BRACEWELL

INSIGHTS

2020 Post-Election Analysis: Issue by Issue

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FIRST 100 DAYS

By ***Scott Segal*** *and* ***Liam Donovan***

As President-elect Biden stands poised to assume the office he has aspired to for the past three decades, he inherits a national crisis not unlike the one he stepped into as vice president nearly 12 years ago. Just as President Obama did in early 2009, Biden will have to subordinate his agenda to the immediate needs of the country. Unlike Obama, he'll have to do so with a narrowly divided Senate, a diminished House majority, and, in all likelihood, a divided federal government.

Then-Vice President Biden was charged with leading the Obama administration's effort in crafting and ultimately enacting a stimulus bill to boost an economy reeling from the Great Recession. Biden's intimate knowledge of the institutions of Congress, and his deep well of relationships and goodwill on Capitol Hill served him well then as they should now. Expect the first 100 days to be punctuated by an effort to unite and heal a divided country, beginning with a "Recovery Act"-style health and economic relief package, complete with policies and resources to distribute an anticipated COVID-19 vaccine. Other topline items that the campaign has committed to tackling early in its tenure include strengthening the Voting Rights Act, immigration reforms and gun control measures.

That said, any range of legislative motion for the Biden Agenda will hinge on the fate of the Senate. As run-off elections loom in Georgia early next year, control of the majority hangs in the balance. Should Republicans manage to win at least one of the two pending races, the scope and scale of a COVID stimulus package or any other top shelf Biden priority would be significantly limited. A bare, 50-seat Democratic majority would be able to organize the Senate, confirm Biden's nominees, repeal regulations under the Congressional Review Act (CRA), and pass a limited range of taxing and spending measures under the Budget Reconciliation process. Beyond that, they would be depending on Republican cooperation that may or may not be forthcoming.

But regardless of the run-off outcomes, there is a great deal that President-elect Biden can and will seek to do on Day One, beginning with reversing the Trump administration's myriad executive actions. On the regulatory front, there are hundreds of possibilities – including revoking Trump executive orders, guidance documents or regulations that are not yet complete or still facing court challenges. He has said he would reverse Trump's rollback of 100 public health and environmental rules put in place by the Obama administration. He has clearly signaled his intention to rejoin the Paris Climate Agreement and re-engage with the World Health Organization, among other international efforts President Trump has spurned on issues ranging from trade to security. He has also committed to Day One action on social and economic justice, ethics in government and foreign policy, as evidenced by the range of contacts with foreign heads of state already underway.

With Republicans faring far better across the board than expected, legislative ambitions for a Biden agenda have been cut down to size before the transition has even begun. Carbon tax? Forget about it. Green New Deal? Not even the lite version. Legislative compromise is definitely not off the table, even in areas of partisan disagreement like energy, environment and natural resources. Republicans and Democrats alike may be tired of the last Administration's constant rancor, and Biden himself possesses considerable knowledge of the personalities and politics of the Senate. He'll need it. Even in the event of a 50-50 Democratic majority, pending the outcome of Georgia's run-off elections in January, every vote – from cabinet selections to a hypothetical reconciliation package – will be hard won and subject to veto by more conservative Democratic Senators. Most of the real action will be of the executive variety, or in scarce areas of potential bipartisan agreement, such as targeted COVID relief, infrastructure or retirement and savings.

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COMMITTEE LEADERSHIP IN THE 117th CONGRESS

*By **John Lee** and **Anna Burhop***

Come January, President Biden could very well find himself with a divided government. Both Georgia Senate seats are going to a runoff on January 5th and conventional wisdom suggests that voters opposed to the president-elect may turn out in higher numbers in order to impose a check on his agenda. As a result, Leader McConnell could retain his grip on the Senate leadership reins. The House remains under the leadership of Democrats and Speaker Pelosi, although by a narrower margin than last Congress. Committee leadership changes will be minimal, with most shifts driven by the Republican Party's self-imposed term limits. Our full analysis outlines some key changes likely to have the largest impacts on legislative agenda setting in the 117th Congress.

(Former) Chairman Murkowski:

In the Senate, Energy and Natural Resources (ENR) Committee Chair Lisa Murkowski (R-AK) will have hit her term limit of three terms with the gavel, prompting her to step down and likely focus on her leadership of the Subcommittee on Interior and Environment on the Appropriations Committee. Murkowski is currently third in line to be top Republican on the Appropriations full committee.

With the retirement of current Appropriations Energy and Water Subcommittee Chairman Lamar Alexander (R-TN), Murkowski could exchange her Interior and Environment gavel for Energy and Water. Susan Collins (R-ME) also holds seniority should she want to move to Energy and Water from Transportation, Housing, and Urban Development. Either way, we anticipate that Senator Murkowski sees a more involved role on the Appropriations Committee in her future.

Republican Musical Chairs Ensues for ENR and EPW:
With Murkowski's departure from the top Republican spot at ENR, John Barrasso (R-WY) is expected to exchange the Republican gavel at the Environment and Public Works (EPW) Committee for the ENR gavel. Shelley Moore Capito (R-WV) would then step up to become the first female Republican to lead EPW, and the second woman to be Ranking Member (following California Democrat Barbara Boxer). Capito has chaired two of the biggest subcommittees at EPW, Clean Air & Nuclear Safety and Transportation & Infrastructure, in her first Senate term.

Senate Democrats do not impose term limits on Committee leaders; therefore, Tom Carper (D-DE) will remain top Democrat at EPW and Joe Manchin (D-WV) will be top Democrat at ENR.

In the House:
With the retirement of Nita Lowey (D-NY), all eyes turn to the House Appropriations Committee. Three committee members declared their candidacy to succeed Chairman Lowey, all women. Marcy Kaptur (D-OH) holds seniority, and is current chair of the Energy and Water Subcommittee. Following behind her is Rosa DeLauro (D-CT), long-time Democratic lead of the Labor, Health and Human Services Subcommittee. Congresswoman DeLauro enjoys the support of many of the health and education groups in Washington. Last but not least, and perhaps the dark horse in the race, is Congresswoman Debbie Wasserman Schultz (D-FL). The Congresswoman does not come close to the seniority of the other two candidates, but she secured the support of many top Congressional Black Caucus members due to her commitment to incorporate social justice reforms as part of the appropriation process. A winner will not be announced until the Steering Committee is convened at the end of November.

Since numerous Republicans are termed out of Committee leadership for the 117th Congress, PRG is closely monitoring the race for House Energy & Commerce Committee Ranking Member due to the retirement of Ranking Member Walden (R-OR). Three candidates have emerged: Cathy McMorris Rodgers (R-WA), current Ranking Member of the Consumer Protection Subcommittee, Dr. Michael Burgess (R-TX), current Health Subcommittee Ranking Member, and Bob Latta (R-OH), current Ranking Member of the Communications and Technology Subcommittee. Although Burgess holds seniority, many in the caucus are pushing for McMorris Rodgers to secure the spot in order to increase the number of women in Republican leadership. Regardless of the selection, the move will likely start a subcommittee leadership shuffle, meaning we may see different Republican leadership on the Energy and Environment and Climate Change subcommittees as well.

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ENERGY

*By **Scott Segal**, **Eric Washburn***, ***Christine Wyman**, **Anna Burhop**, and **George Felcyn***

One of the noteworthy moments of the recent Presidential campaign came in the candidates' last debate, when Vice President Biden made the following comment on energy: "I would transition away from the oil industry, yes. The oil industry pollutes, significantly. It has to be replaced by renewable energy over time."

While much was made of that remark, the term “transition” was an unmistakable reference to specific language in his campaign’s July energy plan calling for a net-zero carbon economy by 2050, coupled with an intermediate net-zero commitment for the power sector by 2035. While reasonable minds may differ as to whether those goals are achievable without major technological breakthroughs or robust use of offset mechanisms (or both), the language of a “transition over time” is familiar. Echoes of such a transition can be found in the climate policies of oil & gas and power sector companies and in policy debates happening in the halls of major trade associations.

Exactly how significant change in the energy sector ultimately becomes under a Biden administration lies in large part on the outcome of a number of external factors. What can reasonably be done to affect the national energy mix pursuant to executive authority? How persuasive can former Senator Biden be in convincing one-time colleagues to walk a potentially risky path on energy? Finally, who will a Biden administration rely upon to develop and implement his energy policy, both at the White House and within the Cabinet?

That last point in particular merits attention. We think a Biden administration is more likely to trust its experts to develop the components of a national energy policy than to release top-down dictates that prove less than durable in their impact. As a wise Washingtonian once said, “Personnel is policy.”

We expect a deliberate, but gradual—rather than radical—approach to the energy transition from a Biden administration. Consider the following:

- Biden White House officials and Cabinet appointments are likely to reflect Biden’s own left-of-center, but not revolutionary, views on the role of government as change agent.

- The memory of 2009-2010, when the cap-and-trade bill failed but helped precipitate major mid-term losses, is still fresh in the minds of Biden and Democratic Congressional leadership.

- Regardless of the outcome of the Senate run-off races in Georgia, Senate Democrats will lack a sufficient margin to pass sweeping and dramatic reforms of energy and environmental policy, particularly if the filibuster remains in place. Senator Joe Manchin (D-WV), for example, seems like to oppose major change and is on record in favor of keeping the filibuster in place in any event.

- ESG investors are already pushing corporate leaders to establish “net neutral” climate goals, taking some pressure off Congress.

Thus, we think you can count on some or all of the following:

- **Biden is not opposed to continued use of fossil fuels in any form.** His position on hydraulic fracturing on federal lands became increasingly clear as the campaign wore on, and his strong belief in the importance of removing energy leverage from Russia while fostering more favorable trade relations with China can create a path forward for export markets for U.S. natural gas. Also, the close relationship between the building-trades unions and the Biden campaign and transition team suggests that policies undermining energy and manufacturing growth will fail to gain traction, at least as long as the U.S. seeks a path of sustainable economic recovery. Even the incoming administration's support for carbon capture and sequestration, which will likely spur some exciting new projects on the path to net-zero emissions, can be seen as a desire to keep the fossil-fuel sector alive and well.

- **Biden the technological optimist.** Biden clearly supports the expansion of renewable energy sources, from the more familiar like solar and wind to the cutting-edge like hydrogen applications in manufacturing, power, gas and transportation. Look for that optimism to show up in support for legislative priorities like Clean Energy Standards; energy efficiency expansion; green tax provisions that extend or create new incentives for clean technologies; green infrastructure provisions; and appropriations to support research, development and deployment priorities. While past efforts fostered early-stage innovation, Biden's ARPA-C approach would center on actual commercialization.

- **Biden transportation policy seems broadly positioned.** It's tempting to focus solely on electric vehicle (EV) support thanks to the candidate's oft-repeated commitment for 500,000 new charging stations. We think an EV infrastructure-based commitment coupled with tax credits fits better within a Biden energy policy rubric than an outright mandate or ban on internal combustion engines, which would be more likely to trigger consumer acceptability issues. Yet Biden has spoken of enhanced energy efficiency for cars and trucks more broadly, and counts the inclusion of CAFÉ standards in the auto bailout as one of his early Obama administration victories. Beyond EVs, look for commitments to advanced liquid motor fuels, increasing octane to support efficiency objectives, and alternative technologies like hydrogen fuel cells.

- **A different offshore?** While the offshore oil and gas sector will continue to see choppy waters from market conditions and a skeptical administration, other opportunities may emerge. Offshore wind (OSW) developers can look forward to leaving much of today's disruptive federal permitting uncertainty behind, while doing their part to reduce the intermittency of the renewable resource base. The best-in-class Gulf Coast offshore energy industry may also find new opportunity in OSW, as well as more aggressive schedules for plugging and abandonment activities.

- **Going nuclear.** Past Democratic administrations have not been particularly kind to the nuclear sector. During the campaign, while noting the need for effective treatment and storage of waste, the Biden team also expressed support for advanced nuclear technology like small modular reactors. While part of the puzzle, we think the new administration will have to grapple with creating a favorable environment for the existing nuclear fleet for that 2035 intermediate power-sector decarbonization goal to stay within reach. Look for Biden to bring leadership into the Department of Energy with particular nuclear expertise.

In sum, a Biden energy policy will push the envelope of what can be done, channeling FDR's Great Depression-era New Deal and using the economic recovery and even the pandemic as rationales to "Build Back Better." Yet much of what Biden wants to achieve in the energy arena will require legislation and appropriations, testing his team's skills at legislative negotiation. For executive action, while climate change and environmental justice considerations may add challenges to some permitting, Biden's countervailing interests in economic recovery, union support and even foreign policy will likely produce a more balanced approach.

**PRG Consultant*

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ENVIRONMENT

By ***Scott Segal****,* ***Jeff Holmstead****,* ***Eric Washburn*****,* ***Christine Wyman****, and* ***Anna Burhop***

Much like the Trump administration focused its early efforts on reversing Obama administration actions, President Biden will spend much of his first two years tackling issues that had been the subject of Trump-era "rollbacks." Biden has been vocal about his intention to undo many Trump administration actions, particularly regarding climate change and reversals of Obama administration environmental rules. While certain initiatives depend on a cooperative Congress, we expect the Biden administration to hit the ground running on the Paris Climate Agreement, climate change, environmental justice enforcement and permitting.

Biden has signaled his intention to re-join the Paris Climate Agreement, which can be done by executive order since the United States' withdrawal was not done by Congress and was only final as of November 4, 2020. Given that U.S. emission levels are likely on track to meet the current Paris trajectory, Biden has called for stronger commitments, not just from the U.S. but from all parties. Rejoining he can do quickly; renegotiation would take time.

Voters say they want climate action, but don't expect Biden to begin pushing for a carbon tax, even though he has supported the idea in the past. The economic recession makes taxes difficult to swallow and the left has noted that taxes don't require emissions reductions or address environmental injustice. Even the House Democrats' $760 billion transportation and climate bill relied on mandates rather than taxes to create an indirect tax on carbon. That's why we expect a regulatory structure like a Clean Energy Standard and an innovation agenda to remain front and center.

Environmental justice (EJ) is a growing focus for the President and Congress. Biden will make it a priority across all federal agencies to promote environmental justice initiatives that could condition permits, target enforcement and become a basis for setting standards. Congress will continue its parallel EJ initiatives and oversight of companies' impacts on frontline communities. More broadly, expect Biden to empower his EPA and DOJ to pursue enforcement actions, both traditional environmental criminal enforcement as well as plaintiff-driven climate litigation – and expect him to call for backup via Congressional oversight.

On the regulatory front, there are hundreds of possibilities – including revoking Trump executive orders, guidance documents or regulations that are not quite complete or still being challenged in court. Look for Biden to repeal the series of executive orders and other initiatives designed to reduce regulatory burden, most recently including proposals to clarify provisions of the Clean Water Act that complicate infrastructure development, including the Waters of the U.S. Rule and Section 401 of the Clean Water Act, as well as changes to the implementing regulations for NEPA analyses.

Also on the chopping block: the 2017 “two for one” regulatory order, and the 2017 E.O. maligning the Clean Power Plan (CPP). Biden has said he would restore the CPP (or the rationale for the mercury rule), but these have legal obstacles in their way and have largely been overtaken by events. Expect the usual moratorium on late-breaking Trump administration regulations. Additionally, with Kamala Harris as vice president, expect the Biden EPA to reinstate the California waiver and pursue significantly more aggressive fuel economy standards for cars and trucks.

The Biden administration will have more specific opportunities to achieve aggressive clean air targets via the air quality standards – called NAAQS - review process and the rejiggering of the social cost of carbon (SCC). It would take two Presidential terms, but Biden could lower the NAAQS for ozone and $PM_{2.5}$ and then adopt a more stringent cross-state air pollution rule, making it harder for coal- and natural gas-fired power plants to operate. Changing the SCC methodology would not go unnoticed, but by increasing the current value, rulemaking to reduce greenhouse gas emissions becomes easier to justify, and permitting obligations become more difficult to meet.

Overall, the focus of the Biden administration will largely be on taking a more aggressive approach on environmental and climate issues, and increasing enforcement against industry, particularly in the environmental justice space. If this includes empowering his DOJ to support climate change lawsuits, Biden could grant these plaintiff-driven cases more credence. While these suits have had little success thus far, strong federal support for plaintiffs’ actions could improve their chances because many judges pay close attention to DOJ’s views. As many observers have noted, the current Supreme Court and the change in balance of lower federal courts is likely to be a check on the most ambitious climate change lawsuits, but the high court can hear only a limited number of cases that those that make it to the Court may find limited success. With White House encouragement, we are likely to see more states and cities filing climate change and similar lawsuits. Companies in the energy and manufacturing space will be well-advised to analyze their exposure to potential EJ claims, potential climate-related actions from all fronts, and potential oversight and investigations.

**PRG Consultant*

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TAX

*By **Tim Urban** and **Liam Donovan***

With polls having long shown their party poised to take full control of Washington, Democratic tax-writers had been limbering up to significantly revise the Internal Revenue Code in 2021. But now the question of who controls the Senate, and by what margin, is much less clear. Should Democrats manage to claw their way to wins in Georgia and a bare majority in the upper chamber, they’ll need absolute consensus within their caucus to muster the votes for any partisan tax vehicle. Alternatively, if the conventional wisdom that the GOP will win at least one if not both Senate races comes true, the Biden administration could very well find themselves facing at least two years of divided government. The tax policy ramifications are significant.

While the Biden campaign has never been overly specific with its tax policy prescriptions, its themes are crystal clear. Restoring progressivity to the tax code; shutting down the games that sophisticated US multinationals play to avoid taxation; using tax policy to achieve energy and environmental policy objectives; employing both carrots and sticks to encourage domestic manufacturing; and raising revenue through the tax code to offset new progressive spending priorities. Specific elements culled from campaign documents include increasing the corporate rate, raising taxes on highly compensated individuals, and adding a new 15 percent minimum tax on book profits for corporations making over $100 million. Importantly, Biden has also pledged not to raise taxes on those making less than $400,000 per year, limiting Democrats' range of motion on the individual side of the code.

Republicans, on the other hand, are looking to extend or make permanent a handful of important TCJA provisions that otherwise will expire during the Biden Presidency. Also, they have an ever growing stockpile of corrections to the 2017 bill, and pro-business tax break proposals to address the economic effects of COVID. So, it seems to us that there may be the raw material at hand for some bipartisan deal making, especially now that President Trump's confrontational approach to Congress will be replaced by an Administration headed by a very experienced back-room negotiator.

Early in 2021, we will see the transmittal to Congress of the President's tax legislative blueprint as part of the budget process. That seminal document, along with the inevitable back and forth that will occur when the Secretary testifies on the Hill before the tax writing committees, and along with a veritable tsunami of reintroduced tax bills by Members and Senators, will frame up the guardrails of what may be doable in this Congress.
If the GOP continues to control the Senate, there will inevitably be a push from progressive activists and House Members for Biden to do as much as he can via the tools at his disposal that do not require congressional approval, such as executive orders and administration rulemakings. However, with regard to tax, it will be difficult for the Treasury and IRS to do much more than work around the edges of tax policy without new legislation. Look for the new administration to revisit any of the TCJA rulemakings that aren't yet final, but don't expect any dramatic changes in direction without prolonged rulemaking.

Pending the outcome of the Georgia run-off elections, our guess is that the 21 percent corporate rate appears safe for the time being, along with some other permanent TCJA provisions targeted by progressives. While there will very likely be a renewed assault on oil and gas specific provisions in the Code, Members and Senators from oil and gas areas may be able to preserve some if not all of them. Areas we see as potentially open to bi-partisan deal making include COVID-related economic recovery incentives, extension of expiring tax provisions; infrastructure rebuilding tax policy; energy and environmental tax incentives; and retirement savings. If government is indeed divided in 2021, look for a sharp focus on potential swing vote Senators like Joe Manchin (D-WV), Kyrsten Sinema (D-AZ), and in-cycle Senator-elect Mark Kelly (D-AZ).

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INTERNATIONAL TRADE

*By **Josh Zive** and **Paul Nathanson***

The Trump administration's approach to international trade was one of the most significant shifts away from the policies of previous administrations. Trump's "America first" policy resulted in a reliance on the use of tariffs and therefore trade tensions with just about every U.S. trading partner to protect certain favored industries and political constituencies, such as steel producers. It is important to remember that although Biden campaigned as a complete rejection of President Trump, his views on trade policy have always been shaped by populist and nationalist principles, which were embraced by the Trump administration. Additionally, Biden has positioned himself as a stronger candidate against China than President Trump.

During the campaign, Biden was very cautious in the way that he spoke about trade policy. He criticized Trump's trade policy as ineffective, but did not make any commitments to undoing the wide range of tariffs enacted by the Trump administration. Biden has hinted that his approach to trade will focus on continuing to confront China, but shift away from the unilateralism of the Trump administration and return to a more multilateral approach as a way to confront the Chinese government's trade policies.

The most detailed explanation that the Biden Campaign provided on his views of tariff policy can be found in his lengthy response to questions submitted by the United Steelworkers Union (USW) in May 2020. As Biden explains to the USW:

"Trade is tough competition for jobs and markets. The President needs to stand with American workers and communities, not with wealthy corporations or the foreign governments that are subsidizing and protecting their businesses. That's the problem with Trump. When push comes to shove, Trump sides with corporate interests against workers, their unions, and their communities. And he rewards corporations and their executives for abandoning American workers and moving jobs overseas -- rather than holding them accountable to create, maintain, and bring back jobs to the U.S."

Biden's campaign conveyed some nationalist and populist similarities with Trump; however there will likely be a different approach on a range of policies. As stated, Biden will seek to repair and restore relations with our allies, particularly our EU, NATO and USMCA allies. The trade fights generated by the Trump administration with these allies, including the Section 232 steel and aluminum tariffs and the Boeing-Airbus dispute with the EU, has created numerous problems for U.S. manufacturers because of retaliatory tariffs and disruptions in U.S. supply chains. Disruptions of these supply chains caused by tariffs rattled the U.S. business community and were among the most unpopular trade actions by the Trump administration.

While trade policy in a Biden presidency will look more like pre-Trump U.S. trade policy, it is unlikely to result immediately in new bilateral or multilateral trade agreements, as the Biden trade team will spend a significant amount of time "putting out fires" inherited by the breakdown in trade relations under the previous administration.

As stated, the first tariffs that are likely to be terminated are the Section 232 tariffs on steel and aluminum on certain countries. Look for Biden to lift tariffs on allies from the EU and NATO, Canada and Mexico, Japan, South Korea, Australia and New Zealand. Biden could explain the lifting of these tariffs by stressing the need to bring these countries into a global alliance to confront China on a variety of its trade policies, including its overcapacity in steel production.

In summary, trade policy politics have never cut cleanly along partisan lines, and current public skepticism about past free trade agreements, fostered by candidates from both political parties, means that new comprehensive trade agreements requiring Congressional action are unlikely for the foreseeable future, no matter which party ends up controlling the Senate. Like past administrations, a Biden administration will likely use Congressional inaction on trade and the statutory tools at its disposal to try to negotiate smaller trade agreements, while also using more subtle approaches to place barriers on imports to protect domestic industries, including strengthening "Buy American" provisions in government contracts and tilting anti-dumping and countervailing duty laws even further in favor of U.S. petitioners.

While Biden has largely refrained from issuing any detailed proposals on trade policy, over the next four years we can expect to see an emphasis on U.S. domestic growth and a commitment to working with allied nations to confront China.

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CONSUMER PRODUCT SAFETY

*By **Paul Nathanson**, **Ed Krenik** and **John Lee***

Former Vice President Joe Biden's win on Election Day will result in a change in the composition of the U.S. Consumer Product Safety Commission (CPSC). But, a change to majority Democrats for the five-person Commission is complicated, with several unique twists that could result in a majority Republican Commission for the duration of Biden's first term.

President Trump nominated Nancy Beck for the Commissioner and Chairman slot in March 2020, but her nomination has stalled in the Senate. Senator Shelley Moore Capito (R-WV) announced her opposition to Beck due to concerns over Beck's handling of Perfluorooctanoic acid (PFAS) issues while at the Environmental Protection Agency and Office of Management and Budget. Senator Capito is a member of the Senate Commerce Committee, and her opposition brings the Committee vote at best to a tie, which means the nomination cannot advance to the full Senate.

As a Republican majority on the Commission can be guaranteed until 2024 with Beck's confirmation (barring any resignations), one would assume Senate Republican leadership would prioritize moving Beck's nomination during the Lame Duck session. It remains to be seen whether Senator Capito will allow Beck's nomination to advance to the Senate floor. Even on the Senate floor, Capito would still have the opportunity to vote against Beck. Senator Susan Collins (R-ME) also announced her opposition to Beck's nomination. Beck is not expected to win any Democratic support and, with two already announced Republican defectors, she could not lose more than one more Republican vote with the Republicans only having a 51-48 advantage. (Vice President Pence could break a 50-50 tie.)

If Beck is confirmed, she would serve as CPSC chairman until January 20, 2021 when Biden takes the oath of office. At that point, the Commission will vote on a new acting chair before the president appoints a new chairman.

If Republicans are unsuccessful in confirming Beck, Biden would then nominate his own chair to a seven-year term and switch the power balance to 3-2 in favor of Democrats. Acting Chair Adler has already said that he has no desire for another full term, which means a new nominee and confirmation process. CPSC watchers should also keep their eyes on October 2021 when Biden nominates a replacement for Democratic Commissioner Elliot Kaye, whose term has expired and who must depart the Commission by then. A 3-2 Democratic-controlled Commission would likely increase enforcement efforts and attempt to pass more mandatory safety standards.

If you followed all of that math and stayed with us, we want to leave you with one final note on the Congressional front: We expect the House to have a maintained interest in CPSC issues and possibly attempt to revamp the Consumer Product Safety Improvement Act which was last updated in 2008. Changes could include modifications to the voluntary standard process, elimination of 6(b) confidentiality protections for industry and weakening the current deference to voluntary safety standards in favor of mandatory standards. However, the likelihood of these changes moving with Senate Republican approval are very slim.

If the Republicans do secure a 3-2 majority on the Commission, look instead for an increased oversight focus on Commission action/inaction led by the House Energy & Commerce Consumer Protection Subcommittee Democrats.

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APPROPRIATIONS AND BUDGET

*By **Ed Krenik** and **John Lee***

With a government funding deadline looming on December 11, 2020, Congress will have its fair share of work to do upon its return after the national elections. The following is a review of the current Continuing Resolution (CR), how Congress might decide to fund the government moving forward and potential leadership changes in the 117th Congress for the Appropriations Committee.

Congress successfully diverted a shutdown this past September, passing a CR keeping spending consistent with Fiscal Year 2020 levels until December 11.Whereas most Departments and outside groups are no fans of a CR (think delayed cancer research grants at the National Institutes of Health), this was an inevitable conclusion to an attempted regular order process that resulted in zero of the Senate Appropriations Subcommittees marking up their bills, let alone passing them on the Senate floor. This is despite the House and Senate having previously negotiated top-line spending numbers.

The House, meanwhile, plowed their way through ten of twelve spending bills. So what does this mean for the December 11deadline? Below you will find what we anticipate to be the most likely scenarios:

Scenario 1: House Democrats along with the assistance of the Biden transition team decide that it is better to wipe the slate clean before the start of the Biden administration. As of November 10th, the Senate released all twelve of their appropriations bills as the starting point for negotiations on a comprehensive package. Assuming these discussions go well, the four corners come to an omnibus agreement with spending levels close to Fiscal Year 2021. The President, not wanting to tarnish his image on the way out, signs the bill.

Scenario 2: Everything in Scenario 1, except we have an outgoing President Trump uninterested in doing any more business with Washington. This would mean a government shutdown from December 11 until the early days of the Biden administration.

Scenario 3: The government funding debate gets wrapped up with discussions involving a COVID-19 response package and/or passage of the National Defense Authorization Act. A COVID-19 package relies on appropriations attention due to the need for emergency spending across the government, so if momentum picks back up for a response look for these efforts to be combined. A government shutdown is thereby averted, whether through an omnibus or CR.

Scenario 4: Senate Minority Leader Chuck Schumer decides he likes his chances in Georgia and decides to only support a CR extension strategy until February or March. Not only is it unlikely that the Democrats gain both seats in Georgia on January 5, it would be a Congressional appropriator's nightmare to have a Fiscal Year 2021 package outstanding while needing to begin a 2022 regular order process. As such, we see the above scenarios as more likely.

In addition to outstanding Fiscal Year 2021 work, immediately after the election, attention will turn to the race for the Democratic Chair of the House Appropriations Committee, following the retirement of current Chairman Nita Lowey (D-NY).

Three committee members – all women – have declared their candidacy to succeed Chairman Lowey thus far. Marcy Kaptur (D-OH) holds seniority, and is current Chair of the Energy and Water Subcommittee. Following behind her is Rosa DeLauro (D-CT), long-time Democratic lead of the Labor, Health and Human Services Subcommittee. Congresswoman DeLauro enjoys the support of many of the health and education groups in Washington.

Last but not least, and perhaps the dark horse in the race, is Congresswoman Debbie Wasserman Schultz (D-FL). The Congresswoman does not come close to the seniority of the other two candidates, but secured the support of many top Congressional Black Caucus members due to her commitment to incorporate social justice reforms as part of the appropriation process. No matter who wins, with the retirement of Defense Subcommittee Chairman Pete Visclosky (D-IN) and Commerce, Justice, Science Chairman **José** Serrano (D-NY), expect numerous shifts in subcommittee chairs as well.

By way of timing, the House Democratic Caucus plans to hold leadership elections on November 18th and 19th, followed by the Democratic Steering and Policy Committee meetings the week of November 30th to finalize committee chairs.

In terms of the Senate, Senator Pat Leahy (D-VT) takes the helm, setting up Vermont for a big boon as Senator Bernie Sanders (I-VT) will likely chair the Budget Committee. All previous ranking members are expected to fill their respective chair slots.

One last item that we are watching closely: The retirement of Lamar Alexander (R-TN) at Energy and Water will mean a new Republican lead for the subcommittee. We expect either Senator Murkowski (R-AK) to move over from Interior and Environment, or Lindsey Graham (R-SC) from State and Foreign Operations.

The Senate has not announced meeting dates for final leadership determinations.

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