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Executive Memorandum: Russ Brown
Subject: Labor policy outlook for the 116th Congress

Divided government will return when the 116th Congress begins on January 3, 2019. House Democrats will rule their chamber for the first time since 2010 and Senate Republicans added to their majority though they are still short of the 60-vote threshold necessary to move most legislation. Here's what to expect:

Nomenclature: Current Ranking Member of the House Education and Workforce Committee, Rep. Bobby Scott will become chairman and rename the body as the Committee on Education and Labor, historically the name of the committee under Democratic majorities.

Oversight and Confirmations: House Democrats have already announced they will begin their first session back in the majority with oversight hearings of the Department of Labor's handling of a "tip pool" regulation. Early in 2018 the department was criticized for announcing that proposed rule without making public a government study showing the rule's financial impact on workers. Presumptive Chairman of the Education and Labor Committee, Rep. Scott, also announced his intention for a hearing on DOL's rule change easing child work safety rules for the health care industry.

Even while in the minority, Rep. Scott and his team have been



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aggressive in their oversight of the Trump administration's labor reform efforts. Letters have been sent to DOL and the National Labor Relations Board demanding information or delays regarding recent rulemakings as well as calls for investigations of alleged ethics violations by members of the NLRB. These efforts will continue and expand to committee hearings. When in the majority, committee Democrats will also have ability to issue subpoenas to compel testimony or produce information they feel has thus far been lacking.

In the Senate, Republicans at the Health, Education, Labor and Pensions Committee can be expected to keep their labor focus on administration confirmations. At present, 50% of the key positions at the Department of Labor have been confirmed. The Senate has yet to confirm nominees for the Commissioner of the Bureau of Labor Statistics, Administrator of the Wage and Hour Division, and Assistant Secretaries for employment and training, occupational health and safety, policy, veterans employment and training, and disability employment policy. The HELP Committee has done its part to approve nominees for almost all of those posts (no nominee yet for Assistant Secretary for Disability Employment Policy), but unconfirmed nominations expire at the end of 2018. Expect those nominations to be renewed early in 2019 and the HELP Committee confirmation process to start anew.

There will likely be a need to fill a vacancy on the NLRB, where former board chairman Mark Gaston Pearce has been renominated to fill a seat designated for the minority; and four positions open at the Equal Employment Opportunity Commission (EEOC), three members and the general counsel. Those NLRB and EEOC nominations have been



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contentious and while the NLRB seat could remain unfilled indefinitely the EEOC will soon lack quorum and some stakeholders are increasing calls to fill those positions immediately.

Legislative Priorities: Senate Republicans will continue their support of permanent, legislative fixes to the joint employer and other high-profile issues. With their small majority, though, it will remain difficult to secure the needed 60 votes to advance legislation in the Senate. An area where bipartisan cooperation could be found may involve job training efforts. Any partisan labor legislation advanced by the Democrat-run House will be blocked by Senate Republicans, and vice-versa.

House Democrats will be eager to advance numerous labor bills that have gained steam within the Democratic caucus for years. This includes legislation to require paid leave, the “Healthy Families Act”; and the “Paycheck Fairness Act” to address gender pay disparity. Rep. Scott said the chamber will also move to increase the federal minimum wage. Workplace safety rules will also receive legislative attention in the House.

The Education and Labor Committee is also expected to take steps to reform the National Labor Relations Act and other labor laws. Scott and many other committee Democrats currently sponsor legislation to codify the Obama-era joint employer standard, ambush elections, and persuader rule. Further, their platform during the recent campaign called for binding arbitration, permitting secondary boycotts, and the prohibition on state right-to-work laws. Legislation with these



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provisions would die in the Senate but the House may begin work on it soon anyway.

Two other legislative efforts that could involve the labor committees are a transportation infrastructure bill and reform of the multiemployer pension system. Both have been areas of attention in recent years but without any resolution. The transportation committees would lead a multi-committee effort on the infrastructure bill and it would touch on the Davis-Bacon Act and project labor agreements, with or without reform of those issues. A fix for the multiemployer pension system is the current target for the Joint Select Committee on Solvency of Multiemployer Pension Plans, which expires at the end of the year. Should the matter remain unsolved, which is likely, the labor committees will continue to be faced with the mounting problem of union pension plan insolvency.

Regulatory Changes: The Congressional Review Act (CRA) is a tool for Congress to block regulatory changes made by the executive branch and affords opportunities to fast track the process, particularly in the Senate. In 2017 Congressional Republicans used the CRA successfully to block Obama administration rules like the OSHA “Volks” Rule and the “Blacklisting” Rule. The CRA requires, however, approval from both the House and Senate. With a divided Congress its unlikely for any CRA bill to get all the way to the White House, and even then the President could veto. The CRA is a regulatory tool, though, and the House Democrat Majority could use it to message opposition against upcoming rulemakings. For instance, included on the



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administration's recent Fall 2018 Unified Agenda for Regulatory and Deregulatory Actions are proposed rules expected in December from DOL and NLRB relating to the joint employer rule and DOL's overtime rule early next year. Further out, potential rulemakings included in the Unified Agenda's "Long Term Actions" are the National Mediation Board's effort to revise its existing procedures for handling representation disputes under the Railway Labor Act and the NLRB's move to overturn the 2014 representation election rule changes, which Chairman Ring says will be addressed through multiple regulatory actions rather than a single, comprehensive rule change package.