

# THIS WEEK IN WASHINGTON

Week of April 3, 2017



## This Week in Washington

Thank you for your continued interest in Washington, D.C. – and for reading This Week in Washington.

The Trump Administration is 75 days old today. There is no question that it's been a rocky start with almost a daily push and pull between noise (extraneous messaging) and news (his agenda). Cable news shows focus on the noise and the ongoing investigations about Russia's involvement in the past election are making TV stars out of some of the key members of the House and Senate Intelligence Committees.

The Administration needs a 'win' – and it will get a big one this Friday when President Trump's Supreme Court nominee Neil Gorsuch is approved by the U.S. Senate.

In our headline article, [Larry Smith](#) describes the case between Volks Constructors and OSHA and how Congress and the Administration are using the Congressional Review Act to get some of the regulatory relief that's been promised – and that can be achieved. [Larry](#) also updates NAFTA and Trade. [Steve Gordon](#) talks about progress on the Administration's key legislative agenda in Heard on the Hill, and he begins a profile series introducing us to key people in Washington who drive the policy wagon. [Dana Marston](#) provides a quick look at the \$18 billion in proposed budget cuts FY2017, as well as a glimpse at the White House's new Office of American Innovation. We'll also provide a calendar of Capitol Hill's upcoming hearings and meetings.

Thanks as always for your comments, feedback, and suggestions for future articles in This Week in Washington. We are sincerely grateful for your interest.

## ICYMI: Arizona Issues in the News

[A Right-Left Cure for Disabilities Torts](#)

[Sen. Jeff Flake: Gorsuch Deserves Up or Down Vote](#)

[Arizona Senators introduce a new bill to offset costs of incarceration of undocumented immigrants](#)

[A Pentagon Test for Boeing's Mr. Fix-It](#)

And check out the U.S. Chamber's new report [Taming the Administrative State: Identifying Regulations That Impact Jobs and the Economy](#)

## Trump's Budget Cut Proposal

Click the image below for a complete update on President Trump's Fiscal 17 budget cut proposal.

By [Steve Gordon](#), Managing Director, Total Spectrum

*Supreme Court – The Showdown in the Senate.*

President Trump will get his first win this week when Judge Neil Gorsuch is approved by the Senate for appointment to the Supreme Court. However, we're probably on the road to a major change in the structure of the Senate, which will be another self-inflicted attack on the institution and the level of trust within the Senate – unless the parties discover a last-minute exit ramp. [Read more.](#)

## NAFTA and Trade Update

By [Larry Smith](#), President, Legislative Strategies Inc. and Strategic Consultant to Total Spectrum

President Trump signed two executive orders on trade this past Friday. The first increases the collection of anti-dumping penalties on importers who flood America with undervalued goods. The second requires both the U.S. Department of Commerce and the U.S. Trade Representative to prepare a study within 90 days on the factors that contribute to the U.S. trade deficit.

The Administration is lowering the rhetoric on changes to NAFTA, and will soon notify Congress of their intent to renegotiate NAFTA – which will then kickoff a 90-day period of consultation prior to commencement of negotiations. Senators are expecting the proposed NAFTA discussions to be about improving the dispute process with only minor emphasis on tariffs.

Robert Lighthizer, the President's nominee for US Trade Representative, needs a waiver from both the Senate and House from a provision that bars anyone who has represented foreign governments in trade disputes or negotiations with the U.S. from serving as our country's trade representative. Although confirmation hearings went well, Democrats and Republicans do not agree on the terms of the needed waiver. Senate Republican leaders expect that the waiver to eventually pass both bodies.

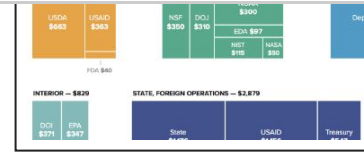
## An Example of Regulatory Relief

By [Larry Smith](#), President, Legislative Strategies Inc. and Strategic Consultant to Total Spectrum

### Background

Pursuant to the federal Occupational Safety and Health Act of 1970, companies are required to report workplace injuries and illnesses to the Occupational Safety and Health Administration (OSHA) and maintain a record of those reports for a period of time.

In November 2006, OSHA issued citations to Volks Constructors, alleging failures to record some workplace injuries between 2002 and April 2006. OSHA alleged over 100 violations, the majority of which were vague, and many nearly five years old. Volks claimed that the allegations were not timely because the Occupational Safety and Health Act has a six month statute of limitations. OSHA ignored the statutory six-month requirement, and instead took the position that it could fine a company for a recordkeeping violation at any time



## The Team Behind the New White House Office of American Innovation

Click the image below for an update on the staff of the new White House Office of American Innovation.



## On the Calendar This Week (All Times ET)

### Monday

10 a.m.

[Senate Judiciary meeting to vote on Neil Gorsuch's nomination to join the Supreme Court. Rod Rosenstein to be deputy attorney general and Rachel Brand for associate attorney general.](#)

5 p.m.

[House Rules meeting on three bills. H.R. 1342 and H.R. 1219 would amend SEC regulations, while H.R. 1304 would exclude stop-loss insurance from the definition of health insurance coverage.](#)

### Tuesday

9:30 a.m.

[Senate Armed Services Committee hearing on U.S. Strategic Command.](#)

9:30 a.m.

[Senate Homeland Security hearing on fencing along the U.S.-Mexico border.](#)

10 a.m.

[Senate Banking meeting to vote on Jav Clayton's nomination to lead the SEC.](#)

10 a.m.

[House Energy and Commerce subcommittee hearing on a discussion draft that would reauthorize the EPA's brownfields program.](#)

Volks sued the Department of Labor (AKM LLC dba Volks Constructors v. Secretary of Labor). In 2012, the D.C. Court of Appeals rejected OSHA's arguments, saying that OSHA's approach to the reporting statute was unreasonable and would lead to absurd consequences. The court ruled in Volks' favor. [Read more.](#)

## Profile of Key People: An Introduction to the People Who Drive the Policy Wagon



Senate Majority Leader Mitch McConnell (R-Kentucky) with his wife, Secretary of Transportation Elaine Chao

\* Unanimously elected to be the Senate Majority Leader in 2014 and 2016

\* Previously served as the Republican Leader in the 110th, 111th, 112th, and 113th Congress

(2007-2013), and as the Majority Whip in the 108th and 109th Congress (2003-2006).

\* Served in the Republican Leadership Team as Chairman of the National Republican Senatorial Committee

\* Named by Time Magazine as one of the 100 most influential people in the world in 2015

\* First elected to the U.S. Senate in 1984, he was reelected in November 2014 for a 6th term – winning 110 of the Commonwealth's 120 counties

\* Graduated with honors from the University of Louisville, then graduated from the University of Kentucky College of Law, where he was president of the Student Bar Assn.

\* He served as Judge-Executive of Jefferson County, KY before his election to the Senate

\* He serves as a senior member of the Senate Appropriations, Agriculture, and Rules Committees

\* He is married to Secretary Elaine Chao, President Trump's Secretary of Transportation. She was President George W. Bush's Secretary of Labor for all 8 years of his administration, and has also served as the President of the United Way of America and as the director of the Peace Corps

[House Agriculture subcommittee hearing on commodity policy.](#)

10 a.m.

[House Armed Services hearing on defense overhaul.](#)

10 a.m.

[House Natural Resources hearing on three environmental measures.](#)

10 a.m.

[Senate HELP hearing on FDA user fee agreements.](#)

10 a.m.

[Senate Energy and Natural Resources hearing on cybersecurity threats to energy delivery systems.](#)

10:15 a.m.

[House Energy and Commerce subcommittee hearing on cybersecurity in health care.](#)

2 p.m.

[House Agriculture subcommittee hearing on credit programs.](#)

Wednesday

9:30 a.m.

[Senate Homeland Security hearing on border security.](#)

10 a.m.

[Senate HELP hearing on Scott Gottlieb's nomination to be FDA commissioner.](#)

10 a.m.

[House Education and the Workforce subcommittee hearing on H.R. 1180. The legislation would allow private-sector employees to cash in overtime hours for wages or paid time off.](#)

10 a.m.

[House Armed Services hearing on the effects of a continuing resolution to the military.](#)

10 a.m.

[House Transportation and Infrastructure subcommittee hearing on the FAST Act, a transportation funding bill.](#)

10 a.m.

[House Natural Resources subcommittee hearing on H.R. 1731. The bill would bankroll efforts to revamp coal mining communities.](#)

10 a.m.

[House Agriculture hearing on tax reform and rural America.](#)

10:30 a.m.

[House Veterans' Affairs subcommittee hearing on seven bills.](#)

2 p.m.

[House Natural Resources subcommittee hearing on four bills.](#)

Thursday

subcommittee hearing on auditing Department of Defense contracts.

10 a.m.

Senate Finance hearing on the IRS' handling of the current tax filing season, and refund fraud. IRS Commissioner John Koskinen will testify.

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[azchamber.com](http://azchamber.com).

### Heard on the Hill, continued.

Larry Smith wrote last week:

*Under Senate Rules, it takes 60 votes to break a filibuster via a cloture vote on a Supreme Court nomination. Republicans will need eight Democrats to vote with them to invoke cloture, thereby ending the filibuster by Schumer and his colleagues. After that, only a simple majority vote would be needed to confirm Gorsuch as a Supreme Court Justice.*

*Under normal circumstances, if the filibuster prevailed after several attempts to end it by a cloture vote, the nomination would be pulled and nominee would be out of luck in getting the job. In this case, because a seat on the Supreme Court is so important, the Republicans have another option in their bag of parliamentary tricks, dubbed the nuclear option. They learned how to use this option back in 2013 when Harry Reid (D-NV), then Senate Majority Leader, exercised it to clear the confirmation of three judges to the U.S. Court of Appeals for the District of Columbia Circuit. Senator Reid made clear when he pulled the nuclear trigger that this rule change applied*

### Regulatory relief, continued.

OSHA wanted to address this ruling and allow the agency to continue writing citations beyond the statutory six month statute of limitation window, so they created a regulation entitled Clarification of an Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness, finalized on December 19, 2016. This rule "clarified" that an employer's obligation to make and maintain records extends throughout the five year reporting retention period. OSHA maintained that any decision to not properly record an injury during that period would be a citable offense and that it had the power to expand the six months statute of limitation in the statute.

This regulation is an excellent example of regulatory overreach – but more than that, it is an example of an agency operating in flagrant disregard for an existing statute that limited the look back to six months. It also shows the agency's disregard for a U.S. Court of Appeals decision that said in no uncertain terms that the policy was in violation of the law. Yet OSHA pursued federal rulemaking to overcome that statute and a federal court's opinion.

*Regulatory Reform under the Congressional Review Act*

*The nuclear option is a parliamentary maneuver that changes Senate rules by a simple majority vote rather than the normal two-thirds vote. Doing so minimizes the rights of the minority in the Senate, going against a tradition that dates back to the earliest days of the Senate. Having reduced the rights of the minority in this way may be only the first action because there could be other ramifications. If nominations for the Supreme Court only require a simple majority vote, rather than the current 60, it may be only a matter of time when the same holds true for legislation.*

Majority Leader McConnell, a believer in the institution of the Senate, and Minority Leader Chuck Schumer, who understood the consequences of Harry Reid's 2013 decision both for the Senate and for his party when they would be in the minority, are the key players. Senate Democrats are being pulled by the progressive wing of their party to remember Judge Merrick Garland, President Obama's 2016 nominee, and to oppose President Trump at every turn. The Minority Leader joined the Gorsuch filibuster to keep his party unified, and now has enough votes to filibuster this nomination.

Four things are certain:

- \* Judge Neil Gorsuch will be the next justice on the Supreme Court.
- \* President Trump will be able to claim a major victory.
- \* There will be high suspense and some memorable moments this week in the Showdown in the Senate.
- \* Larry Smith's concern about a domino effect – the elimination of the filibuster on Supreme Court judges becoming a precursor for the ultimate elimination of the filibuster for other legislation – will be on everybody's mind.

### *Healthcare*

There have been aftershocks since the earthquake when the healthcare bill was pulled from the floor.

President Trump laid much of the blame for the legislative loss at the feet of the Freedom Caucus, although moderates certainly voted against the bill too. His anger was probably based on expectations that he could work with the Freedom Caucus because their supporters were also his supporters, and high frustration from the significant time and effort he spent negotiating with them.

President Trump has said that health care will come back with a new coalition, possibly even including Democrats, although it's hard to

under the Congressional Review Act to disapprove this rule by enacting a joint resolution of disapproval. With H.J. Res 83, passed by Congress in March 2017, the House and Senate jointly disapproved the OSHA rule, stating that it will have no force or effect. This was delivered to President Trump on March 27, 2017 and is pending his signature.

This regulatory relief is made possible by the Congressional Review Act (CRA) which can overturn any regulation that impacts a third party. A CRA resolution is not subject to a filibuster and provides the majority with a vast deregulatory agenda – and equally important, Congress must act to allow a regulation to return once it has been struck down. The only limitation is that Congress must act to utilize the CRA within 60 legislative days of being notified of the regulation.

This Congress has approved 13 CRA resolutions, of which seven have been signed by President Trump.

### *Update on this story*

President Trump Monday night signed the Resolution. Representative Virginia Foxx (R-NC), Chairwoman of the House Committee on Education and the Workforce, and Representative Bradley Byrne (R-AL), Chairman of the Subcommittee on Workforce Protections, released the following statement:

This resolution now blocks an unlawful rule by the Obama Occupational Safety and Health Administration (OSHA) that violates the Occupational Safety and Health Act and fails to improve workplace safety.

The role of the executive branch is to enforce the laws – not rewrite them," Chairman Byrne said. "This OSHA power grab was completely unlawful. It would have done nothing to improve workplace safety while creating significant regulatory confusion for small businesses. I want to thank President Trump for signing this important resolution and blocking the Obama administration's attempt to change the law through executive fiat. This is just one step in our efforts to uphold the rule of law and advance responsible, proactive policies that keep America's workers safe."

"I want to thank my colleague Representative Byrne for leading efforts to overturn the Obama administration's unlawful power grab, which reflected a failed approach to workplace safety," Chairwoman Foxx said. "For years, this committee has urged OSHA to develop proactive policies that prevent injuries and illnesses before they occur. Regardless of who is in charge, we will continue to hold the agency accountable in the years ahead."

We heard noise about wanting to find a way to bring healthcare back, so we canvassed key leaders in the House and the Senate. The folks we talked to in House Leadership were both weary and leery of the education they would get from the second (or third) kick of the mule. The Senate leaders we canvassed want the House to go first, and then they would consider it.

### *Taxes and Infrastructure*

There's a desire among some in the Senate Republican caucus to tie taxes and infrastructure together in order to bring a few Democrats to the table. Unlike the House tax plan, these Senators would not be concerned about finding a revenue source to make tax reform revenue neutral. This would get Republicans out of the box they are in over the proposed Border Adjustment Tax (which doesn't have great support in the Senate) or the need to find another revenue source (not much fun either).

The White House outsourced the healthcare policy to the House leadership and the public was not involved. Both mistakes have been noted by the Administration. The Trump economic team, headed by Gary Cohn, will be very engaged in taxes – particularly because the President feels that taxes are in his wheelhouse and because tax reform is critical to economic growth and the jobs he promised. House Ways and Means Chairman Kevin Brady has promised a great number of hearings to engage the public.

While the Trump Transition did not create a plan for health care, they did for tax reform:

#### Corporate reform:

- \* Lower the corporate rate to 15% from 35% for all types of businesses and eliminate the alternative minimum tax.
- \* Repatriate corporate profits at a one time rate of 10%
- \* Eliminate most deductions and other tax expenditures, with the exception of the research and development tax
- \* Allow manufacturers to expense capital investment – but they would lose the ability to deduct corporate interest expense. (Chairman Brady has said there's some wiggle room on this one – with a transition period)

#### Individual reform

- \* Compress the current seven brackets to three – 12%, 25%, and 33%
- \* Keep capital gains as it currently exists
- \* Repeal the estate tax
- \* Increase the standard deduction for joint filers to \$30,000 and for single

household status for filing

Congressman Brady expects the Administration to have their head in the game. The Administration – for their part – has said to expect their principles for tax reform in the near future.

The House's starting plan was released last June by Speaker Paul Ryan and Chairman Brady. It was called the "Better Way", and proposes to shift the tax code toward a consumption based system. In addition to lifting the estate tax and the alternative minimum tax, it allows companies to fully expense capital investment and places a border adjustment tax on imports while allowing for an exemption for exports. Chairman Brady wants to have several hearings in the Ways and Means Committee on matters such as the Border Adjustment Tax prior to finishing work on bill wording in late spring or early summer.

There is no clear view of what the Administration will propose as part of their \$1 trillion infrastructure agenda, other than it will include (if not rely on) public-private partnerships and will attempt to remove regulatory roadblocks, using the XL Pipeline as an example of what's possible.

The Chairman of the House Transportation and Infrastructure Committee is Bill Shuster of Pennsylvania. He was an early Trump supporter and his friendship with the President began long before Donald Trump ran for President.

#### *Budget*

Mark your calendars for April 28th – that's the day that funding for the government runs out for the period April 29th through September 30th. Both Majority Leader McConnell and Speaker Paul Ryan predict that there will not be a government shutdown. The plan is to pass a short term continuing resolution, and if the plan works it will be because they were able to keep controversial items, such as funding for the wall and defunding of Planned Parenthood, out of the equation.

They will also soon need to raise the debt ceiling.

#### *This and That – and our April recess schedule.*

\* Alexander Acosta's nomination to be Secretary of Labor advanced out of the Senate Health Education Labor and Pensions Committee on a party line vote.

\* Former Georgia Governor and Agriculture Secretary nominee Sonny Perdue is hoping for a confirmation vote on the floor of the Senate in late April. I won't be shocked if the vote slips into May.

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He'll host China's Xi-Jinping at Mar-a-Lago on Thursday, where high on the list of discussion topics will be trade barriers and North Korea.

\* Senator Mike Crapo, Chairman of the Senate Banking Committee, wants to begin work on financial regulatory reform through bipartisan engagement with Senator Sherrod Brown on non-controversial legislation.

\* The Senate and the House will be in recess (district/state work periods) during the weeks of April 10th and 17th. This Week in Washington will publish next on April 11th, covering a very significant week. We'll take the week of the 17th to pause and reflect, and return with a special issue on April 25th.