

# What happens if... Potential election outcomes and what they could mean

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Biden wins, Democrats win  
the Senate and the House 1

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Biden wins, Republicans hold  
the Senate and Democrats  
hold the House 7

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Trump is reelected, Republicans  
hold the Senate and Democrats  
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An official portrait of Vice President Joe Biden. He is shown from the waist up, smiling broadly with his arms crossed. He is wearing a dark blue pinstriped suit jacket, a white dress shirt, and a blue and white striped tie. A small American flag pin is visible on his left lapel. The background features a large painting of a harbor scene with a sailboat, flanked by an American flag on the left and a presidential seal on the right.

# Scenario 1: Biden wins, Democrats win the Senate and the House



In this scenario, it's a clean sweep for Democrats: Joe Biden defeats President Donald Trump, and Democrats capture control of the Senate and maintain their House majority. The last time Democrats ran Washington, in 2009 and 2010, they enacted a nearly \$1 trillion stimulus in the wake of the financial crisis, and overhauled the healthcare and financial services sectors with the Affordable Care Act and Dodd-Frank. The House also approved energy and climate legislation that would have established a price on carbon dioxide through a cap-and-trade system.

That far-reaching legislation backed a decade ago by President Barack Obama and congressional Democrats may have been a political overreach – Republicans were swept into office in record numbers in the 2010 midterm elections. But political capital is meant to be spent, not stored like a rainy-day fund. Even though the 2010 elections swept out 63 House Democrats and six senators, party leaders today would say enacting historic policies such as the Affordable Care Act was worth it.

So, under Scenario 1, what do Democrats do with total control of the federal government? Here are six things to know.

## 1. Fate of the filibuster

The filibuster is a wonky procedural tool in Senate tradition that effectively requires 60 votes to pass any legislation, instead of a simple majority of 51. Beginning in the 1850s, different iterations of the filibuster have been used to stall or block legislation.

What's changed in recent years is that the filibuster has been used routinely – by both Republicans and Democrats when in the minority – to thwart legislation and frustrate the majority party. While there were fewer than a half-dozen votes annually to end filibusters 100 years ago, the Senate has voted more than 250 times in the past two years to overcome filibusters.

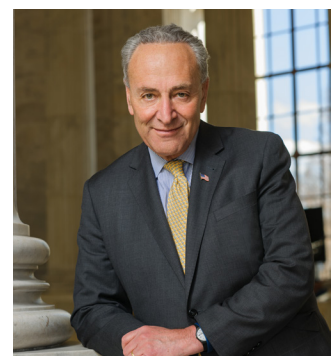
Even if Democrats have a big election victory in November, they are unlikely to have 60 votes in the Senate. That means Republicans could stonewall Democrats from advancing their agenda.

Spurred by progressive activists, many Senate Democrats favor ending the filibuster, but other Democrats are cool to it. If the elections produce only a slim Democratic majority, the party may not have the support needed to change the rules.

Without the filibuster, Democrats could literally pass anything in Congress, if they could muster the votes for it. Rolling back Trump-era tax cuts, reinstating the assault weapons ban, strengthening the Affordable Care Act by adding a public option or even replacing it with Medicare for All, and enacting sweeping climate change legislation would all be possible.

Moreover, Democrats could pass other structural changes that would add to their political majorities. Statehood for the District of Columbia and Puerto Rico could produce as many as four additional Democratic senators. The Supreme Court's current roster of nine justices could be expanded to any number the majority party chooses, with Biden appointing and the Senate quickly confirming the new justices.

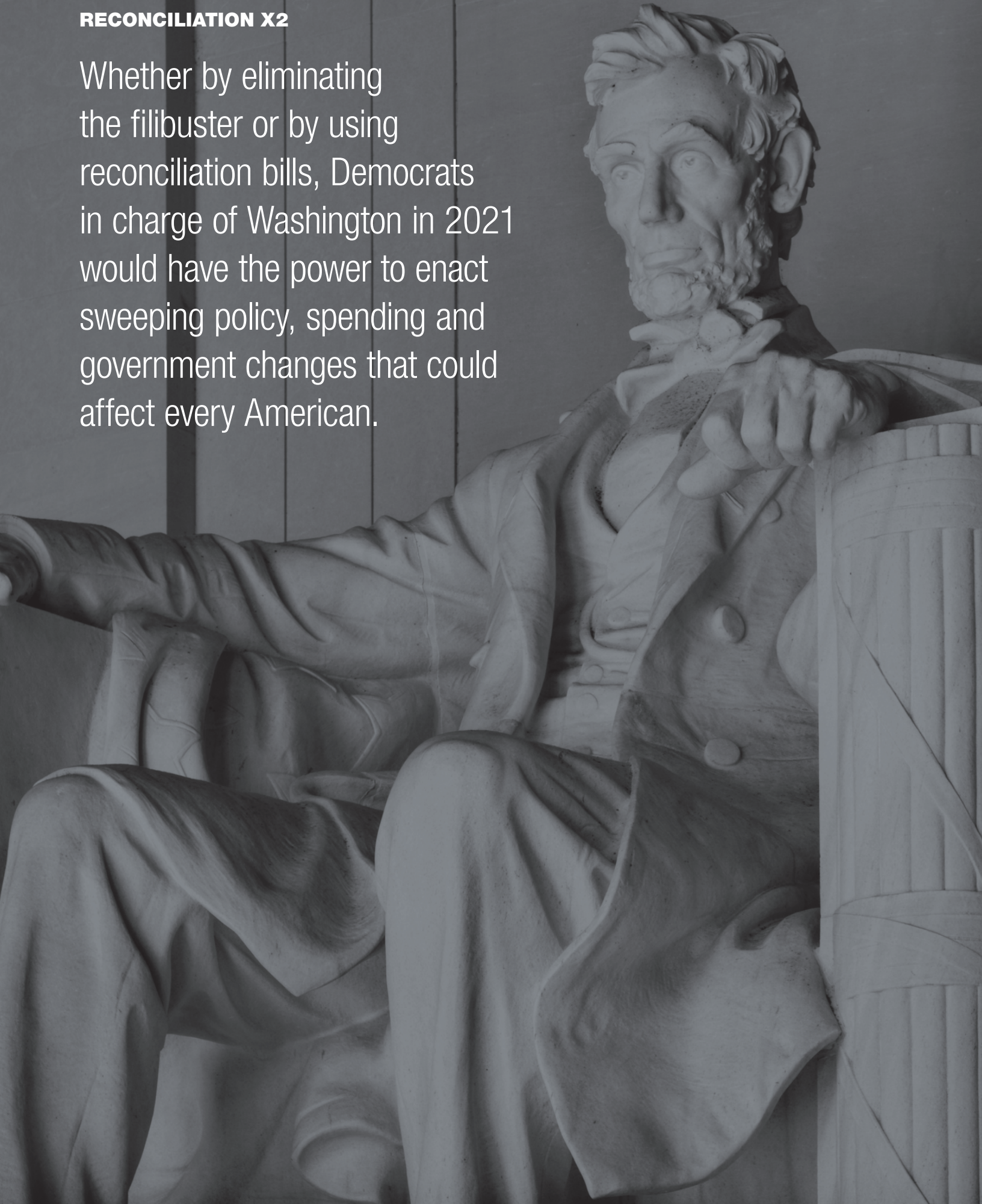
One senator to watch on the fate of the filibuster is Sen. Chuck Schumer, D-N.Y. Not only would Schumer be the majority leader, but he also would be up for reelection in 2022, and progressive activists are already fanning the flames of a possible primary challenge by Rep. Alexandria Ocasio-Cortez, D-N.Y., if the Senate fails to move quickly and aggressively on their policy agenda.



Sen. Chuck Schumer, D-N.Y.

## RECONCILIATION X2

Whether by eliminating the filibuster or by using reconciliation bills, Democrats in charge of Washington in 2021 would have the power to enact sweeping policy, spending and government changes that could affect every American.





## 2. Reconciliation x2

Even without changing the filibuster rules, Senate Democrats would have two opportunities in 2021 to enact sweeping reforms without input by Republicans by using something called the budget reconciliation process.

Reconciliation is a procedurally complicated, two-step process that would allow Democrats to enact far-reaching tax, spending, healthcare and climate change legislation. Reconciliation bills cannot be filibustered in the Senate. But only provisions that directly affect government spending can be included, so District of Columbia statehood, gun control or Supreme Court packing would not work via budget reconciliation.

Democrats are plotting an early 2021 reconciliation bill followed by a second reconciliation bill after the Oct. 1, 2021, start of the 2022 fiscal year.

Democrats in 2010 used reconciliation to pass parts of their healthcare overhaul, and Republicans in 2017 enacted their major tax reforms in a reconciliation bill. The GOP also was able to eliminate the tax penalty for the Affordable Care Act's individual mandate using that process.

Whether by eliminating the filibuster or by using reconciliation bills, Democrats in charge of Washington in 2021 would have the power to enact sweeping policy, spending and government changes that could affect every American.

## 3. Crosshairs: Private sector investigations

Democrats in 2019 and 2020 leveraged their House majority to conduct oversight of the Trump administration, focusing most recently on its efforts to combat COVID-19. But if Biden is in the White House, Democrats on Capitol Hill will not be aggressive in investigating their own party's administration. Instead, Democrats will turn their sights on the private sector and initiate sweeping oversight investigations.

Letters demanding company emails, notes of board meetings and internal analyses of key decisions will be sent to chief executive officers across sectors: energy, defense, financial services, healthcare, technology and more. If the letters are ignored or companies are perceived to be slow-walking compliance, subpoenas will follow.

Corporate executives will also be called to testify before congressional committees and forced to defend company decisions – or an email written by a middle-level manager.

Democrats' goal would not be merely to embarrass companies or their senior leaders. Instead, they view congressional oversight as a powerful tool to spotlight business activities that create a rationale for Democrats' legislative priorities, such as reducing the country's reliance on fossil fuels, breaking up the concentrated power of big banks and Wall Street interests, scrutinizing corporate diversity and inclusion efforts, lowering prescription drug prices, and reining in the power of technology and social media platforms.

## 4. Transparency: Corporate governance and disclosure

A close cousin of Democrats' oversight of corporate America is pushing a broad corporate transparency agenda, focusing on governance and mandated disclosures. These new mandates would extend to all public companies, not just those that receive federal assistance from the CARES Act, for example.

Are corporations paying lip service or taking seriously environmental, social and governance factors in their business decisions? Are corporations putting the interests of workers ahead of shareholders and executives? Are boardrooms and C-suites operating with an eye on sustainability and responsible investing? Congressional Democrats and Biden administration officials and regulators will want to know.

Certainly, House Financial Services Committee Chairwoman Maxine Waters, D-Calif., and Senate Banking Committee Chairman Sherrod Brown, D-Ohio, would push for a host of laws mandating new requirements on public companies. But so, too, would the Securities and Exchange Commission (SEC) under Democratic control, which would emphasize its inspection and enforcement authorities. The SEC would exercise its regulatory and oversight authority to push for new corporate governance mandates, new disclosure requirements and enforcement of securities laws generally. Capital formation would be a much lower priority. Wall Street and capital markets stakeholders such as private equity funds and hedge funds also would come under enhanced scrutiny by regulators and lawmakers and face a host of new mandates.





## CONGRESSIONAL REVIEW ACT

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Once enacted, regulations (or, depending on your perspective, "red tape") can be difficult to remove or modify.

That's where the Congressional Review Act comes in. It allows Congress to overturn executive branch departments' and agencies' regulations, interpretive rules, guidance documents and more. Details quickly get into the weeds, but here's the bottom line: Biden and congressional Democrats could undo virtually any Trump administration regulation, final rule, interim final rule, guidance document, interpretive rule or policy statement that became final after about June 1, 2020.

The process to overturn these rules is straightforward: Congress passes a resolution of disapproval (which is not subject to the Senate filibuster), and the president signs it like any other legislation. Trump and the Republican-controlled Congress did the same thing in 2017, rescinding 14 regulations approved in the final year of the Obama administration.

Democrats and their allies outside of government have been scouring the Federal Register to identify which Trump rules they could try to overturn with newfound majorities in Congress.

Trump rules that Democrats will likely target: The Securities and Exchange Commission's rule known as Regulation Best Interest, on the relationship of broker-dealers to their retail customers; a Labor Department rule on brokers' fiduciary requirements when giving advice on retirement plans; changes to the National Environmental Policy Act designed to streamline permitting of new highways, power plants and pipelines; Environmental Protection Agency rules on methane standards for natural gas production and processing facilities; and Department of Health and Human Services changes to sex and gender identity protections for certain federal health and education programs.

## 6. Personnel as policy: Speeding Senate confirmations

A permanent federal bureaucracy of 2.1 million civilian employees work regardless of who is in the White House, but all presidents populate executive branch departments and agencies with their partisans. It is not only to reward supporters but also to ensure the far reaches of the federal bureaucracy are implementing the president's policy priorities.

Of the approximately 4,000 presidential appointments available, about 1,200 require Senate confirmation. These are Cabinet secretaries, deputy secretaries, undersecretaries and assistant secretaries as well as commissioners, administrators, ambassadors and more, such as the leadership of the armed forces. With Democrats in charge of the Senate, they would be charged with rapidly confirming nominees to ensure Biden's administration is fully stocked with partisans to implement the president's agenda.

Among the most consequential and long-lasting impacts of a Democratic sweep would be Biden's ability to appoint and the Senate to confirm judges for the federal courts, including the Supreme Court.

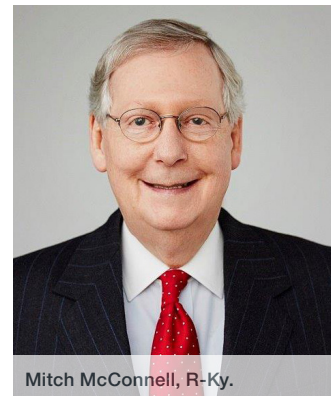
After first Democrats and then Republicans changed Senate rules to prohibit filibusters of appointees to lower courts and the Supreme Court, Trump has virtually remade the federal judiciary. During Trump's term, the Senate confirmed 219 judges, and Amy Coney Barrett was Trump's third Supreme Court justice. Among the nation's 13 regional appeals courts, which are often the last arbiters for controversies, more than 30 percent of the appellate judges were appointed by Trump. As of Oct. 27, 2020, there is only one appellate court vacancy and 56 district court vacancies, with 33 nominees pending.

Current Senate Majority Leader Mitch McConnell, R-Ky., frequently highlights the Senate's unique role of being in the personnel business – that is, reviewing and confirming a president's nominees. Republicans will use the lame-duck session to confirm as many remaining federal judicial nominees as they can.

In charge of a Democratic-led Senate, Schumer's first priority would similarly be ensuring speedy confirmations for Biden's political and judicial appointees.



Amy Coney Barrett



Mitch McConnell, R-Ky.



A formal portrait of Vice President Joe Biden. He is shown from the chest up, wearing a dark blue pinstriped suit jacket, a white dress shirt, and a blue and white striped tie. He has his arms crossed and is smiling warmly at the camera. A small American flag pin is visible on his left lapel. The background is a blurred painting of a harbor scene with a sailboat.

## **Scenario 2:**

Biden wins, Republicans  
hold the Senate and  
Democrats hold the House

If you like government gridlock, this outcome is for you. Or maybe political paralysis is just the medicine Washington needs to create a new era of bipartisanship. Here are four things to know.

## 1. Can split government spark bipartisanship?

Joe Biden is a pragmatic deal-maker. It was how he behaved as a senator and as vice president, and it is how most Democrats believe he would govern as president, whether they like it or not. Could those instincts ease the partisan gridlock that has gripped Washington for most of the past decade or more?

He would need those instincts. Just in the proverbial “First 100 Days” of a Biden presidency, he would need to sign spending bills to keep the government open; lead the nation out of the COVID-19 pandemic, likely with additional trillions of dollars in relief; and thread the needle between the aggressive personnel demands of his party’s left wing and the need to have his Cabinet approved by a Senate controlled by Republicans.

McConnell would be triumphant, defying the odds of holding his majority even as Trump went down to defeat – but also facing a political map in 2022 that is not favorable to the Senate GOP.

The optimistic outlook recalls Biden and McConnell’s history as colleagues and their successful working relationship during the Obama era – at times as the only negotiating pair able to salvage deals to avert government shutdowns and debt ceiling breaches. The necessity of working with a Republican Senate would provide Biden with a buffer against the left wing, and divided government could lead to a renewed era of bipartisanship in Washington.

(We’re not holding our breath.)

## 2. GOP finds religion: Return to deficit reduction?

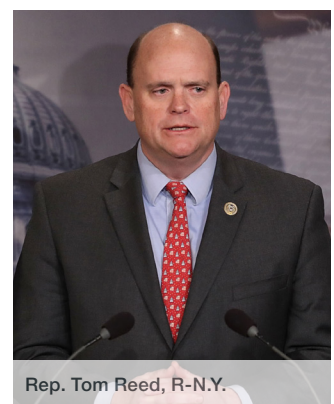
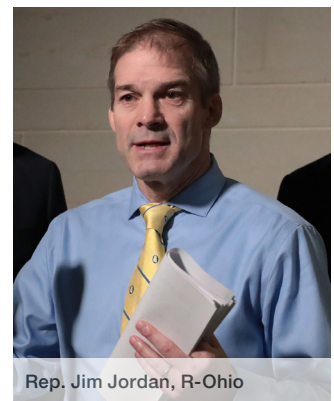
For generations, one bedrock Republican policy was a focus on government spending, controlling the deficit and reducing the national debt, which mushroomed this year to \$27 trillion. During the Obama era, congressional Republicans would demand offsetting spending cuts in return for Democrats’ plans to increase spending or increase the government’s borrowing limit.

Republicans have been less vocal on spending since Trump was elected, even before Washington approved trillions of dollars in COVID-19 relief this year.

With Biden elected and House Democrats wanting to press ahead with their spending priorities, Republicans would likely renew their call for spending restraint. From strong Trump backers such as Rep. Jim Jordan, R-Ohio, to leading moderate GOP voices such as Rep. Tom Reed, R-N.Y., controlling government spending is something the entire party can rally around.

Republicans may have ceded the political high ground on deficits and debt in recent years, but with the party in control of the Senate, the GOP would have an ability to push back on Biden’s and House Democrats’ spending priorities.

Senate Republicans likely could not force Congress to scrutinize the spending on Social Security and Medicare that is fueling Washington’s red ink. But replaying the same playbook used during the Obama era, they would be able to leverage some spending cuts in return for allowing some of the Democrats’ spending priorities to be enacted – and return to some of the traditional Republican rhetoric on deficits and debt.

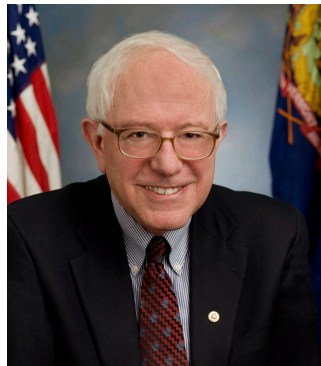






### 3. Progressives' policy frustration

Sen. Bernie Sanders, I-Vt., was defeated in the Democratic presidential primary, but his supporters in the party are energized and overflowing with pent-up desire for radical change after four years of Trump. End the legislative filibuster, pack the court, blow up the system.



Sen. Bernie Sanders, I-Vt.

Biden sees his presidency instead as a radical return to the norms that Trump shattered as well as to policy moderation. With a Republican Senate, he wouldn't have much choice. On the left's cherished policy goals, from the Green New Deal to Medicare for All, Biden has hewed away from ideas he sees as impractical or impossible, toward working within the system rather than blowing it up. Under divided government, those progressive ideas become mostly irrelevant in actual policymaking.

The energy of the left is not irrelevant, however, and progressives would work to exert influence with any levers they still could. For now and into the beginning of a Biden presidency, that means "personnel is policy."

### 4. Personnel is policy: McConnell to confirm Biden's Cabinet

Biden in this scenario would avoid the fights he doesn't want over the filibuster and court-packing but would face a different needle-threading exercise in balancing the personnel demands of the left with his own tendency toward moderation. And that's before nominating his Cabinet for approval by a Republican-run Senate. We would also expect that Biden would move quickly to announce nominations in November and December with the goal of having much of the Cabinet confirmed in the week following the Jan. 20 inauguration.

Progressives already have served notice to Biden that he is expected to have the most diverse Cabinet that academia and policy think tanks – not corporations – can produce. More moderate business-friendly Democrats view these as arbitrary limitations of Biden's options. The simmering battle between the Democrats' wings is expected to play out around key economic posts, especially within the Treasury Department, National Economic Council, Federal Reserve, SEC and Consumer Financial Protection Bureau.

Even in a divided government, the Senate traditionally does not block a president's Cabinet choices unless they are clearly unqualified or have ethical problems. Although a few nominees have withdrawn before formal consideration, the last time the Senate actually voted down a nomination was under George H.W. Bush in 1989. How Republicans handle Biden's nominees – whether they simply approve them, use the process to extract concessions or throw up roadblocks – could provide early clues to the first question about rekindling bipartisanship.





**Scenario 3:**  
Trump is  
reelected,  
Republicans  
hold the Senate  
and Democrats  
hold the House



The billions of dollars that were spent on television, radio, mail and social media advertising changed... nothing. This would be the status quo election result. Washington in 2021 would look a lot like Washington in 2020, except Trump would be unshackled by facing reelection and likely feel personally and politically vindicated.

Here are three things to know about a status quo election result.

## 1. Status quo spurs bipartisanship?

Four years ago, the nation wondered whether Trump would govern as a post-partisan populist, forming issue-based coalitions with clusters of Republicans and clusters of Democrats to form majorities in Congress and make progress on long-stuck policies such as infrastructure. After all, Trump is a builder, a developer and ostensibly a deal-maker, not an ideologue.

The Trump pivot never happened. Could that change in a second term? The fundamental dynamics are still there on policies such as lowering prescription drug prices and upgrading the nation's infrastructure.

While Senate Republicans are cool to opening up Washington's checkbook after spending trillions on COVID-19 relief, bipartisan solutions on long-identified issues may be the tonic Republicans need heading into a 2022 midterm election that likely would be treacherous in a second Trump term.

Although a path for bipartisanship exists at least on some policies, it's more likely that a status quo election result produces status quo legislative activity.

## 2. The unpredictability of a non-ideological president

Although the COVID-19 response has overshadowed usual campaign policy pronouncements in 2020, Trump hasn't offered an outline of what second-term policy priorities would look like. When asked, he's only said he would continue the priorities he has pursued in the first term.

From trade policy and foreign affairs to infrastructure development and prescription drug pricing, Trump is certainly not a traditional Republican. The lack of ideology keeps him politically nimble. But as described above, Trump so far has not coupled his willingness to color outside the traditional Republican lines with a bipartisan policy achievement.

Fresh off being reelected, Trump and congressional Republicans would likely be emboldened and strive to enact their own agenda, which would face roadblocks in the Democratic House and be filibustered by Senate Democrats. Absent a pivot, then, the early years of a second term could look a lot like the last two years of the first term: relentless focus on confirming federal judges and aggressive use of executive orders and regulations that do not require congressional approval.

## 3. Democrats' bloodletting

If Trump is reelected, the resulting bloodletting within the Democratic Party could not be overestimated. The dismay over another Trump term would accelerate the party's move to the left – mirroring the Republicans' move to the right – as grassroots activists, party operatives and progressive incumbents vent their collective anger.

Even if Democrats gain net seats in the House, Speaker Nancy Pelosi and Majority Leader Steny Hoyer could face legitimate challenges to their leadership positions under this scenario as progressive activists go hunting for scalps. Either way, House Democrats would be sure to continue and intensify their oversight of the Trump administration, while passing legislation to showcase their priorities on healthcare, climate, spending, election/political spending/voting and infrastructure.

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