

# Here's What Happens If Republicans Take The Senate

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Republicans plan to adopt a combative but strategic approach toward governing in the increasingly likely event they take control of both chambers of US Congress, top GOP lawmakers and aides told Business Insider.

With an eye toward the 2016 presidential election, Republican leaders in the House and Senate will look to move forward GOP legislative priorities popular with the American public and could earn an ample number of Democratic votes to send to President Barack Obama's desk.

They'll also aim to show they are the party best able to run the country.

"We want to demonstrate a kind of competence that Harry Reid has not," a senior Republican Senate aide told Business Insider recently, referring to Senate Majority Leader Harry Reid.

"They have governed with the sole purpose of casting the Republican Party in a bad light," the aide said of the Democrats. "We want to pass legislation that casts the party in a more favorable light."

Some of the immediate legislative priorities that Republicans would look to act on include passage of the Keystone XL Pipeline — which the Obama administration has delayed multiple times over the past three years — chipping away at the Affordable Care Act, and corporate tax reform.

The goal is to force Obama to make decisions on popular bills, putting him in a corner where he will have to either veto legislation or begrudgingly accept it. Obama has vetoed only two bills during his first six years in office, the fewest since President James Garfield's brief, one-year tenure.

"We want to get things in front of the president that define him and his party," the Senate aide said. "Harry Reid has protected him. We want to force him to make a choice."

Republicans look increasingly [likely to take control of the Senate in Tuesday's midterm elections](#). The GOP is also likely to expand on its 34-seat majority in the House, with analysts

expecting a two- to 10-seat pickup. Analysts consider the finance and energy sectors to potentially see a major boom from a GOP takeover of the Senate.

But how quickly Republicans can put their plan into action under likely Majority Leader Mitch McConnell depends on whether they cleanly win the Senate on Tuesday, or whether the fight will extend into December — or even into January. That's a possibility if [elections in Louisiana and Georgia extend to runoffs](#) and Senate control is dependent on their outcomes.

The uncertainty surrounding the runoffs could have a "halting effect" on the start of Congress' lame-duck session this month, said Chris Krueger, an analyst at Guggenheim Securities. But there will need to be a sprint on certain must-pass legislation, like the continuing resolution to keep the government from shutting down.

Here's a look at how different areas could be shaped by GOP control of the Senate:

## **Obamacare**

The Republican Holy Grail — a bill that repeals the Affordable Care Act — will see its best chance for passage next year. But while there will likely be a full vote in the Senate to repeal the entire healthcare law, aides said, the overall GOP strategy will likely be to chip away at parts of the law in bills that could make it to the president's desk.

A full-repeal bill would certainly prompt a presidential veto. One item Republican House and Senate aides think is likely to make it to Obama's desk — and potentially get his signature — is a bill to repeal Obamacare's tax on medical devices. A similar [amendment](#), championed by Sen. Orrin Hatch (R-Utah), who is in line to become the next chair of the Senate Finance Committee, passed by a 79-20 vote in 2013.

"I think the med-device tax and some other little areas would be the best place to start, because that is the 'possible,'" a senior GOP aide on the Finance Committee told Business Insider of Republicans' pursuit of Obamacare-related legislation in the next session of Congress.

Republicans could also take aim at so-called risk corridors in the health law, a potential fight that [some Republican senators have already begun discussing as](#) part of a potential shutdown fight.

The "risk corridors" in question aim to make it easier for insurance companies to transition to the new healthcare system, largely by making it less financially risky for them to sell new insurance plans on the government exchanges established by the Affordable Care Act.

But Republicans have charged the program amounts to a "bailout" for insurance companies, and a bill targeting the provision is something they think could attract Democratic votes.

"Why not just do it separately?" one Republican aide said when asked about the possibility of tying funding for the risk-corridor program to the continuing resolution, which keeps the government funded and needs to be passed by Dec. 11 to prevent a shutdown.

If Republicans tackled the issue of risk corridors in a separate bill, it would simplify messaging and make some Democrats more likely to jump on board.

In general, Senate Republicans will look to follow the House GOP Obamacare playbook of the past four years. They plan to use their subpoena powers to full effect and hold more oversight hearings on the healthcare law.

Some of the issues those potential hearings will focus on include money Republicans claim has been wasted on state insurance exchanges that ended up converting to the federal marketplace, the [security of HealthCare.gov](#) and state-exchange websites, and the process for verifying people's incomes to receive subsidies for health insurance.

"Being in the minority, we don't have the ability to call a hearing and to get the witnesses that we'd want," the GOP Finance Committee aide said. But should the GOP take the Senate, he added, "I think oversight of Obamacare would be something you'd see a lot more of."

## **Foreign Policy**

One of the GOP's first orders of business, should it win the Senate, may well be mounting a united front to oppose any Obama administration-led deal on Iran's nuclear program. Such a move could win the backing of a decent amount of Democrats.

Such a move could well become the first of many intense fights set for a lame-duck session of Congress.

"Where to start?" said Greg Valliere, the chief political strategist at Potomac Research Group. "After the immigration executive order comes a bitter fight on Iranian sanctions, then a battle over whether to pass a continuing spending resolution or an omnibus, then a fight over tax extenders — *and that's just in the lame duck.*"

[The Obama administration has signaled](#) it might attempt to maneuver around Congress and avoid allowing a vote on any final agreement with Iran, the deadline of which is set for Nov. 24. But unity among top Republicans and Democrats, including Sens. Mark Kirk (R-Illinois) and Bob Menendez (D-New Jersey), would make that more difficult.

"By threatening to cut out Congress from the Iran nuclear deal, the administration is actually uniting Congress," Kirk said in a recent statement.

"We will not support an Obama-Khamenei deal that condemns our children to a future where the Middle East is full of nuclear weapons," he added, referring to Iran's Supreme Leader.

Sen. Bob Corker (R-Tennessee) appears next in line to take over from Menendez as chair of the Foreign Relations Committee if Republicans take control of the Senate. Corker has also stressed that any final deal must be approved by Congress. He [said](#) on the Senate floor this summer that if Obama did not submit a final approval to Congress by four days after the Nov. 24 deadline, all

sanctions relieved under the interim agreement should be restored.

## **Trade**

But a GOP Senate could also help jump-start a key part of Obama's foreign-policy agenda, where he has run into a roadblock from his own party.

The big obstacle to Obama's ambitious trade agenda has so far been Harry Reid. Obama needs Congress to pass a special authority for him to fast-track certain trade deals that Congress can either accept or reject, but cannot change.

Reid has not allowed a vote on fast-track legislation, and Democrats generally fear expanded trade could cost American jobs and have a negative effect on global wages. But Obama has long advocated a pair of trade agreements with the EU and nations in Asia, saying they will create millions of jobs through a vast expansion of US exports.

Republican aides told Business Insider they are open to working with Obama to get fast-track legislation.

"Trade is an issue that Democrats see as tough medicine," the GOP Finance Committee aide said. "They know we need it. They know it's good in the long run. It's just hard to swallow.

"We feel strongly that if you're another nation who's negotiating with the US, the likelihood of trying to close a deal you can't guarantee is going to get an up-or-down vote in the Senate — there's not a lot of incentive there to close a deal. I think the administration knows they need TPA [Trade Promotion Authority], and it's an issue that splits Democrats much more than it splits Republicans."

## **Immigration**

A coming Republican Senate would also make Obama more likely to [take executive action quickly on immigration](#), something he delayed until after the elections.

The only question at this point is when, not if. Many analysts expect Obama to announce his executive action before Thanksgiving. But the timing will likely depend on whether Republicans secure control of the Senate on Tuesday — Obama wouldn't want to imperil Democratic Sen. Mary Landrieu in a theoretical runoff in Louisiana.

Obama's actions will likely face heavy pushback from Sen. Chuck Grassley (R-Iowa), the likely next chair of the Senate Judiciary Committee, and Sen. Jeff Sessions (R-Alabama), who will likely take over as chair of the Senate Budget Committee in a GOP Senate.

"The President is assuming for himself the sole and absolute power to decide who can enter, work, live, and claim benefits in the United States. He has exempted virtually every group in the world from America immigration laws," Sessions said in a statement last week.

Any executive action would effectively poison the well for any legislative fix to the nation's immigration system until after Obama leaves office. The legislation passed by the Senate in 2013 expires with the end of this Congress in early January.

Former Republican presidential candidate Mitt Romney [said](#) this weekend that a Republican House and Senate would pass immigration legislation. But Republican strategists speculated that any legislation Republicans would try to pass would be more about messaging on a "secure border" than a comprehensive revamping of the nation's immigration laws.

## **Taxes**

Then there's the ever-ambiguous issue of tax reform, which has been floating around Washington for virtually all of Obama's term. It will figure even more prominently next year as it will be a priority for Republicans who think a revamp of the corporate tax code is essential to boosting economic growth.

Rep. Paul Ryan (R-Wisconsin), considered likely to be the next chair of the House Ways and Means Committee, has put tax reform high on his list of issues to tackle. At a recent campaign stop with Sen. Pat Roberts (R-Kansas) in Overland Park, Kansas, Ryan told Business Insider he and Hatch, the likely next chair of the Finance Committee, would work to come up with a proposal by sometime next year.

"We have to reform this tax code," Ryan said. "Because we're taxing American businesses at much higher rates than our foreign competitors are taxing theirs."

Roberts, who will be a senior member on the Senate Finance Committee, said the House and Senate committees would work as "hard as possible to get it done."

"We know it has to be done. It's long overdue," Roberts said. "You elect a Republican majority in the United States Senate, and I can assure you that under Orrin Hatch's leadership, and Paul's leadership, that we will have a proposal for serious tax reform."

But privately, both the administration and Republicans are skeptical the other side would work in good faith on tax reform. Republicans felt jilted by the Obama administration's focus on so-called tax "inversions" this year, which culminated in [unilateral action by the Treasury Department to curb the practice](#) earlier this fall.

Republicans agree that the issue of inversions needs to be addressed, but they prefer that it be done as part of broad tax reform. They believe administration focused on the practice for political gain — though it never ended up fully resonating as an issue with the American public.

Senior Republicans believe there is a risk the administration would do the same thing with broad tax reform, citing a lack of communication from the White House to top GOP lawmakers on the issue thus far.

"There's not a lot of outreach going on about this," one senior Republican Senate aide told Business Insider. "You can already see: They're messaging."

## **Court Appointments**

A significant part of Obama's legacy rests on the judicial nominees he can appoint to courts, which will determine the constitutionality of his administration's policies, regulations, and executive actions long after he leaves office.

With Reid's help, judicial appointments have been one of the few ways Obama has been able to work around Congress. Last year as majority leader, [Reid changed Senate rules](#) so that executive and judicial appointees could pass the Senate by a majority vote, taking away most of Republicans' power to filibuster these nominees.

If they control the Senate, that advantage will disappear. Grassley, the likely next chair of the Judiciary Committee, could block any nominees from even receiving a hearing. And McConnell could prevent them from getting a full vote on the Senate floor.

Three of Obama's nominees to the powerful US Court of Appeals for the D.C. Circuit were confirmed last year after Reid changed the Senate's rules. Thanks in large part to Obama's appointments, Democratic-appointed judges now hold a majority on nine of the country's 13 appeals courts. When he started his term, Democrats had a majority on only one of the courts.

Many of Obama's appointees are controlling his agenda, writing new rules for financial reform, climate change, and even gun control and immigration.

The rules change has the potential to end up being the most important part of Obama's legacy outside of Obamacare. The D.C. Circuit Court, outside of the Supreme Court, is generally considered the second most powerful court in the nation, with its vast jurisdiction over the federal government and thousands of regulations, rules, and executive actions from more than 400 administrative agencies. It's the court, for example, that in January [ruled Obama's 2011 recess appointments unconstitutional](#).

"The issues before this court are some of the most important with respect to administrative law, which is where so much law gets made today," Roger Pilon, the chair of the Cato Institute's Center for Constitutional Studies, told Business Insider.

"When you can't get things through Congress in the normal, constitutional way, what you do is exactly what Obama's doing," he said. "You turn to ruling by executive order."

One of the key tenets of Obama's second-term agenda, for example, is in the area of climate change, on which he has no chance of working with Congress. He has admitted this, and so the Environmental Protection Agency has [been writing new rules on climate policy](#), including new carbon emissions standards for existing power plants.

Any challenges to Obama's new policies could end up in the D.C. Circuit Court. With a Democratic majority now sitting on the court, those challenges are more likely to be dismissed. A full D.C. Circuit Court panel also agreed to [rehear a significant case related to Obamacare](#) after a setback to the law by a smaller, Republican-skewed panel on the court.

But a Republican majority would put a significant dent in Obama's ability to reshape the federal judiciary. According to [data](#) from the group Alliance for Justice, there are 56 total district and circuit court vacancies without nominees. Congressional scholar Norm Ornstein of the American Enterprise Institute [wrote](#) this March that he expects Republicans to confirm virtually none of the possible nominees if they take control.