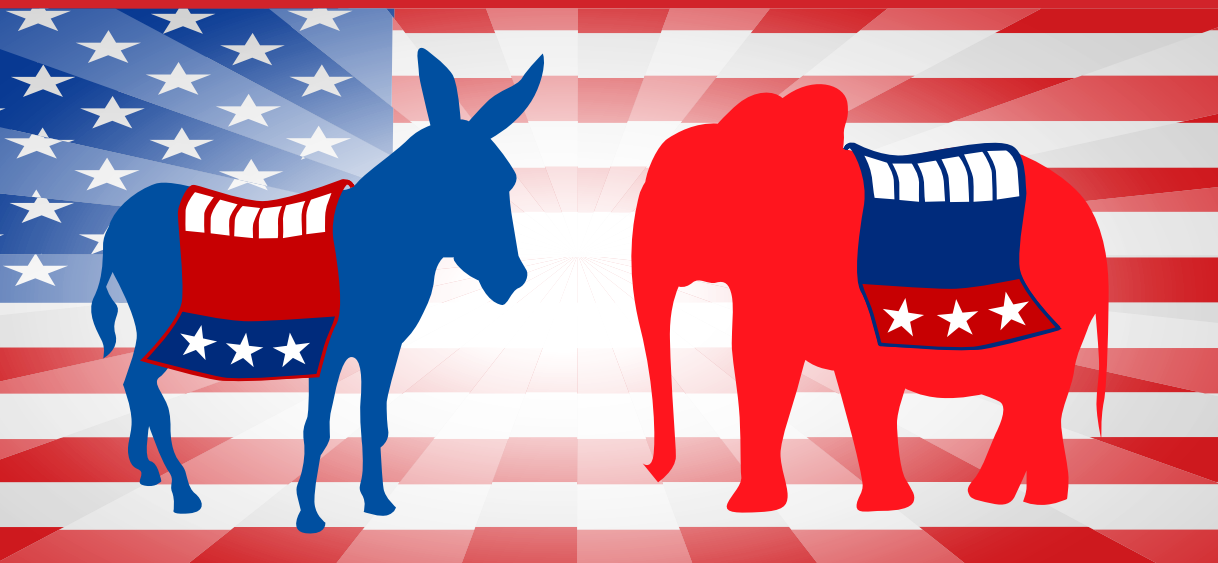


POLITICAL REPORT 2016



ANALYSIS PRE-ELECTION EDITION
SEPTEMBER 2016

HOT TOPICS
OF THE
ELECTION
SEASON
RELATING TO...

- AMERICAN INDIAN
LAW AND POLICY
- ANTITRUST AND
COMPETITION
- COMMUNICATIONS
AND INFORMATION
TECHNOLOGY
- CYBERSECURITY AND
ENCRYPTION
- ENERGY AND
ENVIRONMENT
- HEALTH CARE
- INTERNATIONAL
TRADE
- TAX
- TRANSPORTATION AND
INFRASTRUCTURE

Akin Gump

STRAUSS HAUER & FELD LLP

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AMERICAN INDIAN LAW AND POLICY

An aerial photograph of a river winding through a deep, narrow canyon. The canyon walls are composed of layered, reddish-brown sandstone, showing signs of erosion and weathering. The river is a vibrant blue-green color, contrasting sharply with the arid, rocky landscape. The sky above is a pale, hazy blue with soft, wispy clouds. The overall scene conveys a sense of natural grandeur and historical significance.

American Indian Law and Policy

SUMMARY POINTS

- In an effort to reach out to as many communities as possible, former Secretary Clinton's campaign has put together a Native American policy workgroup that has advised her campaign on issues of importance to Native American individuals and tribal governments. In addition, Secretary Clinton developed a platform describing her position on several issues of relevance to Native Americans and tribal governments.
- Mr. Trump's campaign has not shared or disclosed any proposed Native American policies.
- Given Secretary Clinton's level of interest in Native American issues, a Clinton presidency is expected to fill administration positions that are directly related to Native American issues in short order. These would include the positions of Assistant Secretary for Indian Affairs and Solicitor at the Department of the Interior, and tribal liaison positions at various other federal agencies. A Trump presidency is expected to take longer to fill such positions.
- The leadership of the relevant committees of jurisdiction in the Senate and House of Representatives is expected to change, with both the Republican and Democratic leaders of the Senate Committee on Indian Affairs changing and the Republican leadership of the House Natural Resources Committee Subcommittee on Indian, Insular and Alaska Native Affairs changing. This will likely result in significant turnover in staff for the entire Senate Committee on Indian Affairs, but probably not much change in staff for the House Subcommittee.

Republican Candidate Donald Trump and the Republican Platform

Mr. Trump's campaign has yet to propose specific Native American policies, and it is impossible to determine what policies a Trump administration would ultimately adopt. However, the National Republican Party Platform does recognize the failure of the federal government to sufficiently honor trust responsibilities to Native American tribal governments, the social and economic hardships experienced by Native Americans, and the resolve to remedy those situations through the encouragement of economic self-sufficiency.

The Republican Platform to encourage economic development in Indian country focuses on the development of tribal resources by tribal governments, absent restrictive federal regulations, and says that tribes should have more opportunities to be consulted before any new regulatory policy is implemented on tribal lands. Finally, Republicans aspire to provide greater

protections for tribal cultures and languages, which are considered to be “national treasures.”

Democratic Candidate Hillary Clinton and the Democratic Platform

Secretary Clinton’s campaign has a website that provides a statement of her positions on several issues of importance to Native Americans, including her previous work in Indian country. In general, she will focus on consulting; protecting tribal assets and resources; resolving long-standing disputes with the federal government; strengthening public safety and justice in Indian country; combating drug and alcohol addiction; increasing opportunities for youth; ensuring high-quality education for youth; ensuring that tribal communities have improved health care; and fighting for Native American veterans.

In addition to the Clinton campaign, the National Democratic Party Platform includes a section on how the Democratic Party will fight for Native American issues. This Platform includes pledges to uphold, honor and strengthen the trust responsibility to tribal governments; enact laws and policies that will expand tribal jurisdiction in Indian country; streamline the land-to-trust process; and fully fund the Indian Housing Block Grant Program, the Bureau of Indian Education and the Indian Health Service. Additionally, the

Democrats have pledged to enact legislation to negate the effects of intergenerational trauma, protect tribes’ cultural resources, enforce the Indian Child Welfare Act as it was originally intended, strengthen Indian voting rights and protect tribal resources from climate change.

Outlook for Remainder of 2016 and 2017

- While not much activity is expected to occur in Congress prior to the November elections, Congress is expected to take up several issues of importance to Native Americans and tribal governments in the lame-duck session that occurs after the November election with adjournment sometime in December.
- Most of the tribal programs are funded through the Department of the Interior Environment and Related Agencies Appropriations bill, which also includes funding for the Indian Health Service. Congress is expected to fund these programs for fiscal year 2017 by an omnibus appropriations bill. Funding for tribal programs is not expected to be cut, but any increases in funding are also expected to be nominal.
- While the House passed the Tribal Labor Sovereignty Act this year, the Senate has yet to act. Republican Senate Leader

Mitch McConnell has expressed a willingness to include this bill on a larger must-pass piece of legislation. However, the vast majority of Senate Democrats oppose such action. Enactment of this bill will largely depend on the number of Senate Democrats who will support it.

- Efforts to reauthorize the Native American Housing and Self-Determination Act have continued since the law expired in September 2013. Congress has continued to fund these programs, but the level of funding has failed to increase due, in part, to the fact that the law has expired. The biggest problem facing reauthorization is Republican opposition to reauthorizing the Native Hawaiian housing programs.





- Efforts will continue to get a five percent set-aside for tribes in the annual Crime Victims Fund. The Senate included this provision in its Commerce-Justice-Science appropriations bill, but Indian country needs to get the provision in the omnibus appropriations bill. If successful, approximately \$145 million will be available to tribal governments in fiscal year 2017; this would be an increase in funding of about \$142 million.
- A federal district court recently ruled that the Department of the Interior cannot take lands into trust for the Mashpee Wampanoag Tribe because it was not under federal jurisdiction as of 1934, citing the ruling of the U.S. Supreme Court in *Carcieri*. The decision has Congress renewing efforts to find some compromise to address the Supreme Court ruling.
- Congress will try to find a compromise to help tribal governments deal with the Affordable Care Act's Large Employer Mandate, which requires tribes to offer all employees a minimum level of health care coverage or pay a penalty. The mandate fails to account for those employees who are covered by the Indian Health Service.
- Republican leadership of the House Natural Resources Committee will continue to push a bill that will reform the federal recognition process by providing Congress with the sole authority to grant federal recognition to tribal entities.
- Any of these issues that do not get enacted by the end of 2016 will likely be reintroduced in the first quarter of the next Congress, which begins in January 2017.
- The Democratic (Jon Tester, D-MT) and Republican (John Barrasso, R-WY) leadership of the Senate Committee on Indian Affairs is expected to change in 2017. Likely replacements on the Republican side are Lisa Murkowski (R-AK), John Hoeven (R-ND) and Steve Daines (R-MT). Tom Udall (D-NM) is likely to become the Democratic ranking member.
- Republicans are expected to maintain the majority in the House, and minimal changes are expected to occur on the House Natural Resources Committee. However, the Ranking Republican on the House Subcommittee on Indian, Insular and Alaska Native Affairs Don Young (R-AK) will likely have to relinquish his ranking position. Likely replacements are Paul Gosar (R-AZ) and Doug LaMalfa (R-CA).

ANTITRUST AND COMPETITION



Antitrust and Competition



SUMMARY POINTS

- Since antitrust enforcement actions and merger challenges tend to depend heavily on specific facts, contrasting current antitrust enforcement with the approach that will be taken after the election is difficult. Still, there has been much rhetoric in the campaign about concentration and the system being “rigged,” the latter from candidates in both parties, as well as populist voter anger that could influence future enforcement actions.
- The Democratic Platform and Secretary Clinton’s proposals call for more aggressive antitrust enforcement if she is elected, including a focus on preventing increased concentration and understanding its relationship to stagnating personal incomes.
- Mr. Trump has not articulated a general approach; antitrust enforcement could change in either direction if he is elected. On the one hand, Republicans are sometimes viewed as less interventionist antitrust enforcers with respect to civil antitrust matters. On the other hand, Mr. Trump has brought up the possibility of antitrust actions in his criticism of Jeffrey Bezos, who controls Amazon and owns *The Washington Post*. Additionally, through his businesses, Mr. Trump has been involved in antitrust matters as a plaintiff and defendant and was once fined \$750,000 in a settlement with the Federal Trade Commission (FTC) for a failure to comply with a merger filing requirement.
- Depending on the election results in November, a Democratic-controlled Senate will generally be more active in congressional reviews of corporate mergers and acquisitions, including public hearings.

Background

The issues that antitrust enforcement touches—from mergers to anticompetitive conduct—may resonate with populist voter anger. But that does not necessarily mean that there will be a major increase in antitrust enforcement, given that the ability to increase antitrust enforcement could be tempered by the courts, and given that antitrust enforcers have been relatively aggressive under President Obama. For instance, the Obama Department of Justice (DOJ) reports that a total of 40 mergers have been blocked by court order or wholly abandoned by the merging companies in the face of their investigation, as compared to only 16 in the prior administration. The FTC has been similarly active and prevailed in the U.S. Supreme Court in 2013 on its challenge to “pay-for-delay” agreements as part of its push for quicker generic drug entry into pharmaceutical markets.

Traditionally, antitrust enforcement under Republicans and Democrats has seen relative consistency in the policing of criminal cartel behavior, both domestically and internationally. That said, differences have sometimes come into play with respect to merger enforcement and policing of civil nonmerger, anticompetitive conduct, including monopolization.

A more aggressive approach to enforcement can nevertheless make a

difference, particularly as to mergers, since parties often choose not to incur the expense, risk and delay of pursuing a matter to resolution in court when a challenge by the government is anticipated or filed. This can lead to abandoned deals or consent decrees even where there is a good prospect of an agency loss. That alone can change the profile of what many companies consider and do.

Certain American and foreign parties who feel aggrieved by the conduct of powerful U.S. companies, particularly in the tech area, have found the European Union to be more supportive of claims of monopoly and anticompetitive conduct, and there is always a possibility that the United States might become more accommodating to such claims.

On the other hand, should Mr. Trump elect to take a significantly less active enforcement approach to the antitrust laws, neither state antitrust enforcers nor private parties seeking to enforce antitrust law are likely to fill all of the resulting gap. As a result, some transactions and conduct might be allowed to proceed that would otherwise have been challenged.

Democratic Candidate Hillary Clinton

- will take steps to (1) stop concentration in any industry where it is unfairly limiting competition, and (2) prevent

concentration in the first place by beefing up the enforcement agencies and directing more resources to hire aggressive regulators to conduct in-depth industry research to better understand the link between market consolidation and stagnating incomes

- will empower the agencies to vigorously investigate mergers and to oppose “pay-for-delay” agreements that keep prescription drugs artificially high and diminish patient choice
- will protect free competition through net neutrality and encourage pre-emption of state laws that unfairly protect incumbents against innovators (e.g., certain state regulations pertaining to automobile dealerships and utility-pole access)
- supports President Obama’s Executive Order directing agencies to identify actions that they can take to identify anticompetitive activity and refer practices that may violate the federal antitrust laws to the DOJ and FTC.

If strong antitrust enforcement steps are not taken, expect certain Democratic senators, like Elizabeth Warren, who has urged more aggressive antitrust enforcement (as has the Democratic Platform), to step up calls for action.

Republican Candidate Donald Trump

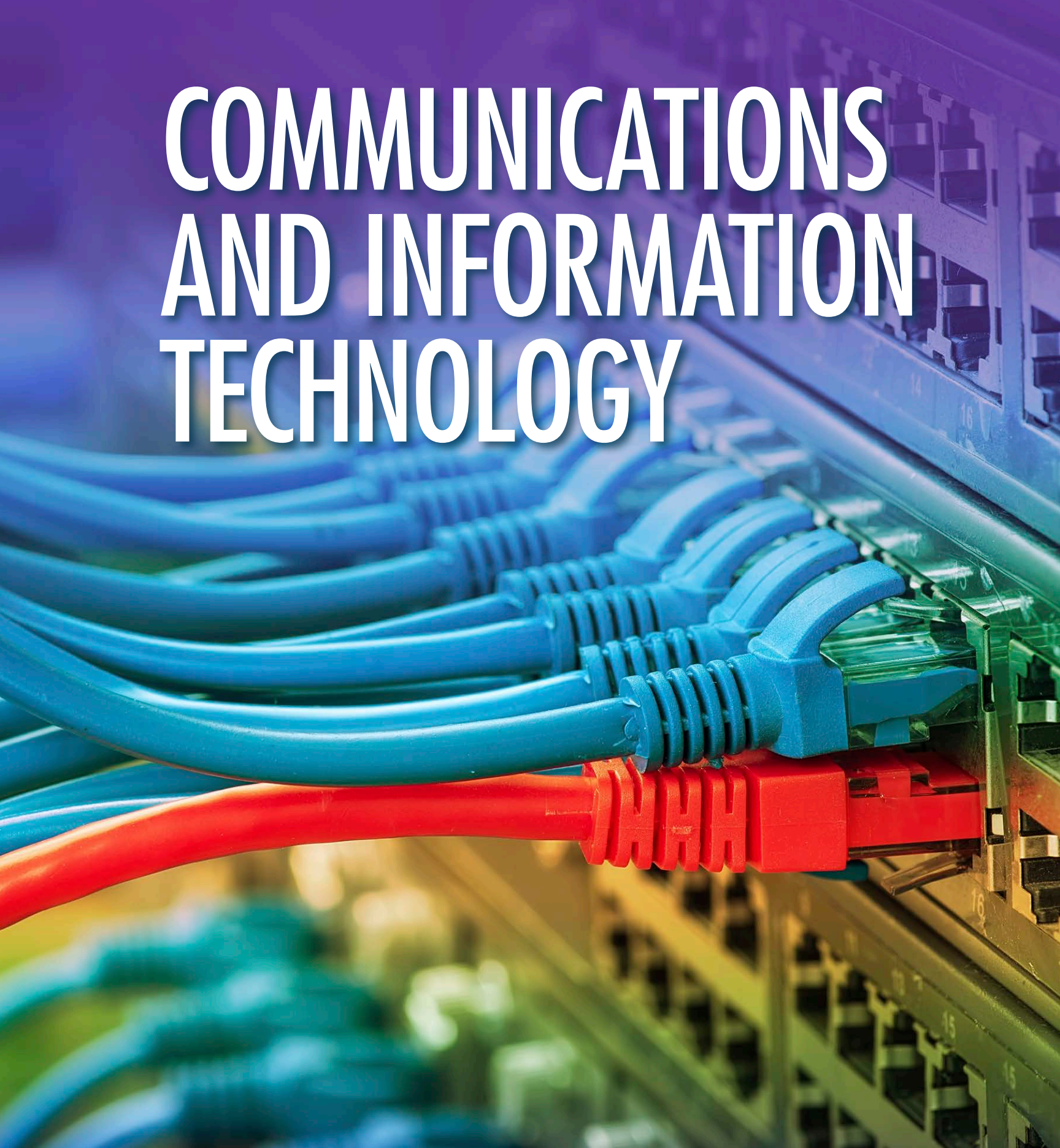
- has discussed the economy as being rigged, but has not made clear how and whether that view might affect antitrust enforcement
- has said that large online retailer Amazon has “a huge antitrust problem” and that Jeffrey Bezos is using *The Washington Post*, which he owns, to influence politicians to help Amazon on tax and antitrust issues. Mr. Trump declared that Bezos “thinks I’ll go after him for antitrust . . . because he’s got a huge antitrust problem because . . . he’s controlling so much, Amazon is controlling so much of what they are doing.”
- may or may not align with the Republican Platform, which is largely silent on antitrust, except perhaps to the extent that it calls for less regulation (government should not be “a meddling monitor”) and more freedom for businesses.



Mr. Trump has had a variety of experiences in business with antitrust enforcement that might influence his views:

- In 1988, Mr. Trump agreed to pay a \$750,000 fine for failing to comply with the Hart-Scott-Rodino (HSR) Act, which requires premerger notification of certain transactions followed by a waiting period that allows the agency to do an antitrust analysis and to potentially challenge the transaction before it closes. In that case, Mr. Trump purchased an interest in two gaming companies in excess of an HSR threshold without providing the required notice and complying with the waiting period.
- From 1989-1993, Mr. Trump defended private litigation brought by an affiliate of a gaming competitor claiming monopolization of a portion of the Atlantic City casino gambling market and conspiracy to suppress competition. Mr. Trump prevailed at trial.
- Mr. Trump’s other major antitrust experience came against the NFL as a plaintiff. As an owner of the New Jersey Generals, in a case brought by the USFL, he and others charged the NFL with illegal monopolization. The jury found for the USFL, but awarded only \$1 in damages, trebled to \$3.

COMMUNICATIONS AND INFORMATION TECHNOLOGY



Communications and Information Technology

SUMMARY POINTS

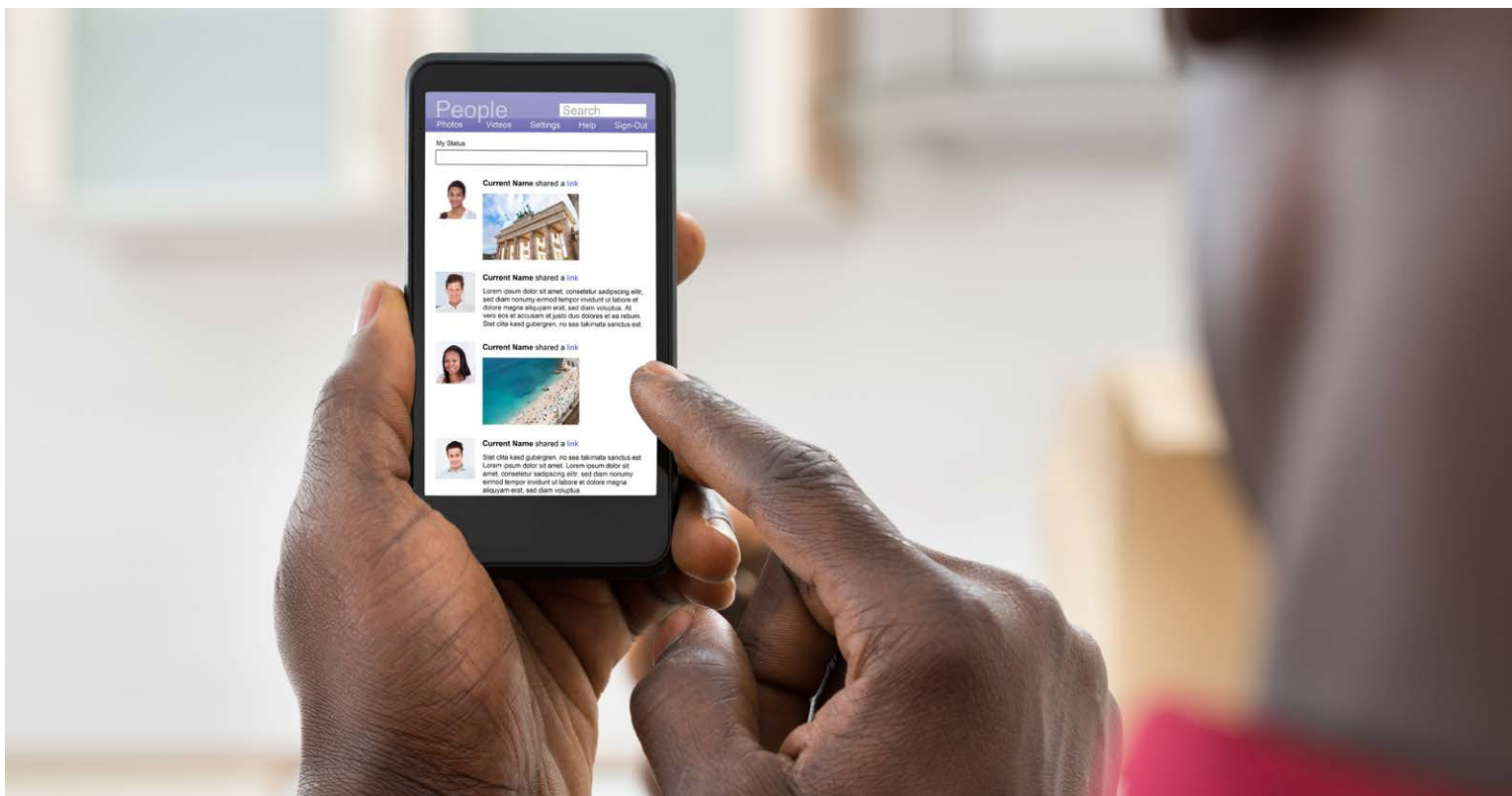
- The policy issues in the communications and technology sectors described below are those falling within the jurisdiction of the Federal Communications Commission (FCC), an independent agency, led by five commissioners, all of whom are appointed by the president and confirmed by the Senate. The winner of this year's presidential election will have the right to appoint a three-person majority to the FCC, with the remaining two members representing the other major party. The chairperson of the FCC controls the FCC's agenda, and the policy issues are typically a reflection of the views of his or her political party, as well as the chairperson's personal priorities. The president typically does not involve himself or herself directly in the FCC's policy initiatives, though there are exceptions, as we witnessed in the recent net neutrality debate in which President Obama modified the approach that Democratic Chairman Wheeler was proposing to take and President Obama's recent public support for FCC Chairman Wheeler's proposal on set-top box regulation. Regardless of the degree of a president's activism, his or her communications policy positions help shape the FCC's agenda and priorities.
- In June, Secretary Clinton published her initiatives on technology and innovation, which provide some guidance as to what we can expect in a Clinton-controlled FCC. A number of these initiatives are summarized on the following pages.

Mr. Trump has said very little about communications and technology policy other than on the topics of net neutrality and encryption. We understand that he may publicly announce his communications and technology agenda prior to the first presidential debate. Until then, we can make some predictions on his policy positions based on our understanding of those positions he has taken and more generally on a review of positions taken by the current Republican FCC commissioners and traditional Republican policy in certain areas.

The following is a review of key policy areas and the positions of the candidates where known:

Democratic Candidate Hillary Clinton

- **Consumer Privacy Protections:** Her tech agenda states that her "policy approach to privacy will affirm strong consumer protection values through effective regulatory enforcement in an adaptive manner, encouraging



high standards in industry without stifling innovation.” As a result, Secretary Clinton likely will continue existing efforts by the FCC to protect consumers’ privacy through regulation (e.g., by adopting broadband Internet privacy rules presently proposed by Chairman Wheeler).

- **Encryption and Cybersecurity:** Whether the FCC in a Clinton administration is involved likely will depend on the outcome of the commission’s findings. Secretary Clinton was a proponent of the USA Freedom Act, and she supports Sen. Mark Warner (D-VA) and Rep. Mike McCaul’s (R-TX)

idea for a national commission on digital security and encryption to work with technology and public safety communities to address law enforcement needs while protecting consumers’ privacy. She would encourage government agencies to consider innovative tools like bug bounty programs, modeled on the Defense Department’s recent “Hack the Pentagon” initiative, to encourage hackers to responsibly disclose vulnerabilities they discover to the government. And she will bolster the government’s ability to test its own defenses and fix vulnerabilities before hackers exploit them.

- **Streamline FCC Regulations:** Secretary Clinton is likely to rely on the FCC for development of rules and procedures that will further the following tech agenda:
 - craft rules to increase ownership of media/telecommunications outlets by minorities, women and young entrepreneurs (e.g., media ownership rules, auction bidding credits)
 - work with the Department of Agriculture’s Rural Utilities Service to develop rules and programs for development of broadband infrastructure



- expand E-Rate programs to connect more “anchor institutions” to high-speed Internet.
- **Deployment of 5G Technology and Services:** Secretary Clinton would (1) accelerate the process of identifying spectrum, including federal government allocations, for auction to the private sector; (2) consider spectrum policies that permit unlicensed, nonexclusive and shared uses; and (3) dedicate federal research funding to test-bedding, field trials and other public-private endeavors to speed the deployment of 5G services to support the Internet of Things, smart factories, driverless cars and other technologies that rely on spectrum for connectivity.
- **Net Neutrality:** In 2015, the FCC adopted net neutrality rules that recently were upheld by the D.C. Circuit. Rules were premised on reclassification of broadband Internet access services as telecommunications services and require (1) no blocking, (2) no throttling and (3) no paid prioritization (i.e., fast lanes). Further appeals of the net neutrality rules are pending. Secretary Clinton supports the rules adopted under Chairman Wheeler and pledges in her tech agenda to “defend these rules in court and continue to enforce them.” In addition, she would promote an Open Internet agenda abroad by opposing efforts to block or degrade Internet access or to shut down social media. She would also fight efforts to create an Internet run by governments.
- **Privatization of Government-Controlled Spectrum:** In connection with her plan to speed deployment of 5G services, Clinton commits in her tech agenda to “enhance the efficient use of spectrum by accelerating the process of identifying underutilized bands, including ones now used by the federal government.”

- **Minority and Young Entrepreneurs Access:** Secretary Clinton would work to increase access for minorities, women and young entrepreneurs to capital needed to participate in the tech economy. Her FCC would likely craft rules to increase ownership of media/telecommunications outlets by restructuring the media ownership rules and by providing auction bidding credits or developing other policies that promote opportunities.
- **Closing the Digital Divide:** Secretary Clinton has proposed ensuring that 100 percent of Americans have access to broadband by 2020. She plans to ensure that funding is available for this effort through the Connect America Fund, which is the primary source of funding for broadband infrastructure managed by the FCC, as well as through grants to develop “digital communities” where broadband is currently lacking. She will also “direct federal agencies to consider the full range of technologies as potential recipients—i.e., fiber, fixed wireless, and satellite—while focusing on areas that lack any fixed broadband networks currently.” Her plan would also direct more investments to “anchor institutions” — schools, libraries, transit systems and other public spaces.

Republican Candidate Donald Trump

- **Consumer Privacy Protections:** If Mr. Trump follows traditional Republican policy in this area, he might abandon the FCC’s current efforts to use its rulemaking processes to regulate broadband privacy, and instead rely on industry self-regulation to address consumer privacy. Primary responsibility for privacy issues would revert back to the FCC’s case-by-case enforcement paradigm (coupled with judicial review).
- **Encryption and Cybersecurity:** Given his heavy focus on national security, Mr. Trump may push the FCC to take action that would force equipment manufacturers to cooperate with national security efforts, either through individual enforcement actions or via rulemakings of general applicability.
- **Streamline FCC Regulations:** Because Mr. Trump is focused first and foremost on economic impacts, it is possible that the Trump FCC might initiate review of all FCC regulations in an effort to deregulate by eliminating unnecessary regulations and streamlining those remaining to minimize bureaucratic oversight and delays where appropriate. He might also require the FCC to justify each new rule or rule

change by the application of an objective cost/benefit analysis based on economic impacts, thereby providing reviewing courts with an easier means of determining the validity of such rules under the Administrative Procedures Act.

- **Deployment of 5G Technology and Services:** Given his pro-business viewpoint, a Trump-controlled FCC might seek to accelerate actions to adopt rules/policies to authorize 5G services in the United States in an effort to establish America’s leadership in this very important area (i.e., to “Make America Great Again”). Mr. Trump may call upon the FCC to explore additional spectrum bands to support 5G services, as well as to expand its efforts to incent U.S. companies to develop the technology and systems for the deployment of 5G services.





- **Net Neutrality:** Mr. Trump tweeted in 2014 that “Obama’s attack on the internet is another top down power grab. Net neutrality is the Fairness Doctrine. Will target conservative media”:
 - Mr. Trump’s apparent anti-net neutrality position (though not his rationale) is consistent with the Republican viewpoint that (1) net neutrality regulations are not needed and (2) broadband Internet services should not be regulated.
 - Mr. Trump’s ability to take action to change the regulations adopted under Chairman Wheeler’s regime likely will depend upon the outcome of the judicial appeal of the D.C. Circuit opinion upholding the rules.
- **Privatization of Government-Controlled Spectrum:** A Trump-led FCC might seek to accelerate the reallocation of as much government-controlled spectrum as possible to private commercial users and to attempt to reduce the deficit through auction revenue generated by the sale of such spectrum. To the extent that spectrum is used for national security purposes, Mr. Trump would be less likely to favor reallocation to private uses.

CYBERSECURITY AND ENCRYPTION



Cybersecurity and Encryption

SUMMARY POINTS

- Secretary Clinton is likely to expand on Obama administration efforts. She has offered a series of proposals to improve the security of government networks and collaborate with the private sector, and she also calls for regulatory enforcement that would encourage high privacy and security standards in the private sector, consistent with innovation.
- Secretary Clinton and Mr. Trump have addressed national security elements of cybersecurity. Mr. Trump has called the United States “so obsolete” in cyber and has called for the prioritization of improving Cyber Command’s offensive and defensive capabilities, criticized China’s hacking and called for a review of vulnerabilities in vital infrastructure and then for a plan to address them. He has also called for the execution of Edward Snowden. Secretary Clinton has called for making it clear to Russia, China and North Korea that their hacking activities, whether direct or outsourced, will cost them. In this effort, she seeks to enlist allies to promote strong rules and press and hold China accountable if it is not cooperative.
- In expressing a preference to “err on the side of security,” Mr. Trump arguably may favor security over privacy in more instances than Secretary Clinton. For example, when the FBI sought access to the encrypted information on the phone of the San Bernardino terrorists over Apple’s objection, Mr. Trump called for a boycott of Apple until it provided access. Secretary Clinton has supported legislation to create a national commission that brings the tech and public safety communities together to find solutions that balance privacy and public safety.
- Further legislative progress on cybersecurity may be possible in the next Congress, regardless of election results. Significant bipartisanship contributed to passage last December of the Cybersecurity Information Sharing Act of 2015.



Background

While not a leading campaign issue, cybersecurity touches on both national security and economic issues and may resonate with popular voter anger that is addressed to unfair treatment of the United States by foreign nations. It has also come up in connection with the election itself, with allegations of meddling by hackers with Russian government associations. Both candidates want to project strength on cybersecurity to other nations.

The business community has supported voluntary approaches to cybersecurity, such as development of best practices and progress through public-private partnerships, rather than regulation. The tech industry in particular, along

with privacy groups, has been active in the post-Snowden world in advocating for strong encryption that protects privacy and security, notwithstanding possible impacts on law enforcement. It fights efforts to undermine the security of its innovative products, including the creation of backdoors and sometimes selective unlocking, which it is concerned might harm consumers and put the companies at a competitive disadvantage, particularly in other countries.

Democratic Candidate Hillary Clinton

- Secretary Clinton's cybersecurity campaign proposals include steps that are intended to improve the security of government networks;

expand investment in cybersecurity technologies; empower a federal chief information security officer; and expand public-private collaboration and information-sharing to strengthen private sector cybersecurity, promote best practices, etc., in order to strengthen cybersecurity for both government networks and the private sector. Secretary Clinton is also likely to build on President Obama's U.S. Cybersecurity National Action Plan and ongoing work by the President's commission that is looking at the challenges ahead.

- Secretary Clinton supports advances in "big data" and the "Internet of Things" as promising transformative benefits, coupled

with an approach to privacy that affirms strong consumer protection values “through effective regulatory enforcement in an adaptive manner, encouraging high standards in industry without stifling innovation. She will carry through that approach globally to support data flows essential to the digital economy.”

- Secretary Clinton says it is a “false choice” between privacy and keeping Americans safe. She supported the USA Freedom Act and supports the Sen. Warner/Rep. McCaul bipartisan proposal for a national commission on digital security and encryption, which is intended to work with the technology and public safety communities to address law enforcement needs, protect the privacy and security of Americans who use technology, and assess effects on innovation and global competitiveness. She also supports a major initiative to help law enforcement break encrypted communications on their own. She does not support legally requiring backdoors or the provision of encryption keys to law enforcement.
- Secretary Clinton has spoken against Snowden’s leaks and has supported NSA reforms to a point, noting that “collecting information about what’s going around the world is essential to

our security.” She has called out China as a security threat, noting the investigation into Russia’s interference with our election, and said that cybersecurity is “one of the most important challenges the next president is going to face” in light of the offensive advances of Russia, China, Iran and North Korea, and she says that the United States must make it clear that direct or outsourced hacking will exact a price. The United States will work with allies on these and related issues. She also supports efforts, such as “Privacy Shield,” to align national data privacy laws and protect continued cross-border data flows.

- Secretary Clinton calls for hardening federal networks, including specific steps like prioritizing application of cybersecurity tools, such as multifactor authentication, encouraging consideration of “bug bounty” campaigns and fostering more elite teams, (e.g., cleared government expert “red teams”) to find and fix vulnerabilities.

Republican Candidate Donald Trump

- Mr. Trump has said that we are “so obsolete in cyber” now after having been involved at creation and are “toyed with by so many different countries...” He says that we do not know who is

doing what and their capabilities, whether it is China or Russia, and this needs to play a prominent role in our thinking. He said that we are neither as advanced as other countries nor moving forward as rapidly. He says that he will prioritize the development of offensive and defensive capabilities at Cyber Command, including to disrupt enemies, such as terrorists; as one of his first directives, ask the federal government and military to thoroughly review cyber defenses; and identify all vulnerabilities in all vital infrastructure and then ask for a plan to immediately protect those vulnerabilities.

- Last year, he said that we should “err on the side of security.” He assumes that people are listening to his phone conversations. He would be fine restoring provisions of the Patriot Act that allow for bulk collection. He urged a boycott of Apple until it provided the information sought by the FBI from the phone used by the San Bernardino shooter. He has also called for Bill Gates to work on “closing the Internet in some way.”
- Mr. Trump called for Russia to hack Secretary Clinton’s email servers and, in 2014, called on hackers to look at Obama’s college records for his place of birth. He has said that he was kidding about the former.

ENERGY AND ENVIRONMENT



Energy and Environment



Introduction

While energy and environmental issues have not been highlighted as frequently during the 2016 presidential campaign as in years past, the candidate's policy positions diverge sharply on key issues, including the extent to which there should be government regulation of developing energy and natural resources, and addressing climate change. Both candidates closely follow their parties' traditional policy positions.

Meanwhile, Congress continues to work on energy policy legislation that Congress could possibly complete before adjourning. Complicating the prospects for passage will be the truncated legislative session remaining and the scope of differences between the Senate- and House- passed bills. Congressional leaders in this effort have stated their intention to move forward as quickly and as far as possible. A brief legislative update follows on the forthcoming chart.

SUMMARY POINTS

- The Democratic and Republican candidates for president are generally aligned with the positions of their parties on energy and environmental issues.
- Secretary Clinton and Mr. Trump have divergent approaches to regulating pollutants and establishing national energy policies.
- Mr. Trump views climate change as a nonissue, has called for an "all-of-the-above" energy policy that eliminates subsidies for renewable energy and supports shifting environmental regulations from the Environmental Protection Agency (EPA) to the states.
- Secretary Clinton supports international agreements to address climate change and plans to commit the United States to carbon emission reductions, including calling for 500 million new solar panels by the end of her first term in office.

CANDIDATE POSITIONS SIDE BY SIDE

The candidates' energy and environmental positions—as reflected in their public statements, campaign websites and national party platforms—are summarized below.

Issue	Clinton	Trump
CLIMATE CHANGE	<ul style="list-style-type: none"> • An urgent threat and defining challenge of our time 	<ul style="list-style-type: none"> • “Not a big believer” in manmade climate change
Greenhouse Gas (GHG) Emissions	<ul style="list-style-type: none"> • Reduce GHG emissions by 80% below 2005 levels by 2050 • Price GHG emissions 	<ul style="list-style-type: none"> • Forbid EPA from regulating carbon dioxide as a pollutant • No carbon tax/price on GHGs
International Climate Accords	<ul style="list-style-type: none"> • Meet pledge to keep temperatures from rising 3.6°F degrees above preindustrial levels 	<ul style="list-style-type: none"> • Reject Paris Agreement and Kyoto Protocol • Halt U.S. funding of United Nations Framework Convention on Climate Change
FEDERAL ENVIRONMENTAL REGULATIONS	<ul style="list-style-type: none"> • Extend smart pollution and efficiency standards • Implement all of President Obama’s executive actions on climate • Privatize environmental and climate justice by eliminating lead poisoning within five years, cleaning up the more than 450,000 toxic brownfield sites, and creating an Environmental and Climate Justice Task Force • Reduce American oil consumption by one-third through cleaner fuels and more efficient cars, boilers, ships and trucks 	<ul style="list-style-type: none"> • Cut EPA • Environmental problems best solved by incentivizing human ingenuity and new technologies • Shift responsibility for environmental protections from the EPA to the states • Transform the EPA into a bipartisan commission (similar to the Nuclear Regulatory Commission) to avoid politicized science • Limit congressionally delegated rulemaking • End practice of “sue and settle,” whereby agencies settle lawsuits implementing future regulatory conditions or procedures without public input • Modernize National Environmental Policy Act (NEPA) and return National Ambient Air Quality Standards to “where Congress envisioned it”
Clean Power Plan	<ul style="list-style-type: none"> • A “significant step forward” to address climate change 	<ul style="list-style-type: none"> • Eliminate Clean Power Plan
Waters of the United States	<ul style="list-style-type: none"> • No public position 	<ul style="list-style-type: none"> • Eliminate EPA rulemaking interpreting the Clean Water Act

ENERGY & ENVIRONMENT CONTINUED FROM PAGE 21

CANDIDATE POSITIONS SIDE BY SIDE

Issue	Clinton	Trump
ENERGY	<ul style="list-style-type: none"> Federal government should use 100% clean electricity Launch \$60 billion Clean Energy Challenge to partner with states, cities and rural communities 	<ul style="list-style-type: none"> Calls for an “all-of-the-above” energy strategy American energy dominance will be declared a strategic economic and foreign policy goal
Energy Efficiency	<ul style="list-style-type: none"> Maintain efficiency standards, particularly for appliances and buildings Cut energy waste in American homes, schools, hospitals and offices by one-third and make American manufacturing the cleanest and most efficient in the world 	<ul style="list-style-type: none"> Has not publicly discussed energy efficiency
Renewable Energy	<ul style="list-style-type: none"> Install 500 million solar panels by the end of the first term (2020) Generate renewable energy sufficient to power every American home by 2027 	<ul style="list-style-type: none"> Supports renewable energy, but only with private capital and not to the exclusion of other forms of energy that are working much better
Renewable Fuels	<ul style="list-style-type: none"> Commit to getting the Renewable Fuels Standard (RFS) “back on track” 	<ul style="list-style-type: none"> EPA should increase the amount of ethanol blended into gasoline consistent with statutory levels set by the RFS
Nuclear Energy	<ul style="list-style-type: none"> Nuclear has an “important role to play” in U.S. energy production 	<ul style="list-style-type: none"> Implement the Nuclear Waste Policy Act Allow for responsible development of nuclear energy and research alternatives, including thorium
Energy Infrastructure	<ul style="list-style-type: none"> Modernize electric grid Opposes Keystone XL pipeline 	<ul style="list-style-type: none"> Request that TransCanada renew its permit applications for Keystone XL pipeline and approve it A portion of revenues from oil and gas transportation via pipeline should be redistributed to local, impacted communities

CANDIDATE POSITIONS SIDE BY SIDE

Issue	Clinton	Trump
PUBLIC LANDS	<ul style="list-style-type: none"> • Increase fees on extraction companies operating on public lands without abruptly halting activities • Prioritize conservation and stewardship of our shared natural heritage, including conservation of public lands and waters • Establish an American Parks Trust Fund to expand local, state and national recreational opportunities and rehabilitate existing parks • Double the size of America's "outdoor economy" 	<ul style="list-style-type: none"> • The federal government should convey public lands to the states • Strike down Bureau of Land Management's hydraulic fracturing rule • Allow state regulators to determine extraction within their borders, even on public land • Expedite permitting for mineral production on public lands • Rescind moratorium on new federal coal leases
OIL AND GAS EXTRACTION	<ul style="list-style-type: none"> • Ensure that federal actions do not significantly exacerbate global warming • Ensure that existing fossil fuel production is safe and responsible, and that sensitive areas are taken off the table • Give EPA the ability to regulate hydraulic fracturing, as well as states and localities • Reduce methane emissions from hydraulic fracturing by 40-45 percent below 2005 levels by 2025 • Oppose drilling in the Arctic and off the Atlantic coast • Reform fossil fuel extraction leasing and phase down extraction on public lands 	<ul style="list-style-type: none"> • Open public lands and the Outer Continental Shelf to oil and gas exploration • Favors hydraulic fracturing, but "understands" why states or municipalities want to ban the practice • Encourage the free trade and exportation of liquefied natural gas (LNG) • Increase oil production to counter manipulation by OPEC and other nationalized oil companies
ENDANGERED SPECIES ACT	<ul style="list-style-type: none"> • Oppose efforts to undermine the Endangered Species Act 	<ul style="list-style-type: none"> • Reform the Endangered Species Act • Endangered species will not be protected in one location if these species exist elsewhere

“While not hot-button issues in either campaign, this election could have enormous consequences for energy and environmental policy. There are two candidates whose visions and beliefs are almost diametrically opposed, and who would take the United States down very different paths on energy and environmental issues.”

Pending Energy Legislation

Both the House and the Senate have passed significant energy policy legislation. The House passed the North American Energy Security and Infrastructure Act (H.R. 8) in December 2015 with only nine Democrats voting in favor. The White House has issued a veto threat, objecting to a number of new restrictions on federal authority in the bill, including new provisions to broaden FERC authority to impose deadlines on other federal agencies and to curtail the Department of Energy’s ability to consider whether natural gas export projects are consistent with the public interest.

The Senate adopted the Energy Policy Modernization Act (S. 2012) in April 2016 with bipartisan support. The legislation would streamline federal licensing for liquefied natural gas exports and approval of pipeline projects, improve electric grid reliability and security, and strengthen energy efficiency standards for commercial and federal buildings.

The House and Senate both appointed conferees and will attempt to reconcile the differing bills in a joint House/Senate Conference Committee before Congress adjourns for the year. Conference Committee leaders expressed optimism that they will reach a compromise, but final action on the measure is not expected before a possible post-election lame-duck session of Congress.



HEALTH CARE

THIS IS NOT A BILL.
Your health care professional cannot bill you
for any amount that you owe.

Explanation of benefits

Reference # 865999999

Summary of a claim for service
for services provided by MD

782

Health Care



Introduction

Not surprisingly, while both presidential candidates have released health care plans ahead of the November election, their proposals differ significantly in several key areas, especially on the Affordable Care Act (ACA). Democratic candidate Secretary Clinton's proposals focus on expanding the ACA and reducing prescription drug prices, while Republican candidate Mr. Trump seeks to repeal the health law and replace it with "free-market" reforms. Both candidates would allow the importation of prescription drugs from overseas.

Even before the new president takes office, Congress could act on several outstanding health care priorities during a lame-duck session, although activity in this period is highly contingent on the results of the November elections.

Republican Candidate Donald Trump

Republican candidate Mr. Trump outlined his plan for “Healthcare Reform to Make America Great Again” on March 2, 2016. The plan centers on a call for Congress to immediately and completely repeal the ACA (aka “Obamacare”) and replace it with a number of free market policies. His proposals reflect key traditional Republican policy priorities, including:

- allowing individuals to make tax-free contributions to Health Savings Accounts (HSAs) that could accumulate and become part of the estate of the individual
- requiring price transparency from all health-care providers
- converting Medicaid into a block-grant program
- allowing the sale of health insurance across state lines
- making individual health insurance premium payments fully deductible from taxes
- reviewing options for Medicaid to “ensure that those who want healthcare coverage can have it”
- allowing the importation of prescription drugs from overseas
- implementing “promising reforms” in the mental health system.

Mr. Trump has espoused a number of other positions that were not included in his formal plan. In February 2016, for instance, Mr. Trump said that he

supports protecting those with pre-existing conditions “100%.” To date, he has not outlined any proposals that would guarantee coverage for this population. Mr. Trump has also spoken out against cuts to Medicare, suggesting that economic growth under a Trump administration would strengthen the program. In January 2016, Mr. Trump called for allowing Medicare to negotiate drug prices. This proposal is not listed on his campaign website, nor is it included in the 2016 Republican Party Platform.

The Republican Platform calls for the full repeal of the ACA along with reforms to health-care entitlement programs, including making premium support optional for future Medicare enrollees under age 55 and transforming Medicaid into a block-grant program. The plan includes support for the growth of HSAs and Health Reimbursement Arrangements that “empower patients and advance choice in healthcare.”

Democratic Candidate Hillary Clinton

Secretary Clinton’s core identity has long been defined by her interest in universal, quality, affordable health care for everyone in America. Some specific tenets of her proposals include:

- expanding coverage under the ACA and preserving the Children’s Health Insurance Program

- providing all Americans with the choice of a “public-option” insurance plan and allowing a Medicare “buy-in” for people over 55 years old
- limiting out-of-pocket costs like copays and deductibles
- lowering the cost of prescription drugs
- incentivizing states to expand Medicaid to more low-income Americans
- allowing families to buy coverage on the ACA exchanges regardless of their immigration status
- expanding health care access to rural Americans by making more providers eligible for telehealth reimbursement
- defending access to reproductive health care
- doubling funding for primary-care services at Federally Qualified Health Centers.

The Clinton campaign’s priorities would address a number of health care challenges, including Alzheimer’s, autism, mental health and substance abuse, public health infrastructure and the Zika virus. Secretary Clinton also strongly supports the Cancer Moonshot Initiative.

Secretary Clinton’s agenda for lowering prescription drug costs stands out as one of her most detailed proposals. She proposes to eliminate tax breaks for direct-to-consumer advertising

TRUMP VS. CLINTON ON HEALTH CARE

Issue	Trump	Clinton
ACA	<ul style="list-style-type: none"> • repeal and replace with “free market” reforms • expand the use of HSAs • make individual health insurance premium payments fully deductible 	<ul style="list-style-type: none"> • “defend and expand” coverage • limit out-of-pocket costs for families • double funding for community health centers over 10 years • extend exchange coverage to families regardless of immigration status • repeal the Cadillac tax
PUBLIC OPTION	<ul style="list-style-type: none"> • does not support a public option 	<ul style="list-style-type: none"> • supports a public option insurance plan in every state
MEDICARE	<ul style="list-style-type: none"> • pledges to “save” Medicare “without cuts” 	<ul style="list-style-type: none"> • supports a Medicare buy-in for Americans over 55 years old while preserving traditional Medicare
MEDICAID	<ul style="list-style-type: none"> • proposes state block grants for Medicaid 	<ul style="list-style-type: none"> • supports new incentives to encourage Medicaid expansion nationwide
PRESCRIPTION DRUG PRICES	<ul style="list-style-type: none"> • allow the importation of prescription drugs from abroad • in early 2016, suggested that Medicare should be allowed to negotiate drug prices 	<ul style="list-style-type: none"> • allow the importation of prescription drugs from abroad • allow Medicare to negotiate drug prices • require companies to invest in research and development • eliminate subsidies for direct-to-consumer drug company advertising • cap out-of-pocket drug costs • highly critical of soaring EpiPen costs
PRICE TRANSPARENCY	<ul style="list-style-type: none"> • require price transparency from all providers 	<ul style="list-style-type: none"> • expand disclosure requirements and broaden the ACA’s transparency provisions
MENTAL HEALTH	<ul style="list-style-type: none"> • supports bipartisan mental health reforms under congressional consideration 	<ul style="list-style-type: none"> • fully enforce mental and behavioral health parity laws
SALE OF HEALTH INSURANCE ACROSS STATE LINES	<ul style="list-style-type: none"> • supports the sale of insurance across state lines 	<ul style="list-style-type: none"> • in early 2015, supported the sale of insurance across state lines

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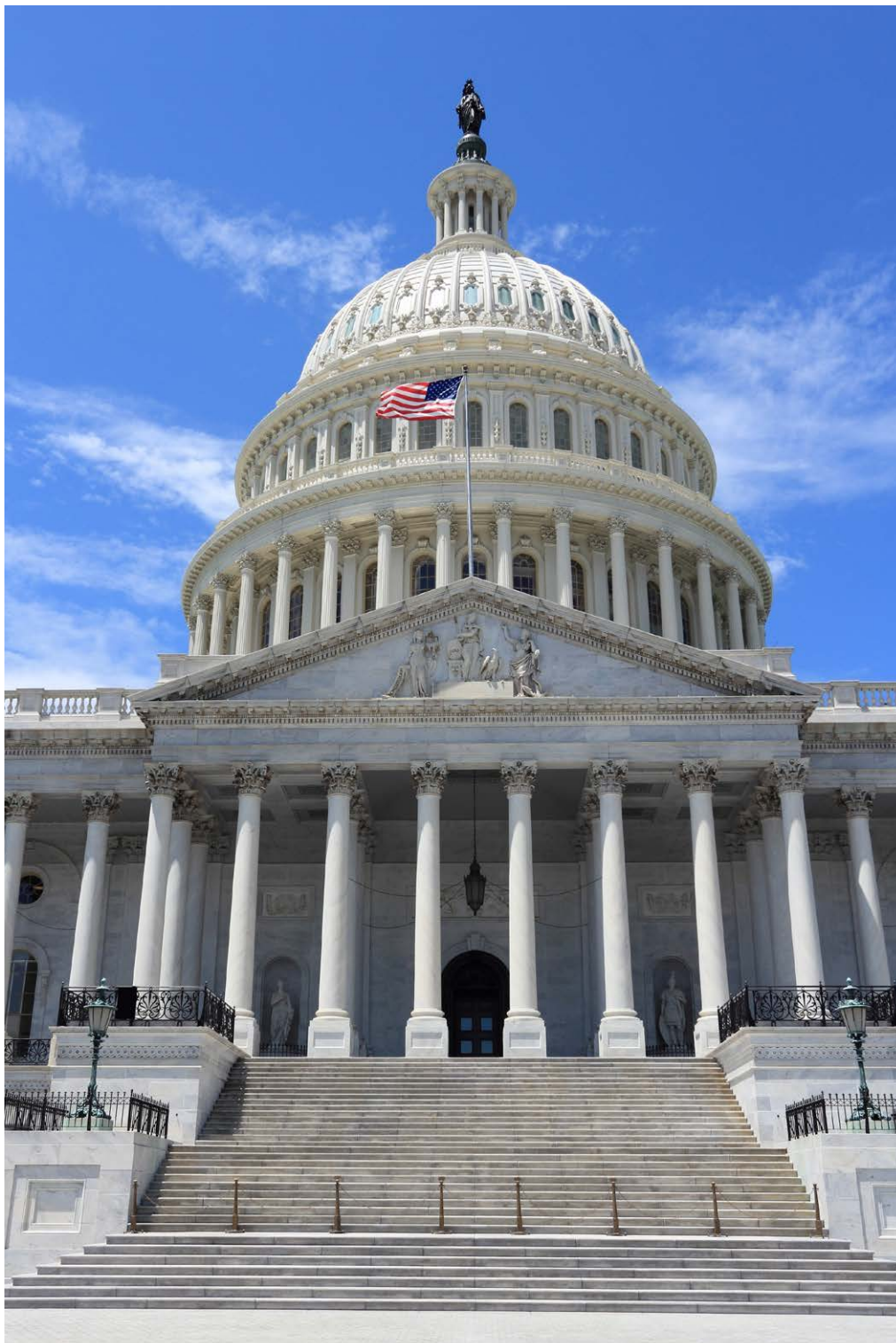
and require drug companies that receive federal support to invest a sufficient amount of revenue in research and development. Her proposals would also allow Americans to import drugs from foreign countries with sufficient safety standards. Secretary Clinton's plan would let Medicare negotiate drug prices.

The Democratic Party's Platform aligns closely with Secretary Clinton's proposals on health care. Notably, it includes a full repeal of the Cadillac tax, but with the caveat to find revenue to offset the repeal to "contain the long-term growth of health care costs." In September 2015, Secretary Clinton called for the tax to be repealed, saying that her reforms would "more than cover the cost" of eliminating the levy on high-cost health plans.



"The health sector should anticipate that regardless of who is in power in the Administration or Congress, one way or the other by legislation or regulation, policymakers will move again to restrain health care costs."

—Akin Gump Health Policy Team



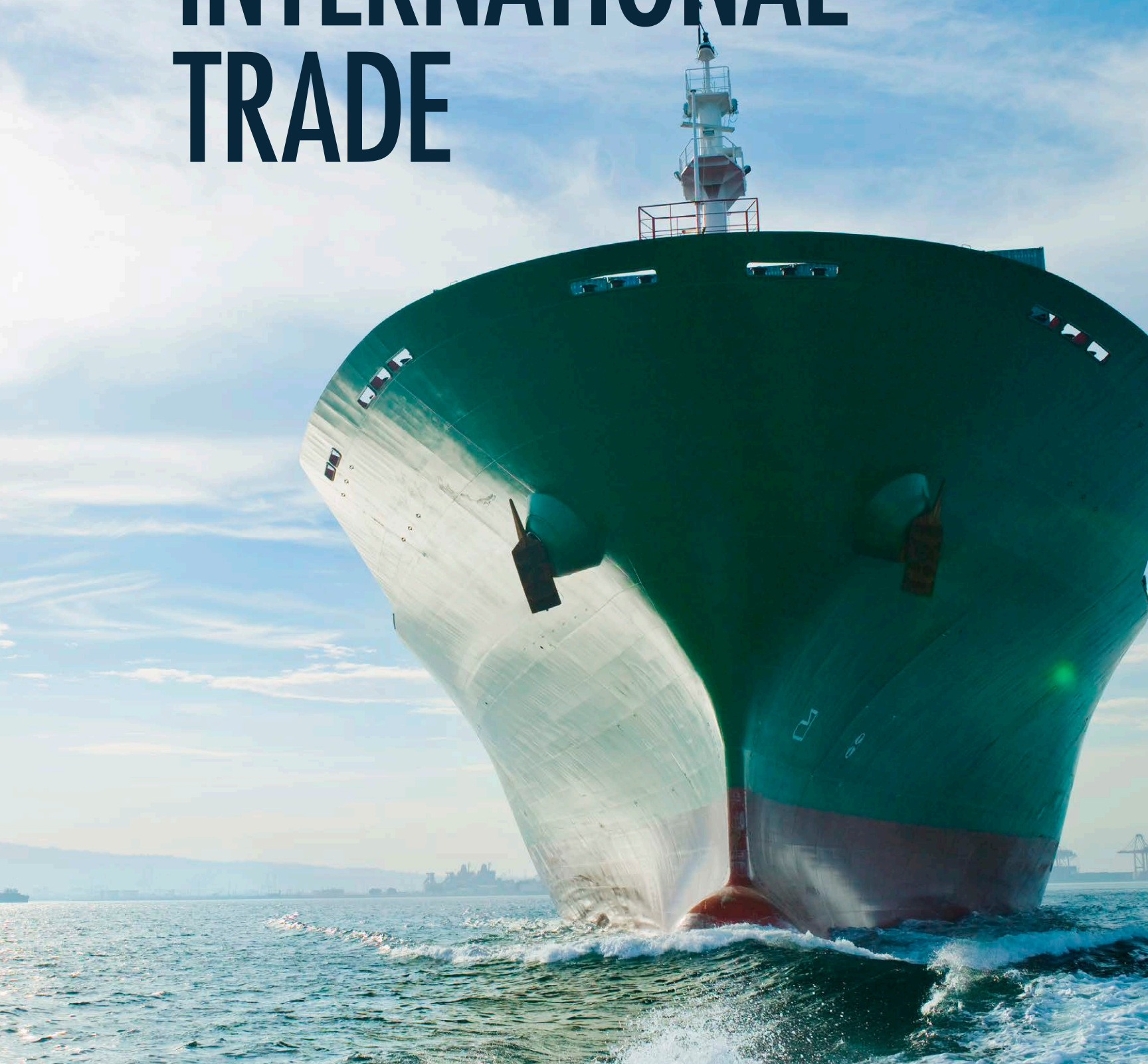
Congressional Outlook

Oversight and “messaging” hearings and some congressional committee action on health care bills may occur prior to the election. Adequate funding for Zika emerges as the top congressional appropriations action item. The soaring costs of lifesaving EpiPens caught congressional attention over the summer recess period and further ignites debates around pharmaceutical pricing.

The House and Senate may seek to address a number of other open health care issues during a post-election lame-duck session. On the House side, the Ways and Means Committee may consider post-acute-care payment reforms, in addition to a hospital bill and other “extender” items. On the Senate side, the Finance Committee may introduce chronic-care legislation. The Senate also has yet to take up its mental health reform bill, which passed out of the Health, Education, Labor and Pensions (HELP) Committee in March. Passage of the 21st Century Cures Act remains a priority to the House Energy and Commerce and the Senate HELP committees.

Stay vigilant—miscellaneous health care provisions that enjoy bipartisan support remain potentially ripe for congressional action, either before or after the elections.

INTERNATIONAL TRADE



International Trade



It is perhaps one among many surprises this election season that international trade appears to have become such a potent political issue. Not since the 1992 election of Bill Clinton has trade played such a prominent role in a presidential election. While both candidates have expressed opposition to President Obama's signature deal, the Trans-Pacific Partnership (TPP), there are important differences in how the candidates approach that issue and trade more generally.

Donald Trump

Mr. Trump's approach to trade is an essential rejection of the bipartisan approach that presidents of both parties have followed since 1934. He views trade as a zero-sum, Manichean endeavor in which the United States has been on the losing side for a long time, allowing foreign countries—most notably China—to steal U.S. jobs. He believes that, through "tougher" trade measures, he can help rebuild America's manufacturing base and, in his words, "Make America Great Again." As reported by International Trade Daily, Mr. Trump recently gave a speech in which he discussed an eight-point plan to tackle the U.S.

trade deficit and restore American manufacturing strength:

- withdraw the United States from the TPP
- hire the “toughest and smartest” to negotiate trade deals for the country
- direct the Commerce Secretary to identify every violation of trade agreements by country
- renegotiate the terms of the North American Free Trade Agreement (NAFTA)—or “we will walk away”
- direct all federal agencies to use every tool appropriate to end trade abuses—particularly China, which he called the worst abuser of all
- instruct the Treasury Secretary to label China a currency manipulator
- tell the U.S. Trade Representative to bring trade cases against China through its domestic authority or within the World Trade Organization (WTO)
- use every lawful legislative power to remedy trade abuses—including raising tariffs.

To most economists and long-time trade observers, some of these proposals reflect existing policy, and some are outright heresy. While these proposals may sound like muscular ideas to reassert American leadership in trade, in fact, many believe that they would relinquish American leadership—most ironically to China—

and lead to other countries similarly pulling back from the international trading system, at least with respect to the United States. The conventional wisdom is that shrinking export markets for U.S. products would hurt U.S. workers, farmers and producers of all types. Mr. Trump’s approach also seems to ignore the geopolitical aspect of trade agreements, which, in some cases, is the most important aspect of striking an agreement.

There is no doubting the political potency, however, of Mr. Trump’s message. In communities all across America where people have lost their manufacturing jobs, trade agreements can be a contributing cause, but they are more often a convenient scapegoat. Improvement of technologies that replace factory workers, increased worker productivity, the plummeting cost of shipping goods internationally and the Internet are, in the view of many, far more important factors in changes in U.S. manufacturing employment than international trade agreements. Mr. Trump—like many Americans—conflates trade agreements with trade. As he correctly notes, the largest U.S. trade deficit is with China, but the United States has no special trade agreement with China. The United States trades with China on the same basis as every other country in the world, as a fellow member of the WTO. There is no trade agreement with China that we can “rip up,” as he seems to suggest.

In sum, most trade observers believe Mr. Trump’s policies would be very harmful to the U.S. economy. Many would-be-presidents talk of tough unilateral measures during the campaign, but those who win later realize the complexity of our relationships with our trading partners and that some of the tough measures they advocated would likely hurt the United States more than any other country. Mr. Trump, were he to be elected, may moderate his positions as many previous presidents have done, but that can be hard to imagine when listening to him on the campaign trail.

Hillary Clinton

Unlike Mr. Trump, Secretary Clinton’s approach to trade does not represent a wholesale rejection of American leadership of the existing trading system. She has advocated a new approach to trade, but most believe that approach will likely focus not just on changes to trade policy, but also on changes in the social safety net that exists to help Americans in the modern, globalized economy. As such, her views do not represent a fundamental break with the ebbs and flows of trade policy dating back more than 80 years.

Many trade observers were disappointed when Secretary Clinton came out against the TPP, an agreement she once championed as Secretary of State. But this position appeared inevitable once trade became a prominent campaign issue.



Pressure from Sen. Sanders and his supporters during the primary, as well as Mr. Trump's rhetoric, made supporting TPP an untenable political position. While Mr. Trump has warned that Secretary Clinton would sign TPP if elected, the Clinton campaign has made clear that she would neither sign it nor renegotiate it. It has claimed that Secretary Clinton wants a "new approach to trade" that ensures a level playing field.

More recently, the political left has been pressuring Secretary Clinton to oppose even holding a vote on the TPP during a lame-duck session of Congress. The point may be moot, however, since many observers

believe that the TPP will not be ready to consider in a lame-duck session, and Senate Majority Leader Mitch McConnell (R-KY) has stated that TPP "will not be acted upon this year."

While in the Senate, Secretary Clinton had a mixed record on trade, supporting some agreements while opposing others. She insisted that she took each agreement on its own merits. That is consistent with what many have commented is her generally substantive approach to issues—she wants the facts, and she will decide on a course of action after examining those facts. This approach is one that most trade observers would welcome, since it

allows for the contemplation of how trade, in fact, can benefit America.

Despite their differences, Secretary Clinton and Mr. Trump have some common ideas on trade. Like Mr. Trump, Secretary Clinton has called for renegotiating NAFTA, for more action on currency manipulation and for more aggressive trade enforcement, even calling for the creation of a new position of "Chief Trade Prosecutor." But overall, Secretary Clinton promises a more nuanced approach to trade policy without the retrenchment and abandonment of American leadership of the world economy that Mr. Trump appears to favor.

TAX

Form

1040

Label

(See instructions)

U.S. Individual

For the year Jan. 1-Dec. 31
Your first name and last initial

United States



Month Day

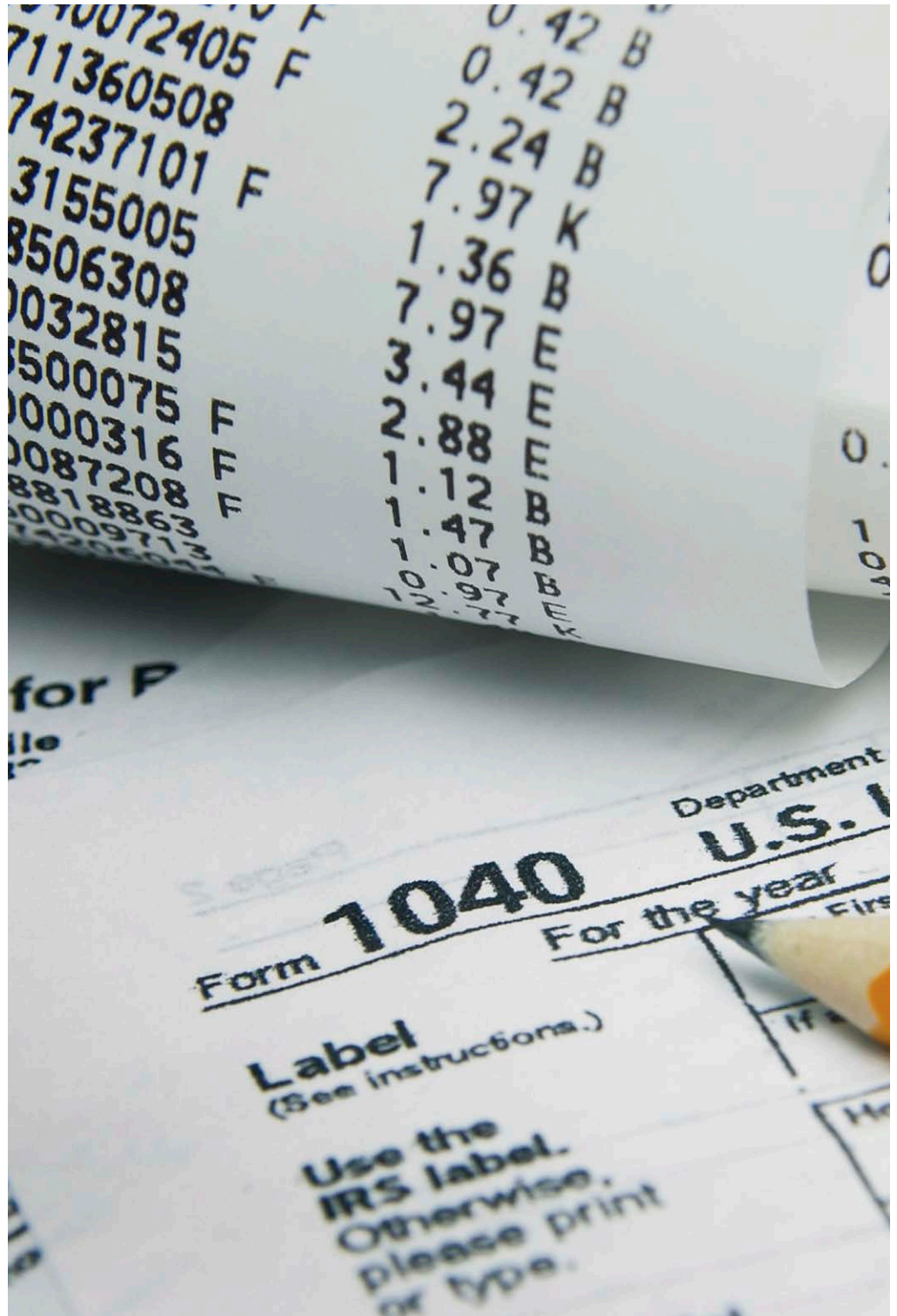
Pay to
the order of

2309

Tax

SUMMARY POINTS

- With the 2016 election campaign in full swing, both presidential candidates are advancing numerous tax proposals with few common features.
- Secretary Clinton's proposals focus primarily on middle-class tax relief, while Republican Mr. Trump's proposals center on tax cuts for businesses, as well as an individual tax cut.
- While there is a general consensus that tax reform will not occur this year, both tax-writing committees will be active in laying the foundation for action on tax reform and other deferred priorities in the remaining months of this year. The expected lame-duck session could yield action on tax provisions expiring this year.



Introduction

As the November 8 election draws near, both presidential candidates have advanced comprehensive tax reform proposals. Democrats, led by former Secretary of State Clinton, focus primarily on middle-income tax relief while proposing to raise revenue from higher-income earners. Secretary Clinton has also proposed to close various business tax “loopholes” and curb corporate inversions. The tax proposals of Republican presidential candidate Mr. Trump are somewhat at odds with those presented by the [Republican Party Platform](#), as well as the tax reform “[Blueprint](#)” released by Speaker Paul Ryan (R-WI) and House Ways and Means Committee Chairman Kevin Brady (D-PA).

While there is a general consensus that tax reform legislation will not be considered in 2016, much activity is expected in the two tax-writing committees to lay the foundation for legislative efforts in 2017. Extensive activities anticipated in both tax committees in the remaining months of 2016 will present both opportunities and vulnerabilities that should not be ignored as the legislative table is set for 2017.

Democratic Candidate Hillary Clinton

Former Secretary Clinton has made middle-income tax relief a hallmark of her campaign, coupled with proposals to significantly increase taxes on upper-

income taxpayers and companies that move their business operations outside the United States. Her plan is generally aligned with the [Democratic Party Platform](#) released at the Democratic Convention in July. Secretary Clinton’s major tax proposals include:

- imposition of a 30 percent tax rate on individuals with incomes above \$1 million and a 4 percent surtax on individuals with incomes above \$5 million
- a sliding-scale capital gains tax that rewards long-term investments
- imposition of a cap on itemized deductions of upper-income individuals
- elimination of the favorable tax treatment of carried interest and executive compensation
- imposition of an “exit tax” on the accumulated earnings of companies that move their tax residency outside the United States, as well as a “clawback” of tax incentives for companies that move jobs abroad
- imposition of a financial transaction tax for high-frequency trading
- standard deduction for smaller companies, much like the one used by individuals
- elimination of fossil fuel tax incentives and other unspecified business tax “loopholes”

- retention of the current estate tax with a 45 percent top rate, and \$3.5 million exemption level.

Republican Candidate Donald Trump

Republican candidate Mr. Trump has released a variety of tax proposals, reflecting tax policy positions that are both fluid and subject to change. Further, many of his proposals appear to be at odds with those contained in the House Republican Tax Reform Blueprint. The primary similarity between Mr. Trump and the Blueprint relate to the proposed significant reduction in tax rates for both individuals and businesses. Mr. Trump’s major tax proposals include:

- significant reduction in individual tax rates (with a top rate of 33 percent) and collapsing the existing seven individual income tax brackets to three while increasing the standard deduction and personal exemptions for lower-income individuals (and eliminating such tax provisions for upper-income individuals)
- retention of the mortgage interest and charitable contribution deductions
- elimination of the favorable tax treatment of carried interest
- reduction in the top corporate tax rate to 15 percent
- imposition of a one-time 10 percent tax on unrepatriated earnings held by U.S. businesses abroad

- elimination of deferral on foreign earnings while retaining the current foreign tax credit
- imposition of a “reasonable” cap on the deduction for business interest
- repeal of the current estate tax and the alternative minimum tax (AMT).

It should be noted that, in May 2016, Mr. Trump indicated that his tax proposals would be a “starting point in negotiations with Congress and that some tax increase on the wealthy is likely.”

House Republican Tax Blueprint

On June 24, 2016, House Speaker Ryan and Ways and Means Chairman Brady released a tax reform Blueprint, intended to be a policy framework to be used by Republican House members in their fall campaigns, as well as legislative action in 2017. The major provisions in the Blueprint include:

- reduction in individual tax rates (with a top rate of 33 percent) and a consolidation of the current seven tax brackets to three (12, 25 and 33 percent)
- provision of a 50 percent exclusion for an individual’s investment income, effectively reducing the tax rate on such income to 6, 12.5 and 16.5 percent
- consolidation of the five current family tax deductions into two simpler benefits: a larger standard deduction and an enhanced child tax credit
- retention of the current Earned Income Tax Credit
- elimination of all itemized deductions, except the mortgage interest deduction and the charitable contribution deduction, while retaining tax incentives for health care and retirement savings
- repeal of the estate and generation-skipping transfer taxes, as well as repeal of the individual and corporate AMT
- reduction in the top corporate tax rate to 20 percent, with a 25 percent top tax rate for small businesses and pass-through entities
- adoption of a territorial tax system that would allow U.S.-based companies to repatriate foreign earnings without additional tax cost
- elimination of the deduction for business interest, but retention of an R&D credit
- restructure of the Internal Revenue Service to modernize and streamline tax administration and taxpayer service.

Outlook

While neither chairman of the two tax committees has indicated an intention to advance tax legislation in the lame-duck session, it should be noted that

many of so-called “tax extenders” will **expire** at the end of 2016. A decision will have to be made whether to allow the expiring provisions to, in fact, expire or to extend them for some brief period of time in anticipation of a more thorough review in the tax reform context anticipated in 2017.

The prospect for legislative action on tax reform in 2017 depends significantly on the outcome of the November elections. While the prospects for these elections cannot be predicted, important tax policy changes are now probable in 2017. Significant tax policy proposals are being advanced by both presidential contenders, by the chairmen and members of both tax committees, and by congressional leaders themselves, portending significant legislative action in 2017. In addition, important policy issues deliberately deferred beyond the 2016 elections (such as the debt ceiling and various infrastructure programs) will confront the new president and Congress in the early stages of 2017. The combination of congressional interest and preparation for tax reform, and the immediacy of the deferred policy issues, are likely to present innumerable opportunities and vulnerabilities for tax policy change and will require experienced advice and counsel to secure successful outcomes in what promises to be a very active, yet unpredictable, legislative environment.

TRANSPORTATION AND INFRASTRUCTURE

An aerial, high-angle photograph of a complex multi-lane highway interchange. The roads are paved in grey and feature yellow and white lane markings. Several cars of various colors, including a prominent yellow car in the center, are visible traveling along the different levels of the interchange. The roads are flanked by green grass and some trees. The overall scene is captured from a high vantage point, looking down at the infrastructure.

Transportation and Infrastructure

SUMMARY POINTS

- Both campaigns have identified the deterioration of the nation's roads, bridges, rails, waterways, ports and airports, and the need to have a world-class transportation system as a key to our economic success. Secretary Clinton has proposed to invest an additional \$275 billion over five years on infrastructure, while Mr. Trump has said that he will spend twice that amount. Secretary Clinton said she will pay for her plan with revenues generated from business tax reform, whereas Mr. Trump said he will borrow the money at a low interest rate. While the focus on infrastructure is notable and may influence Congress, only Congress can authorize spending. Considering the fact that Congress passed a five-year, \$305 billion transportation bill last year, a proposal to raise taxes or increase the national debt may not be well received by Congress. One potential avenue for more transportation funding could be if Congress is able to move a tax bill that addresses repatriation of overseas earnings and those tax revenues are used for infrastructure as has been discussed in the past. What may be more telling is how the Department of Transportation (DOT) would exercise its regulatory authority under the two candidates.
- While Secretary Clinton has talked about cutting red tape, Mr. Trump has made bolder pronouncements about rolling back regulations. It is more likely that Secretary Clinton will continue on a similar path as President Obama in terms of regulating the transportation sector; however, a Trump presidency could see a more streamlined project approval process, fewer consumer regulations and less onerous regulation of the trucking industry, among others.
- While both candidates have spoken about investment in airports, neither candidate has provided details regarding their positions. Federal Aviation Administration (FAA) reauthorization returns next year as a result of Congress passing only a short-term extension, which expires September 30, 2017. Major issues include whether to move Air Traffic Control (ATC) services outside of the FAA, whether to allow airports to increase Passenger Facility Charges, whether to make changes to the FAA's certification processes for aircraft, and how to address safety innovation and facilitation of highly automated operations beyond the visual line of sight.
- Neither candidate has addressed current and future controversies involving DOT rulemakings to provide additional protections to airline passengers, Open Skies issues involving allegations of state subsidies and flag-of-convenience operators, a decision whether to continue approving airline mergers (where the DOJ has authority) and immunity for international code-sharing.



Democratic Candidate Hillary Clinton

Infrastructure Spending. Secretary Clinton has pledged to introduce in her first 100 days a detailed legislative proposal to boost infrastructure spending by \$275 billion over five years, with \$250 billion in direct spending and \$25 billion to stand up a national infrastructure bank that could make \$225 billion in loans and loan guarantees and provide “other forms of credit enhancements.”

Secretary Clinton has said that she will reauthorize the Build America Bonds (BABs) program, which was part of the Recovery Act of 2009, but was not extended. The BABs program provided a direct subsidy payment of 35 percent of the interest costs to state or local government bond issuers and thus attracted new investors, such as pension funds, that do not benefit from the tax exemption of traditional municipal bonds.

Roads, Bridges, Ports, Transit and Rail Investment. Secretary Clinton has spoken of investment across the transportation modes. She has noted the importance of intermodal connections and investment. She has said that she will focus on relieving bottlenecks and congestion on highways, freight railroads and at seaports by upgrading 25 of the most costly freight rail and highway bottlenecks and deepening ports and upgrading aging tunnels and bridges, investing in public transportation to get people to jobs, and building a world-class passenger rail system and bicycle and pedestrian infrastructure. She has said that she will invest in intelligent transportation systems across various funding programs. She also has expressed her support for merit-based competitive grants, which have replaced earmarks.

While Secretary Clinton has said that she will “cut red tape” to expedite

transportation projects, she has not said whether she would attempt to advance projects more quickly under the planning process and/or the NEPA review process or identify other approaches for expediting projects.

Airports. Secretary Clinton has also said that she will invest in “building world-class American airports.” She has spoken of ensuring that “airports have the funding they need to create world-class air hubs for the 21st century, with reliable and efficient connections to mass transit.” Read in context, this could indicate that Secretary Clinton would seek to improve current hub airports, rather than building new airports. She does not identify the source of new funding for airports—whether it would come from an increase in the Passenger Facility Charge; an increase in Airport Improvement Program funding; or as part of a National Infrastructure Bank grant, loan or loan guarantee.



Republican Candidate Donald Trump

On the campaign trail, Mr. Trump has decried the nation's "crumbling roads and bridges" and "dilapidated airports." In May, he stated, "We have to rebuild our infrastructure—our bridges, our roadways, our airports." In his nomination acceptance speech, Mr. Trump complained that "our airports are in Third World condition."

Mr. Trump recently said that he will spend twice as much as what Secretary Clinton has proposed on transportation infrastructure. He has said that he will borrow money to pay for his plan from investors by establishing a fund and issuing bonds, and that he will benefit from low interest rates to rebuild our infrastructure. He also said he will roll back regulations, which could expedite and lower the cost of infrastructure projects. While Mr. Trump has not offered details regarding his plan for spending, he is assembling a transportation transition team who likely will do that. House

Transportation and Infrastructure Committee Chair Bill Shuster (R-PA) has endorsed Mr. Trump and expressed his view that Mr. Trump will be the "greatest infrastructure President."

Unaddressed Issues

Smart Vehicles and Transportation Technology. Secretary Clinton has spoken of her plan for investing in technology, including intelligent transportation systems. In light of the explosion in technological advances with self-driving cars, connected vehicles and smart sensors, Congress and DOT will likely continue to grapple with how to regulate the industry. Secretary Clinton may continue to advance the Smart Cities initiative that President Obama initiated.

ATC. Neither campaign has committed to a position on whether it supports spinning off the ATC system in an effort to modernize it and make it quicker and more efficient. The debate prevented passage of a long-term FAA bill this year, with Chairman Shuster and many of the airlines supporting

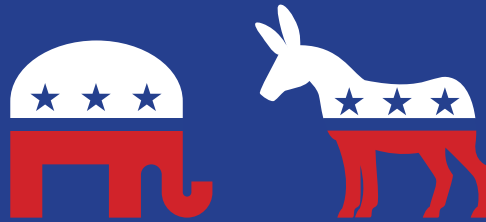
the spinoff to a nonprofit corporation and congressional appropriators and House and Senate Democrats generally opposing it. With the FAA bill set to expire on September 30, 2017, the next president will be able to weigh in on the issue, with the outcome potentially hinging on the composition of Congress and the position of leadership.

Drones. Neither candidate has taken a position on drones. Congress included several drone-related provisions in the short-term extension of FAA programs, and it is expected to be urged in the FAA reauthorization debate to enact additional provisions to advance the industry while ensuring safety.

Airline Consolidation, Competition, and Passenger and Consumer Protection.

Secretary Clinton makes a nod to promoting competition in the airline industry, but neither candidate has addressed the policy to approve airline mergers and antitrust immunity for international code share agreements. Also, neither candidate has addressed whether passengers and consumers need additional legal protections, as contemplated in DOT rulemakings.

Open Skies. Neither candidate has taken a position on whether the United States should continue to push for liberal bilateral air transport agreements, such as with China, Japan and Cuba, or should revisit its policy with respect to current agreements because of allegations of state subsidies to foreign carriers.



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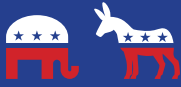
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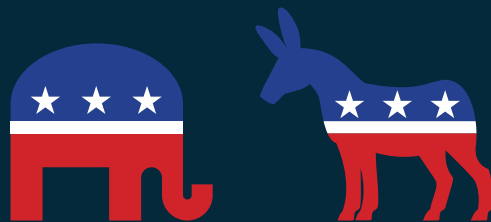
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