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# US Policy Fall Preview 2021

SEPTEMBER 2021

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## Our Bottom-line

The legislative goals of the Biden Administration and the Democratic Congress are clear; transformative investment across the policy spectrum. The vehicles to reach that goal will be passage of the bipartisan Infrastructure Investment and Jobs Act, passage of a “human” infrastructure Bill (via reconciliation) and passage of the annual Appropriations bills.

The bipartisan infrastructure bill passed the Senate. But it will not move in the House until a deal is reached on a reconciliation bill. House moderates agitated for a quicker timeline but House progressives, who vastly outnumber the moderates, didn’t agree to such a timeline, resulting in a soft commitment from the House to consider the Senate bill no later than September 27. That decidedly does not mean a vote on September 27, as widely reported. Dual track is in fact a dual track.

The House will start the process with committees’ submitting their respective legislation to the House Budget Committee by September 15. For those wondering how this will be paid for, meaning whose taxes are going up, the Ways and Means Committee markup starts on September 10. Our report details the instructions each committee received for their specific title.

The Budget Committee will then blend the 12 submissions into one package and move it through a markup, to the Rules Committee and then to the House floor. All without a single GOP vote. What passes here will not be the final package that makes it to the President’s desk. We expect the House version to be more progressive, more expansive and more expensive than Senate Democratic moderates, or the Senate Parliamentarian, will tolerate.

The Senate may take a less than “regular order” route to passage of the human infrastructure package. We most likely will not see markups in every committee, or at all. Instead, behind the scenes negotiations with Budget Chair Sanders,

Majority Leader Schumer and other Committee Chairman will likely produce legislation that will go straight to the floor. We can expect Sens. Machin (D-WV) and Sinema (D-AZ) to be heavily courted.

The Senate Parliamentarian will be in the spotlight as she rules on what does and does not violate Senate reconciliation rules and can be included. Already this year she denied Democratic efforts to add a minimum wage increase to the COVID-19 relief package, which also passed via reconciliation earlier this year.

Once passed, the legislation will travel back to the House for final passage and on to the President’s desk. Yes, that means the House will vote twice and yes it means they will vote on a scaled down package that will not meet every House priority.

But they’ll pass it, as well as the Bipartisan Infrastructure package, and most likely one or more continuing resolutions before they pass the annual appropriations bills. Democrats will be loath to pass any long-term CR as it would represent a continuation of Trump Administration priorities. And an increase in the debt limit will need to be squeezed into one of these vehicles. An omnibus appropriations package is more likely than not.

We don’t expect enactment of the reconciliation and infrastructure bills before Halloween and think the Thanksgiving to Christmas time frame may be likely.

What follows is an attempt to get you up to speed on what will be at the forefront of the action in Washington DC as there is much to do with limited time to do it. A little something to ease you back in from the those Summer nights.

Wishing you and yours a healthy and safe Autumn.

# RECONCILIATION

## STATE OF PLAY

President Biden's "human" infrastructure package, the American Families Plan, has no chance of getting through Congress except through the reconciliation process, which allows a legislative package to be passed in the Senate by only a simple majority vote. Reconciliation began with a FY 2022 Budget Resolution, which the Senate passed on August 11 (S. Con. Res. 14). The House then chose to "deem" adoption of the Senate Budget Resolution in the rule (H. Res. 601) it adopted 220-212 on August 24 for consideration of H.R. 3684, the Senate-passed bipartisan infrastructure bill. More on the Budget Resolution on the next page, but first, some key points below about the opportunities and limits of reconciliation.

## What is reconciliation?

Reconciliation is a rule that was included when Congress rewrote budget rules in 1974. The goal was to allow Congress to pass a new budget resolution with new spending priorities and quickly pass the legislation to reflect the needs of the moment. The Congressional Research Service, a nonpartisan research group in Congress, reports reconciliation was first used in 1980 and has been used to pass 25 reconciliation bills.

Reconciliation allows the party in control of Congress to pass most big-dollar legislation with a simple 51-vote majority in the Senate without having to worry about a filibuster.

In recent years, reconciliation has become a popular tool to get big partisan bills passed when one party has full control of Washington. Democrats used reconciliation to pass some health care changes in 2010, and Republicans used it to pass tax cuts in 2017, but failed in their attempt to repeal the Affordable Care Act during Donald Trump's presidency.

## The "Byrd Bath"

### Limitations of Reconciliation in the Senate – The Byrd Rule

Named for Senator Robert Byrd, the Byrd rule (Section 313 of the Congressional Budget Act) was first adopted in the mid-1980s to exclude extraneous provisions in reconciliation bills. Because reconciliation bills are considered using expedited procedures in the Senate, the Byrd rule is aimed at preventing the use of reconciliation to move a legislative agenda unrelated to spending or taxes, and to some extent it limits Congress' ability to use reconciliation to increase

deficits – at least over the long-term.

The Byrd rule prohibits the inclusion of "extraneous" measures in reconciliation, defining "extraneous" as follows:

- measures with no budgetary effect (i.e., no change in outlays or revenues);
- measures that worsen the deficit when a committee has not achieved its reconciliation target;
- measures outside the jurisdiction of the committee that submitted the title or provision;
- measures that produce a budgetary effect that is merely incidental to the non-budgetary policy change;
- measures that increase deficits for any fiscal year outside the reconciliation window; and
- measures that recommend changes in Social Security

Any Senator may raise a point of order against an extraneous provision in the reconciliation bill, amendments, or the conference agreement. The Senate Parliamentarian decides whether there is a Byrd rule violation, and provisions struck through a Byrd rule point of order cannot be offered later as amendments. However, Byrd rule points of order can be waived by a vote of 60 Senators.

In addition to reconciliation-specific points of order, reconciliation bills are subject to other Senate points of order, like the Senate PAYGO rule, that apply to all legislation.

The Senate parliamentarian is then consulted for rulings on whether or not something fits the rules.

## Meet the Senate Parliamentarian



Elizabeth MacDonough began her career in 1990 as a legislative reference assistant in the Senate library and later as assistant

morning business editor to the Congressional Record. She left in 1995 to attend Vermont Law School, graduating with a JD in 1998. During law school, MacDonough interned with Judge Royce C. Lamberth (United States District Court for the District of Columbia) and the Immigration and Naturalization Service in Burlington, Vermont. After graduating, she worked as a trial attorney for the United States Department of Justice handling immigration cases in New Jersey.

MacDonough joined the office of the Senate Parliamentarian in May 1999 as an assistant parliamentarian and was promoted to senior assistant parliamentarian in 2002. She advised then-Vice President Al Gore on the procedure for counting ballots following *Bush v. Gore*.

At her appointment to Parliamentarian in 2012, she was praised by outgoing Parliamentarian Alan Frumin as "down-to-earth," describing her personal knowledge of Capitol staffers; and by Senator Richard Shelby (R-AL) as "smart, diligent ... and she's got integrity." Sen. John Thune (R-SD) said "she's very steeped in the traditions of the Senate and understands how it works here" and Sen. Mark Warner (D-VA) said he had "no question about her ability to read the rules and make the right decisions."

# FY2022 Budget Resolution Agreement Framework

With the House and Senate having adopted a Budget Resolution for FY 2022, the next step is to develop a reconciliation bill within the parameters of the Resolution. House and Senate Democratic leaders have been working together to draft a reconciliation bill that can pass both the House and Senate. House leaders have instructed committees to submit their reconciliation package no later than September 15. There is no deadline for introduction or passage of a reconciliation bill. Many observers predict reconciliation votes will not occur until late October or November.

## Committee on Finance

The Finance Committee will receive an instruction that requires at least \$1 billion in deficit reduction. This will provide the Committee with flexibility to make investment, revenue and offset decisions consistent with the policy recommendations.

### Investments NEW SPENDING

- Paid Family and Medical Leave
- ACA expansion extension and filling the Medicaid Coverage Gap
- Expanding Medicare to include dental, vision, hearing benefits and lowering the eligibility age
- Addressing health care provider shortages (Graduate Medical Education)
- Child Tax Credit/EITC/CDCTC extension
- Long-term care for seniors and persons with disabilities (HCBS)
- Clean energy, manufacturing, and transportation tax incentives
- Pro-worker incentives and worker support
- Health equity (maternal, behavioral, and racial justice health investments)
- Housing incentives
- SALT cap relief
- Other investments within the jurisdiction of the Finance Committee

### Offsets NEW TAXES

- Corporate and international tax reform
- Tax fairness for high-income individuals
- IRS tax enforcement
- Health care savings
- Carbon Polluter Import Fee

## Of Note

### While only a proposal to Congress, President Biden's American Families Plan suggested several tax increases on high-income households, including:

- Increasing the top individual rate from 37 percent to 39.6 percent,
- Taxing unrealized capital gains above \$1 million at death,
- Taxing long-term capital gains and qualified dividends at ordinary rates for individuals making more than \$1 million,
- Taxing carried interest at ordinary rates,
- Disallowing deferral of tax on like-kind exchanges for gains greater than \$500,000,
- Forcing all income above \$400,000 to face the 3.8 percent Medicare tax,
- Extending the limitation of business losses for noncorporate taxpayers
- Increasing IRS funding by \$80 billion over ten years, directing the additional resources towards audits, IT modernization, the establishment of a new information reporting regime for financial institutions, and more.

### The Biden proposal called for extending several tax benefits that passed in recent legislation, including:

- Extend the expansion of the Child Tax Credit under the American Rescue Plan (ARP) through 2025,
- Make the Child Tax Credit fully refundable permanently,
- Extend the ARP's expansion of the Premium Tax Credit,
- Extend the ARP's expansion of the Earned Income Tax Credit,
- Extend the ARP's expansion of the Child and Dependent Care Tax Credit

## Committee on Agriculture, Nutrition, and Forestry

The Agriculture Committee receives an instruction of \$135 billion.

- Agriculture conservation, drought, and forestry programs to help reduce carbon emissions and prevent wildfires
- Rural development and rural co-op clean energy investments
- Agricultural climate research and research infrastructure
- Civilian Climate Corps funding
- Child nutrition
- Debt relief

## Committee on Banking, Housing, and Urban Affairs

The Banking Committee receives an instruction of \$332 billion.

- Creation and preservation of affordable housing by making historic investments in programs like the Housing Trust Fund, HOME, the Capital Magnet Fund, and rural housing
- Improve housing affordability and equity by providing down payment assistance, rental assistance, and other homeownership initiatives
- Community investment, development and revitalization through initiatives like Community Land Trusts, investments in CDBG, zoning, land use, and transit improvements and creating healthy and sustainable housing
- Public Housing Capital Investments and Sustainability

## Committee on Commerce, Science, and Technology

The Commerce Committee receives an instruction of \$83 billion.

- Investments in technology, transportation, and more
- Research, manufacturing, and economic development

- Coastal resiliency, healthy oceans investments, including the National Oceans and Coastal Security Fund
- National Science Foundation research and technology directorate

### Committee on Energy and Natural Resources

The Energy Committee receives an instruction of \$198 billion.

- Clean Electricity Payment Program
- Consumer rebates to weatherize and electrify homes
- Financing for domestic manufacturing of clean energy and auto supply chain technologies
- Federal procurement of energy efficient materials
- Climate research
- Research infrastructure for DOE National Labs
- Hard Rock mining
- Department of Interior programs

### Committee on Environment and Public Works

The Environment and Public Works Committee receives an instruction of \$67 billion.

- Clean Energy Technology Accelerator that would fund low-income solar and other climate-friendly technologies
- Environmental justice investments in clean water affordability and access, healthy ports and climate equity
- EPA climate and research programs
- Federal investments in energy efficient buildings and green materials
- Appalachian Regional Commission and Economic Development Administration economic development and transition programs
- Investments in clean vehicles
- Methane polluter fee to reduce carbon emissions

### Committee on Health, Education, Labor, and Pensions

The HELP Committee receives an instruction of \$726 billion.

- Universal Pre-K for 3 and 4-year olds

- Child care for working families
- Tuition-free community college
- Investments in HBCUs, MSIs, HSIs, TCUs, and ANNHIs
- Increase the maximum Pell grant award
- School infrastructure, student success grants, and educator investments
- Investments in primary care, including Community Health Centers, the National Health Service Corps, the Nurse Corps, and Teaching Health Center Graduate Medical Education
- Health equity (maternal, behavioral, and racial equity health investments)
- Pandemic preparedness
- Workforce development and job training
- Labor enforcement and penalties
- Civilian Climate Corps funding
- Research infrastructure, including for HBCUs, MSIs, HSIs, TCUs, and ANNHIs

### Committee on Homeland Security and Governmental Affairs

The HSGAC Committee receives an instruction of \$37 billion.

- Electrifying the federal vehicle fleet (USPS and Non-USPS)
- Electrifying and rehabilitating federal buildings
- Improving our cybersecurity infrastructure
- Border management investments
- Federal investments in green materials procurement
- Resilience

### Committee on the Judiciary

The Judiciary Committee receives an instruction of \$107 billion.

- Lawful permanent status for qualified immigrants
- Investments in smart and effective border security measures
- Community Violence Intervention Initiative

### Committee on Indian Affairs

The Indian Affairs Committee receives an instruction of \$20.5 billion.

- Native health programs and facilities
- Native education programs and facilities
- Native American housing programs
- Native energy programs
- Native resilience and climate programs
- BIA programs and facilities
- Native language programs
- Native Civilian Climate Corps

### Committee on Small Business and Entrepreneurship

The Small Business Committee receives an instruction of \$25 billion.

- Small business access to credit, investment, and markets

### Committee on Veterans Affairs

The Veterans Affairs Committee receives an instruction of \$18 billion.

- Upgrades to VA facilities

## HOUSE MARKUP SCHEDULE

### THURSDAY, SEPT. 2

- Natural Resources (11 a.m., Remote)
- Oversight (11 a.m)

### THURSDAY, SEPT. 9

- Education and Labor (12 p.m., Remote)
- Science, Space and Technology (Remote)
- Small Business (10 a.m., Hybrid)
- Veterans Affairs (2 p.m.)
- Ways and Means

### FRIDAY, SEPT. 10

- Ways and Means
- Agriculture (Hybrid)
- Homeland Security (Remote)

### MONDAY, SEPT. 13

- Ways and Means
- Energy and Commerce (Hybrid)
- Financial Services (10 a.m.)
- Judiciary

### TUESDAY, SEPT. 14

- Ways and Means
- Transportation and Infrastructure (10 a.m., Hybrid)
- Wednesday, Sept.15
- Submissions due to Budget Committee

# THE BIPARTISAN INFRASTRUCTURE BILL

The Senate-passed infrastructure bill, the Infrastructure Investment and Jobs Act, is a bipartisan compromise bill that amended the House-passed H.R. 3684. Many forward-looking technology and climate provisions in the House bill were not included in the Senate bill. House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) is looking to include many of these provisions in the House reconciliation bill, some of which may be tripped up by the Byrd Rule. Below are key points in the Senate-passed bill.

The Congressional Budget Office estimates that over the 2021-2031 period, enacting Senate Amendment 2137 to H.R. 3684 would decrease direct spending by \$110 billion, increase revenues by \$50 billion, and increase discretionary spending by \$415 billion. On net, the legislation would add \$256 billion to projected deficits over that period.

And here's a breakdown of pay-fors:

- Tapping about \$205 billion in unspent COVID-19 relief aid. Congress has provided about \$4.7 trillion in emergency assistance in response to the pandemic.
- Drawing on about \$53 billion in unemployment insurance aid that the federal government was providing to supplement state unemployment insurance. Dozens of states have declined to take the federal supplement.
- Drawing on about \$49 billion by further delaying a Medicare rule giving beneficiaries rebates that now go to insurers and pharmacy benefit managers. The trade association for drug manufacturers argued that the rule would help reduce patients' out-of-pocket costs, but the Congressional Budget Office had projected that it would increase taxpayer costs by \$177 billion over 10 years.
- Raising an estimated \$87 billion in spectrum auctions for 5G services.
- Restarting a tax on chemical manufacturers that expired in 1995, raising about \$13 billion. The money was used to help fund the cleanup of Superfund sites. Also, selling oil from the Strategic Petroleum Reserve would add about \$6 billion.
- Strengthening tax enforcement when it comes to crypto currencies, raising about \$28 billion.
- Relying on projected economic growth from the investments to bring in about \$56 billion.

## The infrastructure spending plan negotiated by the White House and a bipartisan group of lawmakers carries a \$1 trillion price tag. Major highlights:

	PROGRAM	AMOUNT
	ROADS, BRIDGES, MAJOR PROJECTS	\$110 BILLION
	POWER GRID INFRASTRUCTURE	\$73 BILLION
	PASSENGER, FREIGHT RAIL	\$66 BILLION
	BROADBAND INFRASTRUCTURE	\$65 BILLION
	WATER INFRASTRUCTURE	\$55 BILLION
	PUBLIC TRANSIT	\$39 BILLION

	PROGRAM	AMOUNT
	INFRASTRUCTURE RESILIENCE	\$46 BILLION
	AIRPORTS	\$25 BILLION
	PORTS AND WATERWAYS	\$17 BILLION
	SAFETY	\$11 BILLION
	ELECTRIC CAR/BUS INFRASTRUCTURE	\$15 BILLION

Figures reflect proposed new funding above baseline spending levels.

Source: Documents obtained by The Associated Press

# APPROPRIATIONS

Lawmakers are unlikely to complete their work on appropriations before the Sept. 30 end of the current fiscal year, so talk will turn to a continuing resolution to fund the federal government's operations when lawmakers return to Washington. Democrats could use a stopgap spending bill to force a vote on suspending or increasing the debt limit, which came back into effect Aug. 1 and must be addressed to prevent the federal government from defaulting on obligations that it already incurred. But they'd need 10 GOP Senators to go along with them.

## Appropriations STATUS: FY 2022 House

Item	House	Senate
302(b)	Approved by full committee on June 29 by a vote of 33 to 25	N/A
Agriculture	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	Approved by subcommittee on August 2; approved by full committee on August 4 by a 25-5 vote
Commerce, Justice, Science	House passed rule for bill on July 28 but did not complete consideration	N/A
Defense	Approved by full committee on July 13 by a 33 to 23 vote	N/A
Energy and Water Development	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	Approved by full committee on August 4 by a 25-5 vote
Financial Services and General Government	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	N/A
Homeland Security	Approved by full committee on July 13 by a vote of 33 to 24	N/A
Interior, Environment	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	N/A
Labor, HHS, Education	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	N/A
Legislative Branch	Passed by House on July 28 by a 215-207 vote	N/A
Military Construction, VA	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	Approved by full committee on August 4 by a 25-5 vote
State, Foreign Operations	Passed by House on July 28 by a 217-212 vote	N/A
Transportation, HUD	Passed by the House on July 29 as part of seven-bill minibus by a 219-208 vote	N/A

Sources: House Appropriations Committee, Senate Appropriations Committee, [Congress.gov](https://www.congress.gov). All dates are in 2021 unless noted otherwise.

# What's in the Appropriations Bills?

## Ag-FDA Totals \$26.6 Billion in House, \$25.9 Billion in Senate

Agency/Program (in billions)	FY 2021	White House Request	House	Senate
Nutrition programs	\$145.7	\$157.1	\$139.3	\$139.6
Farm production and conservation programs	43.4	38.5	38.5	38.6
Agricultural programs	7.5	8.6	8.2	8.3
Rural development	3.2	4.6	4.7	3.6
Foreign assistance	2.2	2.0	2.2	2.2
Food and Drug Administration	6.0	6.5	6.3	6.2

### House provisions

- Provide additional "such sums" appropriation for SNAP for unanticipated costs in Q4
- Direct USDA to prohibit companies owned by China, Russia, Iran, or North Korea from purchasing agricultural land in the U.S.

### Senate provisions

- Provide \$7 billion in natural disaster assistance for crop and livestock losses in 2020 and 2021
- Require any genetically engineered animals to be labeled as such in the marketplace
- Allow states to exempt eligible schools from whole grain requirements

Notes: Table includes mandatory funding and user fees. Figures are based on committee-approved bills. The Commodity Futures Trading Commission is funded in the Ag-FDA bill in the House and Financial Services bill in the Senate. SNAP – Supplemental Nutrition Assistance Program

Sources: H.R. 4356 and House Appropriations Committee report; S. 2599 and Senate Appropriations Committee report

## House Commerce-Justice-Science Bill Totals \$81.3 Billion

Department/Agency (in billions)	FY 2021	White House Request	House
Justice Department	\$33.8	\$36.0	\$36.4
NASA	23.3	24.8	25.0
Commerce Department	8.9	11.6	10.9
National Science Foundation	8.5	10.2	9.6

### Measure also would

- Provide \$753.8 million for Violence Against Women Act programs, a 48% increase from fiscal 2021
- Include \$409.5 million for programs under the 2018 criminal justice overhaul law ([Public Law 115-391](#))

- Block DOJ grant funding unless states, local governments meet specified conditions, such as eliminating racial profiling, deadly force, chokeholds, and "no-knock" warrants in drug cases
- Require at least 25% of [Byrne JAG](#) funds be used for activities aimed at improving police practices
- Bar the use of funds to host official visitors from China at NASA facilities

Notes: Some figures in the table include mandatory funds. Figures are based on committee-approved bill. JAG – Justice Assistance Grant  
Sources: H.R. 4505, House Appropriations Committee report and news release.

## House Defense Bill Would Provide \$705.9 Billion

Account (in billions)	FY 2021	White House Request	House
Operation and maintenance	\$192.2	\$253.6	\$254.3
Personnel	157.8	167.3	166.8
Procurement	136.5	132.5	134.3
RDT&E	107.1	112.0	110.4

### Measure also would

- Support a 2.7% military pay raise
- Repeal the 2001 and 2002 authorizations for the use of military force

- Bar funds for Guantanamo Bay detention facility operations after Sept. 30, 2022
- Prohibit the use of funds to support the activities of China's Wuhan Institute of Virology

- Support active duty end strength of 1,346,400 personnel

Notes: Some figures in the table include mandatory funds. Figures are based on committee-approved bill. JAG – Justice Assistance Grant  
Sources: H.R. 4505, House Appropriations Committee report and news release

## DHS Would Get \$52.8 Billion in House Bill

Agency (in billions)	FY 2021	White House Request	House
Federal Emergency Management Agency	\$21.7	\$24.0	\$23.8
Customs and Border Protection	15.0	14.6	14.1
Coast Guard	11.0	10.9	11.2
Transportation Security Administration	8.3	8.5	8.5
Immigration and Customs Enforcement	8.0	8.0	7.9
Secret Service	2.4	2.6	2.6
Cybersecurity and Infrastructure Security Agency	2.0	2.1	2.4

### Measure also would

- Rescind more than \$2 billion in previous funds for wall construction along U.S.-Mexico border
- Bar the department's use of funds to deny entry into the U.S. based solely on personal marijuana use
- Prohibit DHS support for local law enforcement at protests unless the secretary approves it

- Provide a total of \$76.2 billion when including disaster relief funds and fee-funded programs

Notes: Table includes \$18.8 billion outside of base spending for disaster relief; excludes mandatory and fee-funded programs. Figures are based on committee-approved bill. DHS – Homeland Security Department  
Sources: H.R. 4431, House Appropriations Committee report, and news release

## Energy & Water Has \$53.2 Billion in House, \$53.6 Billion in Senate

Department/Agency (in billions)	FY 2021	White House Request	House	Senate
<b>Energy Department</b>	<b>\$39.6</b>	<b>\$46.6</b>	<b>\$45.1</b>	<b>\$45.0</b>
National Nuclear Security Administration	19.7	19.7	20.2	20.0
Energy programs	12.4	18.8	16.8	16.9
Environmental and other defense activities	7.3	8.0	8.4	8.3
<b>U.S. Army Corps of Engineers</b>	<b>7.8</b>	<b>6.8</b>	<b>8.7</b>	<b>9.0</b>

### House provisions

- Enact Biden's proposal to revamp Energy Department office to focus on carbon reduction in difficult-to-decarbonize sectors
- \$210 million for the Appalachian Regional Commission, a \$30 million increase
- Bar relocation of Army Corps civil works functions out of Defense Department

### Senate provisions

- \$450 million in emergency Interior funds to address drought in western U.S.
- Award grants to tap older Americans to support Energy Department programs
- Authorize a pilot program to construct a consolidated interim nuclear waste storage facility in a consenting state

Note: Figures are discretionary funding and based on committee-approved bills.  
Sources: H.R. 4549 and House Appropriations Committee report; S. 2605 and Senate Appropriations Committee report

## House Financial Services Bill Totals \$29.1 Billion

Agency/Account (in billions)	FY 2021	White House Request	House
<b>Treasury Department</b>	<b>\$13.5</b>	<b>\$15.4</b>	<b>\$15.4</b>
Internal Revenue Service	11.9	13.6	13.6
<b>Federal judiciary</b>	<b>8.2</b>	<b>8.6</b>	<b>8.6</b>
<b>Securities and Exchange Commission</b>	<b>1.9</b>	<b>2.0</b>	<b>2.0</b>
<b>Small Business Administration</b>	<b>0.9</b>	<b>1.0</b>	<b>1.0</b>

### Measure also would

- Provide \$500 million for grants to states to make election security improvements
- Include \$416.9 million "program integrity" adjustment to increase tax collections, reduce the tax gap
- Create a commission on name changes for federal property that's "inconsistent" with DEI values

- Require White House Office of Management and Budget to make apportionment documents public
- Omit bans on the use of D.C. funding for abortion services and to legalize marijuana

Notes: Judiciary funding includes mandatory accounts, Securities and Exchange Commission collects fees to offset its appropriation. Figures are based on committee-approved bill. DEI - Diversity, equity, and inclusion  
Sources: H.R. 4345; House Appropriations Committee report and news release

## House Interior-Environment Bill Includes \$43.4 Billion

Department/Agency (in billions)	FY 2021	White House Request	House
<b>Interior Department</b>	<b>\$13.3</b>	<b>\$15.9</b>	<b>\$15.6</b>
Environmental Protection Agency	9.2	11.2	11.3
Indian Health Service (HHS)	6.2	15.9	8.1
U.S. Forest Service (USDA)	5.4	6.3	6.2

### Funding includes

- \$5.66 billion in Interior Department and USFS funding to combat wildfires, including reserve funds
- \$3.23 billion for the Clean Water and Drinking Water state revolving funds, an increase of \$464 million

### Measure also would

- Allocate \$900 million in mandatory funding from the Land and Water Conservation Fund
- Block any offshore oil and gas leasing or exploration in areas not included in a 2017-2022 [leasing plan](#)
- Omit language requiring agencies to treat biomass energy as carbon neutral

Notes: Table includes discretionary funding only and doesn't reflect mandatory spending or reserve funds. Figures are based on committee-approved bill. USDA - Agriculture Department; HHS - Health and Human Services Department  
Sources: H.R. 4372; House Appropriations Committee report and news release

## House Labor-HHS-Education Bill Would Provide \$237.5 Billion

Department/Agency (in billions)	FY 2021	White House Request	House
<b>Health and Human Services Department</b>	<b>\$97.0</b>	<b>\$120.0</b>	<b>\$119.8</b>
Administration for Children and Families	41.2	46.9	47.6
National Institutes of Health	42.9	51.7	49.4
Centers for Disease Control and Prevention	7.9	9.6	10.6
<b>Education Department</b>	<b>73.5</b>	<b>102.8</b>	<b>102.8</b>
<b>Labor Department</b>	<b>12.5</b>	<b>14.3</b>	<b>14.7</b>

### Measure also would

- Omit the Hyde amendment that prohibits use of federal funds for abortions
- Require Title X grantees to provide counseling or referrals for abortion when requested
- Block funding for Wuhan Institute of Virology and for "gain-of-function" research by foreign adversaries
- Make DACA recipients and others with temporary protected status eligible for federal financial aid
- Limit federal funding for for-profit colleges and charter schools
- Block Trump-era rule allowing states to use federal grants to privatize job-search services

Notes: HHS agencies reflect total program level funding. Figures are based on committee-approved bill. DACA - Deferred Action for Childhood Arrivals  
Sources: H.R. 4502; House Appropriations Committee press release, draft committee report, final report

## House Legislative Branch Bill Would Provide \$4.8 Billion

Chamber/Office (in billions)	FY 2021	White House Request	House
House of Representatives	\$1,476.6	\$1,736.6	\$1,715.0
Library of Congress	757.3	801.0	794.4
Architect of the Capitol (excluding Senate)	585.5	785.4	738.3
Government Accountability Office	661.1	744.3	729.3
Capitol Police	515.5	619.2	604.0
Government Publishing Office	117.0	125.5	125.5
Congressional Budget Office	57.3	61.0	61.0

### Bill omits Senate funding, which will be set by that chamber, and would

- Block automatic cost-of-living adjustments for members of Congress
- Allow DACA recipients to work for Capitol Hill offices
- Require removal of Confederate and other statues, Roger Taney bust from Capitol

- Calls for plaque honoring law enforcement who responded to Jan. 6 attack on Capitol

Notes: Requests are submitted by entities and incorporated in White House budget request. Figures are based on committee-approved bill. DACA – Deferred Action for Childhood Arrivals  
Sources: H.R. 4346, House Appropriations Committee report, and news release

## MilCon-VA Gets \$124.5 Billion in House, \$124.4 Billion in Senate

Department/Agency (in billions)	FY 2021	White House Request	House	Senate
Veterans Affairs Department (FY 2022 only)	\$104.4	\$113.0	\$113.1	\$112.9
Military construction	8.1	9.8	10.9	11.0

### House provisions

- Omit policy riders barring closure of Guantanamo Bay naval station
- Permanently allow VA to cover fertility treatments and adoptions expenses
- Provide \$111.3 billion in advance fiscal 2023 funds for Veterans Health Administration

### Senate provisions

- Omit policy riders barring closure of Guantanamo Bay naval station
- Allow VA to cover fertility treatments and adoption expenses with funds under the bill
- Bar funds to deny or interfere with veterans' participation in state-approved medical marijuana programs

- Provide \$111.3 billion in advance fiscal 2023 funds for Veterans Health Administration

Notes: Figures are discretionary and based on committee-approved bills. VA topline reflects total available for fiscal 2022, including advance from fiscal 2021 law. Sources: H.R. 4355 and House Appropriations Committee report; S. 2604 and Senate Appropriations Committee report

## House State-Foreign Ops Bill Includes \$62.2 Billion

Agency/Account (in billions)	FY 2021	White House Request	House
Bilateral Economic Assistance	\$26.5	\$29.6	\$29.6
State Department	16.8	18.3	18.2
International Security Assistance	9.0	9.2	9.0
Multilateral Assistance	2.0	3.6	4.1
U.S. Agency for International Development	1.7	1.9	1.8

### Measure also would

- Bar sanctions waivers related to the Nord Stream 2 pipeline through fiscal 2022
- Omit the Helms amendment that prevents foreign aid funding from being used for abortion
- Block the Mexico City Policy, which banned funds for NGOs that perform or promote abortions

- Bar the use of funds to support the activities of China's Wuhan Institute of Virology
- Increase Ex-Im's default rate cap to 4%, from 2%, through the end of fiscal 2022

Notes: Figures are based on committee-approved bill. NGO – nongovernmental organizations; Ex-Im – Export-Import Bank  
Sources: H.R. 4373, House Appropriations Committee report, and news release

## House Transportation-HUD Bill Would Provide \$162.6 Billion

Department/Agency (in billions)	FY 2021	White House Request	House
Transportation Department	\$86.7	\$87.0	\$105.7
Federal Highway Administration	49.1	47.1	62.5
Federal Aviation Administration	18.0	18.5	18.9
Federal Transit Administration	13.0	13.5	15.5
Federal Railroad Administration	2.8	4.0	4.1
Housing and Urban Development Department	49.6	56.8	56.5

### Measure also would

- Increase highway and transit funding consistent with the "INVEST in America Act" (H.R. 3684)
- Provide \$100 million for a new Thriving Communities program to address transportation barriers
- Include funds to purchase more than 300 zero-emission buses and 400 diesel buses
- Provide \$2.7 billion for Amtrak and \$625 million for new program to improve passenger rail service

Notes: Headline and table figures reflect total budgetary resources for the Transportation Department. Figures are based on committee-approved bill.  
Sources: H.R. 4550, House Appropriations Committee report, and news release

# MUSINGS

## **Afghanistan**

Exits are ugly. Every service member is out of the country but Americans remain. The House Foreign Affairs Committee will begin hearings this month on the withdrawal in Afghanistan with testimony requested from Secretary of State Antony Blinken, the panel's chairman said. On the money side, the latest draft of the House National Defense Authorization Act cuts all but \$350 million dollars of an initial request of \$3.3 billion for "contract close outs and other close-out operations" for Afghanistan.

## **Antitrust**

The House has passed a package of six antitrust bills out of the House Judiciary Committee to address the power of large technology companies such as Google, Amazon, Apple and Facebook. Given the broad disagreement on this package of bills, it is unlikely that any of the bills will pass the Congress. The Democratic Antitrust Subcommittee chairs of these bills have already begun to work with their colleagues on both sides of the aisle on a narrower, more targeted bill – the Open App Markets Act -- that has a better opportunity to be added to a bill before the end of the year.

## **Buy American**

Expect lots of language in Reconciliation directed primarily at China. Allies and trading partners will be working on exemptions. On the Admin side, the White House has issued a notice of proposed rulemaking with the goal of achieving, "the most robust changes to the implementation of the Buy American Act in almost 70 years."

## **Cannabis**

With more states legalizing recreational use, let alone medicinal, Senate Majority Leader Chuck Schumer recently released a much-anticipated discussion draft of a bill to legalize marijuana. Tough to see a 60 voter here in the Senate. But...the budgetary impact of legalization could make it ripe inclusion in a reconciliation package. Sure would be a tasty payoff, but unclear if there are 50 Democratic Senators that would support it.

## **China**

Speaking of China, Senate Majority Leader Schumer passed his Innovation and Competition Act (S. 1260) but the House has other ideas. Seems like a good election year issue doesn't it?

## **CDC Eviction Ban**

Democratic lawmakers and the White House are searching to shore up safeguards for millions of tenants facing a housing crisis after the Supreme Court blocked an eviction ban imposed by the Biden administration. Speaker Nancy Pelosi said the House was considering "possible legislative remedies" as more than 60 House Democrats demanded that she and Senate Majority Leader Chuck Schumer work to revive the national eviction moratorium. Yet the hang up is at the distribution level in the States where about \$40 billion in federal aid has yet to reach tenants.

## **Confirmations**

Slow going for the Administration here. Not unheard of but surprising given the Dem majority in the Senate.

## **Criminal Justice Reform**

Self-imposed deadlines continue to be missed, but conversations continue. October surprise? Maybe.

## **Crypto**

Congress has woken up, not just to the potential payoffs in IRS enforcement, but to the industry as a whole. Regulatory action and increased Congressional oversight forthcoming, and potential legislation as well.

## **Cyber**

Solarwinds may have fallen from the headlines but the impact is just beginning to be understood. More cash coming. The Biden Administration, while building an aggressive team to take on big tech companies, is asking those same companies to work with the feds to address cyberattacks. Heeding the call, Microsoft, Google, Amazon, IBM and Apple have all pledged new cybersecurity projects and spending.

## **Debt Limit**

GOP has firmly said they won't help here. Dem's say they can't believe the GOP would let the Country default. Dems are wrong, and will have to devise a solution on their own, along with perhaps a few Republican Members and Senators not standing for re-election who are repulsed by the prospect of the United States defaulting on its debts. Should that fail, reconciliation is the only answer.

## **Family Office**

A rather quiet corner of the financial world is, thanks to a Hedge Fund masquerading as a Family Office, is seemingly getting

its moment in the sun. At the end of July New York Congresswoman Alexandria Ocasio-Cortez introduced and passed out of committee HR 4620, the Family Office Regulation Act of 2021. Though HR 4620 is likely to pass the House should it reach the floor, we believe that the prospects for eventual Senate passage of HR 4620 are currently very slim this year. That said, even if HR 4620 never becomes law, the positions taken by the bill's supporters in the Financial Services Committee will impact the way that the regulators at the SEC and CFTC choose to address regulation of family office issues. And we've noticed that once a bill makes it out of committee, it generally becomes the floor, not the ceiling of the debate.

## **FED Chair**

To the great consternation of many but not all Democratic progressives, Jerome Powell is likely to be appointed to serve another term.

## **Immigration**

Can you jam something into reconciliation? Cause if you can't we don't see 60 votes for much here. Settling Afghan refugees will consume attention and resources through the Fall. GOP will keep the focus on the Southern Border where "enforcement encounters" hit over 212,000 for the Month of July. Oh and, yea routine service for a Passport really does take 18 weeks.

## **Jan 6th**

Expect hearings thru the Fall. Acrimony will not die down. Trump will be subpoenaed. Won't show.

## **Jobless Aid**

Democrats have no plan to extend unemployment insurance benefits before they end on Labor Day, despite the jump in the delta variant's spread. House Ways and Means Chair Richard Neal (D-Mass.), whose committee would be responsible for pushing the end date beyond Sept. 6, cited the lack of appetite from Biden's White House and debates over whether the \$300 weekly benefit is still needed with falling jobless figures and the return of school.

## **NDAA**

Consideration this fall of Congress' annual defense policy will be dominated by ongoing inter-party and intra-party debate over the topline spending level and Afghanistan-related matters, but it will likely get to the president's desk by not later than December.

## Section 230

Neither party agrees on the best way to address Section 230, which protects online intermediaries from several laws that could be used to hold these entities liable for what users say or do on their platforms. Republicans argue that section 230 is being used to suppress conservative speech through content moderation and de-platforming, while Democrats argue that it is being used to avoid content moderation and to allow the free reign of disinformation, hate speech, and calls for violence. Congressional Democrats and Republicans have introduced legislation to repeal, revise, or limit section 230, with nine bills being introduced in 2021. Based on the different approaches and positioning on Section 230 and the compressed schedule of high priorities before Congress, it is highly unlikely any of the existing proposals will be enacted into law.

## Trade

Slow movement by the Administration to walk back tariffs only aggravates supply chain issues (and impacted US allies). The Biden Administration has demonstrated a willingness to use economic and other sanctions as a foreign policy tool, but with mixed results with respect to outcomes.

## Student Loans

Lots of pressure to do more here by progressive Democratic members. But even in Washington bills gotta be paid. The moratorium on student debt payments has allowed over 43 million borrowers nationwide the opportunity to temporarily stop payments amid the ongoing pandemic. But, as of now, borrowers are still scheduled to resume paying off the more than \$1.6 trillion in debt owed to the federal government when the moratorium lapses at the end of January.

## Taxes

Remember, One man's payfor is another's tax hike. Corporate rate will increase - gotta pay for all the new stuff, well maybe just most of the new stuff - TCJA-tax provisions, such as,

BEAT and FDII will see increased attention, while an effort will be made to fund the "Blue State" promise of SALT. We're told tax increases only for those making of 400K. That could slip lower.

## Vaccine Mandates

The Pentagon has mandated vaccines. Some businesses are threatening to fine employees who don't get vaccinated. And some businesses are requiring proof of vaccination to enter the premises. This does look to become a federal issue.

## Voting Rights

It's a battle between both parties here and neither is giving any quarter. Expect lots of fund raising appeals from both sides on the issue, with little expected compromise. The last reauthorization of Voting Rights Act in 2006 saw bipartisan support, but any such bipartisanship this time is unlikely.

## Deadlines & Expirations

### Covid-19 Relief Laws & Executive Actions Extended Aid

End date	Program
Sept. 6	Extra \$300 per week federal pandemic unemployment benefit, along with: <ul style="list-style-type: none"> <li>• Pandemic Unemployment Assistance benefits, which are available for as long as 79 weeks</li> <li>• Pandemic Emergency Unemployment Compensation program available for 53 weeks</li> </ul>
Sept. 30	Employer tax credits for providing emergency sick leave and family leave 15% benefit increase for Supplemental Nutrition Assistance Program COBRA premium subsidies and Veterans Affairs Department cost-sharing waiver
Oct. 3	Federal eviction moratorium from the Centers for Disease Control and Protection <ul style="list-style-type: none"> <li>• A federal court could strike down the moratorium before this date</li> </ul>
Dec. 31	Expansions of earned income tax, child tax, and child and dependent care tax credits Employee retention credit Medicare sequestration suspension
Jan. 31	Student loan repayment and interest accrual suspension

Note: Latest extension of federal eviction moratorium covers only areas with high rates of Covid-19 community transmission

### Other 2021 Key Deadlines and Expirations

Date	Event
Sept. 15	House and Senate committees to report their portions of Democrats' reconciliation package Budget committees will compile the proposals that could total \$3.5 trillion under budget resolution
Sept. 27	Deadline for House consideration of the Senate-passed bipartisan infrastructure package
Sept. 30	Fiscal 2021 funding and other major programs expire, including: <ul style="list-style-type: none"> <li>• Surface transportation authorization (FAST Act)</li> <li>• National Flood Insurance Program</li> <li>• Transportation Security Administration</li> <li>• Temporary Assistance for Needy Families</li> </ul>
October-November	Debt limit could be reached, according to Congressional Budget Office <a href="#">estimate</a> <ul style="list-style-type: none"> <li>• Treasury Department using "extraordinary measures" to extend deadline since Aug. 1</li> <li>• Congressional Democrats reportedly plan to include extension in stop-gap spending bill, though Senate Republicans have vowed to oppose such a move</li> </ul>
Dec. 31	Several tax extenders, including for energy and mortgage insurance premiums, expire

Notes: FAST Act — Fixing America's Surface Transportation Act, which was extended an additional year.

# SUPREME COURT FALL TERM

Thus far, 31 cases have been accepted for argument during the Supreme Court's October 2021 Term. Eighteen of those cases are set for argument in October or November 2021. The remaining thirteen cases have been accepted for consideration by the Court but have not yet been set for argument. The ten cases highlighted below, a majority of which are not yet set for argument, raise issues that may be of particular importance to a broader audience.

## Supreme Court Merits Cases Currently Set for Argument

### October Cases

#### **Criminal law — *Wooden v. U.S.*,** No. 20-5279 [Arg: 10.4.2021]

Issue: Whether offenses that were committed as part of a single criminal spree, but sequentially in time, were "committed on occasions different from one another" for purposes of a sentencing enhancement under the Armed Career Criminal Act.

#### **Environmental law — *Mississippi v. Tennessee*,** No. 220143 [Arg: 10.4.2021]

Issues: (1) Whether the Court will grant Mississippi leave to file an original action to seek relief from respondents' use of a pumping operation to take approximately 252 billion gallons of high-quality groundwater; (2) whether Mississippi has sole sovereign authority over and control of groundwater naturally stored within its borders, including in sandstone within Mississippi's borders; and (3) whether Mississippi is entitled to damages, injunctive, and other equitable relief for the Mississippi intrastate groundwater intentionally and forcibly taken by respondents.

#### **Criminal Law — *Brown v. Davenport*,** No. 20-826 [Arg: 10.5.2021]

Issue: Whether a federal habeas court may grant relief based solely on its conclusion that the test from *Brecht v. Abrahamson* is satisfied, as the U.S. Court of Appeals for the 6th Circuit held, or whether the court must also find that the state court's application of *Chapman v. California* was unreasonable under 28 U.S.C. § 2254(d) (1), as the U.S. Courts of Appeals for the 2nd, 3rd, 7th, 9th and 10th Circuits have held.

#### **Business law – arbitration —** ***Servotronics Inc. v. Rolls-Royce PLC*,** No. 20-794 [Arg: 10.5.2021]

Issue: Whether the discretion granted to district courts in 28 U.S.C. § 1782(a) to render assistance in gathering evidence for use in "a foreign or international tribunal" encompasses private commercial arbitral tribunals, as the U.S. Courts of Appeals for the 4th and 6th Circuits have held, or excludes such tribunals without expressing an exclusionary intent, as the U.S. Courts of Appeals for the 2nd, 5th and, in the case below, the 7th Circuit, have held.

#### **National security — *U.S. v. Zubaydah*,** No. 20-827 [Arg: 10.6.2021]

Issue: Whether the U.S. Court of Appeals for the 9th Circuit erred when it rejected the United States' assertion of the state-secrets privilege based on the court's own assessment of potential harms to the national security, and required discovery to proceed further under 28 U.S.C. 1782(a) against former Central Intelligence Agency contractors on matters concerning alleged clandestine CIA activities.

#### **Healthcare — *Cameron v. EMW Women's Surgical Center, P.S.C.*,** No. 20-601 [Arg: 10.12.2021]

Issue: Whether a state attorney general vested with the power to defend state law should be permitted to intervene after a federal court of appeals invalidates a state statute when no other state actor will defend the law.

#### **Criminal law — *Hemphill v. New York*,** No. 20-637 [Arg: 10.12.2021]

Issue: Whether, or under what circumstances, a criminal defendant, whose argumentation or introduction of evidence at trial "opens the door" to the admission of responsive evidence

that would otherwise be barred by the rules of evidence, also forfeits his right to exclude evidence otherwise barred by the confrontation clause.

#### **Criminal law — *U.S. v. Tsarnaev*,** No. 20-443 [Arg: 10.13.2021]

Issues: (1) Whether the U.S. Court of Appeals for the 1st Circuit erred in concluding that Dzhokhar Tsarnaev's capital sentences must be vacated on the ground that the district court, during its 21-day voir dire, did not ask each prospective juror for a specific accounting of the pretrial media coverage that he or she had read, heard or seen about Tsarnaev's case; and (2) whether the district court committed reversible error at the penalty phase of Tsarnaev's trial by excluding evidence that Tsarnaev's older brother was allegedly involved in different crimes two years before the offenses for which Tsarnaev was convicted.

#### **Pensions — *Babcock v. Kijakazi*,** No. 20-480 [Arg: 10.13.2021]

Issue: Whether a civil service pension received for federal civilian employment as a "military technician (dual status)" is "a payment based wholly on service as a member of a uniformed service" for the purposes of the Social Security Act's windfall elimination provision.

### November Cases

#### **Criminal law — *Shinn v. Ramirez*,** No. 20-1009 [Arg: 11.1.2021]

Issue: Whether application of the equitable rule the Supreme Court announced in *Martinez v. Ryan* renders the Antiterrorism and Effective Death Penalty Act, which precludes a federal court from considering evidence outside the state-court record when reviewing the merits of a claim for

habeas relief if a prisoner or his attorney has failed to diligently develop the claim's factual basis in state court, inapplicable to a federal court's merits review of a claim for habeas relief.

**Fourth Amendment — *Thompson v. Clark***, No. 20-659 [Arg: 11.1.2021]

Issue: Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has "formally ended in a manner not inconsistent with his innocence," as the U.S. Court of Appeals for the 11th Circuit decided in *Laskar v. Hurd*, or that the proceeding "ended in a manner that affirmatively indicates his innocence," as the U.S. Court of Appeals for the 2nd Circuit decided in *Lanning v. City of Glens Falls*.

**Business law – arbitration — *Badgerow v. Walters***, No. 20-1143 [Arg: 11.2.2021]

Issue: Whether federal courts have subject-matter jurisdiction to confirm or vacate an arbitration award under Sections 9 and 10 of the Federal Arbitration Act when the only basis for jurisdiction is that the underlying dispute involved a federal question.

**First Amendment — *Houston Community College System v. Wilson***, No. 20-804 [Arg: 11.2.2021]

Issue: Whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member's speech.

**Second Amendment — *New York State Rifle & Pistol Association Inc. v. Bruen***, No. 20-843 [Arg: 11.3.2021]

Issue: Whether the state of New York's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment.

**Business law – copyright — *Unicolors, Inc v. H&M Hennes & Mauritz, LP***, No. 20-915 [Arg: 11.8.2021]

Issue: Whether the U.S. Court of Appeals for the 9th Circuit erred in breaking with its own prior precedent

and the findings of other circuits and the Copyright Office in holding that 17 U.S.C. § 411 requires referral to the Copyright Office where there is no indicia of fraud or material error as to the work at issue in the subject copyright registration.

**Technology — *Federal Bureau of Investigation v. Fazaga***, No. 20-828 [Arg: 11.8.2021]

Issue: Whether Section 1806(f) of the Foreign Intelligence Surveillance Act of 1978 displaces the state-secrets privilege and authorizes a district court to resolve, in camera and ex parte, the merits of a lawsuit challenging the lawfulness of government surveillance by considering the privileged evidence.

**Securities — *Pivotal Software v. Superior Court of CA***, No. 20-1541 [Arg: 11.9.2021]

Issue: Whether the Private Securities Litigation Reform Act's discovery-stay provision applies to a private action under the Securities Act of 1933 in state or federal court, or solely to a private action in federal court.

**First Amendment — *City of Austin, Texas v. Reagan National Advertising of Texas Inc.***, No. 20-1029 [Arg: 11.10.2021]

Issue: Whether the Austin city code's distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, is a facially unconstitutional content-based regulation under *Reed v. Town of Gilbert*.

**Merits Cases Accepted, But Not Yet Set, for Argument**

**Healthcare**

***Dobbs v. Jackson Women's Health Organization***, No. 19-1392

Issue: Whether all pre-viability prohibitions on elective abortions are unconstitutional.

***Gallardo v. Marsteller***, No. 20-1263

Issue: Whether the federal Medicaid Act provides for a state Medicaid program to recover reimbursement for Medicaid's payment of a beneficiary's past medical expenses by taking funds

from the portion of the beneficiary's tort recovery that compensates for future medical expenses.

***Becerra v. Empire Health Foundation***, No. 20-1312

Issue: Whether, for purposes of calculating additional payment for hospitals that serve a "significantly disproportionate number of low-income patients," the secretary of health and human services has permissibly included in a hospital's Medicare fraction all of the hospital's patient days of individuals who satisfy the requirements to be entitled to Medicare Part A benefits, regardless of whether Medicare paid the hospital for those particular days.

***American Hospital Association v. Becerra***, No. 20-1114

Issues: (1) Whether deference under *Chevron U.S.A. v. Natural Resources Defense Council* permits the Department of Health and Human Services to set reimbursement rates based on acquisition cost and vary such rates by hospital group if it has not collected adequate hospital acquisition cost survey data; and (2) whether petitioners' suit challenging HHS's adjustments is precluded by 42 U.S.C. § 1395l(t)(12).

**Immigration**

***Johnson v. Arteaga-Martinez***, No. 19-896

Issue: Whether an alien who is detained under 8 U.S.C. § 1231 is entitled by statute, after six months of detention, to a bond hearing at which the government must prove to an immigration judge by clear and convincing evidence that the alien is a flight risk or a danger to the community.

***Garland v. Gonzalez***, No. 20-322

Issues: (1) Whether an alien who is detained under 8 U.S.C. § 1231 is entitled by statute, after six months of detention, to a bond hearing at which the government must prove to an immigration judge that the alien is a flight risk or a danger to the community; and (2) whether, under 8 U. S. C. § 1252(f)(1), the courts below

had jurisdiction to grant classwide injunctive relief.

**Patel v. Garland**, No. 20-979

Issue: Whether 8 U.S.C. 1252(a)(2)(B) (i) preserves the jurisdiction of federal courts to review a nondiscretionary determination that a noncitizen is ineligible for certain types of discretionary relief.

### Discrimination

**CVS Pharmacy Inc. v. Doe**,

No. 20-1374

Issue: Whether Section 504 of the Rehabilitation Act of 1973 — and by extension Section 1557 of the Patient Protection and Affordable Care Act, which incorporates the “enforcement mechanisms” of other federal antidiscrimination statutes — provides a disparate-impact cause of action for plaintiffs alleging disability discrimination.

**Cummings v. Premier Rehab Keller, P.L.L.C.**, No. 20-219

Issue( Whether the compensatory damages available under Title VI of the Civil Rights Act of 1964 and the statutes that incorporate its remedies for victims of discrimination, such as the Rehabilitation Act and the Affordable Care Act, include compensation for emotional distress.

### Education/religion

**Carson v. Makin**, No. 20-1088

Issue: Whether a state violates the religion clauses or equal protection clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction.

### Pensions

**Hughes v. Northwestern University**,

No. 19-1401

Issue: Whether allegations that a defined-contribution retirement plan paid or charged its participants fees that substantially exceeded fees for alternative available investment products or services are sufficient to state a claim against plan fiduciaries for breach of the duty of prudence under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1104(a)(1)(B).

### Fifth Amendment

**U.S. v. Vaello-Madero**, No. 20-303

Issue: Whether Congress violated the equal-protection component of the due process clause of the Fifth Amendment by establishing Supplemental Security Income — a program that provides benefits to needy aged, blind and disabled individuals — in the 50 states and the District of Columbia, and in the Northern Mariana Islands pursuant to a negotiated covenant, but not extending it to Puerto Rico.

### Criminal law

**U.S. v. Taylor**, No. 20-1459

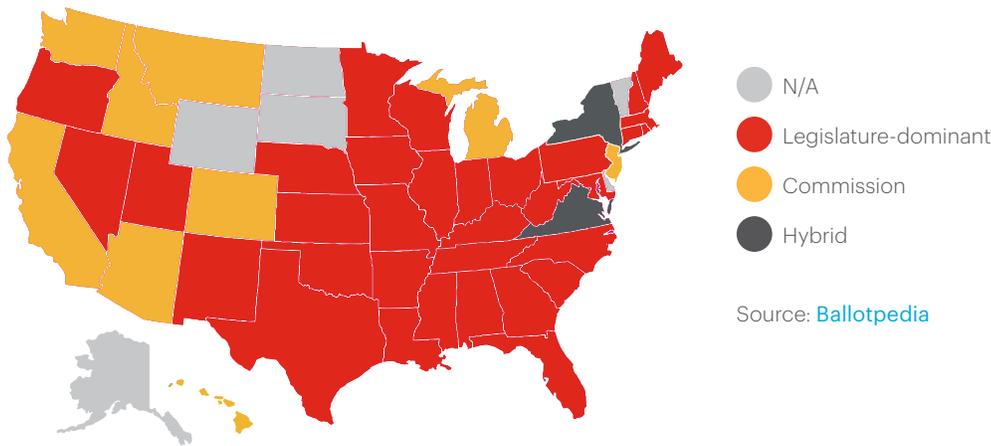
Issue: Whether 18 U.S.C. § 924(c)(3) (A)’s definition of “crime of violence” excludes attempted Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a).

# REDISTRICTING

Most states are required to draw new congressional district lines every 10 years following completion of United States Census (states with one congressional district are not required to redistrict). In 33 of these states, state legislatures play the dominant role in congressional redistricting. In eight states, commissions draw congressional district lines. In two states, hybrid systems are used, in which the legislature shares redistricting authority with a commission. See the map below for further details.

Winners	Losers
CO +1	CA -1
FL +1	IL -1
MT +1	MI -1
NC +1	NY -1
OR +1	OH -1
TX +2	PA -1
	WV -1

## Congressional redistricting methods in the United States



Source: [Ballotpedia](#)

The congressional and statehouse district lines that will be redrawn now that Census data has been released won't have to be vetted by the Justice Department because a 2013 Supreme Court decision in *Shelby County v. Holder* ended a requirement known as preclearance.

The result could be a lot more lawsuits over redistricting.

The GOP was so successful in the 2020 elections that Republicans have the power to draw about 188 congressional seats to Democrats' 73 seats, according to [FiveThirtyEight.com](#).

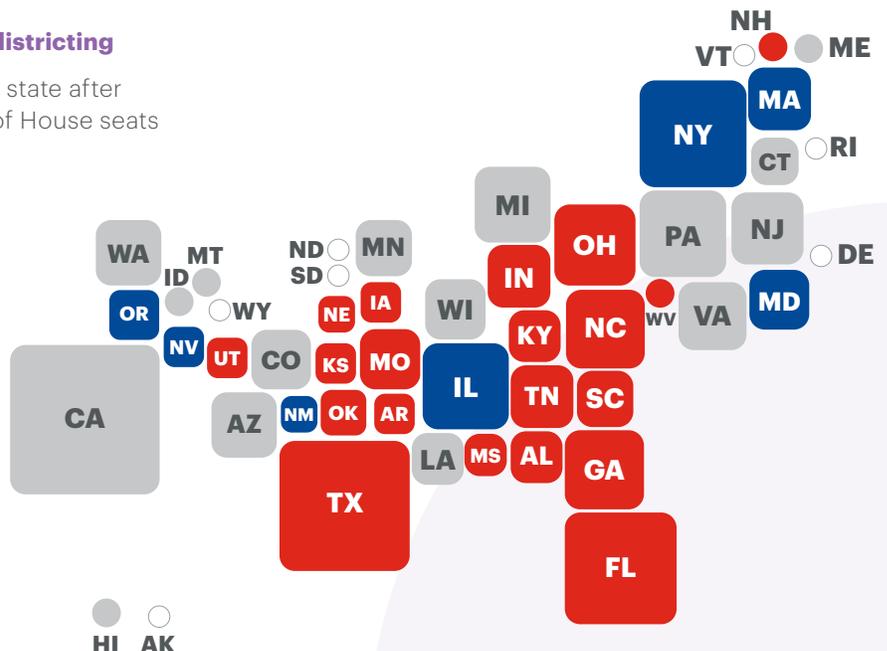
## Republicans won almost all races key to redistricting

Party control of redistricting process in each state after the 2020 election, using projected number of House seats states will have in 2021

- Republican • 188 seats
- Divided/Independent • 167 seats
- Democratic • 73 seats
- One district • 7 seats

States are sized by the number of congressional districts they are projected to have after the 2020 census, based on Election Data Service's apportionment estimates.

Sources: Election Data Services, NCSL, Daily KOS News Stories



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