

CLOSE UP IN CLASS: ELECTION CENTER

Close Up's Election Center helps students to develop an understanding of the primaries and caucuses, the major policy issues driving the election, and the positions all major candidates are taking on key issues. For more information on Close Up and our online resources, please visit www.CloseUp.org.

THE 2016 ELECTION: WHAT COMES NEXT?

INTRODUCTION

On November 8, 2016, U.S. citizens elected Donald Trump as the 45th president of the United States. After months of polls that showed former Secretary of State Hillary Clinton with a significant advantage in the Electoral College, the election of Trump—a Republican businessman with no experience in elective office—was one of the biggest electoral surprises in U.S. history.

So, what happens now? Once the final votes are tallied, Americans will usher in a new Republican presidential administration and a new Republican-controlled Congress in early 2017. With the same party controlling both the executive and legislative branches of government, Republicans will have broad power to pass their priorities in Congress and have them signed by the president. And together, President-elect Trump and Congress could have sweeping effects on the scope and composition of government, the ideological balance of the Supreme Court, and policies that shape our everyday lives.



THE TRANSITION BEGINS

One of the bedrocks of American democracy is the peaceful transition of power from one president to the next. But the process of handing over the executive branch and the national security apparatus is vast and complex, and one that requires the outgoing and incoming administrations to work closely with one another for several months.

For the incoming administration, the work begins months before Election Day and much of the planning is done by teams in four specific areas.

Agency review. This team is responsible for collecting information about the roles and responsibilities of each department and agency in the federal government. The team uses this information to determine who should serve in key leadership roles and where attention is most needed.¹

Appointments. This transition team is often one of the largest, as it works to fill appointments for approximately 4,000 jobs—more than 1,100 of which require Senate confirmation.² This team recommends individuals to serve as cabinet members, undersecretaries, assistant secretaries, and managers, and develops a system for identifying and screening lower level appointees as well.³

THE 2016 ELECTION: WHAT COMES NEXT?

Operations. This team handles the administrative tasks of the transition, including operations, human resources, ethics and legal issues, communications, and congressional relations. This team must work with the General Services Administration to secure office space and information technology support.⁴

Policy. This team prioritizes the campaign promises made by the president-elect and lays the groundwork for new policies to be implemented. The team builds a formal agenda, a budget, and a detailed plan of action for the president's first 100 or 200 days in office.⁵

CHOOSING A CABINET

Article II, Section 2, of the Constitution establishes that once elected, the president “may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.”⁶

In other words, one of the first actions of President-elect Trump will be to choose his cabinet—a group that comprises the leaders of the executive departments. It is the job of these officials to advise the president on a number of issues. The original cabinet formed by President George Washington had only four members—Secretary of State Thomas Jefferson, Secretary of the Treasury Alexander Hamilton, Secretary of War Henry Knox, and Attorney General Edmund Randolph.⁷ Over the past two centuries, the cabinet has expanded to include the vice president and the heads of 15 executive departments:

- Secretary of State
- Secretary of the Treasury
- Secretary of Defense
- Secretary of Justice
- Secretary of the Interior
- Secretary of Agriculture
- Secretary of Commerce
- Secretary of Labor
- Secretary of Health and Human Services
- Secretary of Housing and Urban Development
- Secretary of Transportation
- Secretary of Energy
- Secretary of Education
- Secretary of Veterans Affairs
- Secretary of Homeland Security

When selecting cabinet nominees, modern presidents often choose members of Congress, governors, business leaders, university presidents, or former cabinet secretaries. These nominees can also be symbolic of the tone that the president wishes to set for his or her presidency. President Washington, for example, tried to establish credibility and balance by choosing cabinet secretaries from several different regions of the country.⁸ President Abraham Lincoln made the remarkable decision to appoint William Seward, Salmon P. Chase, and Edward Bates—his rivals for the Republican nomination—to his cabinet, creating what became known as a “team of rivals.”⁹ Several presidents have also included members of the opposing political party in their cabinets in a display of bipartisanship. President Barack Obama, for example, nominated three Republicans to serve in his original cabinet, although one—Senator Judd Gregg, R-N.H.—withdrew his name from consideration.¹⁰



Who is President-elect Trump reportedly considering for cabinet positions?

THE 2016 ELECTION: WHAT COMES NEXT?

So, what role does Congress play in the creation of a cabinet? Under Article II, the president must submit his cabinet nominations to the Senate, which then holds committee hearings and votes as an entire body to approve or reject the nominees. The majority are routinely confirmed, although a small number of controversial nominations are rejected or fail to receive Senate action.¹¹

The other 1,100-plus positions that are chosen by the president and approved by the Senate include:

- Deputy cabinet secretaries, heads of agencies, and other management positions (25 percent)
- Ambassadorial positions (17 percent)
- Positions on boards and commissions, such as the Securities and Exchange Commission (13 percent)
- Policy positions in cabinet departments (11 percent)
- Part-time trustee positions, such as those at the John F. Kennedy Center for the Performing Arts (10 percent)
- Executive positions, such as chief financial officers and general counsels (eight percent)
- U.S. attorneys, who represent the federal government in courts (eight percent)
- U.S. marshals (eight percent)¹²

THE IMPLICATIONS FOR THE SUPREME COURT

Article II of the Constitution outlines one of the most impactful duties of a president: nominating justices to the Supreme Court.¹³ The Court is the highest in the land and it is responsible for determining whether or not laws and executive orders are constitutional. The nine justices are appointed by the president, confirmed by the Senate, and serve for life—unless they are impeached or choose to retire.

As of November 2016, there are only eight justices on the Supreme Court following the death of Justice Antonin Scalia in February. The eight justices include four who were appointed by Republican presidents and four who were appointed by Democrats, creating a relatively balanced ideological spectrum. In March, President Obama nominated Judge Merrick Garland, the chief judge of the U.S. Court of Appeals for the District of Columbia, to replace Justice Scalia, but the Republican-controlled Senate refused to consider the nomination. President-elect Trump will choose a different nominee when he assumes office—and because the Senate will be controlled by his party, it is much more likely that his nominee will be confirmed.

So, who will President-elect Trump choose for this position? During the presidential campaign, he pledged to appoint conservative justices who will uphold Second Amendment gun rights; walk back *Obergefell v. Hodges*, the 2015 decision that allowed same-sex marriage nationwide; and work to overturn the 1973 abortion ruling *Roe v. Wade*. President-elect Trump has also released a list of 21 men and women who are “representative of the kind of constitutional principles I value.”¹⁴



Who has President-elect Trump listed as examples for his Supreme Court nominees?

But President-elect Trump could have a greater impact on the Supreme Court than simply nominating Justice Scalia’s successor. With several justices advancing in age, experts have estimated that there could be as many as four vacancies on the Court during the next presidential term.¹⁵ The oldest justices include two liberals—Justices Ruth Bader Ginsburg (83) and Stephen Breyer (78)—and one centrist—Justice Anthony Kennedy (80)—who often acts as a swing vote. If any one of these justices retires, he or she would likely be replaced with a more conservative justice, pushing the Court to the right. Any shifts in the ideological make-up of the Court could have lasting effects on decisions regarding abortion rights, affirmative action, immigration, health care, or the regulation of money in campaigns and elections.¹⁶

THE 2016 ELECTION: WHAT COMES NEXT?

THE UPCOMING AGENDA

The American people did not only elect a new president on November 8—they also cast their ballots for members of the 115th Congress, which convenes on January 3, 2017. In the new Congress, both the House of Representatives and the Senate will be controlled by Republicans, just as they were in the 114th Congress. The major difference is that this time, a Republican will be in the White House as well.

When the same party controls both the executive and legislative branches, lawmakers can often pursue significant policy changes, since there are fewer threats of a presidential veto. The last time the same party controlled both the White House and Congress was 2009-2011, when Democrats passed priorities such as the Patient Protection and Affordable Care Act, the 2010 health care law known as Obamacare. The last time Republicans controlled both branches was 2003-2007 during the administration of President George W. Bush, when they passed wide-ranging tax cuts and funding for the Iraq War.

There are several important issues that the president and Congress could address in 2017, including:

Health care. Republicans have long opposed Obamacare and Congress has signaled that it will work to repeal it. “It’s pretty high on our agenda,” said Senate Majority Leader Mitch McConnell. “I would be shocked if we didn’t move forward and keep our commitment.”¹⁷ Health care experts have said that a full repeal is unlikely—but Congress could change several key provisions of the law. To reduce the role of government in health insurance markets, Republicans could end the requirement for all Americans to have insurance, end the requirement for large companies to provide insurance for their workers, or convert Medicaid into a block grant program that is designed by each state.¹⁸

Immigration. One of the central issues of the Trump campaign was a promise to build a wall on the southwest border with Mexico. This project would require funding from Congress and it is unclear whether there is enough support for the project. But President-elect Trump has also vowed to take several actions that do not require congressional cooperation. He has said that he would reverse President Obama’s executive actions that protect certain undocumented immigrants from deportation; he has vowed to deport up to two million undocumented immigrants with criminal records; and he has promised to temporarily halt the acceptance of Syrian refugees in the United States.¹⁹

Taxes. The centerpiece of President-elect Trump’s economic plan is an overhaul of the federal tax code. His proposal would reduce taxation of businesses and of most households across the country, and high earners would see the largest reduction in their taxes. President-elect Trump’s plan shares some common ground with plans put forward by House Republicans, so Congress may act on this issue.²⁰

Trade. President-elect Trump has promised to revisit and renegotiate several free trade agreements. His opposition to the proposed Trans-Pacific Partnership between the United States and Pacific Rim nations has almost guaranteed that the deal will not make it through Congress. However, his other trade policies could attract opposition in Congress, as many Republicans are strong supporters of free trade.²¹

The Environment. President-elect Trump has said that climate change is “fictional,” and that he will work to undo President Obama’s climate policies. President-elect Trump could choose not to follow through with commitments the United States made as part of the 2015 Paris agreement or he could direct the Environmental Protection Agency to rewrite or weaken certain energy regulations.²²

THE 2016 ELECTION: WHAT COMES NEXT?

CONCLUSION

A well-executed transition from one administration to the next is essential to the success of a new presidency. There are many decisions to be made, jobs to be filled, and knowledge to be passed on in a short period of time. When President-elect Trump takes the oath of office, he and his team must be ready to effectively manage the federal government and carry out his priorities.

In the days, weeks, and months ahead, every U.S. citizen also has important work to do. It is up to voters to ensure that their elected officials represent their interests, work on behalf of issues that matter, and always protect and defend the Constitution. Whether the new president and Congress choose to enact policies related to health care, immigration, taxes, trade, or energy, the American people must make their voices heard in the process and hold their leaders accountable for their actions.

ENDNOTES

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- ²⁰ *Ibid.*
- ²¹ *Ibid.*
- ²² *Ibid.*