



Wespath

BENEFITS | INVESTMENTS

CONFERENCE FORUM

Legislative Landscape

Agenda

- New Administration in Washington, D.C.
- Election Impact on the 115th Congress
- Legislative Policies and Priorities
- Risks for Church Plans
- Church Alliance Efforts
- Nomination to U.S. Supreme Court
- Litigation Update

45th President of the United States



Tom Price
Secretary of Health
and Human Services



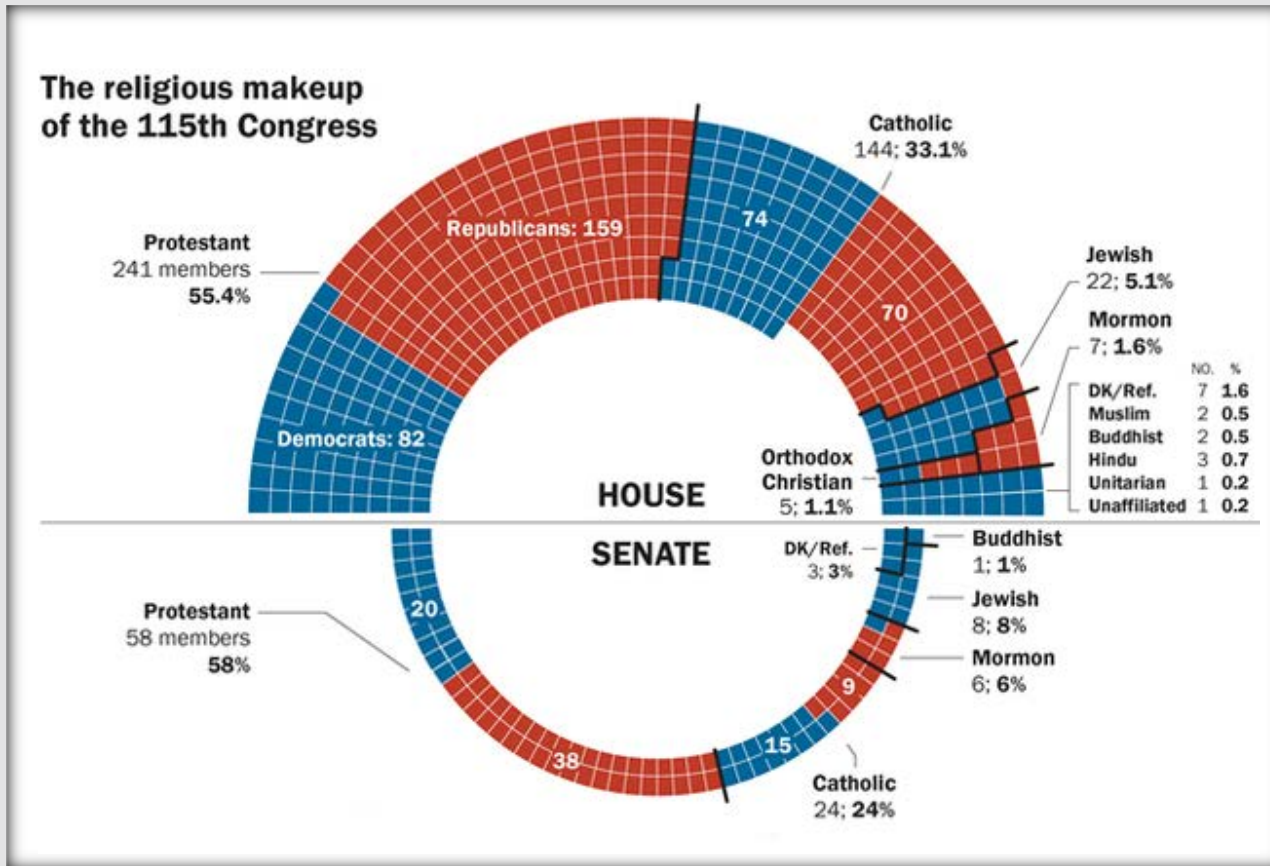
Steve Mnuchin
Secretary of
the Treasury



Andrew Puzder
Secretary of Labor



The 115th U.S. Congress



House
 Republicans: **238**
 Democrats: **194**

Senate
 Republicans: **52**
 Democrats: **48***

* Includes 2 independents who caucus with Democrats

Source: Pew Research Center

2018—33 Senators Up for Re-Election

Democrats

Baldwin, Tammy (D-WI)
Brown, Sherrod (D-OH)
Cantwell, Maria (D-WA)
Cardin, Benjamin L. (D-MD)
Carper, Thomas R. (D-DE)
Casey, Robert P., Jr. (D-PA)
Donnelly, Joe (D-IN)
Feinstein, Dianne (D-CA)
Gillibrand, Kirsten E. (D-NY)
Heinrich, Martin (D-NM)
Heitkamp, Heidi (D-ND)
Hirono, Mazie K. (D-HI)
Kaine, Tim (D-VA)
Klobuchar, Amy (D-MN)
Manchin, Joe, III (D-WV)
McCaskill, Claire (D-MO)
Menendez, Robert (D-NJ)
Murphy, Christopher (D-CT)
Nelson, Bill (D-FL)
Stabenow, Debbie (D-MI)
Tester, Jon (D-MT)
Warren, Elizabeth (D-MA)
Whitehouse, Sheldon (D-RI)

Republicans

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

Independents

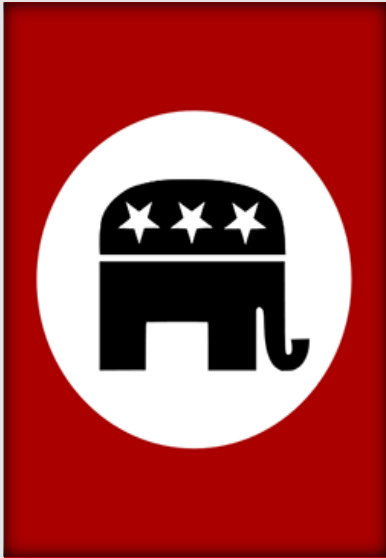
King, Angus S., Jr. (I-ME)
Sanders, Bernard (I-VT)

Presidential election
results **by state**

Red: Trump won state
Blue: Clinton won state

- Democrats must defend **23 of 33** seats—including **10 seats** in states Trump won
- Trump won 5 states with re-election seats by **19% or more**
 - Indiana, Missouri, Montana, North Dakota, West Virginia
- Democrat control of Senate unlikely in 2018
 - Democrat senators from red states may cooperate with Trump more than usual

Priorities for Republican Government



- Repeal and replace Affordable Care Act (ACA)
- Comprehensive tax reform
- Overall deregulation, especially financial services
- Roll back climate change mitigation regulations
- Immigration enforcement and border security
- Trade agreement renegotiation

ACA Repeal and Replace

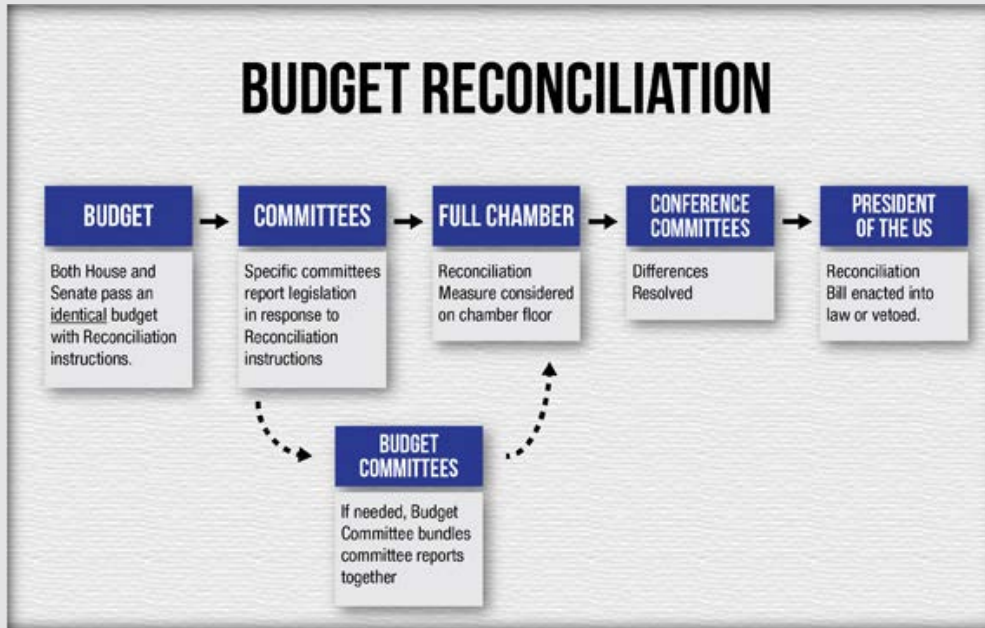


- Order **administrative regulatory rollback**
- Use **reconciliation** to repeal and partially replace ACA
- Use **regular order** to further replace ACA
- Makes a precarious insurance market



President Trump signed an executive order to reduce the impacts of the ACA on **January 20**—his first day in office

Budget Reconciliation Process



Elizabeth MacDonough
Parliamentarian of the U.S. Senate
2012 – Present

- Congress passed a budget resolution in January
- Resolution included instructions for ACA repeal and replace
- Provisions limited to those with more than incidental budget impact
- Senate Parliamentarian determines what is included or excluded
- Passage requires only **51** Senate votes

Repeal/Replace in Reconciliation

- Tax penalties for individual and employer mandates
- Medicaid expansion
- Tax credits for individuals*
- Cadillac Plan Tax delay
- Health savings account (HSA) expansion
- Other ACA taxes
 - (Medicare tax for high-earners, medical devices, health insurance premiums, etc.)

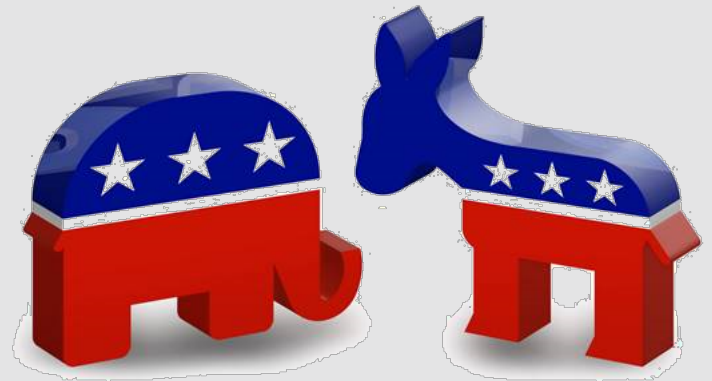


* Substituted with a less-generous age-adjusted tax credit.

Needs 60 Senate Votes

- Employer reporting requirements
- Individual and employer mandates
- Market reforms
 - **Pre-existing conditions exclusions***
 - Age 26 coverage
 - Prohibition on annual limits
 - Essential health benefits and preventive services
 - No rescissions
 - **Age restrictions on premiums***

BUT:
not the tax penalties



* Draft House ACA repeal/replace bill purports to amend these provisions.

ACA Repeal/Replace Risks

- Reliance on ACA marketplaces and Medicaid expansion
 - Four annual conferences have **terminated** group health plans
 - Arkansas, Florida, Great Plains, Illinois Great Rivers
 - Reduction of tax credits; partial reinstatement of pre-existing conditions exclusions; increase in age ratio in premiums
- Cadillac Plan Tax remains



What Are the Odds?

- Opposition from Democrats (48 in Senate)
- Opposition from Republicans in states that expanded Medicaid (4 in Senate)
- Opposition from libertarian and movement conservatives



Sen. Lisa Murkowski (R-AK), Sen. Rob Portman (R-OH),
Sen. Cory Gardner (R-CO), Sen. Shelley Moore Capito (R-WV)



Sen. Rand Paul (R-KY), Rep. Jim Jordan (R-OH),
Rep. Mark Walker (R-NC)

Tax Reform Proposals

Path Forward: A Second Budget Reconciliation Bill

- Timeline appears to be Summer 2017
- No need for 60 votes—reconciliation process
- 10-year budget window restricts permanence



**Speaker Ryan
(R-WI)**

A Better Way



**Representative Camp
(R-MI)**

*Chair—House Ways
and Means (retired)*



**Senator Wyden
(D-OR)**

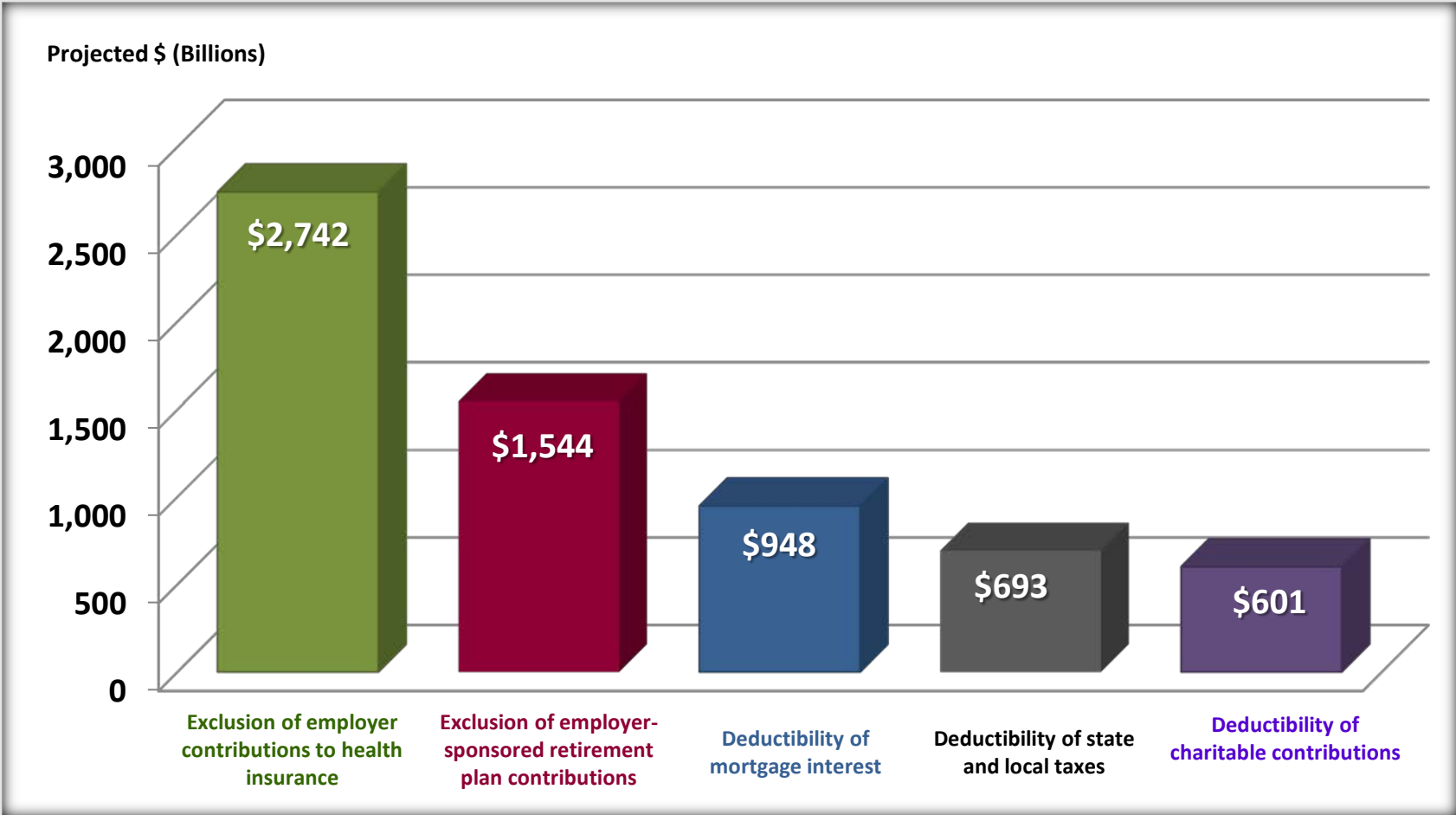
*Ranking Finance
Member*



**Senator Hatch
(R-UT)**

Finance Chair

Revenue Sources 2016 – 2025



Source: U.S. Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2017*

Tax Reform Risks



Clergy Housing Allowance Exclusion

- **Worst Case:**
 - Elimination
- **Possible:**
 - Dollar cap
 - Elimination of double tax benefit



Dividends Received by Tax-Exempt Investors

- Taxation



Charitable Contribution Deduction

- Elimination/reduction

Tax Reform Risks—Plans



- **Retirement plan “consolidation/harmonization”**
 - Special provisions for 403(b) church plans
 - E.g., clergy-only plans; special catch-up contributions; etc.
- **Reduction in plan contribution limits**
 - Or conversion of some or all contribution to “Roth” amounts

Tax Reform Opportunities



Fix the problem of non-QCCOs* in 403(b)(9) plans
Example: United Methodist Personal Investment Plan (UMPIP)

* QCCO: Qualified church-controlled organization

403(b)(9) Timeline

March – April 2016	IRS rejects language allowing QCCOs in volume submitter pre-approved 403(b)(9) plans
May 2016	IRS states that non-QCCOs cannot sponsor/participate in 403(b)(9) plans (even if individually designed) <ul style="list-style-type: none">• <i>But, non-QCCOs have been in 403(b)(9) plans for more than 30 years</i>
June 2016	Church Alliance meets with IRS
September 2016	Senator Cardin amends Senate Finance pension bill (RESA*) to add text to fix non-QCCO 403(b)(9) issue
October 2016	RESA package passes Senate Finance Committee
November 2016	Election outcome reduces “lame duck” legislation

* Retirement Enhancement and Savings Act of 2016

403(b)(9) Fix in 115th Congress

- House bill (likely to be called the FAITH Act)
- Ways and Means Committee in the House
- Senate companion bill
- Finance Committee in the Senate



Rep. Pete Roskam
(R - IL)



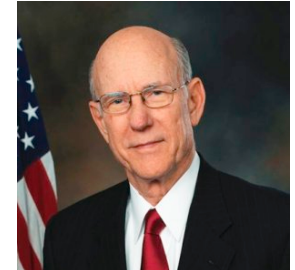
Rep. Ron Kind
(D - IL)



Sen. Ben Cardin
(D - MD)



Sen. Mike Crapo
(R - ID)



Sen. Pat Roberts
(R - KS)

Financial Services

- **Department of Labor (DOL) Fiduciary Rule**
 - President Trump executive order
February 3—requests agency review
 - DOL delays 60 days
- **Dodd-Frank Act Implementation**
 - President Trump executive order—**February 3**
 - Other SEC* and CFTC* regulations
- **Financial services reform legislation**
 - **Church plan opportunity:**
Commodity pool operator (CPO)
exemption for Church benefit boards



* SEC: Securities and Exchange Commission
CFTC: Commodity Futures Trading Commission

Church Alliance Efforts



Church Alliance—Priorities

- Protect church plans in any ACA repeal bill
- Seek solutions for church plans in any ACA replacement bill
 - E.g., seek exemption from Code Section 105(h) for church plans
- Protect clergy housing allowance and church plans in any tax reform bill
- Fix the 403(b)(9) non-QCCO issue
- Seek a solution to church plan benefit board concern with commodities investment rules



Litigation



U.S. Supreme Court



Judge Neil Gorsuch (10th U.S. Court of Appeals) nominated by President Trump

Church Plan (Hospital) Cases

Challenge to church plan status (ERISA exemption)



Claim

Only “church or convention or association of churches” can “establish” church plan

Status

U.S. Supreme Court oral argument **March 27**

Risk

If hospitals lose, they may seek legislative transition relief—which could impact the “church plan” definition in Code

Unreasonable Fee Cases



Class Action Fee Litigation

- **2006-2017**—Numerous lawsuits with multimillion \$ settlements against corporate 401(k) plan sponsors
- **2016**—Universities sued
 - 11 well-endowed private university 403(b) plans and one 401(k) plan
 - Duke, Yale, Northwestern, Vanderbilt, MIT, Emory, Johns Hopkins, NYU, Columbia, Cornell, Penn, USC

Unreasonable Fee Cases

Claim: Unreasonable fees charged to defined contribution retirement plans in violation of fiduciary duties

Church 403(b) plan sponsor ELCA Board of Pension (Portico)

- Minnesota trial court dismissed on First Amendment—**excessive entanglement**
- Minnesota Court of Appeals reversed
- Minnesota Supreme Court declined review
- Portico petitions for *certiorari*—**U.S. Supreme Court**
- Supreme Court **denies *certiorari***—February 27, 2017

Risk: More such lawsuits against church plans



Housing Allowance

FFRF* Claim: Cash housing allowance is **unconstitutional**

Current case—Wisconsin Federal Trial Court

- **January 2017:** Motion to Intervene (filed by three clergy)—**granted**
 - Represented by Becket Fund
- District court decision expected
 - **Spring 2017** (*same judge as 2013 case*)
- Appeal to Seventh Circuit Court of Appeals—**probable**



* **FFRF: Freedom from Religion Foundation**



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