

Alert

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Cozen Currents: Can He Do That?

“Entering office with four years of on-the-job training this time around, President-elect Trump and his advisors have a much better sense of how to manipulate the levers of government power – and they intend to push the envelope in doing so.” — Howard Schweitzer, CEO, Cozen O’Connor Public Strategies

The Cozen Lens

- President-elect Trump is embracing the tech executives around him and adopting their philosophy of “move fast and break things” with his plans for a second term, combining an expansive interpretation of executive authority with skepticism for Washington’s norms.
- Immigration reform and border enforcement is one of the policy areas where President-elect Trump is expected to act first and ask questions later, but a number of practical, political, and legal challenges may limit the ability to see his campaign promises through.
- Tariffs are a top priority for President-elect Trump and he is expected to leverage all executive powers at his disposal to pursue his protectionist agenda.

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Trump the Anti-Institutionalist

Embracing Executive Authority. President-elect Trump is inverting Washington’s typical policymaking process, searching for authority to support his desired plans rather than deriving ideas from existing authority.

- Several of Trump’s policy proposals during the campaign have turned heads, leaving many asking, “Can he do that?” In some cases, there are examples of precedent that Trump and his advisors have identified as cases to draw upon, even if not recent. The question is how far Trump may seek to push the limits of current precedents, such as using the president’s authority to declare national emergencies to support his plans for mass deportation of undocumented immigrants.
- However, knowing if the incoming administration believes it has the authority to pursue a given action is more important than whether precedent exists for understanding what proposals Trump and his team will seek to turn into reality. For example, while there is skepticism about whether Trump can unilaterally impose universal baseline tariffs, he and his advisors believe the International Economic Emergency Powers Act is sufficient justification. This belief is likely enough for the Trump administration to attempt such sweeping duties even though it has never been used this way before.
- Outside legal experts’ disagreement with the Trump administration’s interpretation of the law is unlikely to deter Trump and his advisors, who appear to have adopted the tech mindset to “move fast and break things,” combining an expansive view of executive



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authority with skepticism for Washington's norms. The result will be that the Trump administration's actions may face legal challenges, but the threat of losing in court is unlikely to deter Trump from trying.

Calling on Congress. What Trump can't achieve through executive authority, he will likely try to do through legislative authority, but the narrow majorities in Congress for the GOP may cause headaches.

- Budget reconciliation is the most powerful tool at the disposal of a GOP trifecta, as it allows Republicans to bypass the Senate's filibuster with certain legislation, including the expected tax bill next year. Other items that can be achieved with a simple majority in both chambers include overturning some of the Biden administration's later regulations by passing Congressional Review Act legislation and confirming Trump's nominees. However, the majority in both chambers does not guarantee smooth sailing for Trump's agenda in Congress, and some pushback is already emerging for some of his Cabinet nominees.

- Everything that cannot be done with 51 votes in the Senate will require bipartisan support to reach the 60-vote threshold. There are policy proposals that could meet this standard and already have bipartisan support, such as those dealing with children's online safety and digital assets. However, significant diversions from their current texts could jeopardize Democratic support and may reduce the range of measures that can become law to just must-pass legislation, including appropriations and the annual defense policy bill.

Turning Words into Action. Finalizing a rule or passing a law begins the implementation process, an area where Trump's agenda could face further resistance.

- One potential obstacle to Trump's agenda will be his administration's relationship with the federal bureaucracy. Vital to achieving these objectives will be the ability of appointed agency heads to have career civil service staff execute their goals. The success of doing so may vary across agencies. However, Trump and his allies are eyeing ways to increase their control over the federal bureaucracy and reduce its overall size, such as the reimplementing of Schedule F which would convert tens of thousands of career civil servant positions into political appointments.

- Additionally, for Trump, a key metric for the success of his agenda is the reaction of the financial markets. Significant downturns will likely get his attention, but how much he adjusts his administration's policy may depend on his ideological connection to a given issue. Still, the financial markets will likely be more influential in Washington than in the last four years, even if there are some limits.

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Pushing the Envelope on Immigration

Testing the Bounds of Immigration Enforcement. President-elect Trump is making no secret of the fact that aggressive immigration enforcement is his top priority for his first 100 days in office. NBC reports that Trump is planning to sign up to five immigration-related executive orders on the first day of his presidency.

- Trump moved quickly post-election to get his immigration team in place, announcing the appointments of Thomas Homan as "border czar," Stephen Miller as deputy chief of staff for policy, and Governor Kristy Noem (R-SD) as secretary of Homeland Security. Homan and Miller, in particular, are the architects of Trump's expansive deportation plans, underscoring the president-elect's commitment to the policy. Earlier this month, Trump declared that cost will be no object when it comes to the deportation program.

- While Trump will hold some executive authority to step up workplace immigration raids, change asylum laws, and ink new detention system contracts, the primary impediment to Trump's plan is financial. The US only has the capacity to hold 40,000 or

so individuals in detention facilities, a number Trump will need to multiply many times over to achieve his goals. The plan will also require a dramatic increase in the hiring of immigration and border enforcement officers. While a GOP-controlled Congress is open to getting Trump the money he needs, Congress isn't known for its alacrity, particularly in the face of expected nomination fights, a debt ceiling standoff, and negotiations over FY25 spending.

- To speed along the process, Trump posted on Truth Social last week that he will declare a national emergency to involve the military in his plans. That could solve some of the cost-related concerns, but it raises its own host of problems, chief among which is an expected legal battle. Civil rights organizations are gearing up to challenge the move in court, arguing the Insurrection Act disallows the use of the military within the country unless there is a present threat to Americans. Speed will also be a challenge, with process-related issues slowing even a military-backed plan. Individuals with deportation orders have a right to due process, but the judges and courts that preside over deportation hearings are facing significant case backlogs.

Testing the Bounds of Legal Immigration Reform. Trump is expected to pair the deportation push with a wide array of reforms to the legal immigration system, many of which will face fewer logistical hurdles, but greater legal pushback.

- Going back to 2023, President Biden used his executive authority to restrict asylum access between ports of entry, a move he paired with an expansion of legal immigration pathways. Trump is expected to eliminate the expanded legal pathways, such as the humanitarian parole program for Cuban, Haitian, Nicaraguan, and Venezuelan immigrants as well as the use of the CBP One app for individuals seeking asylum appointments. Temporary Protected Status protections for Haitian migrants are also believed to be on the chopping block. While immigration advocacy groups will push back against these actions, Trump will have fairly wide latitude to roll back the Biden-era programs.

- Long-running legal immigration pathways are also in the crosshairs of the incoming Trump administration. Stephen Miller is promising to ramp up efforts started during the first Trump administration to increase “denaturalizations,” although The Hill reports that a 2017 Supreme Court ruling makes it harder for the administration to win denaturalization cases. Trump has also promised to end birthright citizenship, but such a dramatic change to legal immigration law without congressional authorization is not expected to hold up in court.

- One other longstanding program that has caught the ire of Trump over the years is the H-1B visa program heavily used by employers in the tech industry. Just as was the case the first time around, Bloomberg reports that the incoming Trump administration is expected to limit access to the program, pricing out certain employers, restricting eligibility, and increasing bureaucratic hurdles. Many if not all changes will fall within the legal authority of the president.

Pushing the Envelope on Tariffs

Trump's Tariffs. On the campaign trail, the self-described “Tariff Man” highlighted import duties as a priority.

- President-elect Trump has advocated tariffs of 60 percent for Chinese imports and 10-20 percent for all other countries, a significant increase in scope compared to his first term.

- Tariffs can be seen as a point of leverage in negotiations, but Trump is not likely to use them only in targeted ways to gain leverage over other nations' achievements. For the president-elect, tariffs are not just a means to an end but an end goal themselves, such as decoupling the US economy from China and bolstering domestic manufacturing more broadly.

- Trump has described tariffs as “the greatest thing ever invented” and in addition to supporting the domestic industrial base, he has said that tariffs will make groceries cheaper, reduce the federal deficit, prevent wars, and pay for tax cuts and child care.
- Trump’s pick for secretary of Commerce, Cantor Fitzgerald CEO Howard Lutnick, will be a key figure implementing tariffs, and Trump announced that Lutnick will also have oversight of the Office of the US Trade Representative (USTR). Trump’s former USTR and the architect of the Trump 1.0 tariffs, Robert Lighthizer, does not yet have a defined role, although it is expected that he will be a key player in the administration, whether formalized or not..

Executive Authority. Trump and his circle believe that he can move quickly and unilaterally on tariffs.

- Trump has said that he believes Congress will go along with his tariff plans but that he has authority to impose tariffs himself and does not need congressional approval. In his first term, Trump levied tariffs under the traditional Section 301 and Section 232 authorities. Section 301 allows the president to enact tariffs in response to foreign governments’ policies that burden or restrict US trade, and Section 232 allows the Department of Commerce to investigate the impact of imports on national security.
- Trump is also expected to turn to powers under the International Emergency Economic Powers Act (IEEPA), which gives the president latitude under a declared national emergency. He threatened use of this authority during his first term against Mexico.

IEEPA has not previously been deployed to impose tariffs, though President Nixon cited a forerunner of the law in briefly levying a 10 percent universal tariff in 1971. He lifted it after reaching a monetary agreement with countries belonging to the Group of 10.
