

## State Of The Union Won't Fix Partisan Quagmire In Congress

By **Michael Macagnone**

*Law360, Washington (February 2, 2018, 7:22 PM EST)* -- As Congress returns to fend off another government shutdown Monday, experts said President Donald Trump's State of the Union address alone did little to break up the partisan battles that have dominated congressional fights over spending, immigration and other issues.

Trump, as part of a speech primarily focused on his accomplishments to date, pushed his administration's planned immigration reform package, mentioned an expected infrastructure bill and called for an end to the defense sequester. The speech got glowing reviews from Republicans, saying he delivered an uplifting bipartisan message. However, several experts said there is a way to go before that message could spur an outbreak of bipartisanship or translate into legislative action.

Some experts, like former Minnesota Republican Sen. Norm Coleman — now head of Hogan Lovells LLP's government relations and policy advocacy practice group — said Democrats' reaction to the speech showed that there is still an entrenched partisanship in both chambers that wasn't alleviated that night.

"[Democrats] really showed their colors that they didn't want to work with this president when they wouldn't even stand up and clap for lower prescription drug prices," Coleman said.

Several lines in Trump's speech on his immigration proposal, including that "open borders have allowed drugs and gangs to pour into our most vulnerable communities," drew boos from Democrats. One of the key negotiators on a deal to address Deferred Action for Childhood Arrivals program recipients, Sen. Dick Durbin, D-Ill., told reporters after the speech that the president's comments on open borders and murders by members of the MS-13 gang were inflammatory and not helpful.

On Sept. 5, the Trump administration had announced it would end DACA, which was put in place by former President Barack Obama, by March 5, giving Congress six months to come up with a replacement.

The program, which was launched in 2012 and provided deportation relief and work permits to immigrants who came to the U.S. without authorization as children, has benefited almost 800,000 immigrants, according to government statistics.

The administration's four-pronged framework, unveiled last week, would provide a path to citizenship

for DACA-eligible youth known as Dreamers, fund a border wall system, eliminate a visa lottery program and restrict so-called chain migration by barring visa sponsorship for extended family members.

“I am extending an open hand to work with members of both parties — Democrats and Republicans — to protect our citizens of every background, color, religion and creed,” Trump said. “My duty, and the sacred duty of every elected official in this chamber, is to defend Americans — to protect their safety, their families, their communities and their right to the American Dream. Because Americans are dreamers too.”

Several groups on both sides of the aisle have already panned Trump’s immigration proposal, and Democrats quickly reiterated their opposition after the State of the Union. Democratic leaders like Rep. Jim Crowley, D-N.Y., the chair of the House Democratic caucus, said the president was going nowhere with his current immigration rhetoric.

“From his racist, demonizing comments on immigrants to the complete lack of any mention in relation to securing our democracy from the Russian government, the speech was not new or good, and it will not change fundamental dynamics of the nation moving forward,” Crowley told reporters Wednesday.

Immigration reform advocates like the Mexican-American Legal Defense Fund have rejected the proposal as well as the rhetoric Trump used in his speech. Thomas A. Saenz, president and general counsel of MALDEF, and other groups have blasted Trump’s remarks and pushed Democrats to make Congress address the Dreamers.

“Trump continued, in only slightly muted form, his verbal assault on immigrants of color in general and Latino immigrants in particular,” Saenz said in a statement.

Senate Majority Leader Mitch McConnell, R-Ky., reiterated his promise to bring an immigration debate to the Senate floor in a press conference at the annual Republican retreat Thursday, after complaining Democrats “have endlessly been trying to shoehorn the immigration issue” into spending discussions.

In order to help reopen the government after a brief shutdown in January, McConnell promised to bring an immigration bill to the Senate floor for an open debate after Feb. 8 if there was no agreement before then. Since Trump’s announcement in September, immigration has been continually injected into the spending debate, as the must-pass legislation’s 60-vote Senate hurdle is one of the few leverage points Senate Democrats have.

Trump and Republicans have pushed for an increase in defense spending beyond the limits imposed by the 2011 Budget Control Act. Meanwhile, Democrats have held that there should be parity between defense and nondefense spending cap increases, a major sticking point in spending negotiations even as they tussle over immigration issues.

Still, the immediate problems faced in Congress, coupled with the deal Trump put on the table, could push legislators to break through the stalemate that built up around immigration policy in the last few months, Coleman said.

“Certainly some Republicans are not excited about a path to citizenship and Democrats who bridle at the mention of chain migration,” Coleman said. “It may be that the path forward is not based on mutual good will but the fact that he put a deal on the table that is hard to say no to.”

There are outside factors though, that could start bringing the two parties together in the next few months. According to Coleman and others, infrastructure is a bipartisan issue. “There’s no partisan way to pave a street,” Coleman said, harking back to his time as a mayor in St. Paul, Minnesota — and the pent-up demand for infrastructure investment could spur action.

In this year’s election, there are 10 Democratic Senators on the ballot from states Trump won, varying from Trump’s one percent margin in Sen. Bill Nelson’s Florida to the 40 percent margin in Sen. Joe Manchin’s West Virginia.

The proximity of a tough reelection fight for those Democrats could give them the push to break with their party leadership, Coleman said.

“Up to this point in time this hasn’t been persuasive in getting them to find common ground,” Coleman said. “I do think that the reality of the politics of folks running for reelection in states Trump won is going to be there.”

The positive reviews of the speech in the press and a recent uptick in Republicans’ poll numbers “represent that is a good start, and the question is, what can be delivered, how do you take that message and make it policy,” Coleman said.

Still, it will take serious work in the short term to reach an agreement on policy, Coleman said.

“The reality in this environment with the Trump resistance still being at the core of where the Democratic party base is, there are clear strong partisan divides,” Coleman said. “Making progress is challenging.”

One of the bipartisan issues mentioned in the speech, the infrastructure package, has been believed to be a priority of Congress this year. During the State of the Union, Trump said the plan would emphasize cutting back regulation that has held back investment, making potentially short-term projects take years.

“Every federal dollar should be leveraged by partnering with state and local governments and, where appropriate, tapping into private sector investment, to permanently fix the infrastructure deficit,” Trump said. “And we can do it.”

The White House said that half of the new infrastructure funds would go toward incentivizing new state and local investments in infrastructure with the goal of empowering state and local authorities to prioritize infrastructure projects based on their community’s needs.

Susan Lent, a partner at Akin Gump Strauss Hauer & Feld LLP and leader of the firm’s infrastructure and transportation practice, said the parts of the administration infrastructure proposal that have been made public contained several interesting proposals for regulatory changes, including streamlining environmental reviews. “There is really a significant number of recommendations there that would allow projects to move forward more expeditiously and efficiently and would ultimately have the benefit of reducing costs and getting more projects done,” Lent said.

However, Lent expressed some skepticism about the amount of leverage the plan called for on a \$200 billion federal investment, and what that might mean for states and localities considering projects

under the plan. “The money has to come from somewhere,” Lent said. “If you have a toll road or you are going to privatize your water system, then the private sector is going to have to get a rate of return.”

Joe Seliga, a partner in Mayer Brown’s Chicago office and a member of the firm’s global infrastructure, government relations and public law practice, said the mention of a push for infrastructure legislation was a good step, but it needs to go further. “While the impending election complicates matters, the fact that the need for congressional action is great and the support for action related to infrastructure crosses both parties and is also strongly supported by voters also gives encouragement that action could be taken this year,” Seliga said.

“Now the expectation is to see what steps Congress will take in terms of reacting to the administration proposal and develop[ing] legislation that can move forward,” Seliga said.

-- Additional reporting by Linda Chiem and Nicole Narea. Editing by Bill McConnell and Pamela Wilkinson.