
Policy Implications of the Election

Implications of Republican Control of House (Senate?)

Lame Duck

- Democrats will try to pass EOY priorities and nominations (particularly judicial and regulatory agencies).
- Republicans may have less incentive to cooperate on legislation and nominations.

Republicans Keep Same House and Senate Leadership; House Democratic Leadership Likely Changes

- Republican Leadership likely to stay the same in the House and Senate.
- Senate Democratic Leadership could stay the same, while House Democratic Leadership could turn over entirely.

Republicans Will Leverage their Majority in Advance of 2024

- Focus on investigations and oversight of Biden, his Administration, and Regulatory Agencies.
- Biden nominations will potentially languish in the Senate.
- Little policy overlap between parties + little incentive for bipartisan cooperation = few legislative accomplishments.
- Debt Ceiling and Appropriations past December 16th could become political footballs.

Biden Administration Preventing Policy Rollbacks and Fending Off Investigations

- Departures of some senior White House staff, cabinet- and sub-cabinet level officials.
- Legislative gridlock will shift focus to advancing agenda through executive and regulatory actions.
- 2024 Presidential Cycle begins immediately.

Lame Duck Forecast

Lame Duck? Or Lively Duck?

Democrats are talking about wrapping the top four items (FY23 Defense, FY23 Appropriations, Ukraine Assistance, and Domestic Disaster Relief) into a single package.

House Republicans could be less likely to cooperate on heels of election victories, but possible Democratic control of Senate coupled with bad night for Trump could add some life to this idea.

Lengthy Possible Legislative “To Do List”

- FY23 Defense Authorization
- FY23 Appropriations
- Ukraine Assistance
- Domestic Disaster Relief
- Tax Issues: Extenders, Business Tax, Child Tax Credit
- Respect for Marriage
- Electoral Count Reform
- Debt Limit

Judicial Nominations – Top Democratic Priority In Lame Duck IF Democrats Don't Keep Senate.

Judicial Nominees Confirmed Under:

Barack Obama

Total two terms: **344** (2 Supreme Court, 57 Circuit, and 285 District)

- Last two years with Republican Senate: **19** (0 Supreme Court, 2 Circuit, and 17 District)

Donald Trump

Total one term: **230** (3 Supreme Court, 54 Circuit, and 173 District)

- First two years with Republican Senate: **84** (2 Supreme Court, 30 Circuit, and 52 District)
- Last two years with Republican Senate: **146** (1 Supreme Court, 24 Circuit, and 121 District)

Joe Biden

Total one term: ???

- First two years with Democratic Senate: **84** (1 Supreme Court, 25 Circuit, and 58 District)
- Second two years: ???

Available time to act on nominations in lame duck could be greatly reduced. Confirming nominees during lame duck could require attendance by all 50 Democratic Senators and Warnock likely to be in GA through Dec. 6 runoff.

Pending Nominations

Judicial Branch:

There are currently **57** pending nominations:

- Awaiting Floor Vote: **21 (5 Circuit / 16 District)**
- Awaiting Discharge Vote: **4**
- Awaiting Report from Committee: **12**
- Awaiting Committee Hearing: **20**
- Awaiting Formal Nomination: **1**

Also, lengthy list of pending regulatory and executive branch nominations, e.g, FERC, FDIC, FTC, perhaps IRS.

Debt Limit Crisis Looming On Horizon

Prior to Elections:

Republicans, including possible future Speaker of the House McCarthy, egged on by Trump, talked about using debt limit as leverage for wide range of agenda items, e.g., entitlement cuts, spending caps, rollback of IRS funding, border control.

Biden Administration sounded out key Democrats about addressing debt limit during lame duck when Democrats were still in control of both chambers.

Following Elections:

With smaller majority in House, perhaps Democratic control of Senate, and a diminished Trump, question is whether Republicans will be more receptive to a deal and lower their demands to make it happen.

What is the debt limit:

Debt limit is the total amount of money the U.S. government is authorized to borrow to meet existing legal obligations, including Social Security and Medicare benefits, military salaries, interest on the national debt, and other payments.

Debt limit last raised by \$2.5 trillion in December 2021. Estimates show U.S. will approach debt limit again in summer/fall of 2023.

Default on the debt limit could/would:

- Delay about **40 percent** of government payments, raise interest rates, weaken the dollar, and cause markets to fall.

The U.S. government has never intentionally defaulted.

Republican Priorities

Republican Priorities in a Divided Government

The GOP House will aggressively pursue oversight and pass legislation that rolls back the Biden agenda and energizes its base, recognizing they may lack a Senate majority.

If Republicans fail to take Senate, they will lose that oversight platform and Democrats will have an opportunity to “counter-program”.

Both parties position themselves for 2024 elections.

Efforts will focus on a number of priorities, including:

- Increased Oversight (i.e., Biden Family, DOJ/FBI Overreach, Executive Orders, Border Security, COVID-19, IRS, CBP, SEC, CFPB).
- The Economy (i.e., Taxes, Inflation, Gas Prices, Domestic/Clean Energy).
- Business Sector Scrutiny: Tech/Commerce, “Wokeness,” Trade, National Security, and China.
- Attempts to impeach Biden or Administration officials possible—less likely as a result of the midterms.
- If Democrats hold Senate, getting bills to President’s desk via reconciliation or Congressional Review Act much less likely.
- Efforts to reduce government spending, including spending caps and entitlement reform (Social Security and Medicare).

Congressional Leadership

Congressional Leadership

| *Topline Insight: More of the Same; Plus Change in House Dem Leadership*

Senate Republicans

Leaders Remain the Same

Republican Leader

Mitch McConnell (KY)

Republican Whip

John Thune (SD)

Republican Conference Chair

John Barrasso (WY)

Senate Democrats

Leaders Remain the Same

Democratic Leader

Chuck Schumer (NY)

Democratic Whip

Dick Durbin (IL)

Assistant Democratic Leader

Patty Murray (WA)

House Republicans

Leaders Likely Remain the Same

Speaker of the House

Kevin McCarthy (CA-23)

Majority Leader

Steve Scalise (LA-01)

Majority Whip

?

House Democrats

Leaders Likely to Change

Democratic Leader

?

Minority Whip

?

Democratic Conference Chair

?

*Biden
Administration
and 2024 Forecast*

Biden Administration in a Potentially Divided Legislature

| *Topline Insight: Biden Gets a Break; Partisan Gridlock Awaits*



House legislates, Senate filibusters



Executive Orders



Focus on Legislating and
Negotiating with the Senate



Intense Oversight/Investigation

Biden vs. Trump 2024?

| *Topline Insight: Back to the Future? Or into the Future?*

Trump is blame gamed and damaged by midterms

DeSantis breakout win

Biden gets a second wind

*If Trump runs, **he is likely the Republican nominee***

*If Trump runs, **a primary is now possible***

*If Trump runs, **Biden runs***

*If Biden runs, **a primary is improbable***

If one or both pass, then what?

POTUS 2024?

| *Topline Insight: Should Biden/Trump Choose NOT to Run: **Chaos***

Republican Field

- Governor Ron DeSantis
- Former Vice President Mike Pence
- Governor Glenn Youngkin
- Senator Marco Rubio
- Senator Ted Cruz
- Governor Brian Kemp
- Former Secretary of State Mike Pompeo
- Former Governor Nikki Haley
- Gubernatorial Candidate Kari Lake
- Random Governors, Senators, Business Leaders, Celebrities

Democratic Field

- Vice President Kamala Harris
- Secretary Pete Buttigieg
- Senator Amy Klobuchar
- Senator Bernie Sanders
- Senator Chris Murphy
- Senator Elizabeth Warren
- Congresswoman Alexandria Ocasio-Cortez
- Governor Gavin Newsom
- Random Governors, Senators, Business Leaders, Celebrities

Policy Implications

Policy Implications for Various Sectors

- Competition/Antitrust
- Tech/Telecom/Media
- Tax
- Trade
- Energy & Sustainability
- Financial Services
- Food & Agriculture
- China
- Ukraine and Russia
- Middle East
- Health
- Labor

Competition/Antitrust

Topline Insight: Focus shift in Congress from competition and antitrust concerns to censorship of conservative political speech and perceived “woke” behavior by corporate America.

Some level of Senate bipartisanship likely to remain, where “Big Tech” antitrust bills are likely to be re-introduced in some form but face an even higher bar for significant action if there is a Republican-controlled Senate.

More aggressive action from the two antitrust agencies to challenge consolidation across industries and continue pursuit of lawsuits against Big Tech firms.

Republicans Will Likely:

- Increase oversight into DOJ Antitrust Division and FTC.
- Seek to block second term for Lina Khan as FTC Chair (term expires September 25, 2024).
- Be less inclined to move expansive antitrust legislation and grant resources and authority to antitrust enforcement agencies.

Tech/Telecom/Media

Topline Insight: New GOP House majority pursues oversight, investigations and legislation targeted at technology and media companies; myriad of other policy areas.

Key Legislation:

Comprehensive data privacy; kids' privacy and safety online; Section 230/viewpoint discrimination.

Republicans Will Likely:

- Initiate legislative and oversight activity targeted at Big Tech and Hollywood, including the pursuit of comprehensive and kids' privacy legislation, and targeting the companies' ties to China and alleged censorship of conservative viewpoints.
- Work with Biden Administration to restrict China's access to semiconductor and other technologies and pursue oversight if they believe that the Administration is being insufficiently aggressive.
- Move legislation to update the laws governing autonomous vehicles (AVs) and conduct aggressive oversight of NHTSA to speed the rulemaking process.
- Conduct oversight of Biden Administration implementation of broadband connectivity programs, seeking examples of waste.
- Increase oversight of the FCC and FTC, however each entity will continue to operate as a 2-2 (FCC) and 3-1 (FTC) body for the foreseeable future.

Tax

Topline Insight: Tax policy is likely to remain fractious and highly partisan, with Republicans focused on extending business and individual tax preferences that expire in 2025, and Democrats focused on provisions for lower-income taxpayers, such as the refundable child tax credit and earned income tax credit.

Key Legislation:

Expiring 2017 Tax Cuts and Jobs Act provisions, Child Tax Credit, Earned Income Tax Credit, International Tax Reforms related to OECD negotiations.

Areas for bipartisan cooperation in near term do exist but are limited to smaller items such as pension reform, disaster relief, and perhaps tax extenders.

Republicans Will Likely:

- Remain focused on making permanent items in the 2017 Tax Cuts and Jobs Act.
- Attempt to reverse certain business tax increases, such as amortizing R&D expenses, that went into effect this year.
- Utilize the reconciliation process, if they hold both the House and Senate majority, to send a bill to the White House with their tax priorities.
- Use reconciliation to attempt to reverse policies enacted in the Inflation Reduction Act.
- Utilize the annual appropriations process to roll back IRS enforcement funding or place new limits on the use of the funds.
- Conduct oversight aimed at IRS leaks of confidential taxpayer information, such as the leak to ProPublica.

Trade

Topline Insight: In a highly polarized and partisan environment, trade presents an opportunity for the Administration and Congress to work together.

Republicans will prioritize new trade agreements and opening new markets while the Biden Administration will be looking to implement its “worker-centric” trade approach.

Key Legislation:

Trade Promotion Authority (TPA), Trade Adjustment Assistance (TAA), Generalized System of Preferences (GSP), Miscellaneous Tariff Bills (MTBs), Anti-Dumping and Countervailing Duties (AD/CVD) reforms.

Republicans Will Likely:

- Intensify efforts to reauthorize TPA to drive new trade agreements and open new market.
- Remain focused on China as driver of an aggressive U.S. trade policy.
- Continue efforts around greater scrutiny of outbound U.S. investments.
- Attempt to provide relief to U.S. businesses impacted by tariffs, such as through a more robust Section 301 exclusion process.
- Engage in bipartisan efforts to discourage discriminatory digital services taxes (DSTs) in the EU and elsewhere through the use of US trade remedies.
- Apply increased pressure on the Administration to expand the scope of the Indo-Pacific Economic Framework (IPEF) to include market access.

Energy & Sustainability

Topline Insight: Despite robust Republican oversight and investigations, possible appropriations action, and an active suite of agenda-setting legislative proposals, the Bipartisan Infrastructure Law and Inflation Reduction Act will remain largely intact.

Key Legislation:

Permitting reform, Congressional Review Act, National Defense Authorization Act, Appropriations bills, and tax extenders

Republicans Will Likely:

- Use oversight and investigations to challenge Administration officials and agency leadership on climate, environment, energy security and supply chain/China matters.
- Attempt to utilize the Congressional Review Act to repeal eligible regulations.
- Seek to use the appropriations process to restrict implementation of ESG and climate financial disclosure measures.
- Focus on energy security and affordability themes to bolster fossil fuel interests and cast enacted climate and energy measures to their advantage before the 2024 election.

Financial Services

Topline Insight: Oversight of banking/markets regulators, passage of digital assets legislation, enact legislation that supports economic growth and lower inflation.

Republicans no longer as friendly to corporate America, expect attention towards “woke” capitalists and ESG agenda.

Key Legislation:

Capital formation, digital assets, and data privacy.

Republicans Will Likely:

- Establish a new subcommittee of the House Financial Services Committee dedicated to cryptocurrency and digital assets.
- CFPB, SEC and other regulators will be focal point for oversight from both committees, with agency heads Chopra, Gensler and others in GOP hot seats.
- Work in a bipartisan manner to pass crypto legislation.
- Probe financial services firms’ ties and investments in China.
- Push back against “woke” and ESG policies within regulatory agencies and Wall Street.

Food and Agriculture

Topline Insight: Congressional Republicans and Democrats, and the White House are all likely to be at odds over key farm bill priorities.

Key Legislation:

The current farm bill expires on September 30, 2023. Congress and the Administration will need to work together to pass a new five-year bill or extend the current legislation.

Three of the “four corners” – the chairs and ranking members of the House and Senate Agriculture Committees – have never led a farm bill negotiation.

Republicans Will Likely:

- Target any unobligated funding from the Inflation Reduction Act or prior COVID-related packages to pay for policy priorities.
- Focus on policies that address supply chain and disaster-related issues while attempting to scale back Democrats’ climate and nutrition priorities.
- Face calls from more conservative members of the party for major cuts to the farm safety net and the decoupling of farm programs and nutrition programs – initiatives that would kill negotiations for the legislation.

Food and Agriculture

Topline Insight: Increased congressional oversight of the Biden Administration's agriculture, environmental, and climate policy.

Republicans will likely target the following for oversight:

- USDA's implementation of climate and agriculture provisions of the Inflation Reduction Act of 2022.
- Biden Administration climate policy priorities, including the Partnerships for Climate-Smart Commodities program.
- The U.S. Securities and Exchange Commission's proposed rule on Scope 3 emissions and its impact on American agriculture.
- Biden Administration trade policy and its effectiveness in gaining market access for U.S. agriculture products.
- USDA's update to the Thrifty Food Plan.
- Environmental Protection Agency agriculture- and pesticide-related policies.
- Food and Drug Administration food policy programs and activities.

China

Topline Insight: Republicans will try to put the Biden Administration on the defensive about not being tough enough on China.

Key Legislation:

Forced Labor Prevention Act; Taiwan Policy Act.

Republicans Will Likely:

- Establish a “Select Committee on China” to advance policy goals.
- Increase arms sales and support to Taiwan.
- Attempt to further strengthen U.S. supply chains and reduce flow of sensitive private sector technology to China.
- Support Biden Administration efforts to restrict U.S. outbound investment to China.
- Review U.S. export license regime.
- Encourage further executive actions on human rights abuses in Xinjiang.
- Target China’s growing “soft power” in the U.S.

Ukraine and Russia

Topline Insight: General bipartisan support for Ukraine will hold, but inter-party divisions may cause delays and lower levels of assistance.

Republicans Will Likely:

- Establish oversight procedures for Ukraine aid.
- Encourage greater burden sharing from NATO allies, possibly causing friction.
- Navigate efforts by the Right and Left flanks of each party to press the Administration to dramatically reduce military assistance to Ukraine in favor of domestic economic priorities.

Middle East

Topline Insight: Increased oversight of policies towards Iran and Gulf energy producers, as well as Afghanistan withdrawal.

Bipartisan attitudes against Iran will remain, making any Iran Deal a difficult sell for the Biden Administration.

Bipartisan appetite for “NOPEC” will continue.

Republicans Will Likely:

- Be less inclined than Democrats to oppose engagement with Saudi Arabia, particularly on weapons sales.
- Investigate Saudi and other OPEC producers’ oil supply reductions.
- Ramp up oversight mechanisms of and/or investigate the Biden Administration’s Afghanistan policy and withdrawal.

Health

Mental and Behavioral Health

Topline Insight: COVID has only further exacerbated this public health crisis.

Republicans will likely:

- Base next steps on negotiated bipartisan Committee-level proposals, focusing primarily on children and opioids, with policy facing constraints on any new funding.
- Focus on health care workforce shortages in this area and more broadly in health care. Workforce shortages were unable to meet demand for care pre-pandemic, and this has only worsened as need increases.

Prescription Drug Costs

Topline Insight: Next to health insurance premiums, prescription drug costs are the metric by which Americans measure affordability of care. These costs have continued to increase at an unsustainable rate.

Republicans will likely:

- Seek repeal of the Inflation Reduction Act provisions related to drug pricing controls and inflation rebates, which largely impact Medicare beneficiaries.
- Find a pathway to cap out-of-pocket costs of insulin for those covered under private insurance.

Telehealth Access

Topline Insight: Flexibilities in payment policy and investments in broadband in COVID relief packages advanced decades of efforts by telehealth advocates.

Republicans will likely:

- Advance pieces of larger legislative packages, such as the CONNECT for Health Act, focused on telehealth expansions initially made possible through COVID relief packages.

Health

Health Care Coverage Affordability

Topline Insight: Supply chain delays coupled with general inflation compounded systemic health care cost increases, shouldered by both the federal government and households.

Republicans will likely:

- Pursue rollbacks of the ACA, including: consumer protections, premium tax credit eligibility, open enrollment opportunities, “family glitch” solution.
- Reinstate the ability for narrow, short-term (and lower cost) “junk plans” to be offered in the Marketplace and expand the use and terms for high deductible health plans (HDHPs) and health savings accounts (HSAs).
- Raise the eligibility age for Medicare and increase opportunities for privatization of the program.

Reproductive Health

Topline Insight: It is unlikely federal legislation will advance but policymakers on both sides will continue this debate.

Republicans will likely:

- Reintroduce legislation at the federal level to ban all abortion care and services with very narrow exceptions.
- Reduce funding and increase restrictions on federal family planning programs, such as Title X and the United Nations Population Fund (UNFPA).
- Create stricter guidelines for coverage of abortion services under Medicaid.
- Reverse requirements for coverage of family planning services, including birth control, in private insurance health plans.

COVID-19

Topline Insight: Illness, health complications, and deaths due to COVID-19 continue, and associated hospitalizations strain the public health and health care infrastructure.

Republicans will likely:

- Seek increased oversight and transparency of the federal pandemic response in general and the CDC specifically.
- Apply pressure to limit the extension of the PHE declaration (ending January 11, 2023), possibly urging an exception for Medicare telehealth coverage policies.
- Address the growing pressures on the health care workforce, including increased workplace violence.

Labor

Topline Insight: The Biden Administration's pro-labor regulatory agenda at DOL and NLRB will continue.

Expect the Administration to finalize proposed DOL rules, such as the independent contractor rule, while moving forward on work to update Davis Bacon standards.

NLRB will continue to take a pro-labor posture, with a Democratic board majority assured through 2024.

Watch for the Administration to revisit the overtime regulation and seek other ways to bolster workers in light of the PRO Act's difficult path to passage.

Republicans Will Likely:

- Try to constrain DOL and NLRB through cuts to their budgets and extreme oversight; as well as pass budget riders to block DOL from finalizing proposed rules.
- Devote particular oversight to potential conflicts of interest at the NLRB, the NLRB's General Counsel, DOL involvement in labor disputes and the White House Task Force on Worker Organizing and Empowerment.



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