



What does a 50-50 Senate and a narrow House Democrat Majority mean for the 117th Congress?

After the results of the Georgia Senate runoff elections, the Senate is expected to be split evenly between Democrats and Republicans at 50-50. Once President-elect Biden and Vice President-elect Harris are sworn in, Vice President Harris will have the ability to cast an immediate tie-breaking vote on issues of importance, giving Democrats essential control of the Senate.

The power structure in Congress under a Biden Administration will be both heady and problematic. It will be the first time in a decade that Democrats will have control over both Houses of Congress and the Executive Branch. Newly minted Majority Leader Chuck Schumer (D-NY) and Speaker Nancy Pelosi (D-CA) will have the ability to control the agenda of both Houses, granting them great power in determining what bills will be brought up and the overall legislative strategy. The Biden Administration will be looking for early wins as legislators will soon be looking ahead to the 2022 elections.

- Notably, and despite holding the gavel, Majority Leader Schumer and Speaker Pelosi will continue to face divisions within their own caucus between progressive and moderate factions. Competing priorities, with both sides trying to assert control of the party, may cause problems in uniting the Democratic caucus to pass legislative priorities given the very narrow margin in the House and a tied Senate.
- Further complicating things, Speaker Pelosi has said she will not run for leadership after her current term. With no real succession plan in place, some high-profile members will be positioning for the title, injecting more political considerations into what is usually a predictable situation.
- For Republicans in the House, Leader McCarthy will be newly emboldened with the gains in the House in what was expected to be a "blue wave". For an impending Minority Leader McConnell, he will be faced with a semi-fractured caucus focused on saving and regaining seats in 2022 and a number of members focused solely on running for President in the 2024 cycle. More on that in the coming days.

The Senate

- In the Senate, a 50-50 split is rare. The most recent occurrence was in 2001, where there was a split for six months before Senator Jim Jeffords from the Republican party left to caucus with the Democrats, giving them a one seat majority. Keep an eye on this. While we believe it is unlikely the Republicans will be able to get a Democrat to switch parties, efforts are already underway to sway some of the more conservative democratic members.
 - It is important to note that Sen. Joe Manchin (D-WV), the most conservative member of the Senate's Democratic caucus, went on the record in 2016 strongly rejecting speculation that he would switch parties in this exact situation; at the time, he was quoted by an Associated Press reporter as saying: "I am a born-in-the wool West Virginia Democrat. I don't know where they're getting that crap from."
- If past is present, an agreement on Committee ratios, money, and procedures will have to be negotiated by Senators McConnell and Schumer. While this was accomplished relatively easily in 2001, the Senate was far more bipartisan in those days. In this time of partisanship and acrimony, it is unclear how smoothly these negotiations will go with the current leaders in the Senate. However, we anticipate that committee ratios will be equal, as will funding. Bills and nominations will likely be able to be discharged by either the majority leader or the minority leader (as was the case in 2001) if a tie vote occurs in committee, ensuring the potential for floor consideration.

Role of Vice President-elect Harris

- Vice President Harris's role will be significant. In addition to being the tie-breaking vote for legislation and nominees, Vice President Harris, acting as Senate President, will have discretion and influence over how the Senate functions. She will have to be present in-person to cast a tie-breaking vote, so she may be spending more time than expected in her prior Senate workplace.

Rule Changes and Policies

- With respect to the legislative filibuster, we do not anticipate any immediate changes. A number of moderate Democrats have already stated opposition to changing the rule to allow a 50-vote threshold for bills to be considered on the Senate floor. This will continue to be a point of focus over the next two years, and we will continue to closely monitor.
- Senator Manchin recently stated that he would not vote to expand the Supreme Court or nix the filibuster, potentially killing both of those

ideas in a 50-50 split scenario. However, we believe there will be pressure from progressives and others get done as much as possible prior to the 2022 elections. Given the slim margins in the House, there is the potential that the Republicans could claw back control there in 2022. The party in the White House traditionally loses seats in a mid-term election.

- Democrats will look to use budget reconciliation, a process that allows certain budget/revenue-related items to bypass the filibuster (e.g., tax changes). More on that to come in the next week or so. Sen. Bernie Sanders (I-VT) will be chair of Budget Committee, which initiates the reconciliation process in the Senate.
- While addressing non-budget reconciliation-related policies will still need to win 60 votes to proceed, Democrats would be able to rescind recent Trump Administration regulations with a simple majority using the Congressional Review Act during the first 60 legislative days of this Congress.

Implications for Major Legislation

- There will be several layers to the process: bipartisan and partisan Senate bills, House-passed bipartisan bills, and House-passed partisan bills. Majority Leader Schumer will determine what bills are considered on the floor. Progressives will push for votes on a number of issues (that are more than likely to fail), but those issues will still be put to a vote. Some, including clean energy, healthcare, and immigration will serve as political messaging bills to highlight the differences between the parties and highlight Democratic priorities. In the Senate, Democrats likely will also look to take advantage of that situation where they can get some more moderate and/or vulnerable Republicans to come together on another stimulus package, an infrastructure bill, and other bipartisan legislation. They will be under tremendous pressure from the Administration to get some wins, but the Senate Democrats may have a slightly different focus.
- In the Senate, there are a number of Democrats that may swing outside of their caucus boundaries. This includes Senators Manchin (D-WV), Tester (D-MT), and possibly Senators Sinema (D-AZ) and Cortez-Masto (D-NM). For Republicans, Senators Murkowski (R-AK) and Collins (R-ME) will remain swing votes to provide bipartisan flavor to some legislative initiatives.
- In the House, Speaker Pelosi will have to keep a very tight grip on her caucus to pass a purely partisan bill. Given the narrow margins and moderate Democrats who are up for re-election, she may encounter problems passing a purely progressive agenda, and instead dial back and seek some Republican support.

The House

Narrow House Majority

- Upon the expected confirmation of Reps. Marcia Fudge (D-OH) and Deb Haaland (D-NM) to the cabinet and the resignation of Rep. Cedric Richmond (D-LA) to join the White House staff, the Democrats will have a further reduced majority until special elections are held to replace each of them. This will occur during the heart of the Biden Administration's first 100 days and will likely frustrate progress in the House, unless the Speaker is able to secure unanimous Democratic support for legislative priorities.

Divide between Pelosi & McCarthy on Committees

- Final committee ratios are still being negotiated given the Republican gains in the House of Representatives. One scenario being advocated for is an overall reduction in committee size rather than the traditional move to add members as the result of significant gains by the minority. The minority is opposed to this and the impasse has delayed the assignment of Republicans to committees.

Motion to Recommit

- House Democrats, in the recently approved Rules Package, eliminated the right of the minority to offer the last amendment to legislation in the Motion to Recommit that if adopted was immediately incorporated into the underlying legislation. This is a significant diminution of minority power. Frustration by the Democrats in previous Congresses over "gotcha" amendments led to this change which has served to up the animosity between the parties.

The Biden Administration and Short-Term Outlook

- We continue to believe COVID-19 will be a primary focus of the incoming Administration. We anticipate a subsequent relief package and a push to continue to increase money distributed. A vote on a \$2,000 increase in stimulus checks is quite possible. Infrastructure, climate change/energy policy, and healthcare will be also at the forefront of the Biden Administration's agenda. Given the President-elect's long-standing relationships with Democratic leaders and Congress writ large, there is some optimism that many of these key initiatives have opportunity to be realized in statute in the near-term.
- Other priorities, such as a \$15 minimum wage, which would almost certainly net the support of Democrats on the Hill, may face more problems from Republicans especially from deficit hawks. This is particularly true in light of the massive spending associated with COVID-19 relief.

- In addition, we are seeing that the outgoing Trump Administration is attempting to leave a legacy from a regulatory/administrative standpoint, creating roadblocks and impediments for the new Biden Administration and the Democratic Congress in accomplishing their key policy objectives in the first or second quarters of 2021. Key Democratic priorities may be slower to come to fruition than the incoming Biden Administration would like. We expect the Senate and House will move quickly to forge a path for structuring and organizing committee and legislative business in the coming two weeks. Once accomplished they will move out on their first 100 days agenda.
- President-elect Biden has a strong working relationship with many Republican Members, having been a Senator for 36 years. We believe him to be more interested in getting things done and in compromise, rather than to seek a purely progressive agenda. There is opportunity for him to push Senate and House Democratic Leadership to seek compromise on some of his key electoral initiatives to show progress in the early part of his first year in office.
- So far, many of the presidential nominees put forward do not seem to provoke visceral attacks from the far right, but as the new Congress gets underway, that could all change fast. The Administration may be emboldened to put forth more controversial nominees under a Democratic controlled Senate which only requires 51 votes for confirmation of Presidential appointees.

Long-Term Outlook

- Over the long-term there are several issues to keep in focus. The tension on the Democratic side between progressives and moderates will continue to be a factor. How these factions can come together will be key to the success over the next two years.
 - While Speaker Pelosi was re-elected as Speaker, she has indicated that this is her last term and jockeying is underway to succeed her. The political calculations on votes and what factions to join will come in play here.
- On the Republican side, the Trump factor will remain in play. The outgoing President is alternately being blamed for the Georgia losses, or lauded for even keeping it close. The certification vote in the Senate gained a number of Senators who are not traditional Trump allies, but are up for re-election and feel the need to show solidarity with him. While it is clear President Trump will have a role in the next cycle, how significant that will be remains to be seen. Look for him to attempt to continue to define his role over the next two years but one scenario is him playing in Republican primary campaigns against those who did not support his efforts to overturn the election.

- As noted, the 2022 elections will have a significant effect on the Senate agenda for the next two years. There are 34 seats up for re-election, 20 of which are Republican. Rather than argue about which ones are in peril right now, we will save that for later. We'd note that both Senators Warnock and Kelly must run again in 2022.

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