



**Polarized Electorate, Divided Government:
What to Expect With the 118th Congress**

November 18, 2022

“Twelve years ago at this time, I was poised to become the new speaker and lead a new conservative majority in the U.S. House in the midst of a Democratic administration. Consensus among Republicans and Democrats is even more scarce today than it was back then. But even in a time of divided government and tribal politics, legislation will advance and deals will have to be made in order to ensure government can meet its basic obligations to the people. We can also expect to see significant new action in the area of congressional oversight. Our bipartisan public policy group is uniquely equipped to help clients understand the nature of the changes that are about to be unleashed and develop and execute effective strategies to accomplish their goals.”



John Boehner (R-OH)

Former Speaker of the House

Senior Strategic Advisor, Squire Patton Boggs

Republicans have won a narrow House of Representatives majority, and Democrats will retain their slim Senate majority.

While pundits forecast a Red Wave sweeping across the country, voters delivered a different message.

- Historically, the president's party suffers during the first midterm election as voters seek to vent against the party in power.
 - As anticipated, Democrats lost control of the House, but not by as wide of a margin as projected.
 - With victories in Nevada and Arizona, Democrats now hold a 50-49 edge in the Senate. Senate Democrats will retain the majority regardless of the outcome of Georgia's December 6 Senate runoff – due to Vice President Kamala Harris' tiebreaking vote should there be a 50-50 Senate.
 - The election showed that candidate quality matters, as do issues (e.g., inflation, abortion, crime) and voter enthusiasm.

The narrow majorities in both chambers suggest America remains divided, and compromise will be needed to overcome policy gridlock.

- Democrats will not hold a 60-vote supermajority in the Senate, which is needed to overcome a filibuster, limiting debate and allowing the chamber to proceed to a bill's consideration.
- Given that limitation, nothing significant will become law without compromise in the House and the Senate.

“It looks like a long and drawn out December. House Republican leadership and Appropriations Committee Chair Granger have their work cut out. They need to coordinate the hiring of hundreds of new staffers, assign newly elected Republicans to committees, and negotiate a final omnibus in a government that has become even more divided.

Meanwhile, just about every senator from both parties will be making at least one trip to Georgia....”



Jack Kingston (R-GA)

Former U.S. Representative and
House Committee on Appropriations Member
Principal, Squire Patton Boggs

- This month, both the House of Representatives and Senate will return for a “Lame Duck” session, a period of policymaking – lasting through the end of the year – that will include lawmakers who will not be returning for the next Congress.
- Of note, Democrats anticipate Republicans demanding concessions in exchange for their support for raising the statutory debt limit when the federal government is set to hit its debt ceiling in 2023. Democratic leaders have discussed utilizing the budget reconciliation process this year to preempt any issues next year, but such actions would require Democratic unity and speed to pass a new budget with reconciliation instructions on the debt limit and subsequently pass a reconciliation bill increasing the debt limit itself.
- Not all Lame Duck agenda items will find consensus. Some Republicans may seek to punt or drop measures in anticipation of their 2023 House majority.
- The next slide details several pieces of legislation we anticipate lawmakers will discuss through December.

- **Fiscal Year (FY) 2023 Appropriations:** The current Continuing Resolution funds the government only through December 16, 2022. The White House is also seeking supplemental funds for public health, Ukraine, and disaster relief.
- **FY 2023 National Defense Authorization Act (NDAA):** With negotiations occurring throughout the fall, the annual defense authorization bill is slated for consideration imminently.
- **Permitting:** Sen. Joe Manchin (D-WV) is pushing for his energy permitting reforms to be attached to any moving legislative vehicle, but Republicans may want to introduce their own version in 2023.
- **Cannabis Banking:** An expanded version of the Secure and Fair Enforcement (SAFE) Banking Act could achieve the bipartisan support needed to advance in a year-end legislative package.
- **Electoral Count Act:** A bipartisan group of senators has found consensus on updating procedures for certifying presidential elections.
- **Respect for Marriage Act:** Senate Majority Leader Chuck Schumer (D-NY) hopes enough Republicans will support this bipartisan marriage equality bill now that midterm campaigns are in the rearview mirror.
- **Privacy Reforms:** After a decade of debate, a bipartisan group of policymakers released a bill to create a comprehensive federal consumer privacy network and preempt certain state-passed privacy laws if adopted.
- **Tax Policy:** Discussions continue on extending the expanded child tax credit, immediate research and development expensing, and a myriad of so-called tax extenders that have expired or will expire this year.
- **Health Policy:** Lawmakers will discuss certain Food and Drug Administration (FDA) reauthorizations and reforms, as well as issues including telehealth, pandemic preparedness, mental health, Cures 2.0 provisions, Medicare/Medicaid program extensions, and averting Medicare pay cuts.
- **Trade Package:** House Committee on Ways and Means and Senate Committee on Finance leadership may chart a path forward on three expired trade programs – the Miscellaneous Tariff Bill, the Generalized System of Preferences, and Trade Adjustment Assistance.
- **Rail Negotiations:** There remains the looming threat of a rail-worker strike. Congress’s authority to ban the strike may mitigate the real threat of a rail shutdown.
- **“Legislative Consequence” to OPEC+ Oil Production Cuts:** The White House has said it will rely on Congress to generate such an initiative, called for by leaders in both parties. But the substance of such an initiative and how it would be enacted remain unclear.
- **Judicial Confirmations:** The Senate will continue to confirm judges.

- **House Republicans** elected leaders who will steer Republican policy priorities for the 118th Congress. Rep. Kevin McCarthy (R-CA) won the nomination for speaker with 188 votes. This vote, however, was a closed-door vote; in January, the speaker will be elected by a numerical majority of the votes cast by all Members for a person by name. Additionally, Rep. Steve Scalise (R-LA) was elected Majority Leader, Rep. Tom Emmer (R-MN) was elected Majority Whip, Rep. Elise Stefanik (R-NY) was elected Republican Conference Chair, and Rep. Richard Hudson (R-NC) was elected National Republican Congressional Committee Chair.
- **House Democrats** will wait until after Thanksgiving to hold leadership elections. House Speaker Nancy Pelosi (D-CA) has announced she will not seek re-election to leadership. House Majority Leader Steny Hoyer (D-MD) has also decided to step down, and he has endorsed Rep. Hakeem Jeffries (D-NY) for Minority Leader in the 118th Congress. Rep. Jim Clyburn (D-SC) is expected to run for Assistant Minority Leader. Rep. Katherine Clark (D-MA) is expected to run for Minority Whip, and Rep. Pete Aguilar (D-CA) is expected to run for Democratic Caucus Chair.
- **Senate Democrats** will hold their leadership elections on December 8. They will likely continue under the leadership of Sens. Schumer and Dick Durbin (D-IL). Sen. Patty Murray (D-WA), who Sen. Schumer will nominate as president pro tempore, has stated she will step down from her leadership role; she is expected to become Chair of the Senate Committee on Appropriations.
- **Senate Republicans** had leadership elections on November 16. Sen. Mitch McConnell (R-KY) was re-elected as the GOP leader via a secret ballot. The “Three Johns” – Sens. Cornyn (R-TX), Barrasso (R-WY), and Thune (R-SD) – are likely to round out the Senate GOP leadership team.

Potential House Rules Changes

As the new Congress organizes and begins its work, both the individual party caucuses and the House as a whole will adopt rules packages that govern operations for the next two years. The following are potential changes that could be incorporated into party or House-wide rules packages for the 118th Congress.

- **Prohibition on Earmarks:** Among the significant changes demanded by the House Freedom Caucus is enshrining in House rules a complete prohibition of earmarks. A Republican Conference ban on requesting earmarks effectively ended the practice for the entire House until March 2021, when a secret ballot vote of 102-84 allowed a return with certain conditions.
- **Vacating the Chair:** The House Freedom Caucus is also demanding restoration of the ability of any Member to demand a vote on removing the speaker. This rules change would have serious implications; it would give individual Members the ability to threaten the speaker's position at any time should the speaker be insufficiently responsive to their demands.
- **Term Limits:** Republicans are considering importing into the House rules their Conference rules' six-year term limits for committee chairs and ranking members. This would impose term limits on Democrats for their minority ranking members, changing the main players on the full range of legislative issues handled by Congress.
- **Miscellaneous Rules and Orders:** In addition to ending remote/proxy voting, removing magnetometers outside the House Chamber, and opening Congressional buildings to more visitors, changes may include stripping certain Democratic Members of their committee positions; replacing the select committees created by Democrats; returning to a version of the pay-as-you-go rule that prohibits increases in direct spending rather than increases in the deficit; and reinstating the so-called "Holman Rule" that permits targeting the salaries of individual federal employees.

The Role of Committees

“For the past few months, committee leadership has worked to identify likely priorities. Once Republican leadership elections are held, the committees will put pen to paper outlining their priorities. Congressional leadership will then determine what priorities align with the Conference’s and begin to put together a game plan for the 118th Congress. Early next Congress, many committees will exercise significant oversight of all spending bills and President Biden’s executive orders. On the House T&I front, I expect Chairman Graves to identify ways to ensure Bipartisan Infrastructure Law funding is dedicated to the appropriate programs, while also looking at ways to incentivize private infrastructure investment. If permitting reform does not happen during the Lame Duck, look for Congressional Republicans to revamp the proposals to develop a holistic approach to permitting reform.”



Bill Shuster (R-PA)

Former U.S. Representative and
House Committee on
Transportation and Infrastructure Chair
Senior Policy Advisor, Squire Patton Boggs

Committee Leadership Selection

- Leadership of the House and Senate will meet to determine committee assignments and committee leadership for the 118th Congress. Committee compositions depend on the majority parties in each chamber, ratio of the majority to minority, leadership negotiations, and House and Senate leadership elections.
- As House Republicans campaign for the gavel atop various committees, a major question is whether term-limited Republicans will be able to obtain waivers to serve as chairs.
- Senate Democratic committee chairs will be instrumental in advancing their legislative agenda items out of committee and onto the floor. Unlike this past year, however, Democrats will not be able to look to the budget reconciliation process to force a showdown with Republicans over their spending and tax priorities.

Committee Leadership Selection

House Republican Conference Procedures:

- The Republican Steering Committee nominates committee chairs, subject to approval of the entire Republican Conference, with the exception of Rules, Intel, Ethics, and House Administration, which are nominated by the speaker.
- Republican Conference rules do not require chairs be the Member with the longest service on the committee. In 2013, House Republicans reinstated a three-term limit for committee leadership, now requiring a waiver to continue leading the same committee.

House Democratic Caucus Procedures:

- The Democratic Steering and Policy Committee nominates ranking members, subject to approval of the Democratic Caucus, with the exception of three committees.
- Democratic rules govern that “merit, length of service on the committee and degree of commitment to the Democratic agenda of the nominee, and diversity of the Caucus” are considered.
- Democrats have historically selected the most senior member on each committee as the lead. In 2009, Democrats removed the House rule established in 1995 limiting a chair from serving longer than three terms.

Senate Procedures:

- Under Senate tradition, the majority party Member with the greatest seniority on a committee serves as its chair, with Republicans limiting to a six-year term.
- Under Senate rules, senators may serve on only one of the “Super A” committees – Appropriations, Armed Services, and Finance. Under Republican Conference Rules, the Committee on Foreign Relations is treated as a Super A committee as well.

Potential House Committee Leadership

Agriculture:

- GT Thompson (R-PA)
- David Scott (D-GA)

Appropriations:

- Kay Granger (R-TX)
- Rosa DeLauro (D-CT)

Armed Services:

- Mike Rogers (R-AL)
- Adam Smith (D-WA)

Budget:

- Lloyd Smucker (R-PA); Jodey Arrington (R-TX); Buddy Carter (R-GA); Jason Smith (R-MO)
- Brian Higgins (D-NY); Brendan Boyle (D-PA)

Education and Labor:*

- Virginia Foxx (R-NC); Tim Walberg (R-MI); Jim Banks (R-IN)
- Bobby Scott (D-VA)

Energy and Commerce:

- Cathy McMorris Rodgers (R-WA)
- Frank Pallone (D-NJ)

Ethics:

- Michael Guest (R-MS)
- Susan Wild (D-PA)

Financial Services:

- Patrick McHenry (R-NC)
- Maxine Waters (D-CA)

Foreign Affairs:

- Mike McCaul (R-TX)
- Gregory Meeks (D-NY)

Homeland Security:

- Dan Crenshaw (R-TX); Mark Green (R-TN)
- Bennie Thompson (D-MS)

House Administration:

- Bryan Steil (R-WI); Barry Loudermilk (R-GA)
- Zoe Lofgren (D-CA)

Intelligence:

- Michael Turner (R-OH)
- Adam Schiff (D-CA)

Judiciary:

- Jim Jordan (R-OH)
- Jerry Nadler (D-NY)

Natural Resources:

- Bruce Westerman (R-AR)
- Raúl Grijalva (D-AZ)

Oversight and Reform:

- Jim Comer (R-KY)
- Stephen Lynch (D-MA); Gerry Connolly (D-VA); Jamie Raskin (D-MD)

Rules:

- Tom Cole (R-OK)
- Jim McGovern (D-MA)

Science, Space, and Technology:

- Frank Lucas (R-OK)
- Zoe Lofgren (D-CA); Jamie Raskin (D-MD); Suzanne Bonamici (D-OR)

Small Business:

- Roger Williams (R-TX); Pete Stauber (R-MN)
- Nydia Velázquez (D-NY)

Transportation and Infrastructure:

- Sam Graves (R-MO)
- Eleanor Holmes Norton (D-DC); Rick Larsen (D-WA)

Veterans' Affairs:

- Mike Bost (R-IL)
- Mark Takano (D-CA)

Ways and Means:

- Vern Buchanan (R-FL); Adrian Smith (R-NE); Jason Smith (R-MO)
- Richard Neal (D-MA)

*If past is prologue, Republicans will change the name to "Education and the Workforce."

Potential Senate Committee Leadership

Aging:

- Bob Casey (D-PA)
- Tim Scott (R-SC)

Agriculture, Nutrition, and Forestry:

- Debbie Stabenow (D-MI)
- John Boozman (R-AR)

Appropriations:

- Patty Murray (D-WA)
- Susan Collins (R-ME)

Armed Services:

- Jack Reed (D-RI)
- Roger Wicker (R-MS)

Banking, Housing, and Urban Development:

- Sherrod Brown (D-OH)
- *Tim Scott (R-SC); Mike Rounds (R-SD)*

Budget:

- Sheldon Whitehouse (D-RI)
- Chuck Grassley (R-IA)

Commerce, Science, and Transportation:

- Maria Cantwell (D-WA)
- Ted Cruz (R-TX)

Energy and Natural Resources:

- Joe Manchin (D-WV)
- John Barrasso (R-WY)

Environment and Public Works:

- Tom Carper (D-DE)
- Shelley Moore Capito (R-WV)

Ethics:

- Chris Coons (D-DE)
- James Lankford (R-OK)

Finance:

- Ron Wyden (D-OR)
- Mike Crapo (R-ID)

Foreign Relations:

- Bob Menendez (D-NJ)
- Jim Risch (R-ID)

Health, Education, Labor, and Pensions:

- Bernie Sanders (I-VT)
- Bill Cassidy (R-LA)

Homeland Security and Government Affairs:

- Gary Peters (D-MI)
- Rand Paul (R-KY)

Indian Affairs:

- Brian Schatz (D-HI)
- *Lisa Murkowski (R-AK)**

Intelligence:

- Mark Warner (D-VA)
- Marco Rubio (R-FL)

Judiciary:

- Dick Durbin (D-IL)
- Lindsay Graham (R-SC)

Rules and Administration:

- Amy Klobuchar (D-MN)
- Deb Fischer (R-NE)

Small Business and Entrepreneurship:

- Ben Cardin (D-MD)
- Joni Ernst (R-IA)

Veterans Affairs:

- Jon Tester (D-MT)
- Jerry Moran (R-KS)

*Sen. Murkowski is in a Republican-only runoff on November 23.

“Commitment to America”

On September 23, 2022, Minority Leader McCarthy and House Republicans released the “Commitment to America,” a proposed legislative agenda for the 118th Congress. Expect House Republicans to take this agenda on the road to the American people in 2023.

(1) An Economy That’s Strong	(2) A Nation That’s Safe
<ul style="list-style-type: none">▪ Fight Inflation and Lower the Cost of Living▪ Make America Energy Independent and Reduce Gas Prices▪ Strengthen the Supply Chain and End Dependence on China	<ul style="list-style-type: none">▪ Secure the Border and Combat Illegal Immigration▪ Reduce Crime and Protect Public Safety▪ Defend America’s National Security
(3) A Future That’s Built on Freedom	(4) A Government That’s Accountable
<ul style="list-style-type: none">▪ Make Sure Every Student Can Succeed and Give Parents a Voice▪ Achieve Longer, Healthier Lives for Americans▪ Confront Big Tech and Demand Fairness	<ul style="list-style-type: none">▪ Preserve Our Constitutional Freedoms▪ Hold Washington Accountable▪ Restore the People’s Voice

“I expect President Biden will continue his quest to speak to the soul of America in his many proposals, actions, and pronouncements, recognizing that Americans remain divided on a number of matters, but not irreversibly so.”

While President Biden has a number of executive tools available, I expect him to reach across the aisle – as he did when he was Senator – to find common ground with House and Senate Republicans. In areas where interests may not align, such as climate change, I anticipate President Biden will utilize the regulatory process to advance critical reforms for the American people.”



Rodney Slater

Former U.S. Secretary of Transportation
Partner, Squire Patton Boggs

Congress and the Biden Administration will seek to address a host of issues in the coming two years.

The following slides describe, at a high level:

- ✓ items on the legislative and regulatory agenda, and
- ✗ obstacles in lawmakers' and regulators' paths.

The Administration is hungry for reforms, but can Democrats and Republicans stomach compromise?

- ✓ **Lawmakers will contemplate the next Farm Bill**, an omnibus, multiyear bill that governs a broad range of agricultural and food programs. We expect a comprehensive review of agricultural and nutrition topics, including: commodities, conservation, government nutrition programs, research, and horticulture.
- ✓ **The Administration will focus on its National Strategy on Hunger, Nutrition, and Health**, its roadmap of regulatory and legislative initiatives it released in conjunction with its Conference in September. Agenda items are clustered around five pillars: (1) improving food access and affordability, (2) integrating nutrition and health, (3) empowering consumers to make and have access to healthy choices, (4) supporting physical activity for all, and (5) enhancing nutrition and food security research.
- ✓ **The Departments of Health and Human Services (HHS) and Agriculture (USDA) continue to work on the Dietary Guidelines for Americans, 2025-2030** – which will be used to form the basis of federal nutrition policies. The Secretaries of HHS and USDA will appoint the Advisory Committee, which will then develop and submit a scientific report to develop the Guidelines.
- ✗ Following a *POLITICO* investigation of problems and failures within the FDA's Center for Food Safety and Applied Nutrition, Commissioner Robert Califf announced the Reagan-Udall Foundation would review and assess institutional shortcomings. **The Unified Agenda, to be released later this year, will provide more detailed insight into Administration plans for regulatory initiatives, but the scrutiny over the institution may cause some stakeholders to question whether FDA is up to the task.**
- ✗ **Soaring grocery prices had an impact on voters this election cycle**, and Republicans will use this economic issue to blast the Administration for stoking inflation with high government spending.

Funding the government – and avoiding a highly disruptive shutdown – will depend on the level of unity among Congressional Republicans

- ✓ Lawmakers must **finalize FY 2023 appropriations prior to considering the FY 2024 budget and appropriations.**
- ✓ In order to negotiate final FY 2023 spending bills in December and start the 118th Congress with a clean slate, **leaders first need to agree on a top-line spending number and allocations for the 12 subcommittees.**
- ✓ **Negotiations over must-pass annual appropriations bills will likely continue to involve both parties in both chambers**, with moderating implications on key issues, such as the amounts of total, defense, and domestic spending, the disposition of contentious policy riders, and the makeup of the package of unrelated legislation attached to the year-end spending deal.
- ✓ With divided government and lower discretionary spending levels expected, **there is a high likelihood of starting FY 2024 with another continuing resolution in October 2023.**

- x In deciding whether to participate in a final FY 2023 omnibus effort, **Republicans will weigh greater leverage in January against starting the new Congress without old business weighing down the legislative agenda.**
- x **The fate of earmarks will depend on GOP intraparty politics.** Democrats brought back these project funding opportunities, with guardrails, in FY 2022. House Republicans may choose to change or end the practice once again.
- x **It is an open question whether the new House Republican majority will be able to pass final appropriations bills without asking Democratic leadership to supply needed votes, giving the House minority substantial leverage.** During the last Republican majority, the Democrats supplied the majority of votes for the FY 2014, FY 2016, and FY 2017 omnibus appropriations measures, as well as for two of the three FY 2019 “minibus” appropriations bills. They also provided a decisive number of votes for the FY 2015 and FY 2018 omnibuses.

Will 2023 be a High or Low for Cannabis Reform?

- ✓ **Cannabis Banking is possible before the end of 2022.** The Secure and Fair Enforcement (SAFE) Banking Act has bipartisan support and could pass this year. The measure has previously passed the House seven times and is currently included in the House version of the National Defense Authorization Act. Recently, Senate Majority Leader Schumer and Senate Committee on the Judiciary Subcommittee on Criminal Justice and Counterterrorism Chair Cory Booker (D-NJ) said Congress is close to passing a modified version of SAFE Banking.
- ✓ **In October 2022, President Biden announced the first ever executive actions on marijuana, with additional future actions expected to include:** pardoning all federal offenders for simple possession of marijuana, urging governors to do the same for state offenders, and directing HHS Secretary Xavier Becerra and U.S. Attorney General Merrick Garland to review marijuana's Schedule 1 drug status.
- ✓ For federally legal hemp and cannabidiol (CBD), **many in Congress are calling on FDA to establish official regulations on the sale of various types of CBD.**
- ✗ **If SAFE Banking is not enacted during the upcoming Lame Duck session, it could be years before it is seen again on the House floor. Even so, our expectation is that support for the bill will continue to grow among Republicans** as more governors from both parties call for congressional action to allow state-legal cannabis businesses to participate in the traditional banking system.
- ✗ **The path for legislative action in the 118th Congress on targeted federal cannabis reforms under a Republican majority in the House is uncertain.** The Republican speaker will look to schedule bills that have the support of a majority of the House Republican Conference. In the 117th Congress, Sens. Schumer, Booker, and Ron Wyden (D-OR) pursued major cannabis reform but failed to secure additional Democratic and bipartisan support to get the measure across the finish line.

Debt Ceiling Debacle?

- ✓ The debt ceiling, or debt limit, is the maximum amount of money that the federal government is authorized to borrow to meet its existing obligations, including entitlements and interest on the national debt. If the government hits the ceiling, it will run out of funds shortly thereafter, defaulting on its obligations.
- ✓ **Congress has the sole authority to raise the statutory debt limit. In December 2021, Congress increased the debt ceiling by \$2.5 trillion – only enough to extend it into 2023.**
- ✓ **Prior to the elections, Democrats had discussed utilizing the Lame Duck session to raise the debt ceiling via the budget reconciliation process.** Given the narrow margin of Republican control of the House, there will be less pressure to act this year.
- ✓ **If Democrats do not take action on the debt ceiling this year, House Republicans are expected to seek to leverage the issue to advance their economic priorities.** President Biden has stated he “will not yield” to Republican demands in such a scenario, which only would arise if moderate Republicans join more conservative Members in insisting on a showdown.
- x **If they decide to try, Democrats may have trouble passing a debt ceiling reconciliation bill during the Lame Duck session.**
 - **The process is time-intensive.** Democrats would first have to originate an FY 2023 budget resolution and bring it to the floors of both chambers. The Senate would have up to 50 hours for debate, as well as a “vote-a-rama” on amendments. The House Committee on Ways and Means would then need to advance a debt limit bill, followed by House floor action and 20 hours of debate in the Senate.
 - **Senate Democrats would need every senator in their Caucus to agree to this procedure.** After two years of intraparty collisions, no vote should be taken for granted.

Republicans Seek to Increase National Security Funding; Exercise Oversight of Awards to Ukraine

- ✓ Throughout the 117th Congress, Republicans have complained that the Administration underfunded weapon systems. So, **in the 118th Congress, the House Republican majority will be under pressure to increase the Department of Defense's (DOD's) budget above inflation** to match their criticism of President Biden's defense budget. For example, Republicans on the House Committee on Appropriations will attempt to increase defense spending necessary to increase military readiness by cutting legacy systems and administrative overhead.
- ✓ Because of legislative gridlock, lawmakers might be forced to rely more on **interim bills** to fund the government, resulting in uncertainty and instability in funding ongoing programs and contracts for new starts. This **would be tough to reconcile with Republican assertions that the United States needs to shift military resources and technology to challenge China's ambitions in the Indo-Pacific AOR**. For example, Sen. Roger Wicker (R-MS), the top Republican on the Senate Committee on Armed Services, has already signaled large increases in shipbuilding to check China's ambitions vis-à-vis Taiwan.
- ✓ **Republicans may find common cause with Democrats who bucked President Biden over the last two years and backed higher defense spending** than his Administration requested. For FY 2023, the House recommended \$37 billion more than the DOD's \$773 billion request, while the Senate NDAA suggested a \$45 billion increase.
- ✓ **Oversight of the DOD's contract and processes for expediting arms contracts awards to Ukraine** will likely receive more scrutiny.
- x Republican plans are at **high risk of getting caught up in GOP brinkmanship on spending**, intended to force President Biden to cut social programs and boost security. This would be reflected in **protracted battles over raising the debt limit, if not addressed in the Lame Duck session, or in cutting discretionary spending in 2023**. A vocal minority of Republicans will demand that any increases in defense be paired with non-defense discretionary spending cuts, defense reform, and waste and duplication elimination.

Education issues are ripe for reform, following rising costs and the impact of the COVID-19 pandemic on students and schools, but education policy has become a frontline for partisan politics.

- ✓ Following enrollment declines in community and public four-year colleges, **Congress will seek solutions to improve the higher education system**. Democrats will look to increase funding for federal loan programs, while Republicans will focus on expanding career and technical education and vocational education opportunities. Some aspects of both approaches, including efforts to streamline the student loan system, have bipartisan support.
- ✓ **Republicans will look to introduce bills – even if they do not pass – and drive conversation on hot-button education issues**, such as expanding school choice offerings and restricting the teaching of controversial curricula, such as critical race theory.
- ✓ The Department of Education’s **final regulations for major targeted debt relief programs** are scheduled to take effect on July 1, 2023. In addition, **the pandemic-related moratorium on interest and payments for student loans expires on December 31, 2022**.
- ✗ **Republican leadership on Congressional committees of jurisdiction is expected to shuffle** after a number of retirements. Notably, Rep. Virginia Foxx (R-NC) is term-limited, but she is privately seeking a waiver to continue leading the House Committee on Education and Labor.
- ✗ **The Administration’s student loan cancellation plan will continue to face legal challenges and Congress may take separate action to address loan issues**, as students are again faced with repaying their loans with interest beginning on January 1, 2023. However, given partisan divides on education priorities, limited substantial action on education legislation like the long-overdue reauthorization of the Higher Education Act (HEA) is expected. As a result, the Department of Education and other agencies will likely lead action on education policy.

The GOP is champing at the bit to boost fossil fuels, but the party recognizes that clean energy needs to be part of the equation.

- ✓ **House Republicans plan to offer legislation to address permitting** in order to increase fossil fuel production and other low- to no-carbon sources, such as renewables, small nuclear reactors, and hydrogen. As Democrats equally want permitting reform to increase transmission to add more renewables to the grid, **this is an area where bipartisan cooperation could be possible.**
- ✓ The House GOP will also be looking to perform **oversight of the Biden Administration's accomplishments**, including how funding is spent on projects from the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) (think Solyndra). Republicans have already released early warnings about **potentially targeting oversight of the Department of Energy Loan Guarantee Program, OPEC, and U.S. Securities and Exchange Commission requirements** for public company disclosure of risks regarding climate change.
- ✓ **The Farm Bill, a five-year authorization, will also be a priority for passage in the 118th Congress.** The legislation will again likely include an energy title, which determines policy for the development of farm and community renewable energy systems through a variety of programs, including grants and loan guarantees.
- ✗ Note that there is still **a Lame Duck push by Sen. Manchin and Democrats for a permitting bill to be completed this year.** Options for that include attaching the legislation to the NDAA or the FY 2023 omnibus. While it is likely in the best interest of the Democrats to complete permitting legislation before the 118th Congress begins, it remains to be seen if there will be enough cooperation among progressives and moderates, or the necessary bipartisan support, to get it over the finish line.
- ✗ Republicans have noted that regardless of whether permitting is passed this year, they will still write and look for passage of their own, **more aggressive permitting legislation in the 118th Congress, which is anticipated to contain more robust cuts to NEPA and will be challenging to pass with close margins in the Senate.**

Democrats and Republicans remain polarized on environmental policy, limiting the likelihood of any real progress.

- ✓ While the Supreme Court may soon determine a narrower definition of Waters of the United States (WOTUS), **Republicans may attempt to take action if they do not approve of this and other judicial decisions interpreting the law.**
- ✓ There is **agreement between Democrats and Republicans and the White House that the U.S. environmental permitting system needs significant work.** Setting permitting time limits and limiting litigation of permit decisions are among provisions enjoying consensus.
- ✓ The **investments the Biden Administration has made in climate change and greenhouse gas regulation will continue to dominate energy and environmental policy.** Republicans will seek to advance American technology that can control emissions, while continuing to support expansion of fossil fuel development.
- ✓ The **Environmental Protection Agency's regulatory conveyor belt will continue to roll.** Some important Clean Air Act regulations, targeting greenhouse gases and other pollutants, may attract Republican opposition and efforts to disapprove those regulations through the Congressional Review Act.
- ✗ **Republican efforts to lessen environmental protections will meet with near unanimous opposition from Democrats in the Senate,** likely dooming efforts to pass such bills. They would also face certain vetoes from President Biden.
- ✗ It remains unclear if permitting legislation will achieve enough of a consensus to yield successful results.

Expect Republicans to aggressively direct U.S. foreign policy priorities and create tough votes for Democrats ahead of the 2024 presidential elections – especially on China.

- ✓ “Competitive bipartisanship” on U.S.-China policy will continue as **Biden officials balance “strategic competition” and “responsible management”** of the U.S.-China relationship. A bipartisan group of lawmakers will be increasingly vocal in their support for Taiwan, despite White House pushback.
- ✓ **Biden foreign policy objectives will remain unchanged**, alongside continued legislative gridlock. The Administration’s “center of gravity” for U.S.-China policy will remain the National Security Council and the Departments of State and Commerce.
- ✓ Republican leaders have proposed a House Select Committee on China and will coordinate a **chamber-wide focus on China across committees of jurisdiction**. Oversight priorities will include export control enforcement, the origins of the COVID-19 pandemic, emerging technology competition, research security, and outbound investment security.
- ✓ Lawmakers will need to **reauthorize the President’s Emergency Plan for AIDS Relief (PEPFAR)**, which expires on September 30, 2023. Congress passed the last reauthorization in 2018 with strong bipartisan support, and then-President Donald Trump signed it into law.
- ✗ While rising gas and oil prices are challenging the Biden Administration, **Washington will remain united in deploying anti-Russia measures in response to the conflict in Ukraine**. But expect **increasing Republican calls for oversight of Ukraine aid**.
- ✗ In seeking to influence policy on Latin America issues, **Republicans will oppose engagement with Cuba and Venezuela. They also will continue to resist the Biden Administration’s efforts to revive the Iran deal or to weaken sanctions as the price for a new one.**

Temperatures will run high on health issues, with no break in the fever anytime soon.

- ✓ COVID-19 (and other emerging illnesses) will continue to affect health policymaking. House Republicans will provide **a drumbeat of oversight and investigations surrounding COVID-19, including its origins and issues involving federal relief funds. Mental health services, which increased over the past several years, may draw bipartisan discussions.** With a health system stretched thin, **there is also a chance that bipartisanship emerges to address worker shortages and/or pandemic preparedness.**
- ✓ **COVID-19 brought a surge of telehealth utilization, and both parties have displayed an interest in extending such services once the public health emergency ends.** The projected cost of expanding such services could dampen these efforts.
- ✓ **Republicans have vowed to “modernize health care,”** proposing policies that promote the development and utilization of innovative devices, treatments, technology, and artificial intelligence. The GOP will continue to endorse policies that assist domestic medical supply development and manufacturing.
- ✓ **Lawmakers are sure to bring up rising health costs, but solutions will differ by party.** Republicans will blame Obamacare and other Democratic reforms, while also focusing on Medicare Advantage benefits and combating fraud, waste, and abuse. Democrats will continue to emphasize their concerns with provider consolidation.
- x Lawmakers on both sides of the aisle will continue to vocalize their opinions on the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. **Certain Republicans will champion a national abortion ban, which cannot get past the Senate or President Biden’s veto pen; the President may continue efforts to use his executive powers to expand and protect abortion access.**

The business community's perspective roars back into labor and employment policymaking...caution: more partisan tension ahead!

- ✓ Republican Labor and Employment (L&E) committee leaders will challenge the past two years of Democratic-led L&E policies in 2023. **Rep. Foxx intends to seek a waiver to serve as Chair of the House Committee on Education and Labor** in January. With Sen. Richard Burr (R-NC) retiring in December, the leading contender for the top Republican position for the Senate Committee on Health, Education, Labor, and Pensions (HELP) is Sen. Bill Cassidy (R-LA).
- ✓ The U.S. Department of Labor (DOL) likely will be subjected to **increased Republican scrutiny – DOL's proposed independent contractor rule, proposed expanded Davis-Bacon Act rule, and the forthcoming COVID-19 rule for the health care sector**. Republicans will also wield **the labor appropriations process to stymie funding for implementation** of the past two years of Democratic-led L&E policies.
- ✓ **Republicans will also increase oversight hearings and committee investigations** into the DOL, the National Labor Review Board (NLRB), and the Equal Employment Opportunity Commission (EEOC) **over a perceived pattern of partisanship and mismanagement under the Biden Administration**. The NLRB's proposed joint employer rule and EEOC's pay data collection efforts are anticipated targets.
- ✓ Vis-à-vis the trade lens, Republican L&E and trade **committee leaders will push the Biden Administration to better explain its worker-centric agenda in its trade talks** with other countries.
- ✗ Progressive Democrats will continue to advocate for the White House to advance their L&E agenda, as Republicans return to a more business-friendly approach that directly challenges these policies.
- ✗ A currently tight U.S. labor market and impending economic recession that is expected to see increased employee layoffs in the last quarter of 2022 and into 2023 will have **Republicans focused on the struggling U.S. economy, which could slow momentum on some GOP-led L&E oversight and investigation goals**.

Reigning House Republicans, Raining House Subpoenas

- ✓ Thanks to changes to House Rules made by Democrats beginning in 2007 **and expanded by the last Republican majority**, committee chairs will have unchecked power to issue subpoenas **to compel participation in depositions conducted by committee staff at any time. House Republicans also will be able to use “resolutions of inquiry” to challenge the Administration.** A resolution of inquiry, which is a simple House resolution (H. Res.) that enjoys privileged status on the floor, makes a direct request or demand of the president or the head of an executive department to provide specific factual information in the Administration’s possession.
- ✓ House Republicans already have **the Biden Administration in their sights**. We expect early lines of attack could include Hunter Biden, the COVID-19 pandemic response, the border, and the Afghanistan withdrawal.
- ✓ **Corporate America is likely to be in the Republican crosshairs** as well. Historically, Democratic chairs would have been the ones to fear with a gavel in their hands (as tobacco, pharmaceutical, and financial services executives know well). For a variety of political reasons, House Republicans will show little restraint in going after “big business” and what they consider to be “woke” corporate executives.
- x **Republicans may be held back for several reasons.**
 - Public opinion can shift in response to overreach (e.g., impeaching President Biden as “pay back”).
 - There will be no effective legal remedy to enforce their subpoenas, and resolutions of inquiry have no legal force.
 - Targets with much greater experience in dealing with investigations may develop effective, sophisticated responses that blunt the impact of any inquiries.
- x If history is a guide, **Senate Democrats will be less aggressive in conducting investigations, focusing mostly on the business community and rarely, if at all, on the Biden Administration.**

Republicans ready to rally for reform, but tweaking taxes will be tricky for tax-writers; Treasury to take on targeted tax tasks

- ✓ **House Republicans will pursue a number of key priorities**, including making permanent the individual provisions from the 2017 tax reform law, making bonus depreciation – and, if not done in a year-end tax package, R&D expensing – permanent, and rolling back tax changes enacted as part of the IRA, including the corporate alternative minimum tax and the 1 percent stock buyback excise tax.
- ✓ House Republicans can also be expected to **focus on rising inflation** that they blame on increased government spending and promise to “bring stability to the economy through pro-growth tax and deregulatory policies.”
- ✓ **Senate Democrats will likely focus on their success in enacting the IRA** and the economic benefits it will bring, as well as on continuing to address economic inequality by ensuring the wealthiest Americans and most profitable corporations pay their “fair share” of taxes.
- ✓ **Treasury’s current priorities include implementation of the IRA’s corporate and energy tax provisions. Treasury may also target wealthy Americans**, such as through changes to regulations addressing estate planning and valuation discounts. **If Congress is successful in enacting retirement savings legislation this year, Treasury will also be tasked with regulatory implementation of its provisions making changes to the Tax Code**, such as a provision that would make pooled employer plans (PEPs) available to 403(b) plans sponsors.
- x While regulatory action may be the most likely avenue for tax developments, **major tax policy changes are unlikely with the divided government**. Both parties will use the 118th Congress to make their case to voters ahead of the 2024 Election that their policy platforms are in the best interest of America and its economy.

Bipartisan BroadSides

- ✓ They will not agree on much in 2023, but **Republicans and Democrats will largely be united in taking on “Big Tech.”**
- ✓ As in the current Congress, **they will likely focus on reining in dominant platforms and markets through revisions to the antitrust laws**, such as by seeking to regulate companies that exceed a certain market cap or that dominate a particular online market (e.g., the Ending Platform Monopolies Act and the American Choice and Innovation Online Act). With the European Union (EU) aggressively moving forward on a similar, even more forceful agenda (e.g., Digital Markets Act and Digital Services Act), policymakers will have even more reason to act so as not to allow the EU to establish on a de facto basis the global terms on which U.S. industry must operate.
- ✓ After a decade of debating, **Democrats and Republicans have found common ground on privacy legislation** by compromising on the two major issues that have divided them for so long (private right of action to enforce the law; preemption of state privacy laws).
- ✓ **With Rep. Jim Jordan (R-OH) as Chair of the House Committee on the Judiciary, Congress also could consider amendments to section 230** of the Communications Decency Act of 1996, which generally shields internet platforms from legal liability for content posted by others, depending on how the Supreme Court addresses the issue in two pending cases this term. At a minimum, the House Committee on the Judiciary will likely hold extensive hearings.
- x **Congress might fail to take action for several reasons.**
 - One committed senator is enough to block action on any legislation if the Majority Leader cannot or will not find the time to invoke “cloture” to end debate on the measure.
 - Other legislative priorities might animate the principal committees of jurisdiction in the House in particular (House Committee on the Judiciary and House Committee on Energy and Commerce).
 - Today’s consensus may give way to tomorrow’s conflicts in an increasingly partisan atmosphere.

Biden officials will continue pursuing “worker-centric” trade policies, while Republicans push for traditional deals that lower tariffs on American-made exports.

- ✓ **Competing with China and securing critical supply chains will remain the focus of Congress, the White House, and executive agencies.** Policymakers will consider what supply chains should be limited to allies and what products and services are so critical that they must be made in the United States. Decoupling from China – once inconceivable – is now on the table, in limited industries and supply chains.
- ✓ A group of bipartisan lawmakers will press the Administration to **increase transparency of all trade talks and take actions addressing concerns with U.S.-China trade.** Select lawmakers are also working on legislation to update customs procedures, consulting closely with Customs and Border Protection.
- ✓ As part of this effort to counter China, the Biden Administration will work with partner countries to **advance the Indo-Pacific Economic Framework for Prosperity (IPEF)**, under its four pillars: (1) Trade; (2) Supply Chains; (3) Clean Economy; and (4) Fair Economy. While Republicans agree on the need to more deeply engage in the Indo-Pacific region, they will press – together with some Democrats – for the Administration to undertake comprehensive trade deals that include tariff reductions.
- ✓ The White House is **finalizing executive action mandating the review of certain outbound investment flows**, complementary to the existing review of inbound investment by the Committee on Foreign Investment in the United States. The form and scope of this review remains under debate. The 118th Congress will likely consider enacting some version of the program into law, but so far lawmakers have deferred to President Biden to act in the near-term.
- ✗ **Calls to renew Trade Promotion Authority (TPA), which allows for fast-track consideration of trade agreement implementing legislation, could grow** as Congress pushes for more comprehensive trade talks. Shortly after the election, U.S. Trade Representative Katherine Tai said the Administration is open to a new TPA but only if it is “broadly bipartisan.”
- ✗ Despite strong opposition from business groups and inflation concerns, **the Administration has not yet announced any changes to Section 301 tariffs applying to virtually all trade from China.** Biden officials launched a statutory review window, but Congressional efforts to mandate an exclusion process and revamp the Section 301 statute have fallen to the wayside.

House Republicans will seek to undo some signature Democratic infrastructure wins of the past two years.

- ✓ Rep. Sam Graves (R-MO) is the likely incoming chair of the House Committee on Transportation and Infrastructure (T&I). We expect him to **revisit the IIJA and to seek to roll back the U.S. Department of Transportation's (DOT's) discretionary grant decision-making authority.**
- ✓ House Republicans are likely to **increase investigations and oversight activities of DOT, with heightened scrutiny of the Department's Justice40 and equity grant criteria.** The repudiation of the December 2021 Federal Highway Administration memorandum discouraging new highway capacity could make its way to a transportation appropriations bill.
- ✓ With the current Federal Aviation Administration (FAA) authorization set to end on September 30, 2023, **the FAA reauthorization process will begin in the 118th Congress.** There is a shared consensus that a cost framework is needed for FAA to accommodate new entrants (drones, commercial space interests). Aviation stakeholders may also have to make the case for a timely reauthorization this year, as the 2012 and 2018 reauthorization bills only came after multiple short-term extensions.
- ✗ Republicans will cite soaring energy prices and rising inflation **as the products of excessive government spending through IIJA and IRA authorizations.**
- ✗ There is bipartisan concern over the threat China poses to U.S. economic interests. We expect **House Republicans to establish a select committee on China and potentially call for T&I to advance new restrictions on Chinese rolling stock manufacturers.**

Contact Information

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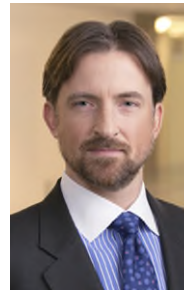
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