

# The Judiciary Committees

[Mark Disler](#)

## THE SENATE

Senator Chuck Grassley will retain his Chairmanship of the Senate Judiciary Committee (SJC). Senator Pat Leahy (D-VT), the longtime senior Democrat on the Committee, is vacating the Ranking Member slot to assume that role on the Appropriations Committee. The new SJC Ranking Member will be another veteran Committee member, Senator Dianne Feinstein (D-CA). The Republican side may see new faces as Senator David Vitter (R-LA) retires and Senator Jeff Sessions (R-AL), as expected, assumes his position as Attorney General; and depending on both the size and party ratios of the SJC in the 115<sup>th</sup> Congress.

### Key Players

**Administration:** Jeff Sessions, *U.S. Attorney General*

#### Senate

Committee on the Judiciary

**Chuck Grassley (R-IA)**  
*Chairman*

**Dianne Feinstein (D-CA)**  
*Ranking Member*

#### House

Committee on the Judiciary

**Bob Goodlatte (R-VA)**  
*Chairman*

**John Conyers, Jr. (D-MI)**  
*Ranking Member*

## THE HOUSE

Bob Goodlatte (R-VA) and John Conyers (D-MI) return as Chairman and Ranking Member, respectively, of the House Judiciary Committee (HJC).

## NOMINATIONS

The SJC's top priority at the outset of the new Congress will be the confirmation of Jeff Sessions as Attorney General, and the series of nominees for sub-Cabinet positions at the Department of Justice (DOJ). These include the Deputy Attorney General, the Associate Attorney General, the heads of the litigating Divisions and Office of Legal Counsel (OLC). The Committee's review of their backgrounds and records can itself be a time-consuming process, even before a hearing is held. If the Democrats decide that one or more DOJ nominees are controversial, the process will stretch out even longer. Incoming Ranking Member Feinstein has already raised process concerns about the timing of the Sessions confirmation hearings, set for January 10 and 11, 2017.

And while U.S. Marshall nominees are virtually never controversial, and few U.S. Attorney nominees will likely be controversial, the Committee's vetting process of these officials will also occupy staff resources since the entire complement of them across the country will turn over at some point next year.

The SJC will also process the nomination of President Trump's nominee to replace the late Antonin Scalia as Associate Justice on the Supreme Court. The Supreme Court confirmation process has long been an all-consuming activity of the Committee, all the more so if, in this circumstance, the Democrats view the nominee as controversial. It is unclear when the President will make this nomination, especially given the Senate's need to confirm his Cabinet, and undertake urgent legislative matters that will occupy much

much Senate Floor time early in the next Congress.

Too early a Supreme Court nomination would leave the nominee subject to criticism and attack longer than necessary while the SJC Chairman and the Majority Leader are managing other business in Committee and on the Floor respectively. Moreover, a powerful advantage of any Supreme Court nominee is having the machinery of the White House – its Counsel’s office, and communications and public outreach teams – and the legal team at DOJ fully deployed. It is likely to take some time after the Inauguration for these teams to be fully in place.

But, whenever the nomination is made, the Committee will have little time – if any – to process any other matter.

In light of this unusually heavy nomination agenda for the SJC, the HJC will get off to a faster start, and make greater progress, on the legislative agenda within the jurisdiction of these Committees in the opening months of the next Congress.

**Immigration reform.** This will be an early priority for the HJC, and the Republican agenda will readily pass the Committee and the House. The SJC will get to these issues as fast as it can in light of its confirmation responsibilities. Please see [Prime’s Immigration Primer](#) for more details.

**Intellectual Property.** Copyright reform remains a priority for Chairman Goodlatte and Ranking Member Conyers in HJC. They most recently issued, at the end of the 114<sup>th</sup> Congress, a proposal on reform of the Copyright Office. Music licensing is another copyright issue which may engage both Judiciary Committees.

While the House has been able to pass patent reform legislation aimed at the patent “troll” concern, the Senate has not been able to do so. The Committees may revisit patent issues again.

**Regulatory Reform.** The HJC has passed a host of regulatory bills in recent years that have not made it through the Senate. A renewed effort for these bills is on the HJC to-do list, and will not face Presidential veto threats. Some may navigate their way to the President’s desk, if not as stand-alone bills, then as part of larger enactments that the new President will sign. Among the bills to be revisited are: the Require Evaluation before Implementing Executive Wishlists (REVIEW) Act; the All Economic Regulations are Transparent (ALERT) Act; the Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act; and the Regulations From the Executive in Need of Scrutiny (REINS) Act.

**Privacy.** The reform of the Electronic Communications Privacy Act (ECPA), which has had widespread but not universal Congressional support will again be before both Committees.

**Criminal Justice Reform.** In the 114<sup>th</sup> Congress, there was bipartisan support for reducing some sentences for certain crimes. In the Senate, however, a number of Republicans on and off the SJC opposed the bipartisan criminal justice reforms embodied in pending legislation. Majority Leader McConnell declined to have this split within the Republican Party aired on the Senate Floor. One of the leaders of the opposition was Senator Jeff Sessions. There is a mixed view on the impact his expected departure to DOJ will have on Senate consideration of any future criminal justice reform legislation. On the one hand, he will no longer be leading opposition to it from the SJC. On the other hand, he will be President Trump’s top adviser on the issue as Attorney General. If President Trump, who campaigned

in part on the premise that crime in this country is out of control, adopts the likely advice he will get from his Attorney General, it is difficult to see the Republican Leadership allowing such legislation to reach the Floor of either body.

**Competition.** The Committees will continue their oversight role of examining future major mergers and acquisitions. The subcommittee of the SJC which handles these issues has a long history of proceeding in a bipartisan manner. But, the biggest question in this field is the attitude of the as yet unnamed Assistant Attorney General for Antitrust toward these issues.

The HJC is expected to pass its Standard Merger Act and Acquisition Reviews Through Equal Rules Act (SMARTER Act), harmonizing preliminary injunctions standards for the FTC and DOJ when they review proposed mergers or acquisitions, which did pass the House in the 114<sup>th</sup> Congress.

There are other issues and legislation that will also recur in the 115 Congress. The Business Activity Tax Simplification Act; Main Street Fairness Act or a variation of it; Financial Institution Bankruptcy Act; and the Mobile Workforce State Income Tax Simplification Act are among them.

The two Committees have engaged in a variety of oversight activity and hearings. Such activity tends to be reduced when both Houses of Congress are controlled by the same party as the President. In areas of particular interest to Chairmen Grassley and Goodlatte, however, oversight will remain on the agenda. Chairman Grassley, for example, has had a long-standing interest in the protection of government whistleblowers and has not hesitated to be a thorn in the side of Administrations of both parties, dating back to the Reagan Administration, when he has felt it necessary to be such.