

THE BIDEN AGENDA, CONGRESS AND AUSTRALIAN INTERESTS

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Joe Biden proposed an expansive legislative agenda throughout the 2020 presidential campaign, spanning racial justice and voting rights, green energy jobs programs, buttressing Obamacare and infrastructure. But sitting above all these issues is control of the pandemic and rebuilding the US economy.

President Biden simply must get his US\$1.9 trillion COVID recovery package through Congress (and may well have by the time this volume is published). There is a deep understanding – which Republicans recognise as much as Democrats – that if Biden fails on this first hurdle, his presidency will be permanently damaged. In fact, failure to win congressional approval on the American Recovery Plan will mean that Biden will be unable to win congressional approval of virtually all the other priority measures listed above that he took to the election.

The key to understanding what Biden can accomplish in Congress requires an appreciation of the political dynamics that affected and ultimately overcame, Obama's presidency. Indeed, the lessons from the 111th Congress – the first two years of President Obama's first term – are the guideposts for Biden's strategy and approach in this 117th Congress.¹¹

Like Presidents Bill Clinton and Barack Obama, Biden comes to office as a Democratic president with his party in the majority in both houses of Congress. Biden also

has an agenda with marked similarities to Obama's: rebuilding an economy struck down by crisis, addressing an urgent health care reform agenda, securing progress in the epic battle to combat global warming and a host of other compelling social priorities.

But unlike Clinton and Obama, Democratic control of Congress is tenuous – just six seats in the House of Representatives and Vice President Harris the tiebreaking vote in the Senate – and at great risk in the 2022 midterms (see Figure 5). Midterm elections typically see the party of the president lose seats. As shown in Figure 6, the midterms of 1994 and 2010 resulted in huge gains for Republicans in House elections, ending unified Democrat control of the federal government and stalling the agendas of both Clinton and Obama. With dogged opposition to the last two Democratic presidents successful in those midterm elections, Congressional Republicans have little incentive to support Biden's policy proposals. The Capitol Hill insurrection on 6 January 2021 further dampened the already remote prospects of bipartisanship.

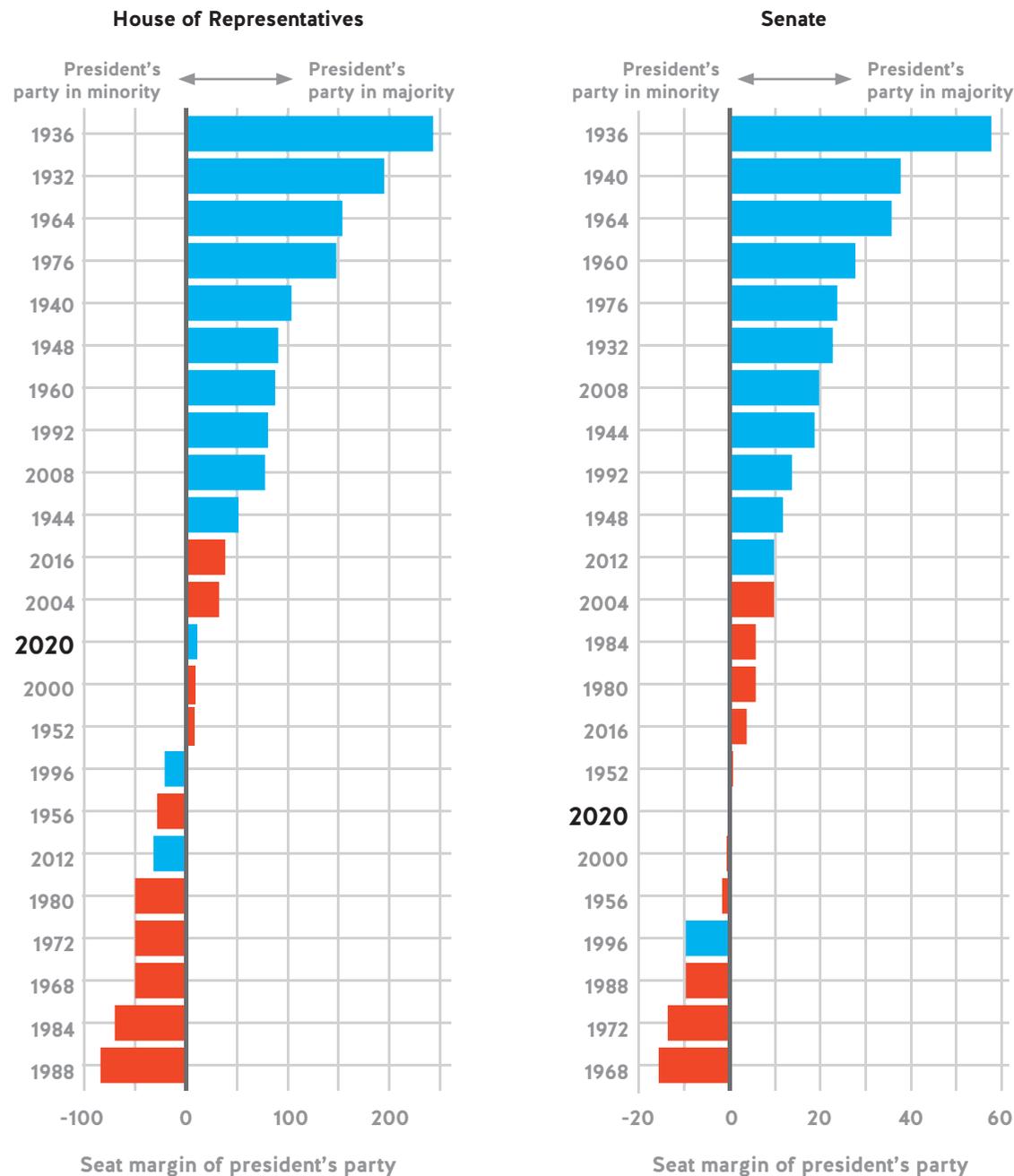
Biden's calculus is that if he fails to secure passage of the American Recovery Plan or meet his ambitious vaccination targets (100 million shots in the first 100 days) his presidency is lost too, along with any chance of legislative success on racial justice, climate change and immigration.

As Vice-President, Biden was central to the Obama administration's protracted and ultimately self-defeating negotiations with Congressional Republicans in 2009 and 2010. Democrats were unsatisfied with the policy compromises that resulted (on recession recovery, on health care, on climate) and lost the House of Representatives: policy pain and no political gain. Biden has no intention of being guilty of repeating that mistake.

This is why Biden is determined to go big and go early, to get the vaccine and economic stimulus in place as soon as possible, and without Republican votes, if needs be.

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Figure 5. Democrats control Congress, but with razor-thin margins



The House of Representatives

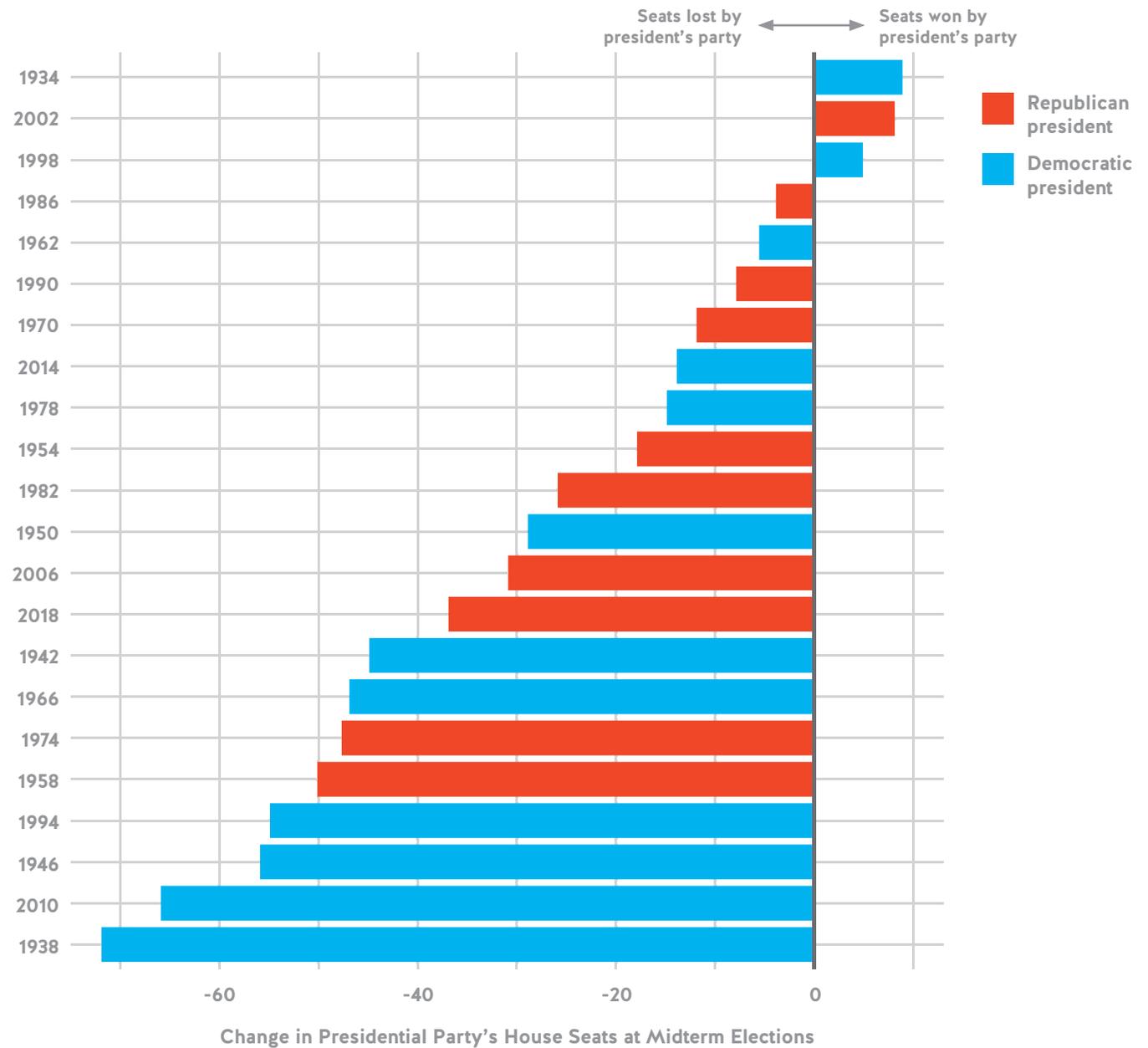
In the 117th Congress that convened in January 2021, the House is comprised of 221 Democrats and 211 Republicans. While margins are immensely tighter than Obama and Speaker Nancy Pelosi faced in 2009, the political dynamics are the same: to be successful, Democrats will have to find the balance on complex legislation within the caucus to ensure that defections do not kill President Biden's agenda – severely undercutting his presidency. Speaker Pelosi and her leadership team have nearly no cushion for error as the threshold between winning or losing comes down to just a couple of Democrats.

This is all the more important given that the House will be the driver of the Biden legislative program. The key lessons of successful legislative management by the Democrats in the 111th Congress are no less applicable to President Biden and Speaker Pelosi today. In particular, look for:

- **Clear and consistent leadership from the President on his agenda and legislation.** President Biden's voice must be forceful, consistent and steady in laying out and explaining what he wants Congress to do, giving assurance to members in swing districts.

- > **Intensely effective working partnerships between the president, the speaker and her committee chairs.** Key to Speaker Pelosi's success throughout her tenure is her exceptional ability to read the moods and dispositions of the members of the Democratic Caucus and to have those assessments guide chairs of the committees in crafting legislation.
- > **A vigorous schedule of hearings to underscore the urgency of the legislative agenda.** In both Obamacare and the energy and climate legislation in 2009, carefully constructed hearings showed the high degree of consensus of key interests and constituencies behind these major legislative reforms. The health insurance and pharmaceutical industries strongly supported the Affordable Care Act. Energy, chemical and manufacturing companies supported the cap-and-trade bill. These very visible shows of consensus paved the way to advance these landmark proposals.

Figure 6. Midterm elections typically see the party of the president lose House seats





The Senate

The 50-50 tie in the Senate plus the tie-breaking vote of Kamala Harris gives the Democrats control of the Senate's agenda, its calendar, committees and critically, which bills come up for votes on the Senate floor.

The biggest initial dividend of control of the Senate for President Biden is that the Democratic majority will generally approve his Cabinet nominees. The withdrawal of Nerra Tanden's nomination as director of the Office of Management and Budget is the first real hiccup, highlighting the immense power of "red state" Democratic Senators looking to distinguish themselves from their Democratic colleagues (e.g., Manchin from West Virginia).

EVEN IF THE HOUSE LEADERSHIP CAN FIND AGREEMENT AMONG ALL HOUSE DEMOCRATS ON THESE CONTENTIOUS ISSUES AMONG ALL THE FACTIONS IN THE PARTY, THE LION'S SHARE OF THE BIDEN LEGISLATIVE AGENDA IS DEAD ON ARRIVAL IN THE SENATE.

Key elements of Biden's agenda will be subject to the Senate's supermajority requirement: 60 Senators are necessary to call debate to a close (to end a "filibuster") and move legislation to a majority vote on final passage. Budget legislation is exempted from the filibuster's supermajority requirement. Both political parties have at times relied on packaging major policy programs into the reconciliation process like the 2001 Bush Tax Cuts, Obama's 2010 Affordable Care Act and, most recently, the 2017 Tax Cuts and Jobs Act. Biden's COVID recovery legislation will be considered this way, circumventing compromises with any Republican senators, but underscoring the importance of holding Democratic senators together. This will test Majority Leader Schumer's political and parliamentary skill, in particular, (a) dealing with the extraordinary negotiating power of "red state" Democratic Senators (who can credibly threaten to vote against the legislation and hence can extract concessions and amendments) and (b) using parliamentary procedures that keep the comprehensive COVID recovery package more or less intact, bringing an up-or-down vote that is much more costly for rebel Democrats to vote against.

Any realistic assessment of the current configuration of Congress must recognise: (a) that there are not 10 Republican votes in the Senate willing to support virtually any element of the Biden agenda; (b) there are limits to what can be legislated via the budget reconciliation process that circumvents the filibuster; (c) there is dwindling appetite for attacking the filibuster itself by enacting changes to Senate rules or for overruling the Senate parliamentarian's determinations about what can be legislated via reconciliation; and (d) even for majority votes on the Senate floor, all 50 Democrats must vote together, or have defections offset by Republicans crossing the aisle.

Accordingly, even if the House leadership can find agreement among all House Democrats on these contentious issues among all the factions in the party – from the progressives on the left led by Representative Alexandria Ocasio-Cortez to the moderates who won Trump districts in the suburbs in 2018 and held them in 2020 – the lion's share of the Biden legislative agenda is dead on arrival in the Senate.

Exceptions that prove the rule

There will, however, be several key exceptions of great relevance for Australia:

Defence spending. In early January 2021, in the closing days of the 116th Congress, both the House and Senate overrode President Trump's veto of the National Defense Authorization Act, which sets military spending levels and locks in US strategic priorities for the country's defence posture.^{1,2} This was the first time Congress had overridden a Trump veto. This spirit of bipartisan cooperation on defence will carry through the Biden presidency, with most Democrats joining most Republicans to ensure steady commitment to overall US defence policy, spending levels and weapons programs. Defence spending will be a major ongoing target of Democrats on the left in both the House and Senate, but on these issues, the centre will prevail.

Foreign Policy. President Biden has entered office without the United States engaged in major wars overseas. Biden's much firmer stance on Russia and President Putin, the aim of restoring effective working relationships with America's allies in Europe and Asia, and Biden's tougher position on human rights, from Saudi Arabia to Burma to China, will be strongly welcomed. The House and Senate foreign relations committees will be active on legislation that will provide incentives and punishment on human rights issues.

Appropriations and government funding. An enduring trend, even under the Trump presidency, was the ability of the House and Senate to work through the government spending (supply) bills for all the government agencies and their operations. The Appropriations Committees have been able in recent years to reach agreements to keep the government operating. The longest government shutdown in American history, however, occurred under President Trump, who insisted, as a condition of signing legislation to maintain orderly funding of the government, that Congress approve funding for the border wall with Mexico.^{1,3} Trump ultimately backed down on his demand and normal operations resumed. This was such a searing political experience that, with a president such as Biden – a creature of Congress – a repeat of that confrontation is highly unlikely.

Congress and Australian interests

There are several major issues directly affecting Australian interests:

China. Leaders in Congress on China policy are highly aware of Australia's frontline status with respect to China and Australia's alliance credentials. As in the Trump administration, this bipartisan coalition will serve a valuable role in helping ensure executive branch policy and actions are mindful of Australia's interests.

Trade. Leaders in Congress on trade will be sympathetic to Australia's long-standing fidelity to free trade norms and policies and will pay special attention to China's economic coercion of Australia. There is little evidence of Congressional support of the United States joining the CP-TPP, at least not until the US economy has meaningfully recovered from COVID.

Military posture. As discussed above on the defence spending issues, Congress will welcome continued further deepening and coordination on the military alliance and overall posture in the Asia Pacific, especially with respect to China and its projection of sovereignty and force.

Big Tech. Australia's strong stance against the market abuses of big tech companies, especially Facebook and Google, has captured the attention of both members of Congress who follow these issues closely and the administration officials and agencies who oversee anti-trust and consumer protection issues.^{1,4} Conversely, there is little love for Big Tech in Congress nor any chance of Congress being sympathetic to any claims that social media giants have been treated unfairly by Australia.

Climate change – a special case. Climate change and global warming have already proven to be an issue that is directly affecting Australian politics. Biden's commitment to move aggressively on climate is a pillar of his overall agenda. His stance on climate was crucial to winning the support of Senators Bernie Sanders and Elizabeth Warren for the Democratic nomination. In office, Biden has affirmed reaching stringent carbon-reducing targets by 2050, and has moved aggressively^{1,5} through executive orders to reverse Trump policies that rolled back environmental regulations, ended carbon-intensive projects such as the Keystone XL pipeline and permit approvals that would have opened public lands and off-shore tracts to oil and gas drilling.

These measures, especially the support for firm 2050 targets, have provoked political debate here on Australia's climate policy. Carbon pricing – a critical lever in realising emissions targets – is an obvious threshold issue. It is unclear whether the Biden administration would welcome or propose legislation on carbon-pricing, but a sustained debate in the US Congress on carbon-pricing, even if the legislative passage were to fail, would spill over into Australian domestic politics.

In the interim, there is nothing the Australian Government can say or do that will slow down, delay or stop any action Biden and his climate advisors – led by former Secretary of State John Kerry, who is fully seized of the climate issue – take to address climate change.

On pages 52-55 we revisit this issue, assessing that while any material divergence in climate policy between the two countries will be an irritant, such differences will not in any way threaten the deep fundamental relationship between the two countries.

We further assess that if Biden were to propose carbon-pricing legislation, Congressional enactment is unlikely. In 2009, the Waxman-Markey “cap-and-trade” program passed the House despite the defection of dozens of Democrats from energy-producing states because of the support of a crucial handful of Republicans. The Waxman-Markey Bill was never brought to a vote in the Senate and died. We doubt that in the current Congress carbon-pricing would even make it out of the House of Representatives, let alone make it to the Senate floor.

This suggests that political spillovers into Australia on climate and emissions will intensify only in so far as a Democratic-controlled Congress actively engages on the issue. US policy proposals will also powerfully shape the terms of debate here on what Australian policy should be.¹⁶ Conversely, should Biden climate and emissions policy hit a political wall in Washington – with Congress the key actor – the intensity of Australian debate may not necessarily diminish, but the scope of climate policy options will likely be limited along similar lines.

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Australian national interests dovetail with Biden being successful in overseeing America’s recovery from the COVID-19 pandemic. A prosperous, capable and self-confident United States is more likely to take on the burdens of global leadership and projecting power and presence into the Indo-Pacific, of bearing the costs of competition with China.

But there are second-order effects at work too, tying Australian national interests to Biden’s domestic political fortunes. American power and prestige abroad are in no small measure functions of the domestic standing of the incumbent president. Early successes for Biden will earn him political capital for pushing back against the voices of protectionism, isolationism and unilateralism in the Congress. An engaged America – led by a President not only supportive of the rules-based, international order but with the political capital to drive the supporting policy and action from Congress – is a stronger and more effective alliance partner of Australia.