

Cozen Currents: Trump's Full Court Press

“Despite the myriad factions among congressional Republicans, President Donald Trump has for the most part imposed his will on GOP lawmakers. He is now shifting his focus to the independent judiciary.” — Howard Schweitzer, CEO, Cozen O'Connor Public Strategies

The Cozen Lens

- Litigiousness is not a bug, but a feature, of Trump 2.0 with the goal of taking some priorities to the Supreme Court and setting new precedents while overturning some existing ones.
- Republicans are signaling that they intend to use budget reconciliation to raise the debt limit to avoid negotiating with Democrats. That might be easier said than done though.
- Both parties are incentivized to kick the can down the road on Social Security reform due to the unpopularity of a comprehensive solution, but with nonpartisan projections suggesting a fix is needed within the next 10 years, one or both parties will need to step up in the not-so-distant future.

Trump's Litigation Strategy

Policy Battles in the Courts. President Trump has pushed the limits of executive power in his second term, with the result that several actions have already been the target of legal challenges.

- Litigation isn't a bug of Trump 2.0. It's a feature. The goal is to bring some priorities to the Supreme Court (SCOTUS), which holds a 6-3 conservative majority, including three justices nominated by Trump, and change legal precedents.
- Trump 1.0 didn't have the strongest track record in court battles over executive branch actions. His first administration achieved a 23 percent legal win rate in legal challenges of its actions, compared to a historical average of around 70 percent. Trump 2.0 is likely to improve its effectiveness and avoid procedural fouls because officials have had four years to prepare.

Key Issues. The White House is picking fights over the power of the purse and the independence of federal agencies, which are expected to ultimately be decided by SCOTUS.

- The Trump administration touched off a battle over spending early on with its federal funding freeze (currently paused by the courts). This fight isn't over. Fox News reported this month that Trump and Office of Management and Budget Director Russ Vought are developing plans for budget impoundment (the withholding of funds appropriated by Congress), under the belief that a federal law prohibiting the practice is unconstitutional. This could tee up a blockbuster SCOTUS case but there's no guarantee that Trump would win. The Court recently ruled 5-4 against the administration in its bid to keep foreign aid frozen.
- Trump has also fired members of independent federal agencies, including Democratic National Labor Relations Board (NLRB) member Gwynne Wilcox and the Federal Trade Commission's Democratic commissioners, Rebecca Slaughter and Alvaro Bedoya. This aligns with the unitary executive theory, a legal principle supported by many conservatives that holds that the president alone holds authority over the executive branch. It contravenes SCOTUS' 1935 precedent *Humphrey's Executor*, in which the Court ruled that the president does not have the power to unilaterally fire appointees at such agencies. The Department of Justice has formally informed Congress that it considers the Court's finding in that case to be unconstitutional. A federal appeals court late last week sided with Trump for now in allowing his firings of Wilcox and Cathy Harris, chair of the Merit Systems Protection Board, but they may appeal. Slaughter and Bedoya have also filed a lawsuit challenging their dismissals by Trump.



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Clipping the Wings of the Judiciary. Trump seeks to limit federal district courts' ability to block executive branch actions through nationwide injunctions.

- These injunctions are a powerful tool to counteract the executive branch because any federal district judge can halt a policy for the entire country. In an appeal to SCOTUS in a case about Trump's birthright citizenship executive order, the White House argued that injunctions blocking the order should be restricted to the judge's district or the plaintiffs in the case.
- Presidents of both parties have seen their actions blocked by nationwide injunctions, for example, former President Biden's federal contractor Covid-19 vaccine mandate and passenger air travel mask mandate. Rep. Darrell Issa (R-CA) has proposed legislation to limit federal district court judges' ability to issue nationwide injunctions, though it's unlikely to overcome the Senate's 60-vote threshold to defeat a filibuster.
- A ruling in favor of Trump to restrict nationwide injunctions would make it harder for Democrats and others to seek to block his policies in the courts but would also apply to future presidents.

The GOP's and Democrats' Debt Limit Quandaries

Republicans' Opportunity to Go It Alone. While debt limit legislation has typically been bipartisan in recent years, Republicans have multiple paths to addressing the issue without needing Democratic votes.

- Although the exact X-date for when the federal government will hit its borrowing limit has not been set by the Treasury Department, two recent estimates placed the likely date between mid-summer and early fall. The options for resolving the issue are either for lawmakers to raise the debt limit by a specific number or to suspend the limit for a set time period. The latter of these options has become more common in recent years as it's more politically palatable.
- Republicans' preferred option is to address the debt limit as part of their budget reconciliation package and include the provision in their "big, beautiful bill." However, doing so will likely require increasing the limit by a set number, which could be a more politically challenging vote than punting for a set amount of time. However, this approach has a potential timing problem, as passage of the entire legislation is unlikely to happen before the end of July at the earliest, despite some optimism for a Memorial Day completion.
- The other alternative for Republicans to address the issue independently would be to use budget reconciliation still, but to pass a stand-alone measure to address the debt limit. This would solve the potential timing issue of waiting for the rest of the bill's negotiations to be complete but may face pushback from fiscal hawks. The House Freedom Caucus has backed a \$4 trillion increase in the debt limit, but only conditional on a set amount of spending cuts occurring. Getting those members to take this vote before those cuts are assured would likely be challenging, but perhaps not impossible with sufficient assurances from President Trump, who has repeatedly called for Republicans to raise the debt limit in reconciliation.

Will the Democrats Play Brinksmanship? If debt limit legislation is unable to be moved by Republicans through budget reconciliation and instead goes through regular order, there will be significant pressure on the Democrats to extract substantial wins.

- Debt limit legislation has recently been a bipartisan issue because deficit hawks in the Republican Party have refused to vote for the legislation, so Democratic votes have been required even in the House, as was the case in 2023. Additionally, regular order is likely the only avenue under which lawmakers can extend the debt limit for a set period of time, which is seen as a politically easier vote than having to raise the limit by a set number.
- Democrats are unlikely to risk a default and have historically been reluctant to play brinksmanship with the debt limit. Still, in the current climate, there is pressure from the Democratic base for lawmakers to show that they are resisting the Trump administration's agenda. Given this dynamic, Democrats will be pressed to get meaningful concessions, potentially more than just the disaster aid that has been floated as part of a bipartisan package.
- As high as the pressure may be on Democrats from their base to avoid backing a bill that does not provide enough wins, there will likely be greater scrutiny around the next round of appropriations legislation that must be passed by September 30th than the debt limit

legislation. A shutdown would be less politically and economically damaging than the US defaulting on its debt. So, even if Democrats were to blink in a game of chicken over the debt limit, they may not do so in the next round of government spending negotiations, where the stakes will be lower, and the political pressure will be higher.

Social Insecurity

The Third Rail of American Politics. Politicians have known for decades that the Social Security Trust Fund is in need of reform, but Americans hold negative views of many of the proposed solutions.

- For Congress, addressing the Social Security Trust Fund's looming insolvency is the ultimate example of a short-term sacrifice for a long-term gain. The mainstream solutions that have been floated over the years, such as increasing payroll taxes or reducing eligibility for certain segments of the population, would immediately increase the financial burden on millions of Americans in exchange for a payoff (Trust Fund solvency) 10 years down the line. It's for exactly this reason that Congress has no interest in acting: why take the political hit of imposing a tax hike from which the benefits won't be felt for years to come?
- Polling underscores lawmakers' concerns that voters won't immediately appreciate efforts to right-size the Trust Fund. A 2024 poll commissioned by Social Security Works found that 92 percent of Americans oppose cutting Social Security benefits to reduce the national debt. According to polling over the years from Gallup, a majority of Americans hold negative views of reforms that would increase the age at which workers are eligible for benefits, reduce benefits for individuals who retire early, reduce benefits for people who are under 55, or increase payroll taxes on all workers. Proposals that would increase taxes on, or limit benefits for, wealthier Americans are generally popular, although not necessarily on Capitol Hill.
- Still, a solution is needed within the decade. According to this month's long-term fiscal projections from the Congressional Budget Office, the Social Security Trust Fund will be insolvent by 2034. Under the law, failure to address the Trust Fund's insolvency will lead to an automatic benefit cut to match payments with the revenue generated by payroll taxes. The Committee for a Responsible Federal Budget estimated last year that the mandated 21 percent benefit cut would result in about a \$16,500 loss for a dual-income American couple at retirement age.

In Search of a Legislative Fix. In recent years, successive administrations and Congresses have largely steered clear of solutions to address the future insolvency of the Social Security Trust Fund.

- The most prominent proposals in recent years have come from Democrats, most of which are focused on improving the fiscal outlook for the Trust Fund by raising taxes on the wealthy. The Social Security Expansion Act, led by Senators Bernie Sanders (D-VT) and Elizabeth Warren (D-MA) would subject all income above \$250,000 to the Social Security payroll tax and extend the tax to the investment and business income of wealthy Americans. Back in 2022, former Senator Joe Manchin (I-WV) similarly proposed increasing the income subject to the payroll tax to \$400,000. GOP lawmakers have separately criticized proposals to increase or expand payroll taxes, instead proposing in the Republican Study Committee's FY25 budget reforms such as an increase in the retirement age and adjustments to the primary insurance amount benefit formula for those not near retirement age.
- With the two parties in disagreement about how to reform the program, nonpartisan budget experts don't expect a solution in the near term. The current incentive structure would suggest that lawmakers won't feel the pressure to reform Social Security until a crisis is near at hand, at which point the reforms will need to be more dramatic and more expensive.
- In the meantime, the Trump administration has taken matters into its own hands by implementing cuts to Social Security's phone services and increasing scrutiny of recipient eligibility. Like the efforts that have come before it though, the Trump administration's Social Security reforms have faced swift backlash. Axios reported last week that some of DOGE's major overhauls have been delayed for the time being while President Trump's nominee to lead the Social Security Administration, Frank Bisignano, promised lawmakers during his confirmation hearing that he would continue to run Social Security as a public benefit, noting, "We will meet beneficiaries where they want to be met, whether in person, in field offices, on

the web or on the phone.”
