

Cozen Currents: Getting Down to Brass Tacks on Tax Reform

The Cozen Lens

- Tax reform will be the top legislative issue next year regardless of who wins the elections and Congress, not the White House, will be the ones in the driver's seat.
- The Supreme Court begins its 2024-25 term this week and the Court's docket includes some high-profile cases with implications for both business and US politics.
- The ferocious AI craze is driving skyrocketing energy demand, leaving policymakers in Washington racing to catch up.

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Tax Committee Leaders' Priorities for Tax Reform

Senate Finance Committee. In Congress' upper chamber, Senate Finance Committee Chair Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) will lead their parties' respective tax reform negotiations.

- Wyden is a veteran of tax reform, having served as the lead Democrat on the Senate Finance Committee since 2013. Wyden was intimately involved in efforts to pass a bipartisan tax package this year, and has promised to hit the ground running next year, telling reporters last week that he is readying a tax package for day one of a Harris administration. The proposal would include Harris' campaign announcements such as an enhancement of the Child Tax Credit (CTC), an expansion of a deduction for startup businesses' costs, and incentives for investments in critical industries, among other things.
- Unlike Wyden, Crapo only became the lead Republican on the Senate Finance Committee in 2021. Crapo is focused on extending the expiring provisions of the Trump-era Tax Cuts and Jobs Act (TCJA), although he's noted that the whole tax code should be looked at during next year's negotiations. Crapo hasn't weighed in publicly on which provisions of tax law he will prioritize extending or changing next year, although he's often defended the TCJA's temporary 199A deduction for pass-through business income and the permanent lowering of the corporate rate. Crapo told reporters last month that he won't endorse or come out against any of Trump's campaign trail tax ideas.
- The key difference between Wyden and Crapo is on the revenue-raising side. Wyden has discussed taxing the unrealized gains of billionaires, eliminating the carried interest loophole, changing the taxation of partnerships, and changing the taxation of the estate tax and gifts, among other things. Crapo, on the other hand, believes tax cuts pay for themselves and shouldn't require offsets.

House Ways and Means Committee. In Congress' lower chamber, House Ways and Means Committee Chair Jason Smith (R-MO) and Ranking Member Richard Neal (D-MA) will run the show.

- Smith is new to the role, having become the top GOP tax-writer in the House just last year. That hasn't stopped him from getting an early start on 2025 planning, launching 10 GOP working groups in April and holding multiple TCJA-related hearings since then. Smith released a fact sheet last month that makes clear his priorities for next year,



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including an extension of the TCJA's 199A deduction, immediate R&D expensing, 100 percent expensing for machines and equipment, an expanded business interest deduction, and lower international tax rates.

- Like his Senate Democratic counterpart, Neal is a tax policy veteran in Congress, having served as the lead Democrat on the House Ways and Means Committee since 2017. Neal too has told reporters recently that he's working to have a tax package ready for day one of a Harris administration that would include many or all of her campaign trail promises. Neal is a stalwart defender of Democrats' expansion of the CTC, an issue that almost prevented him from signing onto this year's bipartisan tax bill.

- While Smith and Neal don't agree on how to offset the cost of a tax package next year, the delta between them is much narrower than the one between Wyden and Crapo. Under pressure from fiscally conservative lawmakers, Smith has acknowledged that an extension of the TCJA will need to be partially offset, going as far as to suggest there could be some GOP support for an increase in the corporate tax rate. Neal is focused on traditionally Democratic offsets, including an increase in the corporate rate, although a 2021 tax proposal from Neal suggests he could take a more moderate approach to tax hikes than Wyden.

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SCOTUS Term Preview

The 2024-25 Term Begins. The Supreme Court (SCOTUS) began its term yesterday, which will run until late June or early July.

- The justices resume hearing cases at a time of declining public confidence in the Court. A recent poll found that 56 percent of Americans trust SCOTUS "a little or not at all," compared to 44 percent who trust it. Views of the Court are deeply split by party, with 71 percent of Republicans but only 24 percent of Democrats indicating trust in the institution. Some of this term's cases touch on divisive issues and the Court's rulings could further polarize the country.

- As of Friday, the Court has accepted 40 cases, but it will likely continue taking more. Typically, the justices hear oral arguments for about 70-80 cases in each term.

- The increasingly conservative Court has narrowed the power of federal agencies in recent high-profile cases, but the Court's decisions last week to allow Biden administration rules on methane from oil and gas production and toxic emissions from coal-fired power plants to take effect shows that not all regulations will automatically be at risk.

Implications for Business. The Court will hear several notable cases relevant to the C-suite.

- Two cases this term will determine businesses' compliance requirements for major federal laws. In *M.D. Sales, Inc. v. Carrera*, the justices are asked to decide on the burden of proof for an employer to seek exemptions from the Fair Labor Standards Act's overtime and minimum wage rules. Oral arguments are scheduled for Election Day. *Stanley v. City of Sanford, Florida* addresses whether the Americans with Disabilities Act applies to receiving benefits earned during employment for former employees.

- The Court will also hear three major energy and environmental cases. One considers the scope of the National Environmental Policy Act, which requires federal environmental reviews for permitting, and another focuses on the Environmental Protection Agency's ability to set pollution limits under the Clean Water Act. A third case addresses Texas' challenge to a Nuclear Regulatory Commission decision on nuclear waste storage, and a decision in this case could have broader implications for the authority of federal agencies.

- The Court will also wade back into tech regulation this term. The Free Speech Coalition seeks to overturn a Texas law that requires age verification for adult websites.

As enhanced children's online protections become increasingly politically popular, a ruling in this case could set a precedent for future efforts.

Implications for US Politics. The Court will consider some high-profile cases on controversial issues.

- The justices will pick up the debate over gun control today when they hear oral arguments in a case seeking to overturn the Department of Justice's rule banning firearms without serial numbers, known as "ghost guns." The Court has also accepted a case brought by the government of Mexico against firearms manufacturers over gun trafficking. These are the first major gun cases to be heard by the Court since its 2022 ruling in *New York State Rifle & Pistol Association v. Bruen* that limits on the Second Amendment must be consistent with historical tradition. Coming in the home stretch of the presidential election, today's case could raise the profile of gun control as an issue on the campaign trail.
- On Wednesday, the Court will hear oral arguments in *Glossip v. Oklahoma*, which seeks to overturn a death sentence and order a new trial on the basis of prosecutorial misconduct. The Court will consider another additional death penalty case on access to DNA testing post-conviction. As Vice President Harris remains vague about her position on capital punishment, these cases could shine a spotlight on the issue.
- The Court will also hear cases on gender identity and sexual orientation. They include a case challenging Tennessee's ban on transgender healthcare for minors. One of the most contentious current issues in US politics, this case ensures that the justices remain at the forefront of the culture wars and will likely spark public opposition regardless of how the Court rules. The justices also accepted a case alleging employment discrimination on the basis of being heterosexual.

Energy Policy of AI Data Centers

Electricity Demanding. AI data centers are so power-hungry they're beginning to strain the grid.

- After decades of flat electricity consumption, US energy demand is now projected to spike. AI data centers account for a full 30 percent of the expected growth, according to a Goldman Sachs Energy, not chips, are now recognized as the primary bottleneck on the development of AI data centers.
- With demand outpacing supply, prices have risen to match. The demand for more electricity and concerns about grid reliability is pushing coal, natural gas, and nuclear plants to delay or cancel their previously planned retirements. Thirty-six percent of the 547 fossil-fuel powered generators scheduled to retire since the beginning of 2022 have had their retirement extended (in more than half of cases, indefinitely).
- All of this has caught the attention of Washington. Key AI lawmaker Senator Mike Rounds (R-SD) said a lack of energy "could shut everything down" for AI if nothing is done. Over in the executive branch, the White House launched a task force last month to tackle data center energy needs with OpenAI CEO Sam Altman, White House Chief of Staff Jeff Zients, and National Economic Council Director Lael Brainard at a roundtable to kick it off. Besides wanting to spur economic innovation, the development of AI is increasingly recognized as a national security concern and Congress doesn't want to fall behind.

Stumbling Blocks. Despite increasing demand, numerous policy obstacles stand in the way of building the new generation required.

- Power plants that want to join the country's electric grids must sit in interconnection queues while grid operators conduct studies on the new infrastructure needed to handle the proposed additional capacity. The typical project built in 2023 took nearly five years to get from the interconnection request to commercial operations; just

one-fifth of projects requesting connection from 2000 through 2018 reached commercial operations through 2023. The amount of capacity waiting in queues is now twice the capacity of the entire US power fleet and 95 percent of this backlog is solar, battery storage, or wind.

- Extra transmission is going to be needed to carry green energy from where it's produced (the heartland, the desert, offshore) to where most people live (cities). It takes an average of ten years to complete such projects. Projects that require permits or environmental review have yet more red tape to cut through. Solar projects take an average of two years to complete reviews under the National Environmental Policy Act process but some take up to a decade.

- Lastly, the combination of a high rate environment, supply chain issues, price volatility, and elevated inflation has been a major headwind for renewable energy. Renewable energy projects are "very sensitive to the cost of capital, particularly for capital-intensive technologies like offshore wind," reducing their competitiveness. Wood MacKenzie estimates that "a 2% increase in the risk-free interest rate pushes up the levelized cost of electricity for a renewables project by 20%, compared with only 11% for a combined cycle gas plant." This (partially) explains why solar power continues to exceed expectations but wind (particularly offshore) has taken a beating.

Possible Answers. Some solutions have garnered bipartisan support though magic bullets for overlapping complicated systems are nowhere in sight.

- A number of bills with a shot of passage would establish a data center testbed working on energy efficiency, commission official reports on data center energy usage, and use AI to improve the grid. The Department of Energy (DOE) has also been hard at work crafting reports, recommendations, voluntary efficiency and certification programs, and providing resources for data center owners.

- Encouraging the next generation of nuclear reactors and keeping currently operating plants online has widespread support. Billions of dollars for both purposes are collectively provided by the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, while the ADVANCE Act and the Nuclear Regulatory Commission are trying to remove the regulatory hurdles. The shining successes of this strategy include one Michigan plant to be re-opened with the help of a DOE loan and another as the result of a private deal with Microsoft.

The latest shot at permitting reform is a bipartisan Senate proposal, the Energy Permitting Reform Act of 2024, authored by Senators Joe Manchin (I-WV) and John Barrasso (R-WY). It's neither guaranteed nor doomed but this lame duck period may be the best shot it will have for the foreseeable future, even if that shot isn't particularly strong. The Federal Energy Regulatory Commission finalized rules in May representing the biggest change to how power lines are planned and funded in more than a decade. Several of the proposals are opposed by Republicans, who have the possibility to flip the board and pull back the rules in the not-too-distant future.
