City of Long Beach
Working Together to Serve

Memorandum

Date: April 26, 2017

To: Federal Legislation Committee Members

From: Patrick H. West, City Manager

Subject: **March – April 2017 Federal Legislative Report**

Attached for your information, is a report from Dentons, the City's federal legislative advocates in Washington DC. This report provides insight into the President's first 100 days in office, as it relates to the City of Long Beach. Specifically, we are monitoring:

- Executive orders and memoranda
- President's FY 18 budget
- Federal FY 17 funding

Please contact Diana Tang, Manager of Government Affairs, at (562) 570-6506 if you have any questions.

cc: Mayor and Members of the City Council
Tom Modica, Assistant City Manager
Anitra Dempsey, Interim Deputy City Manager
All Department Directors
Rebecca Jimenez, Assistant to the City Manager
Diana Tang, Manager of Government Affairs
Dentons

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MEMORANDUM

To: Diana Tang

From: Dentons

Date: April 24, 2017

Subject: Washington Update

Overview

Congress returns from its two-week Spring recess with the threat of a government shutdown looming, a full-court press by the White House to pass an Obamacare repeal-and-replace bill in the House (without a pathway in the Senate for the House text to pass) and President Trump's symbolic 100th day in office less than a week away. One can expect the first week and, in fact, much of the pre-August recess session, to be marked by heated rhetoric, frenzied cable news reporting, presidential tweets castigating perceived roadblocks—and little change in the dynamics of the legislation process. Namely, big legislative initiatives are increasingly hard to pass through the House in a form palatable to the Senate. Which is to say the outlook for tax reform, a transportation package (the President in February called on Congress to invest $1 trillion in America's roads, airports and rail lines), let alone Obamacare repeal-and-replace grow murkier with each passing news cycle. Meanwhile, the administration, in an attempt to work past Congressional stagnation, will increasing rely on the use of executive orders and the Congressional Review Act, although in mid-May, the latter will cease to be a viable option for thwarting former President Obama's final regulatory agenda.

To borrow a line from our President about the repeal-and-replace effort, and apply it to the difficulty of turning campaign promises into legislative victories, that is while wildly out of context, is nevertheless apt: "Nobody knew [this] could be so complicated."

The Trump administration

As the administration closes in on its first 100 days, themes, both intended and not, have begun to emerge. The CEO in charge of government. The man of the people taking his unfiltered message directly to his fellow Americans. The man of his word fulfilling campaign promises with a sure sense of direction. These are just some of the binding motifs that have been cultivated by the administration and its supporters. These are in stark conflict with the unintended themes (or memes) that have led to so many sleepless nights for Press Secretary Sean Spicer: The President unfamiliar with the mechanisms of government who's learning on the job. The judiciary as bulwark, checking executive overreach as the President attempts to make good on his campaign promises. The administration struggling to govern as internal conflicts seek to moderate the President's stated positions. There is some irony in the fact that the President, his press secretary and his closest advisors have been mocked mercilessly by the Saturday Night Live cast, heirs to the original "Not Ready for Prime Time Players," as the administration has itself been accused by detractors and, increasingly, its supporters, as not ready for prime time.

Historically, while this administration's first 100-days successes and missteps may seem unique, they are hardly unheard of when one looks at past administrations. What is unique is that for the first time in the modern era of Presidential administrations, we have a senior White House staff with no experience in the trenches of Congress passing legislation. Presidents Obama, Clinton and both Bushes all had senior staff with direct experience in the Congress, either as former members or as senior leadership staff. President Trump has filled his senior positions with senior military officers, private sector leaders, former business associates, campaign staff and family members. Their lack of real-world experience dealing with "the swamp" and the creatures that inhabit it may have been a boon, optically speaking, for a campaign promising to reform Washington, but in these early days, it has proved to be an Achilles heel.

Meanwhile, the pace at which the administration has gone about identifying and nominating candidates for positions in agencies across the government has been glacial. Some observers have noted that this is an administration whose senior advisors speak openly about dismantling the "administrative state" and its failure to fill hundreds and hundreds of federal jobs is a manifestation of that desire. That said, it is generally accepted that of the nearly 4,000 executive branch appointments the President can make, roughly 550 are mission critical. As of April 15, only 22 had been filled. As for the remaining 528, there were formal nominations for 24 positions; selections but no formal nomination yet for 35 positions; and radio silence as to 473 positions.

The most successful nomination and confirmation for the administration so far was that of Neil Gorsuch, a judge on 10th Circuit Court of Appeals who was recently sworn in as the newest Supreme Court Justice. But even in his case, Senate precedent was disposed of to get the nomination across the Senate floor and to the President's desk.

There is an expectation, somewhat unfounded at the moment, that the pace of position-filling will pick up as the administration moves into its second 100 days. Certainly one can expect that nominations to fill the 93 open US attorney positions will be coming shortly. However, there's also an expectation that Senate Democrats will continue to deploy the only tactic available to them, namely stalling the process.

Executive orders and memoranda

To date President Trump has signed 24 executive orders and 20 presidential memoranda. Both types of executive action are closely related, have the force of law and are intended to help those in the executive branch manage the operations of the federal government. President Trump's use of presidential directives is hardly unique. In fact, the volume of EOs and memoranda is more or less equal to that of former President Obama, with Trump issuing four more than his immediate predecessor. And both presidents, as well as their forbears, have used the orders to turn campaign promises into realities.

President Trump's executive orders can be placed in five thematic buckets: immigration, regulation, trade, law & order and jobs, all of which line up with the themes of his successful presidential campaign. And like the campaign, they have faced significant criticism from the opposition party. This criticism has manifested itself in court challenges, such as occurred with the high-profile orders on immigration and environmental regulations, the enforceability of which has been stayed as the judicial process plays out.

We expect this judicial "check" on the power of the executive branch to continue for the foreseeable future. We would also note that several of the less controversial orders, centered around the working of the federal government and the enforcement of existing regulations, have taken hold and are full steam ahead, as agencies look to streamline not only personnel but agency reach as well.

Of particular relevance to the City are the President's orders concerning immigration and specifically his directive to withhold federal funds from so-called sanctuary cities that limit their cooperation with federal immigration authorities. We note that the City of Long Beach has not declared itself a sanctuary city, but we have been watching this debate unfold with significant interest.

Following the release of the order, Attorney General Jeff Sessions surprised the media with an unannounced appearance at a press conference to offer clarity as to what federal funds were in jeopardy and the criteria for putting a city on its "non-cooperative jurisdictions" list.

After speaking at length about the problem of crimes committed by undocumented immigrants, Sessions said the Department of Justice will require jurisdictions seeking grants to certify they were complying with the section of the US Code that demands information-sharing with federal immigration officials. The DOJ also will "take all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates 8 U.S.C Section 1373," he said. He also noted that the policy merely reiterates an Obama administration stance adopted last year. It's "entirely consistent with…guidance issued last summer," he said.

That said, there remain significant unknowns surrounding the enforcement of this order. Title X of the Congressional Budget Act of 1974, also known as the Impoundment Control Act of 1974, specifies that the President may request that Congress rescind appropriated funds. If both the Senate and the House have not approved a rescission proposal (by passing legislation) within 45 days of continuous session, any funds being withheld must be made available for obligation. Congress is not required to vote on the request, and has, in fact, ignored most Presidential requests. In response, some have called for a line item veto to strengthen the rescission power and force Congress to vote on the disputed funds.

The Congressional Budget Act was passed in response to a widespread feeling in Congress that President Nixon was abusing his power of impoundment by withholding the funding of programs he opposed. The Act, especially after Train v. City of New York (1975), effectively removed the presidential power of impoundment.

We will continue to monitor this developing situation.

Skinny budget

President Trump's so-called "skinny" budget has significantly less detail than the "skinny" budgets of the last five administrations going back to Ronald Reagan. At the topline, the FY18 budget features a proposed $54 billion increase in defense spending and an equal amount in spending cuts on the discretionary side. The Environmental Protection Agency would sustain the biggest cut of any federal agency, with a 31% reduction in funds. Following closely behind is the State Department, with a cut of 29%. The Departments of Transportation and Housing and Urban Development both are looking at budget cuts of 13%.

The Trump budget omits any figures on entitlement or mandatory spending (e.g., Social Security, Medicare, Medicaid, federal retirement, or SNAP), interest payments, revenues or deficits. In contrast, while all five previous administrations released initial budgets that displayed information in very different ways, they all provided a more complete picture of how their policies would affect total spending, revenues and deficits (or surpluses), and showed them for several years beyond the budget year. All five included estimates of total spending, revenue, and deficits (or surpluses) for the coming fiscal year and at least the three subsequent years, and the two most recent administrations (Obama and Bush 43) projected ten years out. Four of the five sorted total spending into different categories and for multiple

years; for instance, showing total spending by each federal agency, by budget functions (e.g., health, education or defense) and/or by program areas.

It is critical to remember that Presidents' budget proposals do not have the force of law—in fact, neither do congressional budgets—but are merely offered as a guidepost and can be ignored or adopted during the congressional appropriations process. President Obama's budgets for FY14, 15 and 16, mustered a total of one vote. These are political documents and should be viewed as such. They provide a window into the policy priorities of the administration, not concrete instructions. In the end, House and Senate appropriators have the final say on government spending.

The FY18 Congressional budgetary process has been slow to begin as the cloud of FY17 still hangs over both chambers and the GOP has chosen to use the FY17 budget to include reconciliation instructions to dismantle Obamacare. We expect this stagnation to continue through mid to late May, as Republican legislators struggle to find consensus, at least among themselves, on a repeal-and-replace strategy.

FY17 funding

To avoid a government shutdown, Congress will have to pass some funding measure by Friday April 28. The current expectation is that a short-term continuing resolution will be passed that keeps the government open and allows for further negotiations between House and Senate appropriators. Reports have varied significantly as to the White House's level of involvement in these negotiations. President Trump, in an effort to cajole Democrats to the table to work on repeal and replace, threatened not to fund the Obamacare exchanges cost sharing reduction (CSR). The effort failed—with Democrats and Republicans alike. With the GOP "in control" of both ends of Pennsylvania Ave, the blame will fall squarely on Republican shoulders should an agreement not be reached.

Given the political realities associated with a government shutdown, a bipartisan positive dialogue between the House and Senate and the removal of the more politically charged legislative language (e.g., defunding planned parenthood),we see the likelihood of a government shutdown as remote. We also see the likelihood of FY17 being funded with anything more than a continuing resolution, keeping spending at FY16 levels, as probable.

A look ahead

As we noted in the beginning of this memo, rhetoric and reality continue to befuddle the Trump administration and its allies in Congress. Legislative victories have been few and far between. The administration's ambitious agenda has stalled around the repeal-and-replace effort, the delay impacting its efforts for tax reform and infrastructure spending. Advancement of the agenda is showing more signs of life in Congress, where we've seen hearings, if not markups, on tax reform and infrastructure. Also white papers produced by committee staff and outside groups seeking to influence the debate. The work of the Congress continues.

We will continue to monitor and advocate on behalf of the city as this process continues.