

News Analysis

Trump Presidency Will Open Floodgates For Law Firms

By **Ed Beeson** | November 9, 2016, 2:47 AM EST



Republican President-elect Donald Trump delivers his acceptance speech during his election night event in New York City in the early morning hours Wednesday. (Getty)

Donald J. Trump has captured the U.S. presidency and soon will send BigLaw scrambling.

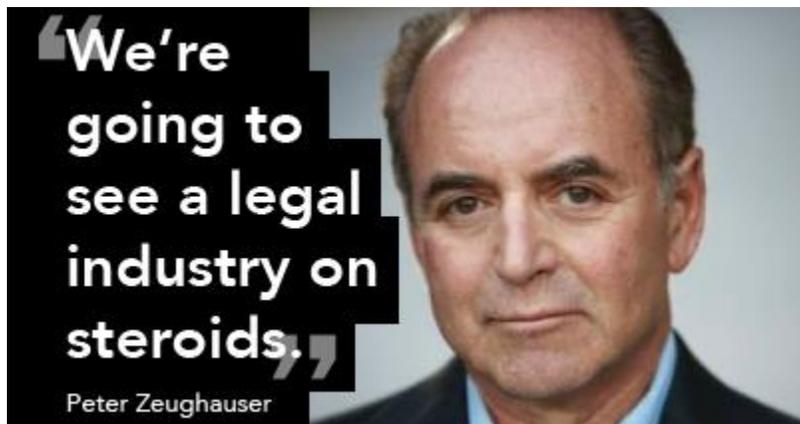
The Republican candidate's monumental, from-behind win over former Secretary of State Hillary Clinton has defied expectation and shattered all convention. And it will breed enormous uncertainty as markets and world leaders adjust to the reality that a brash and cavalier real estate mogul has secured enough ballots to be put in charge of the world's largest economy.

It will be a fraught moment for many. But it may turn out to be a great time to be a lawyer.

"We're going to see a legal industry on steroids," said Peter Zeughauser, a consultant who advises law firm management. A Trump administration "would be the biggest thing in the legal industry since the enactment of the U.S. Constitution."

Trump has vowed to upend much of the established order of Washington, starting with the legacy of his predecessor, Barack Obama. As president, Trump has said he will dismantle Obama's bedrock accomplishments, such as the Affordable Care Act and the Dodd-Frank financial reform law, and possibly nullify trade deals like the North American Free Trade Agreement, which he says have

weakened American workers. He's said he'll start his first day in the Oval Office rolling back executive orders that Obama signed when he couldn't get cooperation from the Republican-controlled Congress.



Political and legal experts are skeptical that Trump will be able to do exactly as he says. But win, lose or draw, what he touches could make for a lot of work for attorneys. At the same time though, law firms may find themselves unprepared for a Trump presidency.

Part of that is due to the prediction industry, which got so much so wrong this campaign season. Like everyone else, top-tier lawyers watched the same national polls that, for weeks leading up to Tuesday, predicted that Clinton would vanquish her opponent.

But the other part is the fact that, compared with Clinton's detailed campaign proposals, Trump has offered mostly thin sketches of what he intends to do come Jan. 20, when he's sworn into office, or whom he'll deputize in his administration. Top lobbyists in D.C. in October said Trump was far behind Clinton's team in terms of planning out his transition to office, and he remains a complete outsider and unknown in a town that prizes connections above all.

"It's hard to think of a president who will have less connection to official Washington than Trump," said Kevin O'Neill, co-chair of the legislative practice group at Arnold & Porter LLP, who like others interviewed for this story spoke in the weeks before the election was decided. "Very, very few Republican lobbyists gave to him, campaigned for him, did anything that they would normally do to build relationships."

"The question is who has a connection," he said. "Who understands him?"

Decoding The Donald

While lawyers say they and their partners have tried to map out where a Trump presidency is headed, and therefore where their energies should lie, it could be anyone's guess at this point.

"Frankly, it's mind-boggling," said Bruce Merlin Fried, co-managing partner of the D.C. office of Dentons. "It's so hard to think about it. Who are his advisers? Who would be the cabinet? What happens to the Supreme Court?"

Trump's documented shifts on public policy issues makes him a moving target for any lawyer trying to pin him down on issues. For example, while Trump railed on the campaign trail against illegal immigration, as a real estate magnate he benefited from the work visa program that many immigration

lawyers fear he will disrupt.

“The question is which Trump will show up? The anti-immigration Trump or the Trump who’s been hiring H-1B and H-2B workers for the past 30 years?” said Charles Kuck, managing partner of Kuck Immigration Partners. “When he can’t get workers for Mar-a-Lago,” the Trump Organization-owned Florida resort, “I think you will see a softening of immigration rules.”

Trump’s plan for his first 100 days in office includes offering legislation to slash corporate taxes, abandon the Affordable Care Act and spur \$1 trillion in new public and private spending on energy and infrastructure projects. He wants to pass a law that would imprison immigrants for at least two years if they illegally reenter the country. He’s also called for a constitutional amendment to impose term limits on congressional seats in a bid to stamp out special-interest politics.

To do much of this, Trump will need to work with the Republicans on Capitol Hill. But it remains a question about what sort of relationship he’ll have with the body in the wake of the scandal that erupted when recordings emerged of Trump speaking lewdly about women he tried to seduce.

Jamie Gorelick, co-chair of the strategic response group at WilmerHale and a former deputy attorney general under President Bill Clinton, expects the Republican diaspora will rally around Trump in a bid to make his first term in office a productive one. That will certainly mean a lot of efforts to turn back the clock on a lot of Obama’s signature accomplishments, such as the Dodd-Frank Act and the Affordable Care Act.

“If you had Republican hegemony across the government, you would have some very significant changes,” she said.

But even a unified front between the White House and Congress doesn’t guarantee Trump will trot the party line.

“In many respects, he’s not a traditional Republican. You can’t even count on that as a guide,” Gorelick said.



Supporters of Trump cheer as they watch election returns during an election night rally Tuesday in New York. (AP)

Border Barriers

There was no political issue more central to Donald Trump's campaign than his pledge to clamp down on U.S. immigration laws.

Some of Trump's most ambitious and expensive plans — building a border wall with Mexico that some media outlets estimate could cost north of \$24 billion and removing millions of undocumented immigrants — could hit a wall if he can't get the funding from Congress.

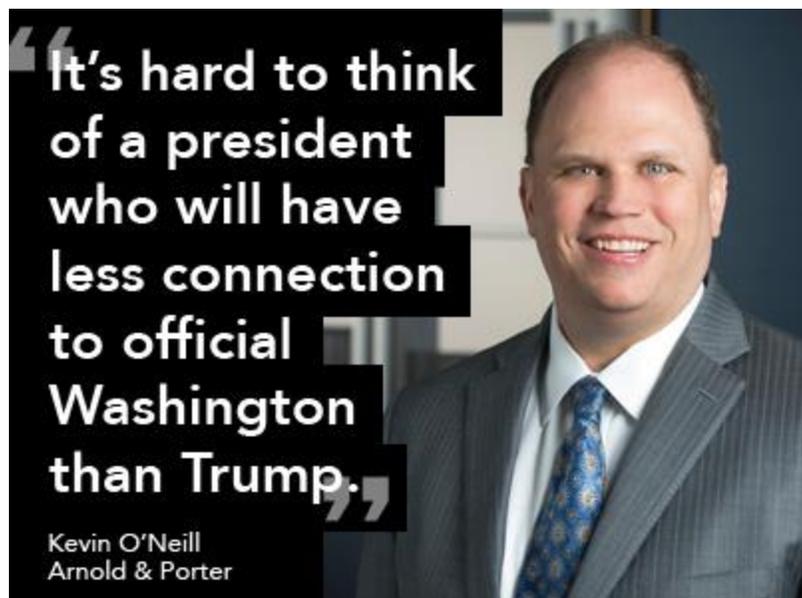
"Every dollar spent on immigration is a dollar not spent on someone else's pet program," said Angelo Paparelli of Seyfarth Shaw.

But a President Trump could take a number of executive actions that could upend the work of immigration law practices everywhere. Among other things, he would probably quickly rescind Obama's 2012 order that allowed undocumented immigrants who entered the country as children to receive temporary, renewable work permits. That would spur immediate work for immigration attorneys.

"I can envision employers would be reaching out to their lawyers to find out what other alternatives exist to keep their workers," Paparelli said.

His other actions may cause a sea change for legal work.

"People that were doing business visas may want to get used to doing asylum claims," said Kuck, the immigration lawyer. "While I hate to liken it to an apocalyptic nightmare for immigration, I fear that is exactly what it could become."



Employers also may find themselves increasingly on the hook if, for example, the Trump administration ramps up audits to inspect whether companies have been complying with requirements to check and keep records of documents that prove their staff are eligible to work in the country.

Lawyers also could find their lives complicated if Trump ramps up action on immigration without also boosting the capacity of the courts to handle the deluge.

"There aren't enough immigration judges," Kuck said. "If you're already looking at in some courts, four- and five-year waits, should a President Trump exist and begin the process, you're looking at a decadelong wait in some courts."

Trade Blockades

Trump told voters he would end a status quo in global trade that had destroyed American manufacturing jobs and put the country at an economic disadvantage. In office, he'll find it harder to live up to promises to renegotiate trade deals and impose new protectionism, lawyers said.

"It sounds good on the campaign trail, but in practice it's going to be more difficult to implement," said John Brew, vice-chair of Crowell & Moring's international trade group.

If Trump tries, though, lawyers in the international trade space certainly will have a field day. For example, his administration likely would face swift legal challenges if he were to unilaterally walk away from deals like the NAFTA or impose tariffs and other punitive measures against countries he believes are harming the U.S. economy or workers.

And it's not clear Trump would win. While he could appoint trade officials to enact his policy preferences, he'll still have to defend his administration's actions before judges and International Trade Commission members he didn't appoint.

"You have to prove your case, you have to prove unfair trade, injury. They're not layups," Brew said.

Repeal, Replace, Repeat

Lawyers also will be watching if Trump lives up to his promise to pull the plug on the Affordable Care Act. But again they're skeptical it will happen.

"They will do repeal and replace in the House for the 19th time and then the Senate will block it," said Richard Cowart, chair of the health law and government relations practice at Baker Donelson Bearman Caldwell & Berkowitz PC.

Even if the Affordable Care Act stays afloat, the Republican-controlled Congress still will face the need to fix problems with the law. Insurers have been pulling out of markets around the country and premiums have skyrocketed after policyholders turned out to be much sicker than predicted.

"They've got to get their heads around how to deal with that. That's a must do," Cowart said. "It's something that I think rational people from both sides of the aisle realize that people aren't going to have a choice if we don't figure out some way to make this more functional."

Whether that includes adopting ideas House Republicans offered over the summer in a blueprint to fix the health care law remains to be seen, but either way the legal industry expects the jockeying over health policy to continue to benefit it.

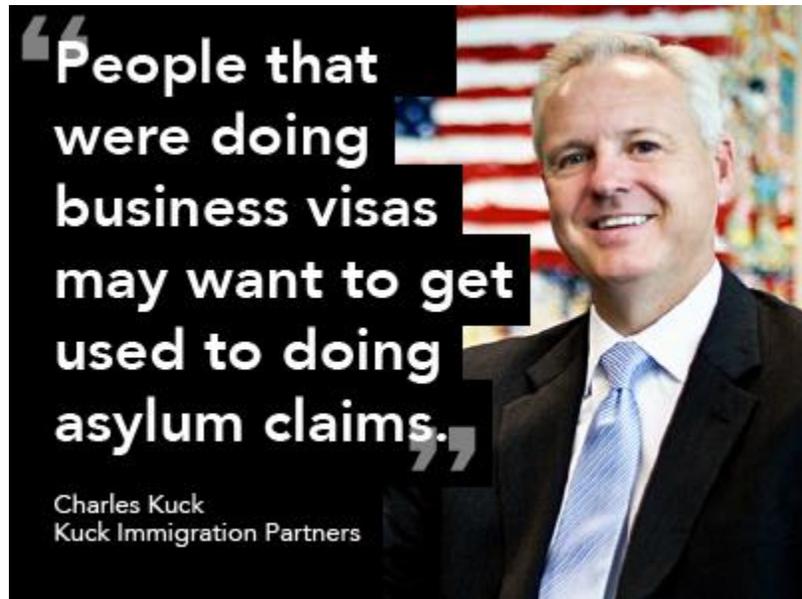
"The fact that the industry is at a transformative stage and the fact that the federal government has just invested significant more resources ... has created a very active sector," said Cowart.

It's difficult to measure how important the big public policy pushes in Washington are to the bottom lines of closely held law firms. Since the Great Recession, law firm revenues have eked out growth rates in the single-digits, compared with solid double-digit growth prior to the collapse, according to surveys

conducted by Citi's Law Firm Group.

"For the most part, we've been in an industry where growth is modest at best," said Gretta Rusanow, head of advisory services in the Law Firm Group.

That reflects both the broader economy and increasingly cost-conscious legal departments that now look to alternative service providers or internally to do the work they once brought to outside counsel, Rusanow said.



Still, it's clear that President Obama's two signature accomplishments — the Affordable Care Act and the Dodd-Frank financial reform law — have been boons to any number of firms and attorneys, given the onslaught of regulation and industry consolidation they produced.

Since the passage of the Affordable Care Act, for example, Baker Donelson has grown its health practice from about 100 lawyers to about 150 now, said Cowart. With the firm's recent merger with [Ober Kaler](#), that headcount will grow to nearly 200, he said.

Dentons has helped hundreds so-called accountable care organizations created by the healthcare law and serves as outside counsel to a trade organization that represents these groups of providers.

"Is Dentons' economic future going to turn on the work we get from ACOs? Of course not," said Fried, whose practice is focused on health care. But his firm's work gives it the chance to strategize with the providers to Medicare recipients about the best ways to deliver high-quality healthcare. "That's a great opportunity."



Supporters watch election results during Democratic presidential nominee Hillary Clinton's election night rally in New York. (AP)

Bridges and Tunnels

The one point of the election where there seemed to be common ground between the Trump and Clinton campaigns was in the vision a major, government-sponsored effort to improve the nation's ailing and outdated infrastructure. Hillary Clinton promised a \$275 billion investment in rebuilding bridges, tunnels, airports and electrical grid. Trump almost quadrupled-down on that with a pledge to make as much as a one trillion-dollar investment over 10 years.

Details on Trump's plans are scant, other than that he expects to issue infrastructure bonds to help pay for the costs and use tax credits to spur private developers to join the effort. But there could be political will to get something done.

"Infrastructure is an area of spending where perhaps a Republican House and/or Senate might actually get behind it," said John Beardsworth, a Hunton & Williams LLP partner who chairs the infrastructure section of the American Bar Association. "Crummy transportation and infrastructure is something that grates on the entire electorate."

Big spending in the area would steer a lot of work to the legal sector. Any effort to strengthen roads or speed up railways inevitably runs up against a range of property concerns and regulatory hurdles.

"Could you imagine a project that spans multiple states involving rights of way, environmental issues?" Beardsworth said. "To the extent there are projects like that, it will greatly benefit the legal industry."

A potentially huge infusion of government investment into infrastructure also will inevitably entice a horde of contractors and subcontractors looking to expand their business, said Michael Lotito, an employment lawyer at Littler Mendelson PC.

But chasing that money also means becoming a government contractor, which is fraught with a number of compliance challenges, notes Lotito, who co-chairs Littler's Workplace Policy Institute. That's, however, a point where a good labor lawyer could find some opportunity.

"There's a lot of need there for expert advice," Lotito said.

Ed Beeson is a feature reporter for Law360. He last wrote about President Obama's legacy of promoting diversity on the federal courts.