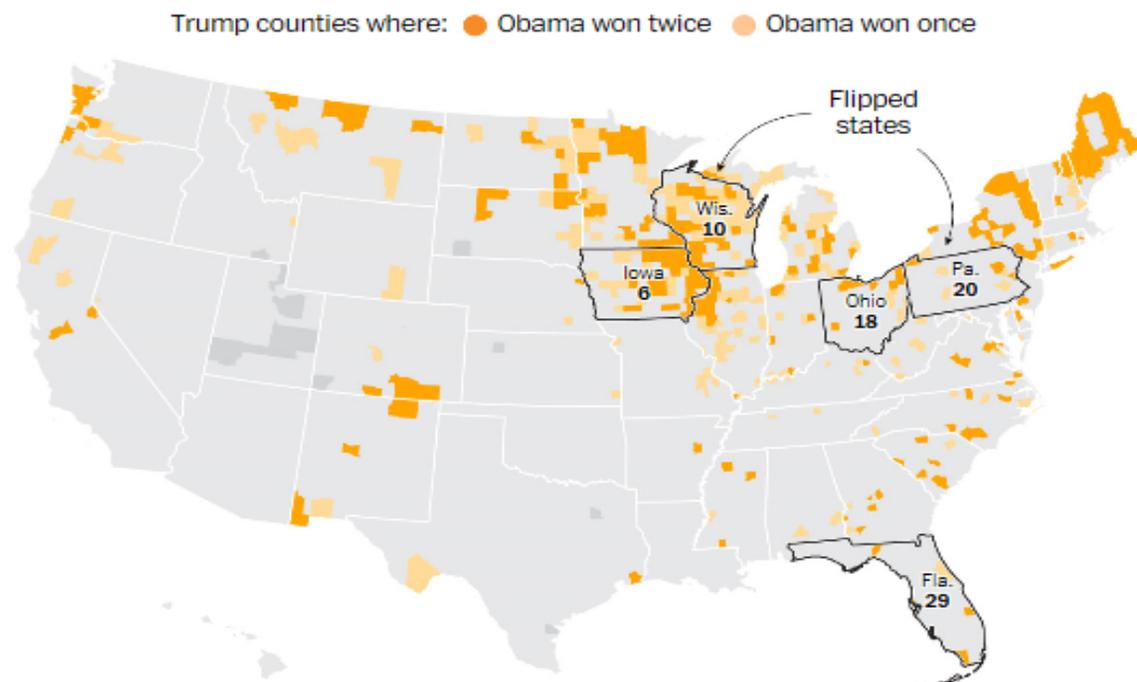
Limit Democratic gains in 2016 Elections



Source: National Journal research, 2016.

Analysis of election results: what really happened?

Trump won five states that Obama carried

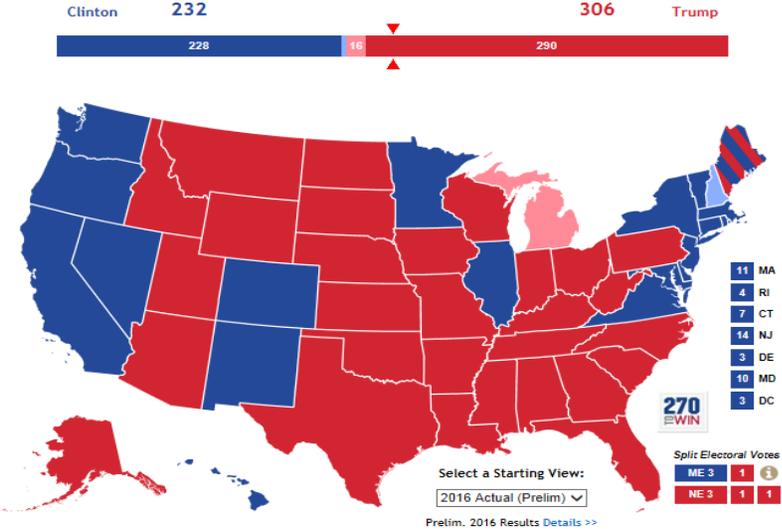


Note: Trump also won Maine's congressional 2nd District, which earned him one electoral vote. Dark gray areas did not have enough data. Alaska is not included because it has no counties. Results as of 7 a.m. Wednesday.

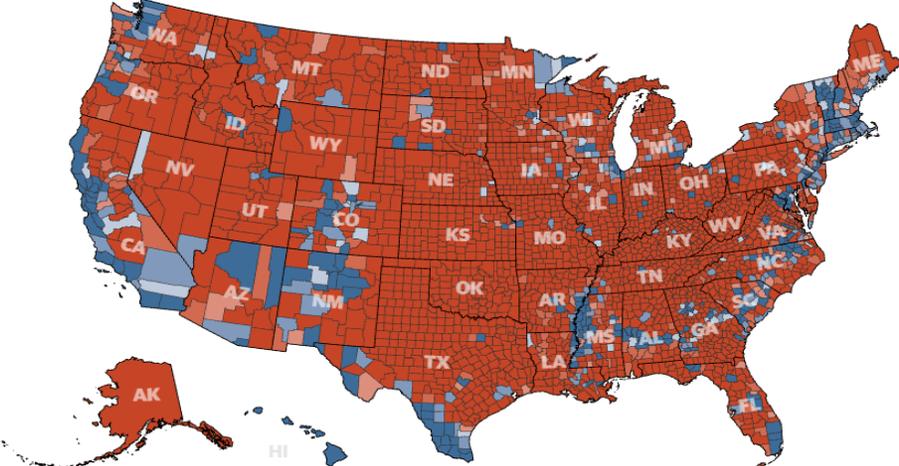
Source: AP.

Profound split between urban and rural communities

2016 Presidential by State



2016 Presidential by County

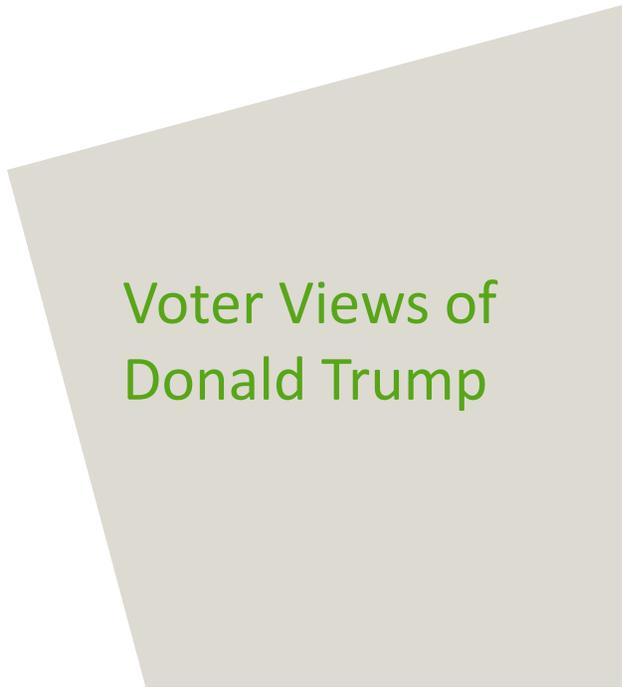


Trump voters clearly valued change over experience . . .

which candidate quality mattered most?			
	clinton	trump	other/no answer
cares about me 15%	58%	35%	7%
can bring change 39%	14%	83%	3%
right experience 21%	90%	8%	2%
good judgment 20%	66%	26%	8%
24537 respondents			

... Even though they had reservations about Trump personally

- **38%** - **Favorable** opinion
- **33%** - **Honest** and trustworthy
- **38%** - **Qualified** to be President
- **35%** - **Temperament** to Serve Effectively as President



Voter Views of
Donald Trump

How did the pundits get it so wrong?

How did pundits miss the Trump voters?

- **Polls** may not have been as inaccurate as reported
- **Lower educated voters** under-weighted in polling
- Faith in massive **ground game**, fundraising advantage and paid media- and “**Big Blue Wall**” overrated
- Polls didn’t accurately gauge **intensity and depth of voter anger**



What's behind the anger that powered Trump's victory?

- **Wage Stagnation:**
 - **Productivity** growing strongly (64.9% from 1979 to 2013); hourly compensation grew 8% in the same period
 - 76% of Americans live **paycheck to paycheck** (CNN Money). More than 1/2 of all Americans can't come up with \$400 in emergency case
- **Obamacare:** Insurance **rates rising** and average of 22% in 2017
- **Immigration:** The estimated **11.4 million undocumented workers** in America heighten employment and racial tensions.
- **Student Debt:** Millennials are drowning in red ink; Total student **loan debt has grown more than 150%** since 2005.
- **Downward Mobility is the New Reality:** Middle Class death watch; 1/3 of Americans who were middle class as teenagers in the 1970s flatten out as adults.

The Trump transition

Trump transition

Inside a transition team: What does it do?

- **Day One Executive Orders (EO's)**
 - Opportunity for immediate impact
 - Obama EO's increase likely Trump action
 - EO's likely in areas of energy/environment, immigration, health care, others
- **Vetting/Selection of Presidential Appointees**
 - **4,000** political positions to be filled; **1,212** Senate-confirmed positions
 - Vetting critical to successful start to Presidency
- **Map Out Policy Agenda**
 - “Parachute teams” to each agency
 - Coordination with Congress on legislative agenda



Trump transition: A few observations

- **Vice Presidential role**
 - VP leadership of transition highly unusual
 - Implications for governing
- **Slower start**
 - Election surprise, ethics issues, mainstream Republican recalcitrance slow transition effort
 - Implications for vetting, filling appointments, policy delays
 - Slower start can make mistakes more likely
- **How to read the transition**
 - Pay more attention to the things it will control (e.g., appointments, EO's)
 - Rely less on transition views on longer-term policy
 - Listen less to outside voices, speculation

Trade and immigration implications

International trade

Chief Point

President Trump will have authority to implement many of his campaign commitments without Congressional approval.

NAFTA

Candidate Trump promised to terminate or renegotiate NAFTA within first 100 days in office. President Trump will have authority to give six months notice to Mexico/Canada to terminate agreement.

China Other Actions

Candidate Trump threatened to raise U.S. tariffs on China by 45%. Various Presidential authorities authorize him to raise tariffs substantially for trade, national security, or balance of payments reasons.

Trans-Pacific Partnership

Candidate Trump said he will withdraw from TPP within first 100 days in office. (U.S. has not approved agreement.)

Currency Manipulation

Candidate Trump said he will name China a currency manipulator within first 100 days.



International Trade – What should you do?

Four-step plan



Immigration

Focus on Illegal
Immigration

Cancellation of Obama's
Executive Orders, Deferred
Action for Childhood
Arrivals (DACA), and
Deferred Action for Parents
of Americans (DAPA)

Withdrawal from or
Renegotiation
of NAFTA

New Visa Issuance
and Reform of Legal
Immigration

Severe Economic
Impact of
Deportation

Tax reform

Tax reform will move in Congress in 2017

- **No guarantees a bill will be enacted in 2017, but it is likely**
- **Trump Plan and House Republican (Ryan/Brady Blueprint) plans are very similar**
- **Along with ACA/Obamacare reform, the top priority of Speaker Paul Ryan**
- **Republicans will try to move a bipartisan bill, but they don't *have to*. Budget reconciliation process provides a way to get a bill through Congress without a single Democrat vote**



It will not be easy...

- Trump plan is estimated to **lose** (on a static basis) **\$4-6 Trillion in revenue** for the U.S. Treasury. Ryan/Brady Blueprint estimated to lose \$2-3 Trillion.
- Remember that U.S. **federal debt? Currently \$19 Trillion** and counting (\$165,000 per taxpayer).
- As more details emerge, there will be **countless disagreements** and turf battles.
- For example, both the Blueprint and Trump plans propose **limiting the corporate deduction for interest expense**. The Blueprint also calls for deleting all (unspecified) industry specific preferences.

Ryan/Brady blueprint (many details still pending)

- **20% corporate tax rate** (currently 35%)
- **25% rate for pass-through business income**
- A **cash-flow consumption tax** structure for business –
 - Full expensing for capital investments
 - No deductibility of interest expense beyond interest income
 - Territorial tax system with one-time tax on accumulated foreign E&P (8.75% cash/3.75% non-cash rates)
 - Border adjustment mechanism: tax imports and deduct exports
- **Individual tax rates lowered to 12%, 25%, 33%**



Trump tax plan (many details still pending)

- **15% corporate tax rate**
- **15% rate for pass-through business income**
 - Manufacturers have option to fully expense capital investments if they opt to waive deduction of interest expense
 - Campaign expressed support for a one-time tax on accumulated foreign E&P, but the plan appears to retain the U.S. extraterritorial system
 - Repeal most corporate tax expenditures, except R&D credit
- **Individual tax rates lowered to 12%, 25%, 33%**
 - Caps itemized deductions at \$100k, \$200k

Outlook

- **Senate Finance Committee Chairman Hatch** expected to release his “corporate integration” proposal soon.
- **Chairman Brady of Ways and Means** asking for feedback as they draft legislative language.
- **Treasury** needs to hire staff.
- Trump and many in Congress want to package tax reform with a large **Infrastructure spending bill**. Chairman Brady has expressed opposition to this.
- The legislation will move forward, but there is lots of work to be done!



Environmental and energy policy

President-elect Trump – Environmental and energy policy

Will this be the future of the EPA as reported by some?



President-elect Trump – Environmental policy

Key questions

- Will President-Elect Trump **abolish EPA?**
- Will EPA still **enforce U.S. environmental law?**
 - Shift in docket
 - Sector-by-sector impact
- Will President-Elect Trump and Congress **repeal environmental laws?**
- What **regulatory changes** might we see?

President-elect Trump – Climate change regulations

- **Unwinding climate change** = #1 Priority
- **EPA** transition team
- What can be **changed immediately**?
 - E.g., Paris Treaty
- **Rulemaking process** for repealing existing regulations
 - E.g., Clean Power Plan
- **Legal precedents** constrain EPA's authority to unwind climate change regulations



Energy policy impacts

What do we know at this point? “An America First Energy Plan”

- Total energy independence
- Energy dominance as economic and foreign policy goal
- Focus on job creation
- Protection of air, water, and habitats
- Open federal lands
- Unleash \$50 trillion in untapped shale oil and natural gas as well as coal
- Encourage use of natural gas to reduce emissions and price of energy
- Rescind energy related executive actions that hinder job creation

Energy: Sector-by-sector impacts

- **Clearly a boost to domestic oil and gas sector**
 - Less environmental enforcement
 - Revoke restrictions on new drilling technologies / methane emissions
 - Expansion of Federal Lands development
 - Midstream project development and elimination of Executive branch intervention
 - Dakota Access
 - Keystone
- **Will there be a resurgence of coal?**
 - Slow death of Clean Power Plan and elimination on moratorium on coal leasing, but the market still rules
- **Renewables and the impact on PTC?**
 - Technological advances and reduced costs are driving the expansion of renewable power
 - Renewed state focus
- **Bull market for Nukes?**
- **Energy transition team**

Obamacare and other key regulatory issues for the healthcare industry

Healthcare reform

- Expect Trump Administration and new Congress to be **active in the health care regulatory space**
 - Particularly with respect to the Affordable Care Act (ACA), the health care reform legislation enacted in 2010.
- But **uncertainty remains the watchword**
 - **Currently, the specifics of the intended policies and pathways remain unknown** – and we anticipate that this uncertainty will persist for some time.

Healthcare reform

- We expect **efforts to repeal ACA to be channeled into the budget reconciliation process.**
 - Ordinarily, proposed legislation can be blocked in the Senate via a filibuster, which takes a super-majority of 60 Senators to overcome
 - Senate Democrats would ordinarily filibuster a proposed repeal of the ACA, which Senate Republicans could not overcome
 - Budget reconciliation measures are not subject to filibuster
- **ACA could not be repealed in its entirety through the budget reconciliation process.**
 - Process does not permit provisions that would not change federal spending or revenue
 - While many core provisions of the ACA (e.g., health insurance subsidies, individual coverage mandate penalties, employer coverage mandate penalties, medical device tax, health insurance tax) could be repealed through the budget reconciliation process, other could not (e.g., certain health insurance market rules like guaranteed issue)
- **Remains unclear what specific policies, if any, will replace those in the ACA, and in what timeframe.**
 - Desire of incoming Administration and new Congress to repeal ACA is likely to be weighed against the **practical and political considerations** of disrupting existing coverage



Affordable
Care Act (ACA)

Healthcare reform

- **Medicaid**

- We expect to see greater discretion afforded to states to design and administer their Medicaid programs:
 - Demonstration projects and waivers
 - Block grants

- **Medicare**

- While Medicare reform was not a focus during the campaign season, it now appears to be on the table:
 - Repeal of Independent Payment Advisory Board
 - Premium support



Medicaid
and Medicare

Payment and delivery system reform

- The Centers for Medicare & Medicaid Services (CMS) has broad authority to test innovative ways of paying for and delivering healthcare in the Medicare and Medicaid programs.
- We expect CMS to continue to invest in such models where there is reason to think that a contemplated model would likely yield both programmatic savings and enhance quality of care.
- More generally, we expect to see a continuing focus by policymakers and legislators on shifting from volume-based payment frameworks to value-based ones.
- We also expect to see a continuing push for delivery system reforms like enhanced coverage of and payment for telehealth services.

Drug pricing

- We expect that drug pricing will continue to be **an area of scrutiny by policymakers and legislators.**
- Some of the suggestions of the President-Elect on the campaign trail may not ultimately be reflected any policies that are ultimately established (e.g., negotiating drug prices under the Medicare program).
- While specific intended policies remain uncertain, we anticipate that discourse will continue around:
 - Pricing transparency
 - Value-based pricing arrangements



Financial services – the regulatory landscape

Trump – Financial services policy

- President-elect Trump has **not laid out a financial regulatory policy**, but he is likely to follow in the footsteps of prominent Republicans who have.
- He has said he **would “rip up” the Dodd-Frank Act** and called for **increased accountability from the Federal Reserve**.
- The Republican platform called for the **CFPB to be dismantled** and most of the Dodd-Frank reforms to be rolled back.

“We have to get rid of Dodd-Frank. The banks aren't loaning money to people that need it.... The regulators are running the banks.”

*Donald Trump,
President-elect*

Republicans have retained control of Congress

- With majorities in both houses of Congress and the presidency, the **Republicans may be able to pass several bills to reform the financial regulatory system.**
- While bashing Wall Street was a bipartisan pastime this election, **Republicans have generally favored Wall Street-friendly laws and regulations** (namely, that there be less of both).
- **The Dodd-Frank Act is likely to be an early target** (along with Obamacare).

“Simply put, Dodd-Frank has failed. It’s time for a new legislative paradigm in banking and capital markets.”

*Jeb Hensarling (R-TX),
Chairman of the House
Financial Services
Committee*

Personnel is policy



Consumer Financial Protection Bureau



FEDERAL DEPOSIT INSURANCE CORPORATION



Key lawmakers, THE BIG 4 + Warren

Rep. Jeb Hensarling



Sen. Mike Crapo



Rep. Maxine Waters



Sen. Elizabeth Warren



Sen. Sherrod Brown



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