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# How to Waste a Congressional Majority

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Trump and the Republican Congress

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*Sarah Binder*

Governing is always hard in polarized times, but it has been especially hard during U.S. President Donald Trump's first year in office. Undisciplined and unpopular, Trump has been largely unable to advance his agenda on Capitol Hill despite Republican control of both houses of Congress. With his political capital shrinking as his public approval falls, Trump will no doubt struggle to deliver on his campaign promises to repeal the Affordable Care Act, reform the tax code, build a wall along the southern border, and repair the nation's crumbling infrastructure.

It is tempting to blame Trump's legislative failures on his lack of government experience, his indifference to the details of policy, and his tempestuous personality. But focusing only on personal characteristics misses the political and institutional dynamics at play. The two parties are deeply polarized, Republicans hold only a slim Senate majority, and Republican conferences in both chambers cannot agree on key issues. A more disciplined and popular president might have managed to bring Republicans together. But huge obstacles would still have remained. As it stands, Trump is heading into his second year in office with little to show in terms of legislative victories—and few reasons to believe his agenda will fare any better in the future.

## STUCK IN NEUTRAL

Judging legislative accomplishments so early in a president's term is risky. Congressional Republicans won't face voters until November

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*We need to talk: Trump and House Speaker Paul Ryan, November 2016*

2018, and Trump won't for two more years after that. But so far, Trump's record pales beside those of other modern presidents. Ever since Franklin Roosevelt's extraordinary first 100 days, during which he persuaded Congress to pass a raft of major laws to combat the Great Depression, that mark has become a checkpoint in assessing presidential performance. In their first 100 days, most presidents exploit their electoral victory to push through major proposals. Even with Bill Clinton's rocky start in 1993, Democrats swiftly enacted the nation's first family-leave law, which had been vetoed by George H. W. Bush. In 2001, George W. Bush made quick progress on a multitrillion-dollar tax cut, as well as on landmark education reform. Within a month of taking office in 2009, Barack Obama and a Democratic Congress had delivered the largest fiscal stimulus since World War II, along with pay-equity and children's health-care reforms that Bush had vetoed.

Trump came into office with a litany of promises: he vowed to reform immigration and the tax code, fix the nation's infrastructure, renegotiate trade deals, build a southern border wall, overhaul health care, deregulate Wall Street, and revive the coal industry. So far, Congress has delivered little from that wish list. Trump's first 100 days were, in the words of the Republican operative Karl Rove, a "honeymoon from hell."

Republicans' failure to repeal and replace the Affordable Care Act, or Obamacare, has defined Trump's early legislative record. In May, after the House barely passed a widely unpopular repeal-and-replace bill, Trump bused GOP lawmakers to the White House to celebrate their achievement in the Rose Garden (a venue typically reserved for signing bills into law). But subsequent efforts by Senate Republicans to pass their own version of the bill failed, despite their use of a legislative process that eliminated the need to secure the votes of any Democratic senators. In October,

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facing a deadlocked Congress, Trump moved to destabilize Obamacare's health-care markets on his own, ending subsidies to insurers that were designed to reduce costs for low-income Americans. Coupled with drastic cuts in Obamacare advertising and personnel, the president's moves increased confusion over the availability and cost of health insurance and threatened to reverse the recent rise in the number of insured Americans.

Republicans have achieved some victories. They have turned to the Congressional Review Act, a rarely used 1996 law that allows Congress to overturn recently written federal regulations without having to worry about a filibuster, in order to loosen restrictions on the oil, gas, coal, and telecommunications industries implemented at the end of the Obama administration. In April, the Senate confirmed Trump's nominee to the Supreme Court, Neil Gorsuch. As of this writing, however, the Senate has confirmed only 12 lifetime judges to the federal bench since then, leaving nearly 150 judge-ships vacant, even though Democratic votes are not required to fill them. That said, Trump's pace is roughly on par with George W. Bush's and Obama's during each of their first years in office. This year, a slow-moving White House, a distracted Senate GOP majority, and Democratic foot-dragging have hindered what could have been quick progress on filling the bench.

Republicans have managed to score some bipartisan wins. In June, with broad support from both parties, Congress passed legislation making it easier to fire employees at the Department of Veterans Affairs, a reaction to revelations in 2014 that VA hospitals had missed targets for waiting times and falsified records. Congress' other major

bipartisan legislative accomplishment, a measure that forced the president to impose new sanctions on Russia and limited his ability to lift existing ones, met fierce opposition from Trump. But with a special counsel investigating possible collusion between the Trump campaign and the Russian government in the 2016 election and Trump facing near-unanimous, veto-proof majorities on the Hill, the president had little choice but to acquiesce to legislators' demands.

Away from Congress, Trump has had mixed success when he has tried to pursue his agenda through the executive branch. He has fulfilled some major promises. He abandoned the 12-nation Trans-Pacific Partnership trade deal, announced his intention to withdraw the United States from the Paris climate accord, and reopened talks on the North American Free Trade Agreement. And Scott Pruitt, the head of the Environmental Protection Agency, has pushed hard to unravel many Obama-era environmental protections.

But much remains undone. Most significant, several of Trump's major executive orders, including the travel ban on visitors from several countries, restrictions on federal funding for so-called sanctuary cities, and an order preventing transgender people from serving in the military, have been blocked in whole or in part by the courts. Some of Trump's difficulties in advancing his agenda through executive action have been self-inflicted. Two cabinet seats—secretary of health and human services and secretary of homeland security—are vacant. Roughly two-thirds of the most important government posts still lack a nominee, reflecting a pace of hiring that lags far behind those of past administrations. Trump has stated that he does not even intend to fill all the vacancies. Without important personnel in the State Department and other agencies, Trump's agenda lacks people to implement it.

## **WHO'S TO BLAME?**

At first glance, conditions in 2017 appeared ripe for major legislative change. The 2016 election turned on the need for change and produced the first unified GOP government in a decade. Granted, Trump could hardly claim a mandate for his agenda, given that Hillary Clinton had won the popular vote. But presidents rarely come in with an overwhelming mandate. As the political scientist Andrew Rudalevige has put it, "Presidents claim to speak for the nation. But in practice they are more often minority leaders." Even presidents who win both

the popular and the Electoral College votes tend to enter office with small majorities. When Ronald Reagan defeated Jimmy Carter in the 1980 presidential election—often recalled as a landslide because Reagan won 489 Electoral College votes—he won just 50.7 percent of the national popular vote. As the parties are roughly evenly matched in popular support, close national elections have become the norm.

In the past, successful presidents have reached beyond their narrow bases to build broader legislative coalitions. But structural factors often limit the parties' appetite for compromise. Continuing a decades-long

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*Republican lawmakers cannot trust the president to stick to his policy pronouncements.*

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trend, Democrats and Republicans are deeply polarized along party lines. This reflects both deep ideological differences between the parties over the role of government and intensely partisan team play. If one party is for something, the other must be against it. Partisan and ideological disagreements emerge

on nearly every major issue of the day: whether to retain or repeal Obamacare, whether to cut taxes for the wealthy or only for the middle class, whether to keep financial regulation tight or free the industry from Obama-era restrictions, whether to grant citizenship to those protected by the Deferred Action for Childhood Arrivals program (an Obama-era policy, known as DACA, that allowed some undocumented immigrants who entered the country as minors to avoid deportation) or end the program altogether. By one common metric, centrists made up about a third of each party in the 1960s; today, less than a fifth of lawmakers vote like moderates.

As the parties have polarized, the incentives for presidents to make overtures to the other side and to build broad coalitions of the sort normally needed to pass major legislation have waned. Moves to the center put the support of one's own party at risk to a much greater extent than they did a few decades ago. Indeed, Trump has been far more likely to follow through on pledges he has made that are close to the views of his far-right base than he has on some of his more moderate promises. He has, for example, decertified the Iran nuclear deal and halted DACA, whereas he has failed to push Congress to follow through on his promise to boost infrastructure spending.

Polarization matters because for almost every legislative motion, Senate rules require a supermajority of 60 out of 100 votes to block a

filibuster. Since they have just 52 seats, Republicans must convince eight Democrats to vote with them each time. If the parties were more ideologically diverse, that might be possible. But senators from competitive, polarized parties find little to agree on—and no political advantage in crossing the aisle.

Recognizing their inability to attract Democratic votes, Republicans abandoned bipartisanship in both chambers from the get-go. Not only did they employ the filibuster-proof Congressional Review Act to reverse Obama-era regulations; they also ignored Senate precedent and went ahead and banned filibusters of Supreme Court nominees, allowing them to confirm Gorsuch to the bench, and sought to repeal and replace Obamacare through “reconciliation,” a budgetary process that can’t be filibustered. In October, they began the process to use this same method to pass a tax plan.

Yet even when Republicans have avoided Democratic filibusters, they have struggled to pass major legislation—because in addition to the polarization of the two parties, congressional Republicans have themselves splintered into factions. The current Republican conferences in Congress are more divided than both their Democratic counterparts and their Republican predecessors. A key split is ideological: hard-core conservatives, often representing southern states, hold decidedly more far-right views and are less willing to compromise than their more centrist, pragmatic colleagues. By trying to legislate without Democratic votes, Republicans have highlighted divisions in their own ranks: they can no longer blame the minority for the legislative gridlock.

Consider the fiasco over Obamacare this past spring and summer. In the House, the far-right Freedom Caucus would vote only for an Obamacare repeal bill that their moderate colleagues refused to support. (After several failures, the moderates ended up caving, and the House eventually passed a bill.) And in the Senate, where only 50 votes were required to repeal Obamacare (counting on the vice president to break a 50–50 tie), Republicans repeatedly came up short. Senators disagreed over how much of Obamacare to repeal and how it might be replaced—decisions made more difficult by cumbersome legislative rules.

## **TWEETER IN CHIEF**

In theory, Trump could help his party bridge these divides. As the political scientist Richard Neustadt famously argued, a president’s power stems from his ability to persuade. That, in turn, depends on

his professional reputation in Washington and his public prestige more broadly. Early wins bolster his reputation with others at the bargaining table and thus beget future success. Early losses, in contrast, communicate weakness. A president's standing among voters also affects his ability to bend others to his will: the higher the public's regard for a president, the riskier it becomes for lawmakers and bureaucrats to cross him.

Viewed from this perspective, it is small wonder that Trump has struggled to advance his agenda in Congress. Republican lawmakers have come to realize that they cannot trust the president to stick to his policy pronouncements. Trump's declaration in June that the House's Obamacare repeal bill was "mean"—after celebrating its passage at the White House—illustrates the GOP's dilemma. The president's comment further exposed both centrists who voted for the bill reluctantly and conservatives who backed it enthusiastically to the threat of possible future campaign ads that attack them for supporting such an unpopular law. As lawmakers have gradually learned, the president has few, if any, consistent beliefs about policy; he seems only to want to score a deal. Despite Trump's claims on the campaign trail to be a superior dealmaker, any talent he may have had in the business world has not translated into legislative success.

Trump's standing with the general public is little better than his reputation in Washington. He is the least popular president at this stage in a presidential term since World War II, and his approval rating—around 38 percent, as of November—has dropped in every single state since he took office. This weakness creates leeway for both Democratic and Republican lawmakers to resist his policies. Red-state Democrats felt little pressure to cross the aisle to vote to repeal Obamacare. And the three GOP senators who voted against the bill to repeal Obamacare withstood considerable pressure from Trump to fold.

Beyond his weak personal standing, Trump's lack of discipline is perhaps his greatest liability. Members of Congress cannot set a national agenda and can only rarely command national press attention. They rely on the president to use his bully pulpit—or Twitter account—to craft and stick to a message, pave the way forward on contested policy, and thereby give rank-and-file members political cover for any tough votes or policy outcomes. But Trump seems singularly incapable of focusing. Instead of pressing relentlessly for tax reform, he engages

in Twitter fights with Republican senators, undercuts his cabinet secretaries, and goes to battle against NFL players. The president doesn't need to be a policy expert. But he does need to adopt a consistent message if he expects to unite a divided party and advance an agenda in Congress.

Faced with a party that struggles to legislate and his own inability to mold consensus among his fellow Republicans, Trump has compounded his party's problems. He has repeatedly created additional crises for Congress to deal with, perhaps with the intention of blaming congressional leaders if they fail to resolve each issue. In September, he began a six-month countdown clock to end DACA and threw the task to Capitol Hill, highlighting divisions among Republicans over immigration. In October, he refused to recertify the Iran nuclear deal, tossing the problem to Congress to resolve. His move later that month to cancel Obamacare subsidies intended to help low-income Americans added another contentious item to Congress' already busy calendar.

To be sure, congressional dysfunction is nothing new. In recent years, Congress has tended to delegate power to the executive—sometimes on purpose, other times as a consequence of deadlock. But now the buck no longer seems to stop with the president. Returning responsibility to Capitol Hill will not make finding solutions any easier if Republicans in Congress are unable to resolve policy impasses on their own.

## **TURBULENCE AHEAD**

Trump's prospects for legislative success in his second year look equally dim as those in his first. Throughout the fall, Republicans worried that Trump's promise to deliver huge corporate and individual tax cuts would meet the same fate as the effort to repeal Obamacare, even though they again planned to use budget rules that would foreclose a Democratic filibuster. Periodic spending bills to keep the government open require 60 votes, handing leverage to Senate Democrats, who could insist that Congress fund the health insurance subsidies Trump abandoned, block spending on a border wall, move to permanently protect DACA recipients from deportation, or demand more funding for their other domestic priorities. Whatever price they extract, it will involve advancing their own agenda, not Trump's.

Big deals are possible in polarized times if the costs of refusing to negotiate climb too high for both parties to bear. Whether the president will play any part in such negotiations remains to be seen. In theory, Republicans on Capitol Hill, sensing a weakened president, could cut deals with the Democrats as both parties look ahead to the midterm elections in 2018. But so long as Trump remains popular with the GOP's base, Republicans' appetite for joining Democrats at the bargaining table will be limited. And time is running short: GOP incumbents could face primary threats with Trump supporters angry at their inability to deliver on Trump's promises.

Unified party control rarely lasts long in American politics. Republicans have a narrow window to deliver on the promises they made to both traditional GOP voters and die-hard Trump supporters. But to keep hold of Congress, they must also show a broader electorate that they can be trusted to govern. Slim, divided majorities notwithstanding, Republicans control all of government. If things go wrong, voters will know who to blame. ●

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