

## Cozen Currents: To the Victors Goes the Process

### The Cozen Lens

- If either party sweeps control of the federal government in November, pressure will be high to reform the filibuster.
- The embrace of populism among Democrats and Republicans has made antitrust enforcement a new area of bipartisan agreement, with both parties supporting more aggressive approaches.
- As both parties develop their priorities for next year's tax negotiations, former President Trump and top GOP lawmakers are setting their sights on a further reduction in the corporate rate.

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### Wither the Filibuster?

**Why Nothing Gets Done.** Despite the impediments it creates, a combination of institutionalists and escape valves have permitted the filibuster to survive. So far.

- The Senate filibuster is a rule with the practical effect that legislation generally needs support from three-fifths of the body (i.e., 60 out of 100) to be approved. That realistically means getting several senators from the other side to back your bill, requiring it to be bipartisan.
- Both parties have learned to get around the filibuster to get what they want. The major tool is budget reconciliation, which requires only a simple majority to pass but also requires unified control of Congress and the White House. Just about every major partisan accomplishment of the last three decades has been through reconciliation.
- That said, pressure to reform the filibuster is rising. A full repeal remains unlikely, but continued chipping away at it is possible under the right conditions.

**The Democratic Vision.** Democrats have come close to further limiting the filibuster under President Biden. The senators that preserved it last time around are heading out the door though.

- In 2022, Democrats voted to create exceptions to the filibuster. Even Biden, a consummate institutionalist, was in favor of the change. The motion failed but for two members of their party: Senators Joe Manchin (I-WV) and Kyrsten Sinema (I-AZ), both moderates who staunchly believe in keeping the procedure. Both are retiring this year.
- Whichever party decides to reform the procedure requires two catalysts to be successful: an issue of prime importance to them and a single solution the caucus can unanimously support. Democrats would like to create carve-outs to the filibuster to exempt certain topics; in 2022, the aforementioned push was to pass voting rights legislation. Since Dobbs, Biden has added that another exception should be made to codify *Roe v. Wade*.
- Democratic-led change requires the party to win unified control of government this year (low probability) and then decide to reform the Senate. This wouldn't necessarily be a good idea; it would be a major long-term risk to the party. Small, rural, white states hold disproportionate power in the body, giving Republicans a large structural advantage, but this desperation can motivate either choice. It could either lead them to play it safe and keep the filibuster knowing they're at risk of being the minority party for the majority of the future. On the other hand, knowing that this may well be their last chance to pass major legislation for many years, it could incentivize radical action (e.g., breaking the filibuster to add DC and Puerto Rico as states).



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**The Republican Vision.** The changing priorities of the GOP mean the filibuster is now facing increasing risks from a new direction.

- The GOP is increasingly changing focus from fiscal issues (which reconciliation is perfect for) to social and cultural ones. Election fraud, immigration, restricting access to transgender care, abortion, and “wokeness” now largely motivate the base, not wonky tax reform. If Republicans win full control of the federal government this November, they’ll learn a lesson Democrats are well-acquainted with: reconciliation is pretty much useless for these non-fiscal topics.
- Senate Republicans are becoming less Reaganesque and moderate and more MAGA and populist. Senator Josh Hawley (R-MO), for instance, has said he’s open to potential changes in the filibuster. Senate Minority Leader Mitch McConnell (R-KY) is very not-MAGA and is stepping down this year as leader of his party (and may not run for re-election in 2026 at age 84).
- The leading GOP catalysts for breaking the filibuster would be immigration and election security. Actually, doing so would require unified Republican control of the federal government (not unlikely) and unanimity among Senate Republicans to reform it (less likely). During his first term, former President Trump repeatedly pushed to end the filibuster, and the party has only increasingly become an instrument of his power since then. Does the caucus in the Senate have the power to defy him a second time?

#### **Antitrust Populism Takes Root**

**No Letting Up.** Even if Donald Trump wins the presidential election, antitrust enforcement could see more continuity thanks to populism’s influence in the GOP than one would expect just looking at a change from a pair of aggressive Democratic regulators to a Republican administration.

- Trump’s embrace of populism has been well-documented, and many of the policies he pursued during his first administration and proposed for a second term have populist roots. Part of the ideology includes limiting corporate power, leading to some Republicans, known as Khanservatives, praising President Biden’s antitrust regulators for their aggressive approach.
- The exact agenda under a second Trump administration will depend heavily on who Trump nominates. There are still prominent Republicans with more traditional views on competition policy that will make the battle over Trump’s choices one of the most contested fights.
- There will be limits on the continuity during a change in administrations as some of the more novel instances of antitrust enforcement pursued under Biden are unlikely to continue. Areas that could see relief include the scrutiny of private equity and competition in labor markets.

**Big Tech Under a Microscope.** Big Tech will likely continue to face scrutiny regardless of the electoral outcome as it has few friends in either party and has become synonymous with the need to rein in large corporations.

- Big Tech has been the top priority for much of Biden’s first term. It will continue to be if he is reelected following the recent agreement between the Federal Trade Commission (FTC) and the Department of Justice to divide antitrust investigations into the AI industry. Turning these inquiries into cases will take months, if not years, but will be at the top of Biden’s regulators’ to-do list.
- While it is uncertain how much a Trump administration would prioritize these AI probes, at a minimum, Big Tech will face pressure over its alleged censorship of conservative viewpoints. Republican FTC Commissioner Melissa Holyoak recently called for a market study into tech and financial platforms focused on their de-platforming practices, rekindling an idea Trump raised during his first term and will likely receive more attention if he is reelected.

**Not Just Big Tech.** The shared populist views on competition policy will also mean that the pharmaceutical and financial services industries could face continued pressure from antitrust regulators.

- As two relatively consumer-facing industries, there is a sensitivity about how consolidation

can directly impact consumers. The threshold to file an antitrust challenge may be higher under a Trump administration, which will likely reemphasize the consumer welfare standard.

However, lengthy reviews could continue to be the norm, particularly for these businesses.

- In addition to antitrust lawsuits, continued regulatory pressure on these industries through regulatory actions that address business practices perceived as anticompetitive is possible. These rules have been crucial in making Biden's competition policy agenda a whole-of-government initiative and will have a fair chance at continuing under Trump.

## Corporate Tax Rate Debate Begins Anew

**Corporation's Big Break.** In remarks before CEOs of major corporations at a Business Roundtable event last week, former President Trump said he would further lower the corporate tax rate to 20 percent if he wins re-election.

- The grand prize of the 2024 elections will be control over negotiations of the trillions in expiring provisions of the Tax Cuts and Jobs Act (TCJA). In anticipation of next year's tax fight, GOP lawmakers on the House Ways and Means Committee and the Senate Finance Committee launched working groups to lay the groundwork for an extension of the TCJA's individual provisions.
- Although the law's reduction in the corporate rate from 35 percent to 21 percent isn't set to expire next year, both parties have discussed modifying it if given the opportunity. For Republicans, the reduction in the corporate rate was a signature policy achievement of the TCJA and a catalyst for much of the law's impact on economic growth.
- While there has been long-running speculation around congressional Republicans and former President Trump's interest in further lowering the corporate rate, Trump's comments to CEOs last week are the first official confirmation of his interest in doing so. The Washington Post reported last week that prominent GOP lawmakers are on the same page. House Majority Leader Steve Scalise (R-LA) told the Post, "... We want to keep rates as low as we can, ideally lower than 21 percent." Senate Finance Committee Chair Mike Crapo (R-ID) indicated he shared Scalise's sentiment.

**Inflation Comes for the TCJA.** Increasing estimates of the cost of extending the TCJA's individual provisions are creating friction among GOP lawmakers.

- Nonpartisan analysis from the Congressional Budget Office (CBO) suggests that the cost of extending the TCJA's individual provisions over 10 years keeps climbing. In May, the CBO released an updated estimate that pinned the cost of an extension at around \$4.6 trillion. The number is \$1.1 trillion more than the agency estimated last year and more than \$2 trillion higher than the tax cuts' cost in 2017.
- Those estimates are a cause for concern among more populist GOP lawmakers. According to Tax Notes, there is a growing divide within the GOP over whether to pay for an extension of the TCJA. Rep. Brian Fitzpatrick (R-PA) told the publication, "We're going into a big tax year next year, and this is going to be front and center...I think that we should pay for as much as we can — the goal being growth, not just slashing or reducing rates." House Ways and Means Committee Chair Jason Smith (R-MO) told a group of lawyers that some prominent GOP House members have gone as far as to express interest in a hike of the corporate tax rate next year to offset the cost of an extension.

**There's Still an Election to Win.** The makeup of Congress and the presidency will ultimately determine the direction of the 2025 tax negotiations.

- Much of the GOP's planning for top priorities such as a second lowering of the corporate rate or the addition of other priorities like immigration reform in a tax package is dependent on a GOP sweep on election night. Unified control of government would unlock budget reconciliation, a procedural tool that allows lawmakers to pass legislation pertaining to federal revenue, spending, or the federal debt without the need for votes from the minority party.
- Senate Majority Leader Mitch McConnell (R-KY) told CNN last week, "The first step is we need to have a Republican president, a Republican House and a Republican Senate, or there will be no reconciliation at all."

- Divided government would pose a serious threat to any GOP plans to lower the corporate rate. Democrats in Congress and President Biden strongly oppose a further reduction of the corporate rate. Biden's FY25 budget, which includes a menu of tax provisions the White House is interested in incorporating into next year's negotiations, lays out a series of tax hikes on corporations and the wealthy including an increase of the corporate rate to 28 percent.
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