

FBB FEDERAL RELATIONS

LINDSAY HART, LLP

Peter Friedmann's View from DC – September, 2020

No one can remember a more toxic partisan environment here in Washington, DC. So when a glimmer of bipartisanship appears, it's very welcome – perhaps not to the media which seems only interested in fanning the flames of conflict, but it is welcomed by those of us who try to get things done on Capitol Hill.

Distracted by political maneuvering in this election year, the House and Senate have been unable or unwilling to do even their basic job -- to pass a budget for the coming fiscal year which begins October 1 2020. So here we are once again, just days away and no budget. But out of the blue comes a compromise between the House and Senate. It looks like we will avoid another shutdown of the federal government. No doubt this will be just a brief moment before everyone gets back to their battle stations. But it demonstrates that just as it appears the wheels are coming off tracks, some rational thinking can prevail.

So now, we are in an election year, with a contentious (to put it mildly) Presidential election campaign underway. Simultaneously, control of Congress is at stake: Republicans seeking to hold their slim Majority, and Democrats motivated to take it. Over all this hangs COVID and the resulting economic doldrums.

That has been more than enough to limit what Congress could accomplish this year. But in fact, the unlikely Trump-Pelosi team have accomplished much, probably more than any President and Speaker of the House – passing and signing, in very short order, the largest economic stimulus initiative in the nation's history. \$4 Trillion in the four COVID bills enacted this past Spring. It took President Trump and Speaker Pelosi to agree on the desired outcome, and to convince their caucuses to compromise. Even earlier, the President and the Speaker overcame objections, and worked to convince the Republicans and Democrats to vote for the USMCA – a massive re-write of the rules for trading with our nation's largest trading partner, Mexico. And despite the heat of the approaching election, it is possible that President Trump and Speaker Pelosi could lead their caucuses to compromise on another COVID stimulus bill. If all this doesn't sound like what you hear on MSNBC, CNN and FOX, then maybe they aren't telling you what's really happening....

Now, if all that were not enough, we enter what is always the most contentious battleground for the President and Senate, regardless of party: confirming a new Supreme Court justice. Even in the best of times, the battle over a Supreme Court justice brings the Capitol to a halt – this is because the most difficult, passionate, intractable social issues come to the fore: abortion; gun control; racial, religious, gender issues; voting rights; Presidential authority; etc. Most Senators and Congresspeople prefer to avoid these high-voltage issues during the regular Sessions of Congress, because resolution is almost impossible. These are issues for the highest court, and they are all aired during the confirmation hearings.

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Whether the President is Republican or Democrat, whether the Senate is with Republican or Democratic Majority, confirmation of a nominee to the Supreme Court has, for the past 30 years been the place where partisanship and policy hardens, and compromise and protocol are either eroded or disappear entirely. Fortunately, appointment to the Supreme Court is for life, so these confirmation episodes occur, on average, only once every 10 years (the 3 during President Trump's first term are an anomaly).

Incredibly, this year, a Supreme Court nomination battle, with all the anger and angst it generates, coincides with the final weeks of an election which will determine control of the White House or Congress. As they say, "you can't make this stuff up".

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