

## Cozen Currents: GOP Thinks Big



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### The Cozen Lens

- Republican leadership is outlining an ambitious legislative agenda if the GOP gains control of the White House and both chambers of Congress in November.
- Despite House Republicans' efforts to pass their versions of the FY25 National Defense Authorization Act and FY25 appropriations bills before the August recess, the measures will not pass until after the election and could face roadblocks that prevent them from even clearing the House.
- While many federal agencies are winding down their rulemaking agendas, the Consumer Financial Protection Bureau is just gearing up for a sprint to finalize a number of sweeping reforms before a possible change in administration.

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### The GOP's Sweeping Aspirations

**Ambitious Plans.** GOP congressional leadership is thinking big in devising a legislative agenda if Republicans sweep this year's elections.

- Full control of the federal government unlocks the budget reconciliation process, which would let Republicans bypass the Senate filibuster and pass one bill by a simple majority each fiscal year. A priority will be addressing the future of the tax code, as the 2017 Tax Cuts and Jobs Act's (TCJA) individual tax provisions will expire next year.
- The corporate tax rate is a major wild card. House Ways and Means Committee Chair Jason Smith (R-MO) has said that some Republicans would like to raise it above the current level of 21 percent, while former President Trump's team is reportedly discussing a further cut, potentially as low as 15 percent.
- House Majority Leader Steve Scalise (R-LA) has raised the potential of taking a page out of Democrats' playbook and aiming for a GOP version of the Inflation Reduction Act (IRA): a reconciliation bill loaded up with a list of Republican priorities including tax cuts, energy production, border security, and unwinding Biden administration regulations.

**The Reality is Harder.** Reconciliation isn't a silver bullet to get everything Republicans want done.

- Republicans may be overestimating how fast they could move even under unified control of the federal government. Margins in the House and Senate would likely be narrow, which limits legislative options and requires buy-in from across the GOP conference. For example, President Biden's Inflation Reduction Act only became law in August 2022 after extensive negotiations with Senator Joe Manchin (then D-WV).
- Many Republicans in Congress were not yet in office when the TCJA passed, which will certainly be the case for members in a new majority, so they will have to familiarize themselves with the procedure. Reconciliation is a complex process full of rules. Perhaps most infamous is the Byrd rule, which bars any provisions considered extraneous to the federal budget. This narrows the scope of what can be included in a GOP reconciliation bill. Democrats have run into their own problems with the Byrd rule. The Senate parliamentarian ruled in 2021 that immigration reform and an increase to the minimum wage failed the test.
- A reconciliation bill also cannot widen the deficit beyond a 10-year time horizon. This is why the TCJA's individual tax rates expire while the corporate rate is permanent. As a result, GOP bill writers will need to find pay-fors for favored programs. Budget reconciliation can involve

math that some may consider “gimmicky,” but that doesn’t mean it isn’t still a challenge.

**What if Democrats Sweep?** While it’s unlikely, unified Democratic control is not an impossible outcome.

- Democrats face a highly unfavorable Senate map, but they have beaten the odds before. In 2020 and 2022, GOP Senate candidates lost winnable races, allowing Democrats to first take and then maintain a majority in the upper chamber. It’s worth noting that Democratic Senate candidates [poll better](#) than President Biden in the battleground states and often have the advantage of incumbency.
- Democrats effectively have a cap of 50 Senate seats if they hold all of their seats except for West Virginia. This razor-thin 50-seat majority would notably differ from the previous one in the absence of Manchin and fellow retiring centrist Senator Kyrsten Sinema (I-AZ). Though there would still be some red-state Democrats left in the caucus, the Senate’s other moderate Democrats did not create the same level of obstacles to Biden’s agenda as the Sinemanchin duo.
- A sweep in 2024 would give Democrats another tie at the reconciliation apple. They could pick up elements of their Build Back Better agenda left out of the IRA, such as an expanded Child Tax Credit. Democrats could also pursue some of Biden’s preferred tax policies listed in the Treasury’s [Green Book](#) earlier this year, such as a 28 percent corporate tax and a 25 percent minimum tax on billionaires. Biden has pledged not to increase taxes on those making under \$400,000 a year.

#### **Must Pass Bills Begin Their Long Road Home**

**Money, Money, Money.** House Republican leadership has laid out an ambitious plan to pass all 12 appropriations bills before the August recess despite failing to pass five measures last year.

- The House GOP cleared their first hurdle last week, passing the FY25 Military Construction, Veterans’ Affairs, and Related Agencies Appropriations Bill. The measure is among the least contentious but still required a largely party-line vote to advance.
- Some of the more controversial measures, including those that failed to pass last year, could again come up short due to internal Republican divides. Attracting Democratic support, which was needed to clear the FY24 appropriations package, will be difficult given the funding cuts for non-defense that these appropriations bills reflect. This dynamic could again leave House Speaker Mike Johnson (R-LA) with egg on his face as another ambitious plan comes up short.
- The House intends to take up the Homeland Security, Defense, and State-Foreign Operations appropriations bills later this month. These three bills, along with the Financial Services and Legislative Branch appropriations bills, are scheduled to be voted on by the full House Appropriations Committee later this week. While this may not be where the legislation gets tripped up, these markups could reveal some of the looming intra-party fault lines coming in the floor fights.

**One Last Ride(r).** In addition to moving the appropriations bills before August, the House hopes to advance its draft of the FY25 National Defense Authorization Act (NDAA).

- While the size of the NDAA alone often garners it significant attention, in an election year where it is one of a few must pass bills left to advance, lawmakers are particularly focused on the package as a potential opportunity for their pet provisions to catch a ride. Making the draft in the House or Senate is likely necessary for a measure to have a chance to be included in the final version, but it will not be sufficient.
- Despite clearing the House Armed Services Committee in a bipartisan 57-1 vote, trouble may lie ahead for the House’s NDAA draft due to the policy riders members want to attach. Conservative Republicans are likely to pitch several culture war amendments, though they will not make the final cut even if they pass in the House. The danger for GOP leadership is that not allowing votes on these proposals could result in scorned members blocking consideration of the NDAA on the House floor and preventing the lower chamber from advancing its draft.

**Hurry Up and Wait.** Even if House Republicans achieve their goals and pass their NDAA and spending bills before the August recess, the final passage of either package will not happen until after the election.

- Given the eventual bipartisan support needed to pass appropriations legislation, it is unlikely that the cuts that the House Republicans are proposing to non-defense are unlikely to become law. The funding levels authorized in the NDAA are likely closer to where the final total will end up, at least for defense. With the Democrats' focus on parity increases for non-defense, there will be a push to raise spending on those programs by at least a proportional amount.
- When lame duck arrives, one uncertainty is whether Congress will pass full-year appropriations legislation or punt it into 2025. Johnson indicated that his preference is the former, even if Republicans win unified control, to enter the next Congress with a clean slate. However, this plan already faces pushback from conservative members. There could be a fiscal pile-up in early 2025 as Congress would have to tackle appropriations, the expiration of the Tax Cuts and Jobs Act, the end of the Fiscal Responsibility Act's budget caps, and the need to raise or suspend the debt limit.

### CFPB is Winning Legal Battles But Could Lose the Political War

**A Shot in the Arm.** The Supreme Court's May decision determining that the Consumer Financial Protection Bureau's (CFPB) funding mechanism is constitutional eliminated a legal argument that had been used to block numerous CFPB rulemakings, enabling it to aggressively pursue its enforcement and rulemaking agenda.

- Ever since the Fifth Circuit ruled that the CFPB's funding structure was unconstitutional in 2022, the agency has been limited in its ability to supervise and investigate companies within its jurisdiction. According to [Bloomberg](#), companies have openly defied CFPB investigative demands while courts have paused enforcement actions. In the first quarter of 2024, the CFPB brought its fewest enforcement actions since 2018, a surprise given CFPB Director Rohit Chopra's progressive approach toward consumer protection.
- Now, the Supreme Court has given Chopra the green light to return to his old ways. In a [statement](#) following the high court's ruling, Chopra said the CFPB will be "firing on all cylinders," announcing plans to expand the agency's enforcement team. [Bloomberg](#) reports that the CFPB is hiring an additional 75 enforcement attorneys, a roughly 50 percent increase above current levels.
- The [Washington Post](#) reports that the CFPB will immediately restart 14 lawsuits which had been paused pending the outcome of the Supreme Court's decision. The agency is also expected to pick up the defense of its payday lending rule, 1071 small business data collection rule, and credit card late fee rule, all of which were put on hold on the basis of the Fifth Circuit.

**The Main Event.** Chopra's top pre-election focus will be to finalize or at least advance a number of sweeping rulemakings encompassing Big Tech companies, credit reporting agencies, banks, and others.

- The CFPB proposed two major rulemakings in fall 2023 that could well define Chopra's legacy if implemented. The larger market participant [rule](#) would allow the CFPB to conduct bank-style supervisory examinations of Big Tech companies' digital wallets and payment arms, a major concern for the likes of Apple, CashApp, Google, and others. Meanwhile, the agency's personal financial data rights [rule](#) would give consumers greater control over their financial data by requiring banks to share the information, at the request of the consumer, with third parties like fintechs free of charge. Chopra projects the CFPB will finalize both rules by the end of the fourth quarter.
- While not yet proposed, the CFPB is also leading a major [rewrite](#) of the Fair Credit Reporting Act (FCRA), the law which governs data protection and monetization requirements for credit reporting agencies. According to a 2023 [outline](#) of the CFPB's plans, the agency is considering expanding its enforcement of FCRA to cover new data brokers and aggregators, tighten restrictions around the sale of credit header data, and require credit reporting agencies to remove consumers' medical debt from credit reports.

- No Biden administration agency's regulatory agenda is complete without an effort to eliminate "junk fees" and the CFPB's is no different. The agency is planning to finalize a proposal that would force banks to either reduce their overdraft fees to as low as \$3 or subject them to the same disclosure requirements as credit cards. A similar proposal to eliminate certain non-sufficient funds fees is also expected to be finalized. The agency has also launched an inquiry into mortgage closing costs which it says have risen due to unavoidable junk fees.

**Uno Reverse.** No matter what the CFPB is able to accomplish between today and the election, many of its regulatory actions will be prime candidates for revocation if former President Trump wins a second term.

- During his first term, Trump made an effort to limit the CFPB's rulemaking and enforcement activity, reversing the more aggressive approach of the Obama administration. Trump appointed Mick Mulvaney as interim director, giving him wide latitude to dismantle its enforcement and oversight teams. Mulvaney issued a memo in 2018 telling staff the CFPB would do no more than its statutory requirements. Mulvaney was later replaced by Kathy Kraninger who took a more reserved approach to agency management but remained widely disliked by consumer protection advocates.
  - Congressional Republicans have already demonstrated an interest in overturning the CFPB's major rulemakings. House and Senate Republicans introduced and successfully passed a Congressional Review Act resolution overturning the CFPB's small business lending rule, although Biden vetoed the effort. GOP lawmakers have also introduced a resolution to overturn the CFPB's credit card late fee rule.
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