BIDEN ADMINISTRATION
Key Strategic Choices and Their Implications
November 2020

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The course of the Biden Administration will depend heavily on a set of key strategic choices that will soon start to become clearer. Different groups will control various of these choices: the voters in Georgia; the president-elect and his team; Senate Majority Leader Mitch McConnell and his Republican colleagues; and President Trump. At this point, there is a great deal of uncertainty about how these choices will come out and therefore how the next several years develop. For each choice, I will present the big picture and then some implications for financial regulation, an area of particular focus for me.

For financial regulation, the broad contours remain as I described in my pre-election paper What If Biden Wins? Impacts on Financial Regulation. However, the broader strategic outlook I describe here will influence the degree to which the new team is able to push through their proposals. At the extreme, Republicans could make it difficult for President-elect Joe Biden to put his preferred choices into the key regulatory and administration positions, which would then influence regulatory choices. In addition, tax changes hitting the banks and Wall Street are substantially less likely now that it is clear that there will not be a significant Democratic majority in the Senate.

The key strategic choices I discuss here are:

- Who wins the two US Senate seats from Georgia?
- How hard will the Biden Administration work at compromising with the Republicans?
- How receptive will the Republicans be to compromise?
- How will Trump respond?
- Who will Biden appoint to key roles?
- What will the Democrats do with their powers that do not depend on new legislation?
WHO WINS THE TWO US SENATE SEATS FROM GEORGIA?

If Democrats win both seats on January 5, 2020, they will have the thinnest of majorities in the Senate (a 50/50 tie, broken by the casting vote of the new Vice President-elect Kamala Harris in her constitutional role as President of the Senate). More likely, Republicans will retain control of the Senate by winning at least one seat. Historically, Republicans in Georgia have done better in runoff elections than in the preceding general elections, as their voters have been more likely to turn out than Democrats in the absence of the excitement of a general election. However, there are so many cross-currents at work at the moment that it is certainly possible that both Democratic challengers could triumph. To quantify my intuition, the Democrats probably have somewhere between a 10 percent and a 25 percent chance of pulling this off.

This matters a lot, as control of the Senate would give Democrats greater ability to pass legislation that matters to them, since they already control the House of Representatives and will not have to worry about a veto from the President. In addition to legislation, Senate confirmation is necessary for the most important positions in the Administration, the judiciary, and the regulatory bodies.

Even if Democrats win control, Senate rules give the minority party significant ability to block legislation. Further, there are Democrats in the Senate from more conservative states who might refuse to follow the party’s lead on some legislation. For example, Senator Joe Manchin describes himself as a “Conservative Democrat” and is from West Virginia, a state that Trump won by 39 percentage points.

HOW HARD WILL THE BIDEN ADMINISTRATION WORK AT COMPROMISING WITH THE REPUBLICANS?

The President-elect has pledged to work with the Republicans where possible. What will this mean in practice? There will be strong pressure from progressives not to compromise on anything of substance, but my reading is that Biden will make a serious effort to find some issues where agreement is possible, such as infrastructure spending. A minor, early sign of this inclination is that progressives have not been happy with Biden’s few initial appointments to his White House staff.

In financial regulation, where I do not expect major legislation, any compromises may be more evident in who Biden chooses to nominate for key positions and in what regulatory changes the Administration champions. The Treasury Secretary is head of the Financial Stability Oversight Council, which coordinates across financial regulators, giving the Administration some direct influence on the regulatory focus.
HOW RECEPTIVE WILL THE REPUBLICANS BE TO COMPROMISE?

It takes two sides to compromise. Will Senator McConnell and the Republican leadership play along, and on which issues? Will the small number of Republican moderates be willing to buck their leadership to back compromises proposed by Biden? Overall, my guess is that the Republican leadership will want to appear open to finding common ground, but will take increasingly tougher positions in negotiations as time passes and specific proposals are considered. The highly partisan environment will make compromises substantially harder. A minor sign of this was the attempt on November 17, 2020 by the Republicans to push through the nomination of Judy Shelton to the Federal Reserve's board of governors, despite the opposition of every Democratic senator and several Republican ones. The attempt failed because of the absence, due to Covid-19 quarantine, of a couple of Republican senators. However, the sense one gets is that some of the Republican senators were willing to put someone on the Board about whom they had serious doubts rather than leave the vacancy open for Biden to fill. It's worth noting that no Fed nominee has ever been confirmed on a purely party-line vote, as Shelton will be if she is eventually confirmed.

HOW WILL TRUMP RESPOND?

The current president will remain hugely influential in the Republican party that he has substantially reshaped over the last four years. However, we do not know how heavily he will choose to intervene in debates on specific proposals and whether the importance of his views may wane over time as other Republicans step forward. My guess is Trump's presence will significantly increase the pressure on Republicans not to compromise with the Biden Administration and the Democrats.

WHO WILL BIDEN APPOINT TO KEY ROLES?

If the Republicans retain control over the Senate, it will be harder for the new president to put strong progressives into any of the key positions. Absent that constraint, such as if the Democrats win both seats in Georgia, Biden is likely to choose a mix of moderates and progressives that largely reflects the overall make-up of the Democratic party, with the addition of a few Republicans and independents as part of his attempt to reach across the aisle. My earlier paper discusses some of the possible appointees.
WHAT WILL THE DEMOCRATS DO WITH THEIR POWERS THAT DO NOT DEPEND ON NEW LEGISLATION?

Presidents have increasingly relied on their ability to issue Executive Orders and to encourage regulatory actions when they find themselves frustrated in their ability to push legislation through Congress. I expect this trend to continue, given the close partisan split after the recent election. There are only two real counterweights to taking such actions. First, there are constitutional limits on how far a president can go, with courts to enforce those limits, courts that are increasingly run by Republican appointees. Second, strong executive or regulatory action could inflame Republican opposition and make it more difficult to reach legislative compromises or to get presidential nominees confirmed.

Overall, I would expect there to be substantial movement in financial regulation over time, as described in my earlier paper. This is not an area where direct Executive Orders are likely to do much, other than to signal to regulators what the Administration wants. For example, one of President Trump’s early executive orders was to mandate that the Treasury Secretary initiate a review of financial regulation and coordinate that review with the financial regulators. The resulting recommendations from that review contained very little that the Administration could do directly, with the vast bulk requiring either regulation or legislation to implement them. Nonetheless, this was an effective way for the Administration to signal its views and we might see a Biden Administration do something similar, such as for a climate transition or “social justice” package of regulatory and legislative recommendations.

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