

Tea Party Patriots Citizens Fund Weekly Report from Washington for 12/17/18

CALENDAR:

The House will return Wednesday, and stay in session through Friday. The Senate will return Monday and stay in session through Thursday, if they can find a way to pass a spending bill.

LAST WEEK ON THE HOUSE FLOOR:

The House returned to work last Monday and passed two bills under Suspension of the Rules.

On Tuesday, the House passed three more bills under Suspension.

On Wednesday, the House took up the conference report to accompany H.R. 2, the Farm Bill. The bill passed by a vote of 369-47.

On Thursday, the House passed another resolution under Suspension of the Rules. And then they were done.

THIS WEEK ON THE HOUSE FLOOR:

The House will return on Wednesday. The floor schedule is still to be determined.

LAST WEEK ON THE SENATE FLOOR:

The Senate returned on Monday, and voted to invoke cloture on the nomination of George Muzinich to be Deputy Secretary of the Treasury. On Tuesday, the Senate voted to confirm him to that position, by a vote of 55-44. Later Tuesday, the Senate voted to confirm Jonathan Kobes to be a U.S. Circuit Judge for the Eighth Circuit Court of Appeals. That vote was 50-50, and necessitated a tie-breaking vote by Vice President Pence.

Then the Senate took up the conference report to accompany H.R. 2, the Farm Bill. That passed, by a vote of 87-13.

On Wednesday, the Senate took up S.J.Res. 64, the Tester/Wyden Congressional Review Act resolution of disapproval overturning the new IRS rule that relieves certain nonprofits of the burden of filing their top donors' names and addresses with their tax returns. GOP Sen. Susan Collins of ME crossed party lines to vote with the Democrats on this one, and GOP Sen. Thom Tillis of NC was once again absent for the vote, so the resolution passed by a vote of 50-49. I do not expect this CRA resolution of disapproval to see the light of day in the House during the 115th Congress.

Later on Wednesday, the Senate took up the motion to proceed to consideration of S.J.Res. 54, a joint resolution to direct the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress. After considering several amendments, the Senate voted to pass the resolution on Thursday, by a vote of 56-41.

The Senate also considered and passed, by voice vote, S.J.Res. 69, a Corker-McConnell joint resolution supporting a diplomatic solution in Yemen and condemning the murder of Saudi journalist Jamal Khashoggi.

And then they were done.

THIS WEEK ON THE SENATE FLOOR:

The Senate will return Monday, and will take up S. 756, the legislative vehicle for the First Step Act, the bipartisan criminal justice reform bill the President endorsed several weeks ago.

At some point, the Senate will take up a funding bill. We'll get to that in a few moments.

CRIMINAL JUSTICE REFORM:

Last week, Senate Majority Leader McConnell announced that the Senate would, in fact, take up S. 756, the legislative vehicle that will be used to consider the First Step Act, a criminal justice reform bill that has split the Senate GOP. It was endorsed by President Trump two weeks ago, but McConnell had been reluctant to schedule floor time for it, given the fact that it split the Senate GOP caucus. Sens. Tom Cotton of AR and John Kennedy of LA are strongly opposed to the bill in its current form, but Sen. Mike Lee is strongly in favor of it.

LEADERSHIP:

Nancy Pelosi cut a deal with several of the rebels and assured she would be elected Speaker on January 3 on the first ballot. Under the agreement, she agreed to impose term limits on herself – going forward, under the deal, if the House Democratic Caucus approves, the top three leaders in the Democrat party would be limited to serving no more than three terms in their positions, with an option for a fourth term if two-thirds of the caucus agrees. The term limits would be retroactive, too, which would mean the two terms Pelosi already served as Speaker from 2007-2011 would be counted against her possible four-term limit. So she's got, at most, two more terms as Speaker, beginning in January.

She agreed to abide by the term limits even if the full House Democratic Caucus decides against adopting that rule change. And incoming Majority Leader Steny Hoyer made clear she was negotiating for herself, and he opposed the term limits proposal.

House Democrats will vote on the change to their party rules in February.

OBAMACARE:

On Friday, U.S. District Judge Reed O'Connor ruled in the case of Texas vs. Azar, the legal challenge to ObamaCare filed by 20 states. Judge O'Connor ruled that because Congress had in 2017 zeroed out the tax penalty associated with the Individual Mandate, it was no longer a tax, and that, because it was no longer a tax, it was no longer constitutional, and, because it was no longer constitutional, it had to be overturned, and because it was overturned and the rest of the law rested on the Individual Mandate as a core element of its operation, the entire law had to be considered unconstitutional.

I will remind you that I am not a lawyer. But I know some really good ones. And many of them are convinced Judge O'Connor's ruling will be overturned.

Their arguments rest on two basic contentions – first, that contrary to the judge's reasoning, the states do not have standing to bring such a lawsuit. Since Congress changed the tax penalty to zero, no one is being hurt. Because no one is being hurt, no one has standing to sue.

Judge O'Connor addressed that argument, and reasoned that there are actually two parts of the law in question – the Individual Mandate itself, and the so-called "shared responsibility payments" (the

euphemism given to the tax penalty incurred for not purchasing an ObamaCare-compliant plan if you're in the subject class). Congress in 2017 in the Tax Cut and Jobs Act did not address the Individual Mandate requirement because the 2017 TCJA was a reconciliation bill that could not address policy; it could only address taxes and spending. So Congress in 2017 focused on the taxes part of the equation, and set the "shared responsibility payment" to zero. O'Connor reasons that even though no one can be said to be harmed economically by the law, because the tax penalty has been set to zero, they can still be harmed psychologically, because the Individual Mandate itself still exists, and some people actually care for the value of following the law, even if there's no economic penalty for violating it. That's interesting reasoning, but I'm not sure how superior courts will view it.

The second argument goes to the severability analysis. O'Connor went back to the arguments made in the two earlier ObamaCare challenges that went to the Supreme Court, and cited representations made by the law's proponents that the Individual Mandate was essential to the operation of the law. If the Individual Mandate fell, he reasoned, then the entire law had to fall.

But critics point out that later Congresses are not bound by the actions of earlier Congresses. And when the Congress in 2017 passed a new law that zeroed out the tax penalty, that later Congress was essentially rejecting the view of the earlier Congress that passed ObamaCare in the first place. By passing a law amending a key part of ObamaCare but leaving the rest of the law in place, that newer Congress was declaring its belief that the law CAN function without the Individual Mandate in place.

Others think the O'Connor will stand. I've put one of the best analyses I've seen along these lines – written by Josh Blackman – in the Suggested Reading.

President George W. Bush appointed Judge O'Connor. Unlike many liberal judges we've seen over the last two years, he did not feel a need to emplace a strict injunction against the continued operation of the law while his ruling is appealed. So for now the law will remain in place while appeals are filed and argued. I fully expect this decision will ultimately go, one way or the other, to the Supreme Court.

RUSSIA HOAX:

Though it's not part of Special Counsel Robert Mueller's investigation – it was handed off to federal prosecutors in the office of the U.S. Attorney for the Southern District of New York some time ago – I want to briefly comment on the decision by former Trump lawyer Michael Cohen to plead guilty to campaign finance violations involving payoffs to two women who claim to have had extramarital affairs with Donald Trump more than a dozen years ago.

There are serious questions regarding the legal jeopardy in which President Trump may or may not find himself, depending upon whom you talk to.

When Cohen declared in his court filing that he had been directed to violate the law by then-candidate Donald Trump, Democrats and the media, predictably, went nuts. But they may have celebrated too early.

The simple fact that Cohen and the prosecutors agree that something is a violation of the law does not necessarily make it so, especially in an area as complicated as campaign finance.

Under the reasoning of the SDNY prosecutors and Cohen, paying off a mistress to conceal an affair is a legitimate campaign expense. What Cohen got in trouble for is not reporting the payment.

Well, that's ludicrous on its face.

The Federal Election Commission has made very clear what is and what is not a legitimate campaign expense – if the expense in question is something that would exist irrespective of the fact of the campaign, it's a personal expense; if the expense is something that would not have occurred without the fact of the campaign, then it's a campaign expense.

Dry-cleaning a candidate's suits and starching his shirts certainly would make him appear more presentable and attractive as a candidate, and might, therefore, be presumed to be a legitimate campaign expense by some, but the candidate presumably would have had his dry-cleaning and shirt-starching done professionally in the absence of the campaign, too, so that's not a legitimate campaign expense.

Some of you may remember a somewhat similar campaign finance case that took place years ago. In the aftermath of the 2008 race for President, we learned that John Edwards had convinced an angel donor to provide \$1 million to pay off his mistress. He was prosecuted for violating campaign finance laws. The jury acquitted him on one charge and deadlocked on the other five, and the prosecutors decided not to re-try him on the five counts.

Stay tuned.

SPENDING:

Last Tuesday, President Trump met at the White House with incoming House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer, to negotiate the end-of-year spending bill that still needs to be passed to keep part of the government open beyond Friday.

In a riveting 17-minute exchange that took place in front of cameras, the President insisted that they agree to give him the \$5 billion for wall funding that he's been demanding for several months now. They flatly refused. He said he would be "proud" to shut down the government over the lack of funding for a border wall. The two Democrats seemed delighted, even if a little flustered – at one point Pelosi suggested such negotiations were better done behind closed doors.

Following the meeting, Democrats and the media, predictably, went nuts. Usually, they all pointed out, when a government shutdown showdown takes place, each side tries to seem reasonable and make sure the blame for the shutdown is placed on the other party. But in this instance, the President not only did not try to blame the Democrats for the shutdown-to-be, he actually said he would be "proud" to shoulder the burden of blame if a shutdown were to occur.

Congressional Republicans – including Senate Majority Leader McConnell, who never met a shutdown he liked, and outgoing Speaker Paul Ryan, who doesn't want a shutdown to occur on his watch as he's heading out the door – are desperately trying to come up with some gambit to keep the government funded.

Two days after the meeting, President Trump tweeted an indication that perhaps he wasn't so sure about wanting to take the blame for a shutdown. In a video posted on Twitter, he attacked Democrats as "absolute hypocrites" and pointed out that they had supported funding physical barriers previously, but suggested that now they would not solely because of their opposition to him. The video contained a caption that read, "Let's not do a shutdown, Democrats – do what's right for the American people!"

Meanwhile, House GOP leaders are still trying to figure out a strategy. Some want to pass a funding bill that includes \$5 billion in wall funding, and send it over to the Senate just to prove that, contrary to Pelosi's belief, they CAN pass that bill through the House. But there are two arguments against that – first, given that it's the end of a Congress where Republicans lost 40 House seats, and many of those departing members have no desire to be hanging around any longer, there might actually be difficulty in getting to 218 votes on such a bill; second, that, given that the bill would surely be filibustered and killed in the Senate, why would you ask your remaining members to take a tough vote on a bill guaranteed to go nowhere in the Senate?

So others in the House GOP leadership are thinking instead about another short-term Continuing Resolution that would fund the government into the new year, at which point the Democrats would take over in the House. Of course, if that happens, the president will NOT get the \$5 billion in funding he seeks.

This is a tough situation. The Democrats have the absolute power to block the funding bill in the Senate if they want to, and they have absolutely no incentive to back down. Pelosi won't back down, either. On the other hand, President Trump appears to have opened the door just a touch.

So we just don't know what's going to happen here. I'd put the odds at two-to-one that we go into the weekend without an agreement on a funding bill, and we have at least a few days of shutdown – but that's wholly dependent on President Trump maintaining a stiff spine. If he concludes in the next few days that his fortunes are better off without a shutdown, look for him to make an accommodation of some sort with Pelosi and Schumer.

STAFFING:

President Trump announced on Friday that Mick Mulvaney – the former House Freedom Caucus co-founder who currently serves as Director of the Office of Management and Budget and Acting Director of the Consumer Financial Protection Bureau – will take on new responsibilities as Acting White House Chief of Staff when Gen. John Kelly leaves after the holidays.

On Saturday, President Trump announced that Interior Secretary Ryan Zinke would be leaving the Trump Administration at the end of the year. He did not say whether Zinke resigned or was fired, but, either way, it was clear that Zinke was in for tough sledding in a new Democrat-controlled House of Representatives. He's been the subject of several ethics investigations, and the toll on his personal finances was about to become much higher.

SUGGESTED READING:

JENNY BETH MARTIN/TEA PARTY PATRIOTS:

[Real Clear Politics: Jenny Beth Martin: Leaver New IRS Free Speech Rule In Place](#)

[DS: What Conservatives Think Of Top Contenders And Wild Cards For Trump's Next Chief Of Staff](#)

[Canada Free Press: Impeachment Obsessed Congress Is Still Hiding It's Sexual Harassers](#)

[CFP: Until They Name Names Lawmakers Guilty of Protecting Sexual Predator Peers Among Them](#)

AGENDA:

[Hill: McConnell Warns Senate It Could Work Through Christmas Break](#)

[Hill: House Democrats Talking More About Impeaching Trump](#)

CRIMINAL JUSTICE:

[RC: Congress on Cusp of Criminal Justice Changes in Year-End Surprise](#)

[Hill: McConnell Agrees To Vote On Trump Backed Criminal Justice Bill](#)

[Hill: Senate Heads Toward Floor Fight On Criminal Justice Bill](#)

DOJ/FBI:

[Politico: DOJ Investigation Turns Up Thousands of Missing Texts from Peter Strzok and Lisa Page](#)

[RCP: A Justice Department Coup?](#)

[DC: Powell: New Facts Indicate Mueller Destroyed Evidence, Obstructed Justice](#)

[Hill: Turley: No Glory in James Comey Getting Away with His Abuse of FBI Power](#)

DONOR PRIVACY:

[Politico: Senate Votes To Overturn Trump's Donor Disclosure Rule](#)

ELECTIONS:

[Politico: N.C. GOP Says Fresh Misconduct Allegation Should Trigger New House Election](#)

[NYT: N.C. Legislature Calls For New Primary If New Election Is Held In Disputed District](#)

[WaPo: NC Congressional Candidate Sought Out Aide Despite Warnings Of Voting Irregularities](#)

LEADERSHIP:

[Politico: Pelosi, Rebels Discuss Limiting Her Time As Speaker To Four Years](#)

[Hill: Black Caucus Huddles As Talk Of Term Limits Heats Up](#)

[Hill: Pelosi, Democrat Rebels Near Deal On Term Limits For Party Leaders](#)

[WSJ: Pelosi Strikes Deal With Detractors On Term Limits For Speaker](#)

[Hill: Pelosi Agrees To Term Limits Vote; Insurgency Collapses](#)

[Politico: 'We Were Shocked As Sh--'; How Pelosi Crushed The Dem Rebels](#)

#METOO:

[Politico: Congress Reaches Out To Curb Sexual Harassment](#)

[RC: Congress Passes Sexual Harassment Bill by Unanimous Consent](#)

OBAMACARE:

[Hill: Federal Judge in Texas Strikes Down ObamaCare](#)

[NYT: Texas Judge Strokes Down Obama's Affordable Care Act as Unconstitutional](#)

[WaPo: Federal Judge in Texas Rules Entire Obama Health-Care Law Is Unconstitutional](#)

[Bloomberg: ObamaCare Thrown Out by Judge, Raising Insurance Uncertainty](#)

[WE: Federal Judge Rules ObamaCare Unconstitutional](#)

[Politico: Judge Rules ObamaCare Unconstitutional, Endangering Coverage for 20 Million](#)

[Politico: ObamaCare Ruling Delivers New Shock to Health System](#)

[TVC: Adler: District Court Judge in Texas Holds ACA Is Unlawful](#)

[Josh Blackman: Thread Analyzing Judge O'Connor's ACA Decision](#)

[DS: A Judge Will Likely Rule Against ObamaCare. Here's What Should Happen Next.](#)

[Hill: Five Takeaways from the Court Decision Striking Down ObamaCare](#)

[WSJ: Texas ObamaCare Blunder](#)

[Judge Reed O'Connor's Ruling in Texas v. USA](#)

RUSSIA HOAX:

[WSJ: Strassel: Checking Robert Mueller](#)

[Daily Wire: Tables Turned: Judge Orders Special Counsel Mueller To Turn Over Documents](#)

[SC: FBI Docs Reveal: "Flynn Was Not Lying or Did Not Think He Was Lying"](#)

[Fox News: False Statements Abound In Mueller Probe, In Contrast To Clinton Case](#)

[Hill: Trump Says He Never Directed Michael Cohen To Break The Law](#)

[WSJ: Trump And Campaign Finance](#)

[NRO: French: Republicans, Don't Fool Yourselfs -- Donald Trump Is in Serious Trouble](#)

[NRO: Bradley Smith: Michael Cohen Pled Guilty to Something That Is Not a Crime](#)

[NRO: McCarthy: Payoffs to Mistresses and In-Kind Contributions? It's an Open Question](#)

SPENDING:

[Politico: Trump Considers Delaying Border Wall Fight Until January](#)

[Politico: Trump Reverses Course, Tells Pentagon To Boost Request To \\$750 Billion](#)

[Hill: Trump, Democrats Battle Over Wall In Oval Office Spat](#)

[Hill: Pelosi Mocks Trump On Wall, Its Like A Manhood Thing For Him](#)

[Politico: The 17 Gripping Minutes That Captivated Washington](#)

[Hill: GOP Struggles To Find Votes For Trump's \\$5 Billion Wall Demand](#)

[Politico: How Schumer United Dems Against Trump's Wall](#)

[Politico: GOP Leaders Still Lack Funding Plan As Shutdown Looms](#)

[Hill: House Passes \\$867 Billion Farm Bill, Sending It To Trump](#)

[Politico: Farm Bill Headed To Trump After Landslide House Approval](#)

[WaPo: Trump's Ultimatum On Border Wall Boxes In Fellow Republicans](#)

[Politico: 'There's No Plan' Congress Skips Town As Shutdown Nears](#)

[WaPo: White House Prepares for Shutdown as GOP Lawmakers Struggle for an Alternative](#)

[Hill: GOP Set for Blame over Shutdown](#)

STAFFING:

[Hill: John Kelly To Leave White House At Year's End](#)

[Politico: Meadows Would Give Trump A Skilled Brawler In The White House](#)

[Hill: Conservative Leader Meadows Will Not Be White House Chief Of Staff](#)

[WaPo: Trump Names Budget Director Mulvaney as Acting White House Chief of Staff](#)

[Politico: 'He Would Have Given Up a Very Valuable Appendage To Get That Job'](#)

[Hill: Interior Chief Zinke To Leave Administration](#)

[Bloomberg: Trump's Interior Chief To Step Down as Pressure Mounts from Ethics Inquiries](#)

2020:

[NBC News: Beto O'Rourke Narrowly Tops MoveOn 2020 Presidential Straw Poll; Biden A Runner Up](#)

[AZC: Jon Kyl Will Resign from the Senate on Dec. 31, Setting Up Another Appointment to the John McCain Seat](#)