



January 8, 2021

## Impact of 50-50 Senate Split and Committee Leadership Projections

On Jan. 20, Sen. Charles E. Schumer (D-NY) will become majority leader of the United States Senate. The election of two Georgia Democrats, Sens. Raphael Warnock and John Osoff, has resulted in a 50-50 split in the Senate. Fifty senators will caucus with Democrats (48 Democrats and 2 Independents) and 50 will caucus with Republicans. The split gives Democrats control of the Senate for the first time in six years.

### What Type of Power Do Democrats Have with a 50-50 Split?

A newly sworn-in Vice President Kamala Harris will give Democrats the tie-breaking advantage and provide Schumer (D-NY) with the critical right of first recognition on the floor. This will give Democrats a majority and the accompanying powers that come along with it.

While lawmakers need 60 votes in the Senate to advance most legislation, even a slim majority will give Schumer the ability to set the agenda, select chairs of the Senate's committees, decide which bills and amendments get Senate floor consideration and which nominees receive confirmation votes. For President-elect Joe Biden, this is important as it virtually guarantees (barring major missteps) that all of his Cabinet, sub-cabinet, and judicial nominees will receive swift Senate approval. Prior rule changes have reduced the vote thresholds required to overcome any filibuster of executive branch nominations and federal judicial appointments. As a result, only 50 votes are required for these positions.

In terms of the legislative agenda, Democrats still do not have sufficient votes to pass bills without Republican support. With 50 votes, Democrats have three potential tools at their disposal: (1) budget reconciliation, (2) eliminating the filibuster and (3) the Congressional Review Act (CRA).

Reconciliation allows the Democrats in the House and Senate Budget committees to drive a budget process that circumvents the Senate filibuster and can become law with a simple majority vote in both chambers of the Congress. However, reconciliation may only be used for legislation that changes spending, revenues and the federal debt limit. Read more about the Budget Reconciliation process [here](#).

The second option would involve eliminating the legislative filibuster. Currently, the Senate cloture rule requires 60 members to end debate on most topics and move to a vote. The Senate could eliminate this rule, which would then require only a simple majority to pass legislation.

In a more narrow set of circumstances, Democrats could invoke the CRA, an oversight tool that allows Congress to overturn rules issued by federal agencies. The CRA requires agencies to report on their rulemaking activities to Congress and provides Congress with a special set of procedures under which they may consider legislation to overturn those rules. Such legislation is not subject to the legislative filibuster and only requires a simple majority to pass. Democrats

will likely use the CRA to overturn portions of the Trump administration's regulatory legacy.

### **What Obstacles Will Democrats Face?**

When Majority Leader Schumer (D-NY) does bring up legislation for consideration on the Senate floor, he will do so in the most trying of environments. If legislative initiatives can be advanced under special rules that allow for a simple majority—such as budget reconciliation or the CRA—there will be zero room for error for Senate Democrats, as any one member of that caucus not supporting a bill or resolution may result in its failure, absent some Republican support. Much attention will rightly be paid to the more moderate members of the Senate Democratic caucus, but it is important to note that every senator, no matter his or her political bent, will have tremendous leverage over the process.

When special rules cannot be utilized to advance bills, Senate Democrats will no doubt be faced with overcoming the hurdle of the legislative filibuster requiring 60 votes to pass a measure on the floor. There has been much discussion in recent months about Democrats eliminating the filibuster entirely, but this will not happen in the near future given the publicly stated opposition from a number of senators. With a 50-50 margin, every single Democrat, including those facing tough elections in 2022, would have to vote to eliminate the filibuster.

So, with just 50 members in their ranks, Democrats will need to gain the approval of a significant portion of the Senate Republican caucus to reach that 60-vote mark. As a result, partisan priorities such as a green new deal, packing the courts and massive tax increases on individuals and corporations are unlikely. However, on bipartisan priorities we may see bipartisan “gangs” come together, building on the success of one such group to develop the framework of the December 2020 COVID-19 stimulus bill. Several members on both sides of the aisle are hungry for legislative activity and there will certainly be opportunities for these working groups to build coalitions to advance bipartisan priorities in the Senate. In fact, with 14 Democrats and 20 Republicans up for reelection in 2022 and at least 10 of those races being competitive, there will be pressure on lawmakers to set aside partisan divides and pass legislation.

### **Has a 50-50 Split Occurred Before?**

A 50-50 Senate split is very rare—it last occurred in 2001—and we expect that the leadership will use the 2001 experience to help guide the negotiations that will commence between Charles Schumer (D-NY) and Republican Minority Leader Mitch McConnell (KY) and each committee chair and ranking member, who will be tasked with determining majority/minority splits in committees, staff budget allocations, office space and how to process legislation in the event of tied committee votes. In 2001, the leaders of each party, Sens. Trent Lott (R-MS) and Tom Daschle (D-SD), agreed to generally split everything evenly—committee ratios for members and staff, office space and budgets—and created a special process to allow tied bills to move to the Senate floor. At the time, with a Republican president in power, the two agreed to the following:

- Republican chairs of all Senate committees after Inauguration Day.
- Equal representation on all Senate committees.
- Equal division of committee staff, budget and office space.
- Procedures for a full committee chair to discharge a subcommittee from further consideration of a measure if it was not reported because of a tie vote.
- Prohibition of a cloture motion from being filed on any amendable item of business during the first 12 hours in which it is debated.
- Requirement that both party leaders “seek to attain an equal balance of the interests of the two parties” in scheduling and considering Senate legislative and executive business.
- Eligibility of all senators to preside over the Senate.

If past is prologue and comity between the parties reigns, these negotiations could be handled swiftly, but it remains to be seen how the administrative and procedural specifics will be decided in the coming weeks once the new Georgia senators are sworn in.

Of course, the political landscape has changed significantly since 2001—McConnell and Schumer do not share the same relationship and in a more partisan environment the two leaders may not be able to reach a quick agreement. However, without an agreement in place, Vice President-elect Kamala Harris’s presence would be required to resolve issues. Additionally, a 30-year veteran of the Senate, Biden has made it clear that he wants compromise to push through their priorities. As a result, it is likely that Schumer and McConnell will reach a similar agreement.

**Below are our projections on Senate committee leaderships for the 117th Congress.**

### Senate Committee Leadership Projections

Senate Committee	116th Congress	117th Congress	Brownstein Insights
<b>Agriculture, Nutrition, and Forestry</b>	Chair: Roberts (R-KS) Ranking: Stabenow (D-MI)	Chair: Stabenow (D-MI) Ranking: Boozman (R-AR)	Roberts (R-KS) is retiring, so Boozman (R-AR) is next in line to succeed him as ranking member.
<b>Appropriations</b>	Chair: Shelby (R-AL) Ranking: Leahy (D-VT)	Chair: Leahy (D-VT) Ranking: Shelby (R-AL)	Unlikely to change.
<b>Armed Services</b>	Chair: Inhofe (R-OK) Ranking: Reed (D-RI)	Chair: Reed (D-RI) Ranking: Inhofe (R-OK)	Unlikely to change.
<b>Banking, Housing, and Urban Affairs</b>	Chair: Crapo (R-ID) Ranking: Brown (D-OH)	Chair: Brown (D-OH) Ranking: Toomey (R-PA)	Crapo is likely to serve as ranking member for Senate Finance. With Shelby already serving as ranking member for the Appropriations Committee, this position will likely go to Toomey.
<b>Budget</b>	Chair: Enzi (R-WY) Ranking: Sanders (I-VT)	Chair: Sanders (I-VT) Ranking: Graham (R-SC)	Enzi (R-WY) has reached the end of his term limit and is retiring. Grassley (R-IA) is next in terms of seniority, but he has indicated that he will serve as ranking member for the Senate Judiciary Committee. As a result, the ranking member will likely be Graham.

<b>Commerce, Science, and Transportation</b>	Chair: Wicker (R-MS) Ranking: Cantwell (D-WA)	Chair: Cantwell (D-WA) Ranking: Wicker (R-MS)	Unlikely to change.
<b>Energy and Natural Resources</b>	Chair: Murkowski (R-AK) Ranking: Manchin (D-WV)	Chair: Manchin (D-WV) Ranking: Barrasso (R-WY)	Murkowski (R-AK) has reached the end of her term limit. Barrasso (R-WY) is next in line and will serve as the new ranking member.
<b>Environment and Public Works</b>	Chair: Barrasso (R-WY) Ranking: Carper (D-DE)	Chair: Carper (D-DE) Ranking: Capito (WV)	With Barrasso moving to ENR, then Inhofe (R-OK) is next in line at EPW. However, Inhofe is already chair of Armed Services and is likely to remain in this position. This makes it likely that Capito (R-WV) will become ranking member of EPW.
<b>Finance</b>	Chair: Grassley (R-IA) Ranking: Wyden (D-OR)	Chair: Wyden (D-OR) Ranking: Crapo (R-ID)	Grassley (R-IA) has reached the end of his term limit, and Crapo (R-ID) is the most likely contender for Finance ranking member.
<b>Foreign Relations</b>	Chair: Risch (R-ID) Ranking: Menendez (D-NJ)	Chair: Menendez (D-NJ) Ranking: Risch (R-ID)	Unlikely to change.
<b>Health, Education, Labor, and Pensions</b>	Chair: Alexander (R-TN) Ranking: Murray (D-WA)	Chair: Murray (D-WA) Ranking: Burr (R-NC)	Alexander (R-TN) is retiring, and Burr (R-NC) is next in line.
<b>Homeland Security and Govt. Affairs</b>	Chair: Johnson (R-WI) Ranking: Peters (D-MI)	Chair: Peters (D-MI) Ranking: Portman (R-OH)	Johnson (R-WI) has reached the end of his term limit, and Portman (R-OH) is next in line to assume the ranking member spot.
<b>Indian Affairs</b>	Chair: Hoeven (R-ND) Ranking: Udall (D-NM)	Chair: Schatz (D-HI) Ranking: Murkowski (R-AK)	With Udall retiring, Schatz is seen as next in line to serve as chair. Murkowski is expected to be the next ranking member.

<b>Intelligence</b>	Chair: Burr (R-NC) Ranking: Warner (D-VA)	Chair: Warner (D-VA) Ranking: Rubio (R-FL)	Burr (R-NC) stepped down as Intelligence chair and Rubio (R-FL) has been serving as acting chair. He will likely leave the Small Business Committee for this role.
<b>Judiciary</b>	Chair: Graham (R-SC) Ranking: Feinstein (D-CA)	Chair: Durbin (D-CA) Ranking: Grassley (R-IA)	With Feinstein stepping down, Durbin is likely to serve as the next chair. Grassley also indicated that he will serve as ranking member for Judiciary.
<b>Rules and Administration</b>	Chair: Blunt (R-MO) Ranking: Klobuchar (D-MN)	Chair: Klobuchar (D-MN) Ranking: Cruz (R-TX)	Blunt (R-MO) has reached the end of his term limit, and may be succeeded by Cruz (R-TX).
<b>Small Business and Entrepreneurship</b>	Chair: Rubio (R-FL) Ranking: Cardin (D-MD)	Chair: Cardin (D-MD) Ranking: Paul (R-KY)	If Rubio (R-FL) becomes ranking member on Intelligence (where he has been serving as acting chair since Burr (R-NC) stepped down), Paul (R-KY) would likely become ranking member.
<b>Veterans' Affairs</b>	Chair: Moran (R-KS) Ranking: Tester (D-MT)	Chair: Tester (D-MT) Ranking: Moran (R-KS)	Unlikely to change.

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