

Holland & Knight



FORECASTS FOR
Federal Funding and Political Power

81st Annual Tribal Assembly
Central Council of Tlingit and Haida Indian Tribes of Alaska

April 20, 2016
Juneau, Alaska
Philip Baker-Shenk
Holland & Knight LLP



Background

- My English name is Philip Baker-Shenk. I am a non-Indian whose Tlingit name is Yeil Shaan (Raven Elder) and by honorary adoption, a Dog Salmon of the Raven moiety
 - Since 1976 have been assisting tribes like CCTHITA in Washington, D.C.
 - Lawyer/partner in the Native American Law Group of Holland & Knight
 - 13th largest law firm in America
 - Began working for CCTHITA about 30 years ago, helping lead a “638” training seminar right here
 - Privileged to help CCTHITA --
 - become one of the first self-governance tribes
 - obtain Congressional reaffirmation of CCTHITA’s tribal status in 1994 when BIA put it in jeopardy
 - Young Native Writers essay contest www.nativewriters.hklaw.com

Holland & Knight **GUNALCHEESH! HAW’AA!**

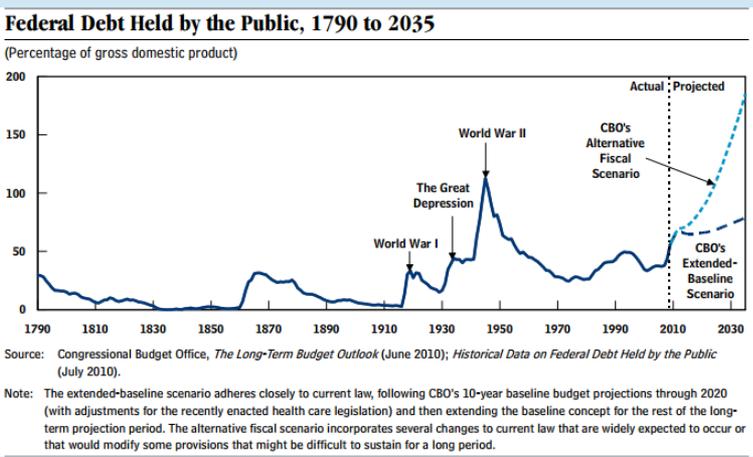


Overview

- Debt Crisis
 - Budget Caps and Sequestration
- Federal Funding
 - FY 2016 Appropriations
 - Projected FY 2017 Appropriations
 - 10 Year Forecast
- Current Political Climate
- Questions and Answers



U.S. Debt Crisis



- National debt at \$19.3 trillion
- Debt as percentage of GDP is higher than it has ever been except during WWII
- Over the past couple of years, the U.S. has tried to resolve the deficit issue by sequestration on the discretionary side



Budget Caps and Sequestration

- 2011: **Budget Control Act** ([*Pub.L. 112-25*](#))
 - Reinstated caps on discretionary budget authority and established across the board automatic budget cuts
 - Led to serious cuts on tribal programs - an estimated **\$500 million impact** on Indian Country
- 2013: **Bipartisan Budget Act** ([*Pub.L. 114-74*](#))
 - Set annual discretionary spending at \$1.012 trillion
 - Canceled automatic spending reductions set to take effect in 2014 and 2015
 - Provided \$63 billion in sequester relief over two years, split evenly between defense and non-defense programs
- 2015: **Balanced Budget Act** ([*Pub.L. 114-74*](#))
 - Set annual discretionary spending near \$1.07 trillion for FY16 and FY17



FY 2016 Appropriations

- OMB required federal agencies to submit FY 2016 discretionary requests (defense and non-defense) at levels that were 2 percent less than FY 2015 enacted levels.
- The Continuing Resolution (“CR”) included a 2-4 percent (annualized) cut across the board from FY 2015 levels enacted
- The Omnibus provided \$1.15 trillion in regular discretionary spending and \$73.3 billion in overseas contingency operations funding

	FY 15 Enacted	FY 16 President’s Request	CR (Annualized)	FY 16 Enacted	FY 15 v. FY 16
IHS	\$4.6	\$5.1	\$4.2	\$5.1	+\$0.5
BIA/BIE	\$2.6	\$2.9	\$2.4	\$2.7	+\$0.1



FY 2017 Appropriations

- OMB required federal agencies to submit FY 2017 discretionary requests (defense and non-defense) at levels that were 5 percent less than FY 2016 enacted levels.
- The President's Budget requests \$1.07 trillion in total appropriations with flat-funding for non-defense discretionary spending.

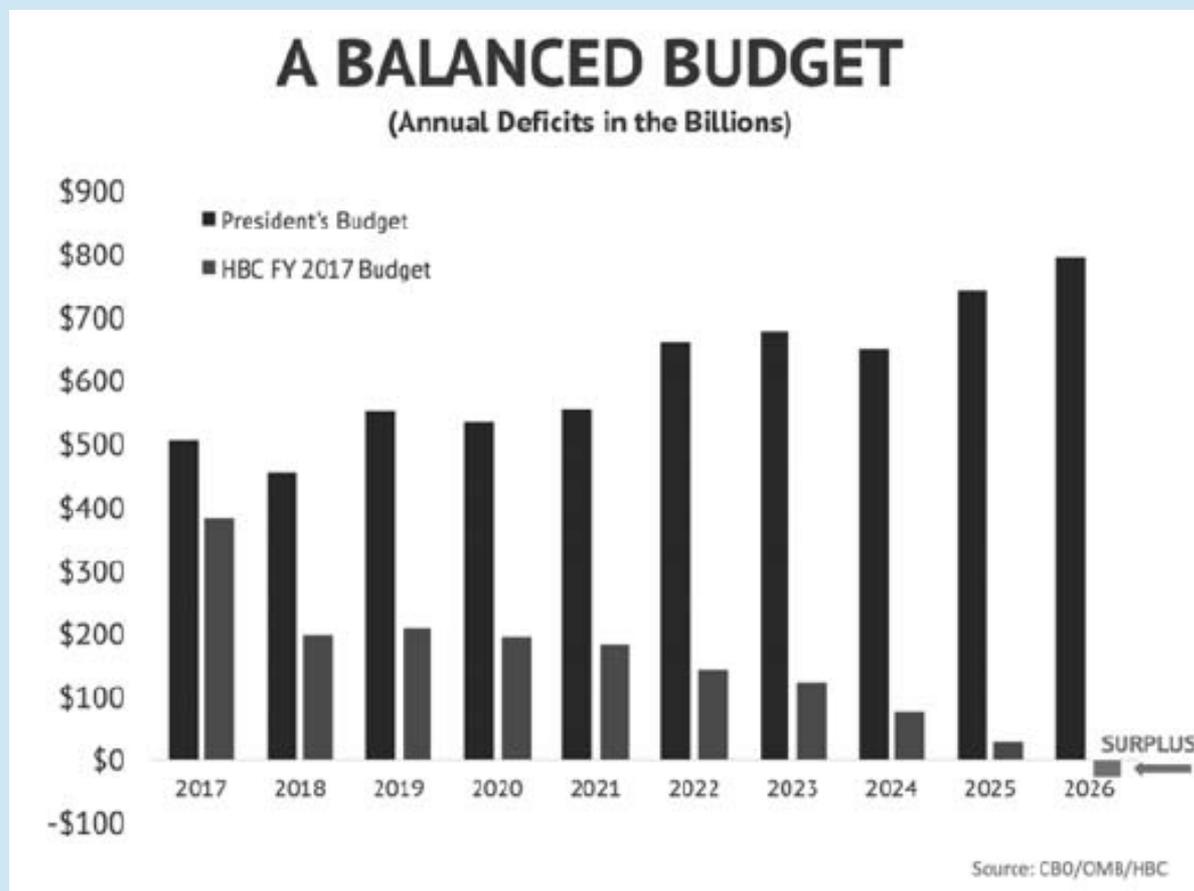
	FY 16 Enacted	FY 17 President's Request	FY 17 President's Request v. FY 16
IHS	\$5.1 billion	\$5.2 billion	+\$0.1 million
BIA/BIE	\$2.7 billion	\$2.9 billion	+\$0.2 million



Current Political Climate

H. Con. Res. 125

- Republican congressional leaders have criticized the President's budget saying that it has failed:
 - to balance the budget
 - to save critical programs such as Medicare and Social Security
 - to maintain a strong national defense
 - promote a more robust economy
 - To avoid a future of huge deficits

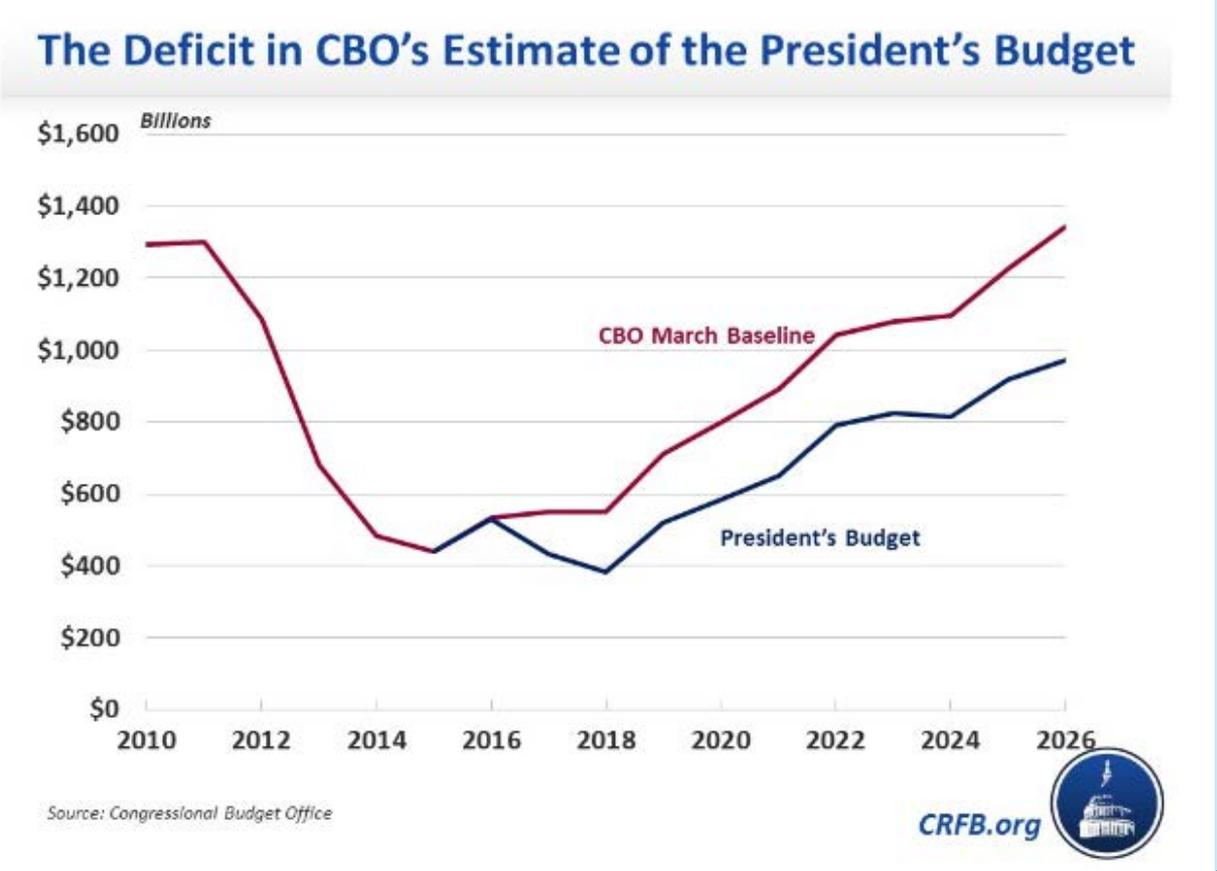




Current Political Climate

Congressional Budget Office (“CBO”)

- Under the FY 2017 President’s budget request, deficits are expected to shrink over the next two years then rise steadily over the next 10 years.





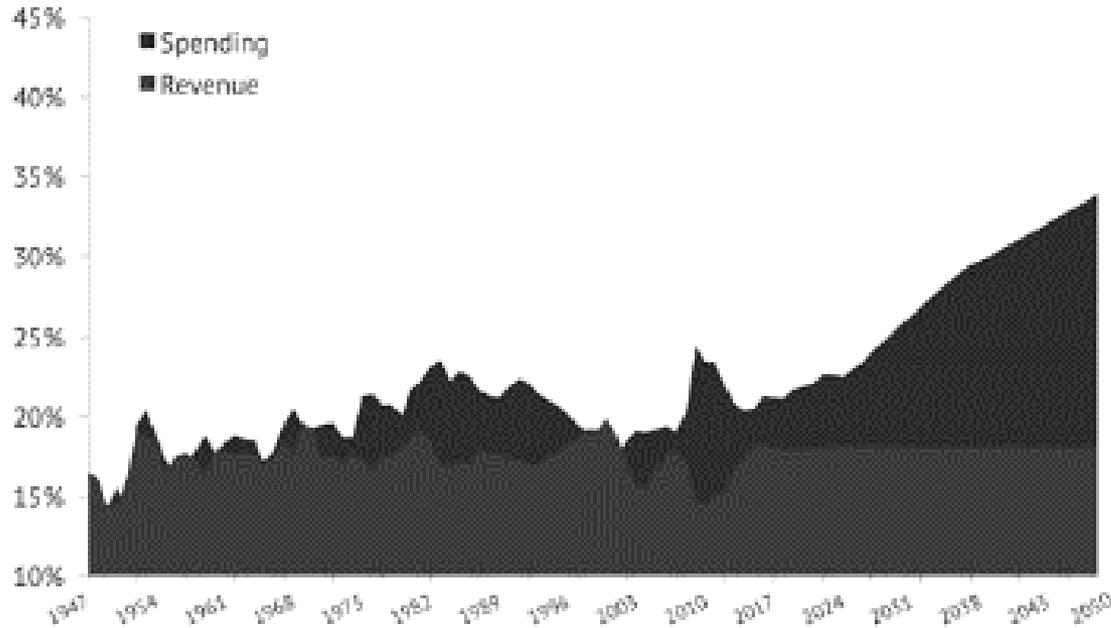
Current Political Climate

Congressional Budget Office (“CBO”)

- Spending control is an indispensable element of controlling the budget.
- CBO’s long-term projections show that even excluding interest payments, government programs will outspend revenue persistently over the next 25 years.

SPENDING IS THE PROBLEM

Historic/Projected Spending & Revenue as a Percentage of GDP



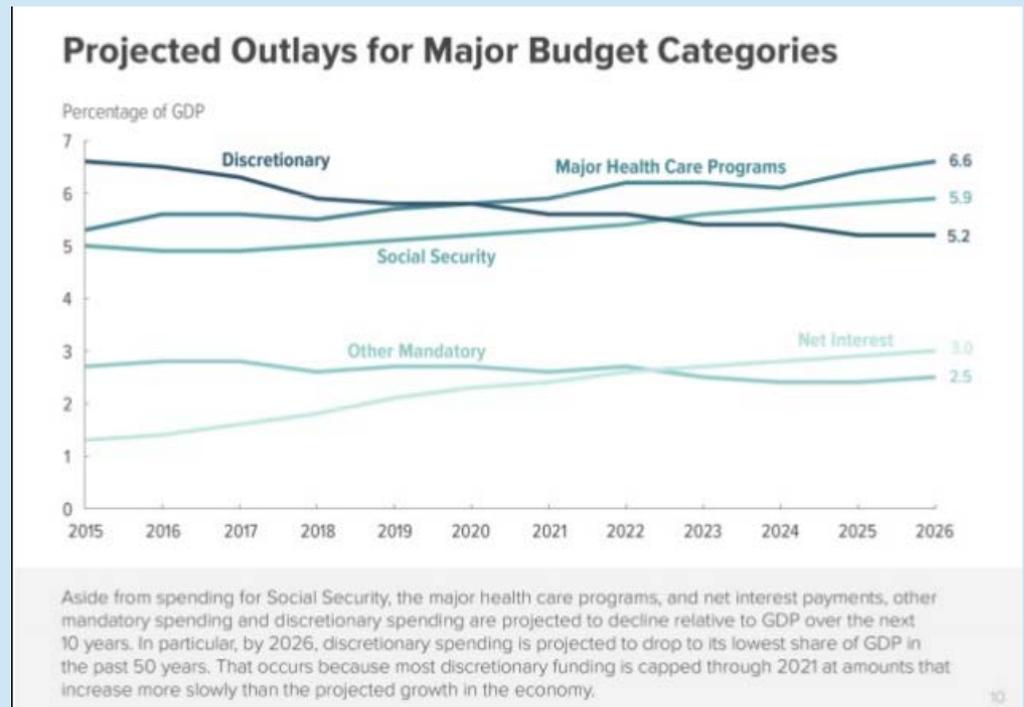
Source: CBO



Current Political Climate

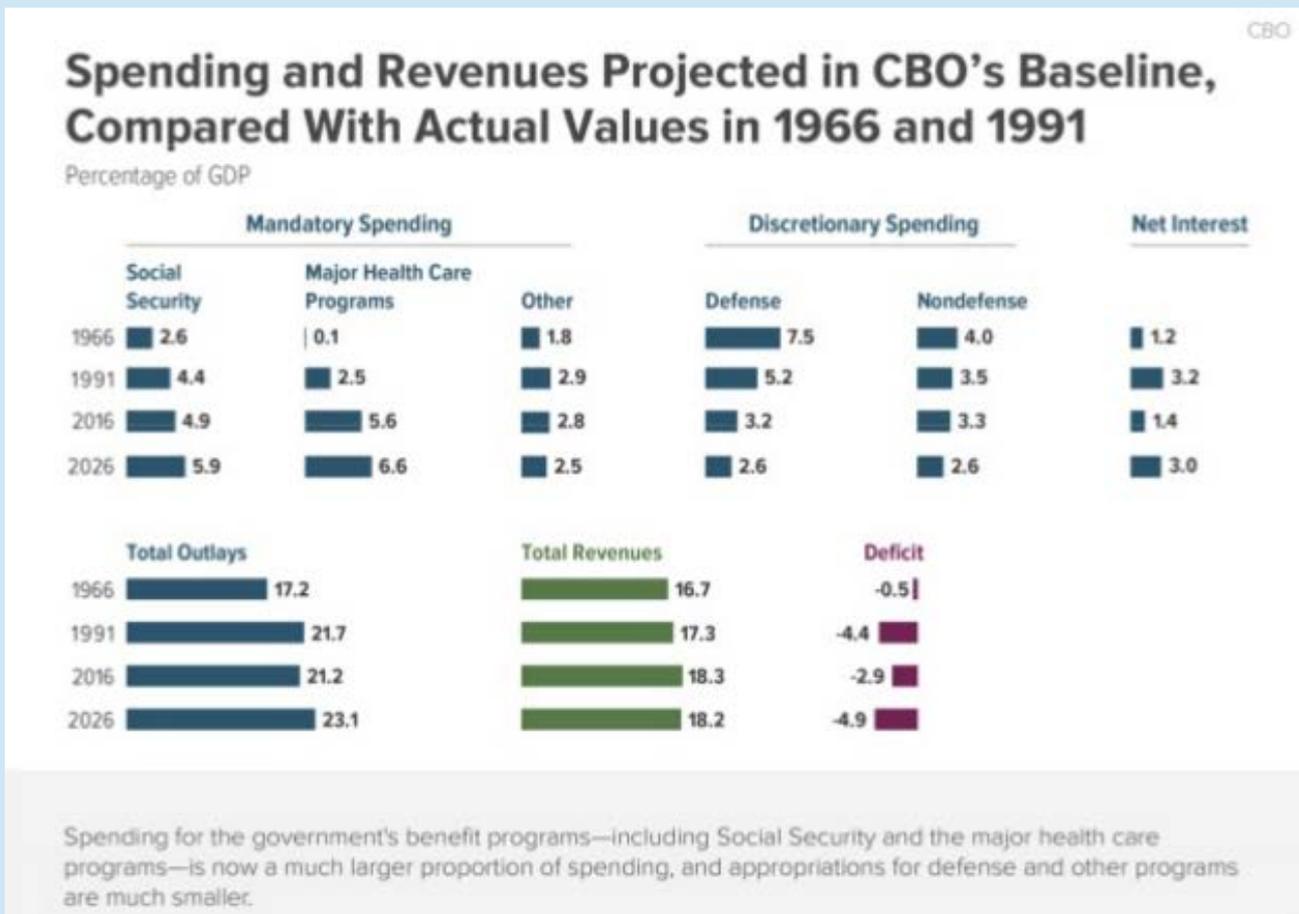
Congressional Budget Office (“CBO”)

- Spending is projected to rise because of the growth in the Nation’s retirement, health care programs, and escalating interest costs.
- Likely be a rewrite of the current deficit reduction plan after the election.
- Further sequestration?





Current Political Climate





Current Political Climate

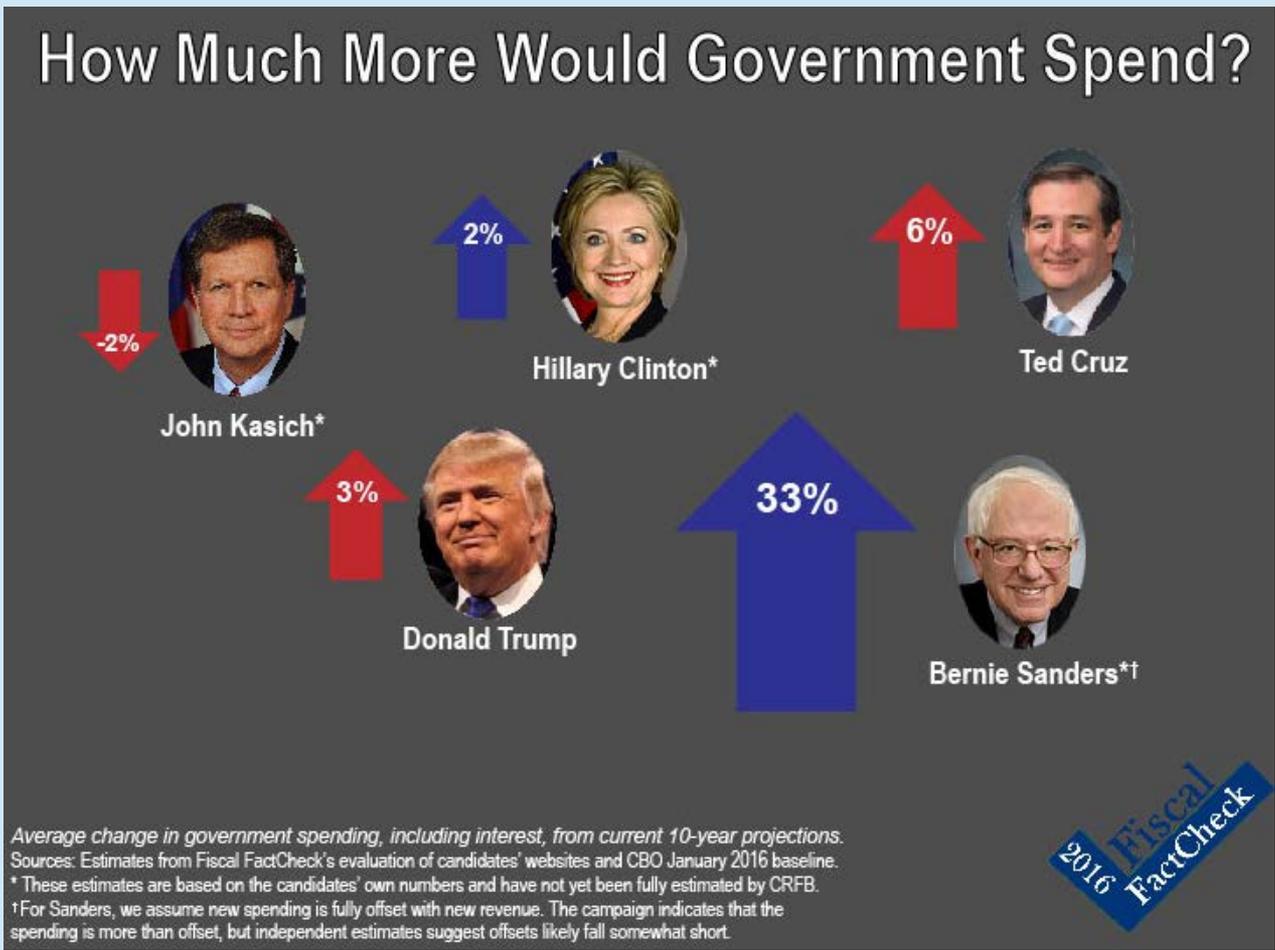
FY 2017 Forecast

- **House**
 - Goal is to pass all 12 appropriation bills
 - There has not been a floor vote on an Interior appropriations bill since 2009
- **Senate:**
 - Goal is to finish appropriations bills by end of April
 - Likely to use the shell of a House appropriations bill from FY 2015
 - House will either take up and amend the Senate bills or try to move its own bills
- **Deadline to finalize (unnecessary) budget resolution: *May 15, 2016***
- **FORECAST:** Final FY17 appropriations will be resolved after the presidential election
 - Democrat president: appropriations likely to be worked out in December
 - Republican president: likely to have another CR with appropriations worked out in the president's new term



Comparing the Candidates Spending Plans

- Ten year projections
- Kasich is the biggest budget cutter, largely because of specific tough choices he's proposed for mandatory spending (Medicare, Medicaid, and Social Security)





Presidential Candidate Bernie Sanders (D-VT)

Indian Policy

- Tribal governments are sovereigns with a right to self-governance, and should have the tribal autonomy and authority to protect their people
- Native Americans continue to face appalling levels of inequality and systematic injustice
- Supported VAWA, TLOA, Save Oak Flat, IHCIA reauthorization, apology, Rename R*dsk*ns, Native veteran reform, stop tar sands pipelines and rail lines, climate change mitigation, solar energy investment
- Wants to uphold tribal sovereignty, jurisdiction, and trust responsibility
- Will add an Indian desk at OMB and maintain White House Indian desk, trust management reform, senior tribal advisers, and more tribal consultation
- Seeks a \$1 trillion investment for transportation, telecommunications, and other basic infrastructure, including deprived communities in Indian Country, and supports full funding and tribal control of NAHASDA block grants, free college tuition for all, more aid to students, and more land into trust, reversing *Carciere* limitations



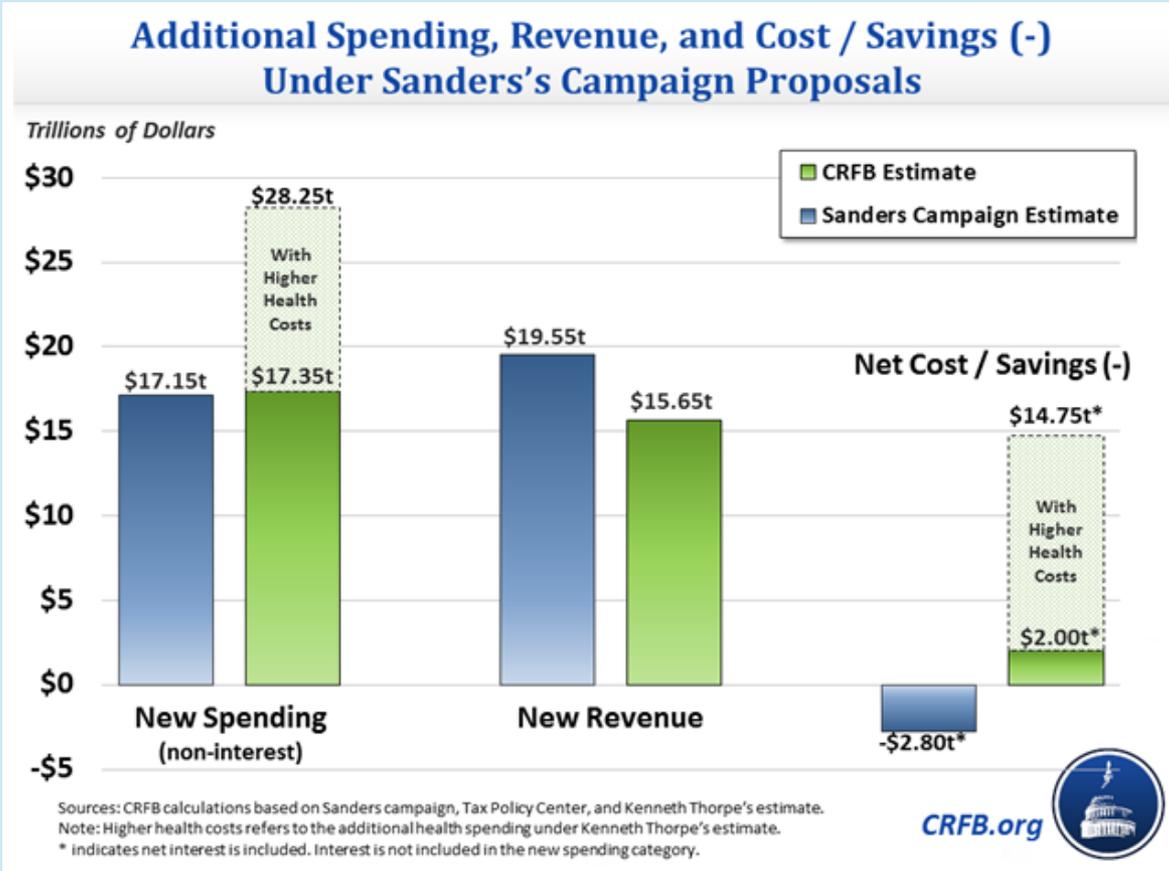
Sanders on Federal Funding and Indian Policy

- “It is no secret that Washington faces a serious debt problem, but last time I checked, it was not because we are spending too much on Indian housing, healthcare or education.
- “It is not because we are spending too much on addressing the scourge of diabetes in Native communities, improving crumbling infrastructure or creating jobs in Indian Country.
- “It is not because we are spending too much supporting Native American veterans who put their lives on the line to defend our nation, or creating economic opportunities for Indian youth.
- “It is profoundly hypocritical that the United States, year-after-year, decade-after-decade, does so little to honor its trust responsibilities to Native peoples. It’s time for real change.” – Bernie Sanders



Sanders and Government Debt Spending

- Sanders has proposed initiatives for universal single-payer health care, tuition-free college, and paid family leave, among other things
- These initiatives would increase (non-interest) government spending by **38 percent** over the next decade





Presidential Candidate Hillary Clinton (D-NY)

Indian Policy

- The federal government should protect the “sacred trust” it holds with Native Americans
- She will strengthen the government-to-government relationship with Indian tribes
- The U.S. “should fulfill its treaty obligations and trust responsibilities to Tribal Nations”
- Clinton will –
 - “Break down all the barriers that hold back Native Americans”
 - “Build ladders of opportunity for Native Americans”
 - “Ensure meaningful consultation and empowerment”
 - Appoint Native Americans to key positions in her Administration and the courts
 - Protect tribal resources, wildlife, air, water, sacred sites, and resolve disputes
 - Improve public safety in Indian Country
 - Combat drug and alcohol addiction, and increase opportunity for Native youth
 - Improve health care access, increase quality education, and expand veteran services



Presidential Candidate Donald Trump (R-NY)

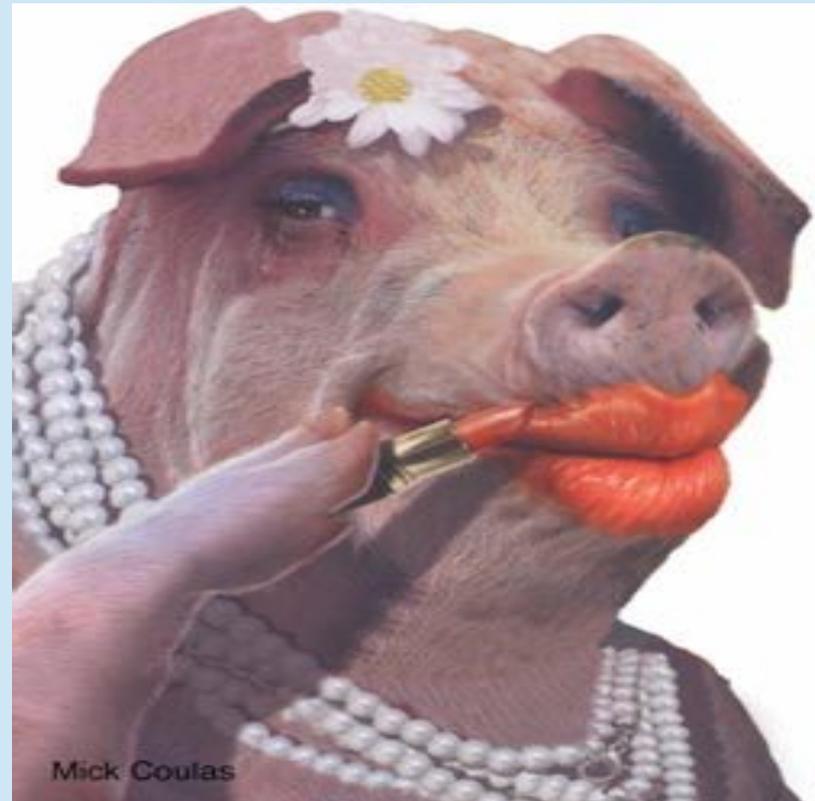
Indian Policy

- Like President Andrew Jackson – Donald Trump is an Indian fighter who champions the interests of the common white man
- Upset by the competitive pressure he felt from Mashantucket Pequot's Foxwood Indian casino, Trump said the Pequots "don't look like Indians" and testified that organized crime would soon control tribes. "It will be the biggest scandal ever," Trump warned, "the biggest since Al Capone An Indian chief is going to tell Joey Killer to please get off his reservation? It's unbelievable to me... . [N]obody likes Indians as much as Donald Trump," but the Indians are being had by mobsters and ... "[t]here is no way Indians are going to protect themselves from the mob. This is gonna blow."
- Trump sued unsuccessfully to challenge IGRA as an unconstitutional preference for tribes
- Trump backed the unsuccessful effort in 1996-98 to impose UBIT on tribal gaming revenue
- Trump reportedly was behind an ad campaign that labeled St. Regis Mohawk Tribe as violent drug criminals when its casino plans competed with his in the Catskills



Presidential Candidate Donald Trump (R-NY) Indian Policy

- Make America great again
- Tear up bad agreements
- Strike new deals
- Saul-to-Paul conversion?





Presidential Candidate Ted Cruz (R-TX)

Indian Policy

- President Cruz would eliminate the IRS and the Departments of Education, Energy, Commerce, and Housing and Urban Development, and at least 25 agencies, bureaus, commissions and programs:

Appalachian Regional Commission
Climate Ready Water Utilities Initiative
Climate Research Funding for the Ofc of Research and Dev.
Climate Resilience Evaluation Awareness Tool
Consumer Financial Protection Bureau
Corporation for Public Broadcasting (privatize)
Corporation for Travel Promotion
Global Methane Initiative
Green Infrastructure Program
Greenhouse Gas Reporting Program
Legal Services Corporation
National Endowment for the Arts
National Endowment for the Humanities

New Starts Transit Program
Pacific Coastal Salmon Recovery Fund
Presidential Election Campaign Fund
Regulation of CO2 Emissions from Power Plants and all Sources
Regulation of Greenhouse Gas Emissions from Vehicles
Renewable Fuel Standard Federal Mandates
Saint Lawrence Seaway Development Corporation
Sugar Subsidies
Transportation Investment Generating Economic Recovery
UN Intergovernmental Panel on Climate Change
UN Population Fund
USDA Catfish Inspection Program

- President Cruz would send most of the federal K-12 funding in block grants to states and shift the Indian Education program and Federal Impact Aid to Interior



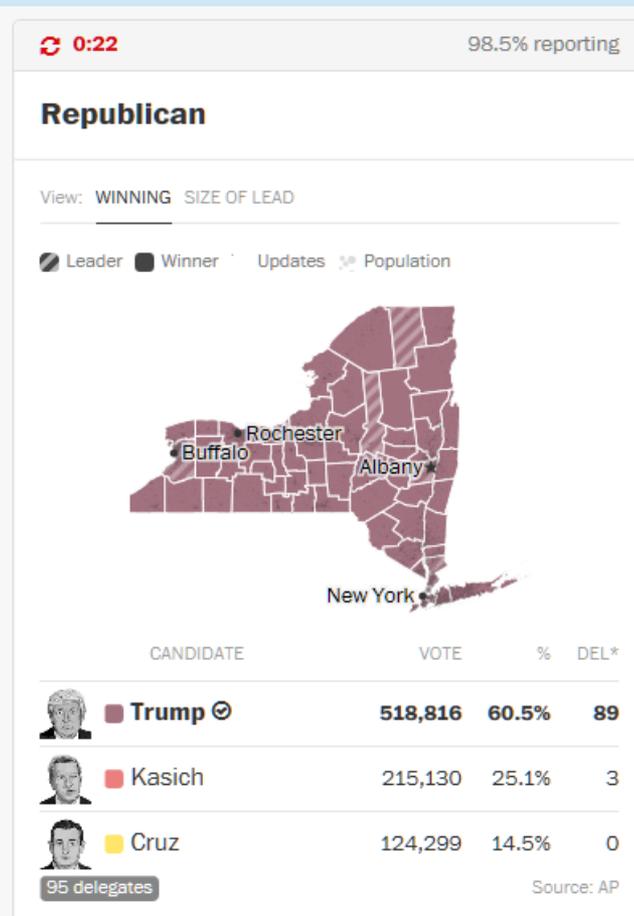
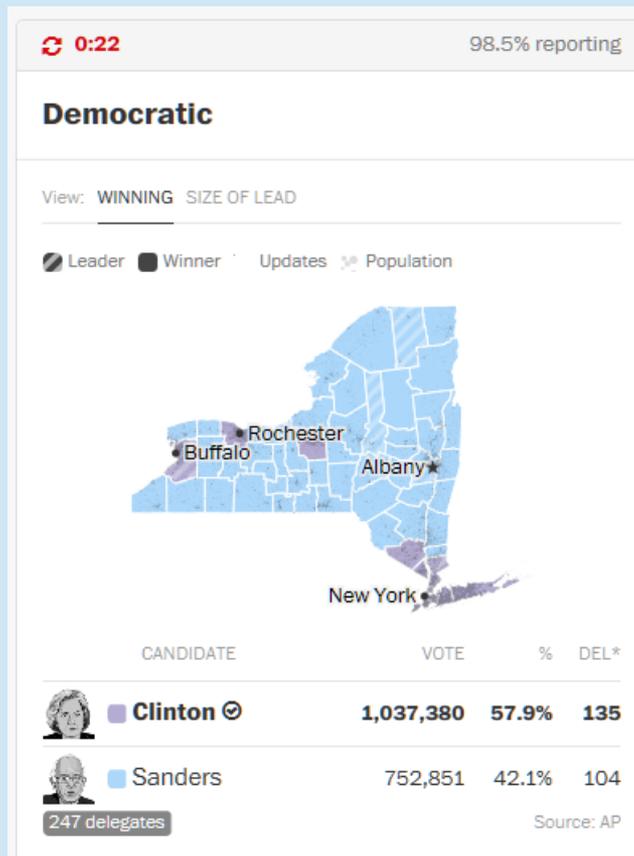
Presidential Candidate John Kasich (R-OH) Indian Policy

- Engaged in some outreach to tribal leaders
- A history of general support as House leader when self-governance was born, UBIT was defeated, BIA was reformed, and Gorton funding cuts were softened
- Seen as a consensus builder for reform not revolution
- Program priority is on Americans at the vulnerable edges, in the shadows, where Indian Country is most represented
- Except for his Ohio fuss against renaming Mt. McKinley Denali, a sparse recent record and few program details specific to Indian country



Does New York Forecast November 2:1 Results?

- 1 million more Democrat voters than GOP voters
- Coastal states rule
- Fear motivates votes
- Clinton cannot lose





Summary

- 2016 is a year of the lame ducks, big noise, little action
- FY 2017 and future year federal Indian spending levels, at best, will be held at prior year levels but in all likelihood will be reduced
- 2016 presidential election will result in higher debt and spending sequestration in the coming years
- CCTHITA and other tribes who rely mainly on federal grants to provide essential services will be hit the hardest by a shrinking federal budget in the coming decade
 - A tribe like CCTHITA will thrive in the future only if it develops economic enterprises that generate governmental revenue
- In self-sufficiency is sovereignty's survival



QUESTIONS? ANSWERS?

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