Public policy spotlight: 8 key issues for 2020 US elections

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With US voters beginning to cast ballots, many are seeking to gauge how the results of the 2020 US elections will shape the US legislative and regulatory environment on a range of issues affecting workers, companies and the economy; as well as environmental issues, global trade and supply chains. Election day outcomes will determine US government approaches to a host of pressing public policy challenges and provide the path forward on many significant issues for years to come.

This publication from the Ernst & Young LLP Office of Public Policy explores eight key issues for the 2020 elections and what to expect under the potential scenarios:

**COVID-19**

**Economic recovery and job creation**

**US-China relations and trade**

**Environment**

**Social justice**

**Health care**

**Tax matters**

**Technology**

For additional insights into the tax, health care and financial services sectors, please see *Congress returns with election on the horizon*, published on 21 September by Washington Council Ernst & Young.
Beyond the White House

Congress
While a great deal of attention is focused on the battle for the White House, which political party controls the House and Senate will influence the US response to many key issues, particularly if they are of the same party as the president. With a unified government, legislation can be passed quickly, and change is rapid. Under a divided government like the one we have today, the pace of change is typically slower, and the president often relies on executive orders and agency rulemakings to change federal policy.

Democrats are expected to maintain their majority in the US House of Representatives. Republicans control the Senate but are facing a challenge for control in November. Should the Senate shift to Democratic control, there will be an immediate impact on the Senate’s legislative agenda. The Senate majority leader has broad authority to determine what legislation is considered, and under what circumstances. Consider that during the current Congress, the House of Representatives passed dozens of bills that did not advance further because Majority Leader Mitch McConnell (R-KY) chose not to take them up on the Senate floor.

The filibuster
The number of Senate seats held by each party not only determines who holds the majority but also whether the majority is “filibuster-proof.” The filibuster is a longstanding Senate rule that requires a 60-vote majority to pass most legislation and confirmations. According to recent reports, Democrats have established a coalition to eliminate the filibuster should they have a majority, which would facilitate their ability to pass more measures on their agenda. Changing the rule would have a long-lasting effect, giving a significant advantage to either party controlling the majority in the future.

Parliamentary rules already allow the Senate to pass certain tax and spending legislation with a simple majority. That process, known as budget reconciliation, was used to pass tax reform in 2001, 2003 and 2017, as well as a portion of health care reform in 2010. The rules governing nominations were amended in 2017, enabling a simple majority vote for judicial confirmations, including Supreme Court nominations.

States
Congressional gridlock has led states in recent years to act on a number of challenging public policy matters to fill the void. For example, several states have acted on consumer data privacy; policing reform; gig worker rights; infrastructure; and environmental, social and governance disclosures. The rising role that state governments have played in leading on public policy matters will continue to be a factor regardless of who wins the White House or controls the Senate in 2021, likely furthering the patchwork regulatory environment in certain sectors. Growing state budget crises also will be a factor affecting the broader public policy environment.

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1“Democratic insiders set up a ‘war room’ to quickly kill the filibuster,” NBC News (11 September 2020).
The COVID-19 virus has engulfed the world in what hopefully will be a rare, once-in-a-lifetime global pandemic. For the US, the impact and ripple effects of the pandemic have been particularly acute – in terms of the disparate health impacts, geographical spread, job losses and economic uncertainty.

The pandemic will continue to dominate the daily lives of Americans for the near term and well into the next presidential administration. The directional trend of the country’s COVID-19 cases and the performance of the economy likely will be key factors for undecided voters going into November’s presidential election. Progress on the development of a vaccine, reopening schools and businesses, and other signs of recovery are likely to influence voter sentiment.

Since the World Health Organization declared COVID-19 a world health emergency early in 2020, the COVID-19 pandemic has “evolved into a global public health and economic crisis that has affected the $90 trillion global economy beyond anything experienced in nearly a century.” On 16 September, the Federal Reserve’s Federal Open Market Committee reiterated that the course of the COVID-19 pandemic will have a significant impact on the economic outlook over the medium term. It attributed some recent pickup in economic activity and employment in part to policy measures taken to support the economy and the flow of credit to US households and businesses, signaling the benefit of federal government stimulus to the economy.

From February to May 2020, more than 14 million Americans became unemployed, moving the unemployment rate from 3.8% to 13.0%, although the figure has improved in recent weeks. However, due to the unique nature of the pandemic and its underlying cause for the current economic downturn, the effects on different industries, sectors, populations and geographies have been incredibly varied. And, as a result, recovery from such impacts also is likely to be slow, uneven and disparate. According to the Pew Research Center, women have been more affected than men, Hispanic women experienced a steeper rise in unemployment than other women, immigrant workers suffered a higher increase in unemployment than US-born workers, and less-educated employees are seeing higher unemployment than their counterparts with greater levels of education attainment.

Despite this uneven impact, the pandemic’s effects have been felt across the economy, with US bankruptcies trending toward a 10-year high in a wide variety of sectors and consumer discretionary companies bearing the brunt of the bankruptcies.

What to expect

President Donald Trump’s approach to addressing the pandemic has included a number of executive actions with a focus on economic recovery and a return to normalcy in schools and daily life, as well as encouraging states to take the lead on a range of operational matters in fighting the pandemic. His administration also helped to lead negotiations of the March 2020 Coronavirus Aid, Relief, and Economic Security Act, a historic $2.2 trillion economic stimulus bill aimed at addressing the economic fallout of COVID-19.

Throughout his campaign, former Vice President Joe Biden has highlighted the actions he would take if elected to help the country overcome the COVID-19 crisis. The Biden Plan to Combat Coronavirus (COVID-19) and Prepare for Future Global Health Threats focuses on a public health-first response coupled with a “decisive economic response.”
What to expect

Regardless of who wins the elections (for the presidency and control of each chamber of Congress), significant attention will have to be paid to economic recovery as the US will still be fighting the pandemic and dealing with the economic ramifications of closures and lockdowns. Several factors, along with the unique nature of the current health and economic crisis, are impacting the speed and scale of economic recovery. Despite wide disagreement between the parties on approaches to spur economic recovery, there are two areas of commonality between both Trump and Biden, and Republicans and Democrats generally, when it comes to potential ways to rebuild and recover in the US.

Infrastructure

Infrastructure spending has long appealed to lawmakers as a way to spur economic growth and promote job creation. Despite interest from both parties, a comprehensive infrastructure package has failed to gain traction. However, it is expected that both Congress and the next administration, whether led by Trump or Biden, would immediately turn to large-scale infrastructure proposals to offset the economic impact of the COVID-19 pandemic on US markets. Infrastructure spending is historically one of the first tools used by lawmakers when looking for economic stimulus and job creation opportunities. Despite common interests, any proposal would likely stall unless the parties resolve partisan disagreements over how to pay for infrastructure and whether to include related items like certain environmental initiatives.

Buy America

A second commonality in both presidential campaign policy platforms is their use of a “Buy America” and a “Made in America” theme for rebuilding the US economy. The two candidates tend to take different approaches to the same concept – Trump has worked to build on his signature “Buy American, Hire American” executive order, and Biden focuses on a broad swath of proposals such as making new investments to innovate in America and revamping manufacturing, supply chains and government procurement. Recent geostrategic tensions and pandemic-related supply chain challenges underlie the candidates’ mutual interest to return manufacturing and other forms of production to US soil.

If the November elections produce a status quo, with Trump remaining in the White House and divided control of Congress, we could expect more of what we have seen in the most recent months of the pandemic – partisan disagreement and blocked legislation despite the common ground that exists. Additional economic relief legislation, in large form, would be difficult in this scenario. If Biden wins the White House, his plans for economic recovery will be more ambitious if Democrats secure a majority in the Senate. If Republicans remain in control, he too may resort to executive action where Congress is unable or unwilling to act.
US-China relations and trade

Trump and Biden have both made the US-China relationship a central part of their campaigns. The scrutiny of China by Washington policymakers over the last year, especially with the advent of the pandemic, is bipartisan. This emphasis has led each candidate to become more nationalistic in economic matters, boosting the US supply chain and domestic manufacturing in their campaign platforms.

Congress and the Trump administration have been using various tools, such as tariffs, sanctions and visa restrictions, to respond to stated concerns relating to national security, intellectual property theft, human rights and Hong Kong. The most recent examples include the administration’s efforts to restrict Chinese companies from doing business in the US and limit access to US capital markets based on a perceived lack of transparency into Chinese-domiciled companies. These efforts are expected to continue in Washington, regardless of who sits in the Oval Office.

More generally, Trump’s approach to trade has been to focus on reducing the US trade deficit. He has done this by pursuing bilateral over multilateral trade negotiations and utilizing various tools available to the president to promote more balanced trade flows. This differs from recent administrations, which have tended to negotiate multilateral agreements and have not used these tools as extensively.

What to expect

In a second term, Trump could be inclined to deploy more tariffs and renegotiate existing trade deals in an effort to support domestic markets and workers. Trump’s second-term agenda moves to end US “reliance on China” by offering tax credits for companies that bring back jobs from China, ending federal contracts for companies that outsource to China.

Biden would be unlikely to prioritize negotiating new trade deals over domestic economic stimulus early in his administration, but as a candidate, he has indicated that he would remove Trump’s tariffs on imports from China. Biden has said, “we are going after China in the wrong way,” and has suggested that he would seek a multilateral approach to reign in what he sees as China’s unfair trade practices.

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2“For Biden, untangling Trump’s trade wars takes backseat to economy,” Politico (20 August 2020).
4Ibid.
Environment

Environmental policy routinely divides Republicans and Democrats, and the platforms and policies of both Trump and Biden are no different. While the business community may be shifting on some environmental issues, the policy debates in Washington remain the same. As with many other issues, if Trump is re-elected, a second Trump administration can be expected to follow a similar path to its first, while a potential Biden administration would predictably take a noticeably different direction.

A hallmark of the Trump administration has been its deregulatory agenda, which the president has championed as a benefit to small business. Many of these actions have been focused in the environmental space, setting the tone early by withdrawing from the Paris Agreement. For the Trump administration, reducing regulation in the environmental space has been viewed as a means to reduce costs, speed construction projects and attract investment.

Biden has made addressing climate change a core tenet of his platform with what his campaign refers to as a plan to build a modern, sustainable infrastructure and an equitable clean energy future. He announced an aggressive $2 trillion plan over four years to combat climate change and revamp the nation's infrastructure. The plan includes clean energy standards, energy efficiency upgrades, restoration of climate regulations repealed by the Trump administration and additional regulations to curb emissions. The infrastructure elements include rebuilding the traditional roads and bridges, but also upgrading water systems and electricity grids and deploying universal broadband – all of which, his campaign has suggested, could help jump-start the economic recovery in the US after the COVID-19 pandemic has ended, as noted in the Economic recovery and job creation section above.

What to expect

Biden's plan calls for a mix of executive and legislative actions, and therefore would almost certainly require Democratic control of Congress to fully implement. Given the likelihood of a slim majority regardless of which party has control in the Senate, both candidates would likely need to rely on executive actions and agency rulemakings to advance their environmental policy agendas.
Despite repeated calls for compromise amid months of nationwide protests, Republicans and Democrats have not yet been able to reach consensus and act on social justice reform legislation. There has been policy agreement on several social justice issues, such as tackling the digital divide in both urban and rural communities and promoting access to capital for minorities and promoting minority entrepreneurship. However, disagreements over proposals to relax the liability shield against alleged police misconduct remain very partisan and have hindered action. Momentum for action has now become a campaign issue.

What to expect

In the absence of congressional action, Trump signed an executive order on policing reform on 16 June that provides new federal grant money to encourage state and local departments to bolster use of force training, prohibit chokeholds in some circumstances, establish a national database to track officer misconduct and establish co-responder programs for dealing with individuals suffering from impaired mental health, addiction and homelessness. Trump did not specifically include social justice reform policies in his second-term agenda released on 23 August, but the agenda does call for an expansion of economic opportunity zones.

While support for additional reform exists on both sides of the aisle, expectations are that a Biden administration would be more proactive on social justice reform. On 9 July, the Biden campaign released its “Build Back Better” plan to advance racial equity across the US economy. The plan calls for an increase in affordable housing and public-private investment for small businesses, infrastructure and clean energy investments, management training and higher education opportunities, opportunity zone reform and a boost in retirement security, among other things. Biden’s campaign also has called for police reform, supporting the House-passed Justice in Policing Act while urging that more money should be directed at police for community policing and mental health assistance.

As both parties continue to grapple with how to address social justice issues in the wake of sustained demonstrations and protests across the nation, look for the topic to remain at the forefront of the political debate for the foreseeable future.

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5“Biden Calls for Increased Funding for Police to Fuel Reform Efforts,” Newsweek (5 August 2020).
Over the last four years, voters consistently ranked health care as a top priority for Congress and the administration. Congress began 2020 with a robust health care agenda aimed at bridging partisan divides to make headway on drug pricing, surprise billing, rural and underserved health services, maternal mortality and other health care policies ahead of the November election. By March, however, it was clear that responding to the COVID-19 crisis would drive the 2020 agenda, bringing to the front new issues like telehealth, supply chain resilience, health equity, mental health services, oversight activity and vaccine development and distribution.

The coronavirus crisis will continue to demand the attention of Congress, but congressional leaders also could face new challenges. Growing federal debt and limited state budgets will make it difficult for either party with control in Congress to advance big-ticket policies — such as enabling permanent telehealth reimbursement or major health care reforms — without also identifying budgetary offsets.

What to expect

If re-elected, Trump is expected to continue to advance his administration’s current health care agenda, including his 2016 campaign promise of repealing the Affordable Care Act (ACA). After a failed attempt to repeal the law in 2017, Republicans are now pinning their hopes on the pending Texas v. Azar repeal case, with the Supreme Court scheduled to hear oral arguments on 10 November — one week after the election. Absent congressional action, the administration has used regulatory actions to weaken the ACA and address other key health care issues such as high drug costs, state flexibility in Medicaid, support for the individual market, surprise medical bills, and health care price and information transparency.

A Biden administration, if paired with Democratic majorities in Congress, would likely focus on seeking to expand access to affordable health insurance through increasing ACA subsidies and tax credits to reduce premiums and extend coverage, expanding coverage to low-income Americans and debating the merits of a “public option.” Biden’s campaign also proposes to stop surprise billing, set price controls for prescription drugs, support those with disabilities and expand access to contraception.

With Republicans and Democrats taking different approaches to solving America’s health care challenges of reducing cost, increasing access and improving quality, and determining how to pay for those changes, “reform” may mean changes that teeter on the edge and revisit the 2020 policy agenda rather than a complete overhaul of our health care system.
Tax matters

Tax policy in the near term will be focused on provisions responding to the coronavirus, and whether any policy can be enacted is contingent upon bipartisan agreement on broader, more divisive issues for coronavirus relief such as overall size of the package, unemployment benefits, and state and local funding.

Beyond the COVID-19 pandemic, the need for revenue will be a dominant theme in tax policy matters. The pandemic has put significant pressure on governments at both the federal and state levels to increase taxes.

What to expect

Trump has committed to additional tax relief if he wins re-election. He has signed an executive action deferring payroll taxes for the last four months of 2020 and said that he would pursue forgiveness of that tax liability, which would otherwise be due in the first quarter of 2021. The president also has promised an income tax cut for middle class families and wants to reduce the capital gains rate down to 15%.

Under Biden, tax increases would be pursued early to offset the cost of policy priorities, but these plans would hinge on the balance of power in the Senate. Additionally, Biden’s policy priorities, including on manufacturing, education, health care, climate change, and housing will require revenue and he has proposed tax increases to pay for them.

The former vice president has said that he would increase corporate taxes from 21% to 28% “on day one,” which he says could raise $1.3 trillion, although legislation is required to change the statutory income tax rates and may take some time to pass. Biden has also said that “no one making under $400,000 a year will pay a single increase in taxes.”

It is worth noting that if Biden wins but doesn’t have a Democratic-controlled Senate, policy items would need bipartisan support and could include preventing tax increases scheduled under the Tax Cuts and Jobs Act (TCJA) or tax relief for the middle class.

Regardless of who occupies the oval office in 2021, he will have to confront tax increases for both businesses and individuals that are scheduled under the TCJA and possibly mounting debts from the coronavirus pandemic and a burgeoning federal deficit that is expected to hit $3.3 trillion by year-end.
Big tech continues to be a focus of congressional inquiry and scrutiny by regulators around issues such as consumer privacy, transparency and market concentration. Policymakers are grappling with the challenge of balancing regulatory oversight of and protections for emerging technologies while promoting innovation and global competitiveness. The relationship between the tech sector and Washington has been increasingly complex and likely will face continued focus after Election Day.

Throughout President Trump’s four years in office, criticisms of big tech have become low-hanging fruit for both political parties. Concerns about the spread of misinformation and so-called deepfakes, cybersecurity vulnerabilities and consumer privacy have been a central focus for both Congress and the administration and will carry over into 2021 and beyond. Most policy considerations in these areas have been event-driven; a new data breach, cyber attack or distorted campaign video. However, politics have thwarted compromise on many of these issues with little hope of immediate resolution.

If Trump wins a second term, the administration would likely continue efforts to target social media companies for alleged bias and anticompetitive practices. The administration could also continue to seek to remove Chinese technology from the US market and appropriate more money for research and development of emerging technologies such as artificial intelligence, machine learning and quantum computing to stay globally competitive and combat Chinese advancements in the fields.

If Biden is elected, his Build Back Better plan for economic recovery suggests the former vice president would focus on greater tech-sector regulation, anti-bias enforcement, action against foreign government interference and restoring the Federal Communications Commission’s net neutrality rules, in combination with a focus on expanding R&D. Another factor likely to influence tech policy in a Biden administration would be his vice president, Senator Kamala Harris (D-CA), as there are several prominent tech hubs established in her home state of California.

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6“US lawmakers say AI deepfakes ‘have the potential to disrupt every facet of our society’,” The Verge (18 September 2018).
Conclusion

The public policy issues contemplated in this publication will present significant challenges and opportunities for Congress and the White House in 2021. How and when policymakers address these issues will leave lasting impacts on consumers, investors, workers, businesses and markets. While the president’s agenda will be a significant factor, which party controls Congress, state governments’ responses and the efforts of the business community will also be important in shaping the contours of the public policy landscape for 2021 and beyond.

Key dates

15 October
Second presidential debate (Miami, FL)

22 October
Third presidential debate (Nashville, TN)

3 November
Election Day

20 January
Inauguration Day

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