

From: U.S. Chamber of Commerce Uscc_communications@uschamber.com
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To: rmarkuson@goweca.com



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U.S. Chamber of Commerce

Implications of 50-50 Senate and Closely Divided House

It now appears that Democrats will win both run-off elections in Georgia, creating a 50-50 Senate with Vice-President-elect Harris providing the organizational majority to Democrats. The following memo highlights the Chamber's initial take on the implications of this outcome.

Major Implications of a 50-50 Senate and a Narrowly Divided House:

- **Nominations: It will be considerably easier for President-elect Biden to have his nominees confirmed.** Majority Leader Schumer will schedule Biden's nominees. Since personnel decisions are largely party lines these days (though we expect some GOP support for many of the nominees), most will be confirmed. It is worth noting that even with a 53-seat majority, some of President Trump's most controversial nominees were not confirmed. President-elect Biden has announced the appointment/nomination of three Democratic House members to his administration. These vacancies will narrow Speaker Pelosi's already tight margins until special elections are held.
- **Policy: Legislation with bipartisan support but opposed by a majority of Senate Republicans will now get a vote, and some of those bills will become law.** Using his power to bring up legislation, Majority Leader Schumer can now force votes on issues that have support on both sides of the aisle.-Legislation to protect Dreamers and the \$2,000 stimulus checks are good examples. Some but not all of these types of proposals will become law. It will still take the support of at least 10 Republicans to overcome a filibuster.
- **Reconciliation: Reconciliation, the process used to pass the Trump tax bill, Obamacare, and the Bush tax bills with simple majority votes, is now back in play.** Reconciliation can only be used for revenue and direct spending items so it has limits, and any proposal would require either bipartisan support or unanimous Democrat support. In 2001, with a 50-50 Senate, the Bush tax bill was passed using reconciliation, but it had the bipartisan support of 58 Senators.
- **The Filibuster: There is no immediate threat of changing the filibuster rule, but pressure may build.** It would take the support of all 50 Democratic Senators to eliminate or change (reduce the 60-vote threshold) the filibuster rule. Numerous Democratic Senators have said they oppose changing the rule. But that could change if virtually every bill, especially those with bipartisan support, is filibustered.
- **Moderates, Gangs, and In-Cycle Members Key:** The support or opposition of moderates like Senators Manchin (WV) and Collins (ME); in-cycle Senators like Senators Kelly (AZ), Portman (OH), and Blunt (MO); and policy gangs such as the one formed to push through the pandemic relief bill, will determine the outcome of most policy issues.
- **Chairmanships, Hearings, and Legislation: The leadership of the Senate committees and the ability to schedule hearings and markups will now flip to Democrats.** How the committees are split – 50-50 or with a Democratic majority – will determine the impact on legislative proposals. The clearest impact is the ability to convene hearings and call witnesses.
- **We Have Been Here Before:** The 2000 election resulted in a new Republican president, a Republican House, and a 50-50 Senate until Senator Jeffords (VT) left the GOP in June of

Republican House, and a 50-50 Senate until Senator Jeffords (Vt.) left the GOP in June of 2001 and caucused with the Democrats.

The Chamber's Approach:

- **The center must hold.** The work of building governing, pro-business coalitions is more critical than ever.
- **We need to expand the ranks of those members who are willing to put policy results ahead of partisan rhetoric.** The House Problems Solvers Caucus and the Senate Gang of 8 who led the efforts to pass a pandemic relief bill will be the balance of power in Congress. They need reinforcements.
- **We will continue to work with centrist Republicans and Democrats and bipartisan leaders to advance pro-business policy and ensure that anti-business policies do not have the support to pass.**
- **At the same time, we need to work closely with Republican Congressional Leadership to try to keep bad, anti-business legislation from coming to the House and Senate Floors.**

Past Precedent for Governing the Senate:

The following is a summary prepared by the [Congressional Research Service](#) of the power-sharing arrangement used the last time the Senate was split 50-50 in 2001.

Committees

- All Senate committees would have equal numbers of Republicans and Democrats;
- a full committee chair could discharge a subcommittee from further consideration of a measure or matter, if it was not reported because of a tie vote; and
- budgets and office space for all committees were equally divided, with overall committee budgets to remain within "historic levels;"

Discharging Measures or Matters

- If a measure or nomination was not reported because of a tie vote in committee, the majority or minority leader (after consultation with committee leaders) could move to discharge the committee from further consideration of such measure or nomination;
- this discharge motion could be debated for four hours, equally divided and controlled by the majority and minority leaders. After the expiration (or yielding back) of time, the Senate would vote on the discharge motion, without any intervening action, motion, or debate; and
- if the committee were discharged by majority vote, the measure or matter would be placed on the appropriate Senate calendar to await further parliamentary actions.

Agenda Control and Cloture

- The agreement prohibited a cloture motion from being filed on any amendable item of business during the first 12 hours in which it is debated;
- required both party leaders "to seek to attain an equal balance of the interests of the two parties" in scheduling and considering Senate legislative and executive business; and
- noted that the motion to proceed to any calendar item "shall continue to be considered the prerogative of the Majority Leader," although qualifying such statement with the observation that "Senate Rules do not prohibit the right of the Democratic Leader, or any other Senator, to move to proceed to any item."

Filling the Amendment Tree

In perhaps the most significant announcement, the two leaders pledged to refrain from using their preferential rights of recognition to "fill the amendment tree" in an effort to block consideration of controversial issues. Senator Lott, on behalf of both leaders, declared the policy in the written colloquy.

... (I)t is our intention that the Senate have full and vigorous debates in this 107th Congress, and that the right of all Senators to have their amendments considered will be honored. We have therefore jointly agreed that neither leader, nor their designees in the absence of the leader, will offer consecutive amendments to fill the amendment tree so as to deprive either side of the right

offer consecutive amendments to fill the amendment tree so as to deprive either side of the right to offer an amendment. We both agree that nothing in this resolution or colloquy limits the majority leader's right to amend a non-relevant amendment, nor does it limit the sponsor of that nonrelevant amendment from responding with a further amendment after the majority leader's amendment or amendments are disposed of.

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U.S. Chamber of Commerce
1615 H Street, NW
WASHINGTON, DC, 20062, US



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