

# Arnold & Porter

Innovative. Integrated. Industry-Focused.

---

## Capital Snapshot: A Monthly Overview of the Issues, Events and Timelines Driving Federal Policy Decisions

March 2022

# This Month's Capital Snapshot Deck

---

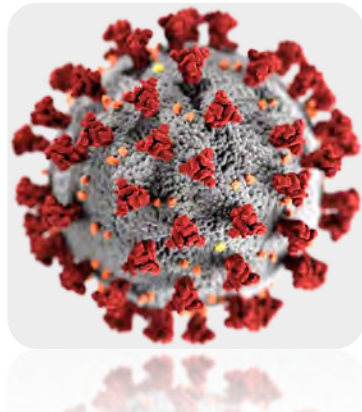
- An overview of President Biden's biggest policy priorities, including what was covered in the State of the Union (SOTU), and potential next steps.
- Highlights of other SOTU priorities.
- The policy and political timeline for March, and a look at the remaining 2022 congressional calendar.
- A best-case scenario for both political parties to win in November.
- A look at some key historical polling trends for midterm elections.

# President Biden's Policy Priorities

Ukraine/Russia  
War



COVID-19  
Pandemic



Economic  
Recovery



Racial Equity



Climate  
Change



# **Policy Priority: Ukraine/Russia War**

---



# What President Biden Said in the SOTU

---

- “Six days ago, Russia’s Vladimir Putin sought to shake the very foundations of the free world, thinking he could make it bend to his menacing ways. But he badly miscalculated....From President Zelensky to every Ukrainian, their fearlessness, their courage, their determination, literally inspires the world....We, the United States of America, stand with the Ukrainian people.”
- “We are cutting off Russia’s largest banks from the international financial system, preventing Russia’s central bank from defending the Russian ruble, making Putin’s \$630 billion war fund worthless....We are choking Russia’s access to technology that will sap its economic strength and weaken its military for years to come.”
- “But let me be clear: Our forces are not engaged and will not engage in the conflict with Russian forces in Ukraine.”



# SOTU Theme: Standing Up to Russian Aggression

---

**World leaders are holding  
President Putin accountable**



**Providing military and humanitarian  
support to Ukraine**



**Issuing economic and diplomatic sanctions**



# Next Steps: Ukraine-Russia

---

- Congress is likely to pass a \$10 billion security and humanitarian aid package for Ukraine in mid-March. There is still ongoing debate over funding levels and which legislative vehicle to attach aid to.
- Congress is looking to develop a bipartisan package of sanctions directed at Russia.
- Members of Congress will push for the expulsion of Russia from the WTO and the removal of permanent normal trade relations with Russia.
- Republican leaders in Congress are asking to expand defense funding in FY 2023 in response to this war.



# **Policy Priority: Exiting the COVID-19 Pandemic**

---





# What President Biden Said in the SOTU

---

- ***“For more than two years, Covid has impacted every decision in our lives and the life of this nation...Thanks to the progress we have made in the past year, Covid-19 no longer need control our lives.”***
- Offered four “common sense” steps to move forward:
  1. Stay protected with vaccines and treatments.
  2. Prepare for new variants.
  3. End the shutdown of schools and businesses.
  4. Continue vaccinating the world.

# Next Steps on COVID

---

- **National COVID-19 Preparedness Plan** guides efforts, some of which will require new funding from Congress.
  - Bolster vaccine campaign with new emphasis on treatments: “Test to Treat” will allow people to receive a COVID-19 test at a pharmacy and receive antiviral pills if they are positive.
  - Bolster pandemic defense: Enhance surveillance and data collection systems.
  - Testing: Expedited authorization, free testing sites, DPA for manufacturing capacity.
  - Vaccines/treatments: Speed FDA review of authorized vaccines to target new variants
  - SNS: Build Strategic National Stockpile reserves for at-home tests, antiviral pills, masks, in addition to ventilators and PPE.
  - Support schools/businesses to stay open.
  - Support global vaccination efforts.
- Potential COVID supplemental.
- Senate PREVENT Pandemics legislation.
- Transitioning policies (telehealth, FDA/CMS flexibilities) once PHE ends.
- Prepare for 2023 GOP oversight.

# **Policy Priority: Sustaining the Economic Recovery**

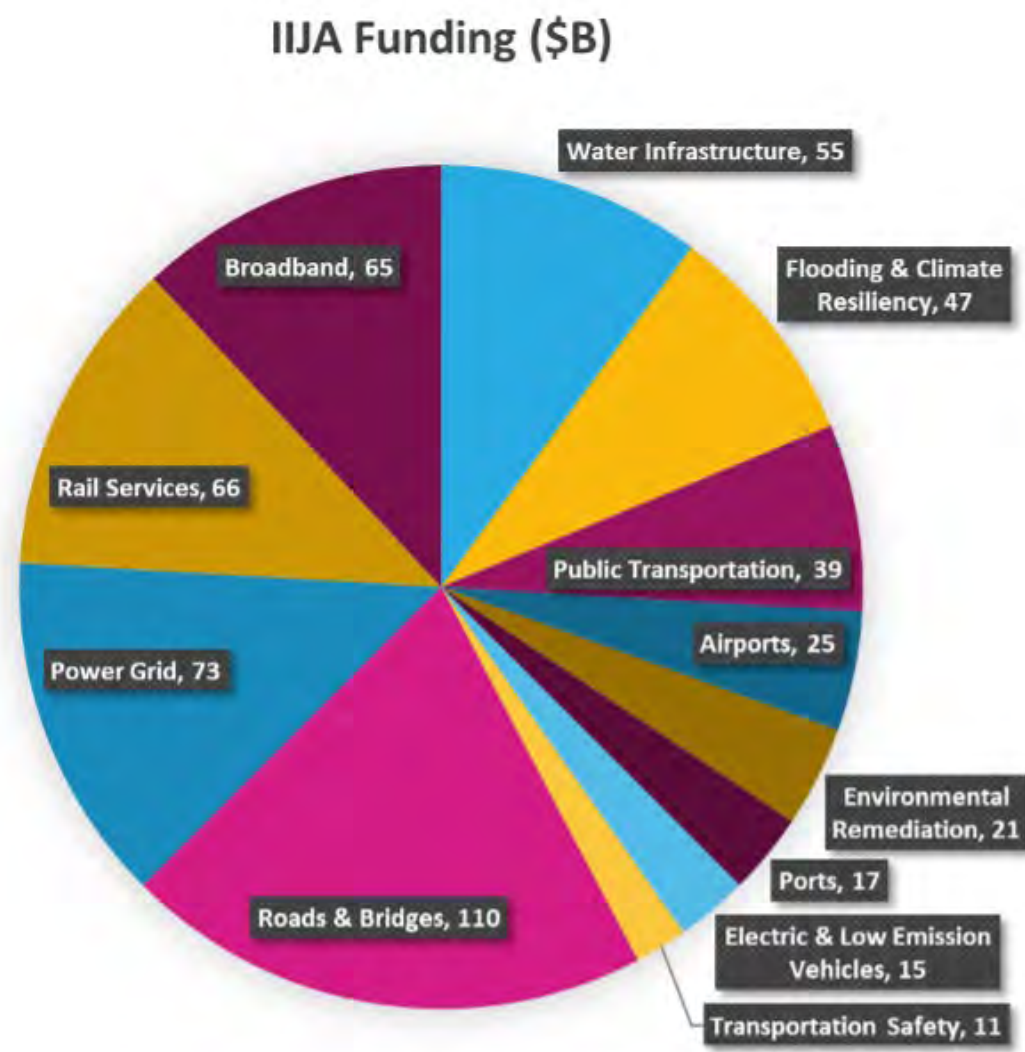
---



# SOTU: Recent Economic Legislation Benefited Americans and the Country

“We’re done talking about infrastructure weeks we’re going to have an infrastructure decade.”

(President Biden; SOTU; March 1, 2022)





# Pending Legislative Priorities Mentioned in the State of the Union



## American Manufacturing and Innovation

Ensure increased production, provide good jobs, remain globally competitive, and correct supply chain disruptions.



## Healthcare

Cut prescription drug costs, let Medicare negotiate prices, improve standards for nursing home quality, address mental health, and invest in research (Cancer Moonshot).



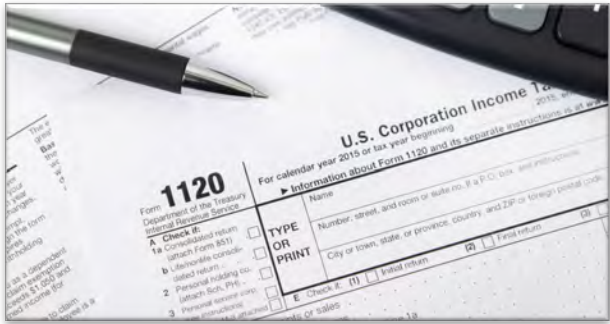
## Clean Energy and Climate

Expand clean energy production, improve energy efficiency and cut energy costs for families.



## Child Care

Cut child care costs in half for most families and extend the Child Tax Credit.



## Tax Reform

Increase taxes on wealthy individuals and corporations.

# Next Steps: Infrastructure & Supply Chain

---

- The Administration will now turn to implementation of key elements of the American Rescue Plan (ARP) and the Infrastructure Investment and Jobs Act (IIJA). Significant next steps will include:
  - Climate change mitigation and adaptation and the need to promote environmental justice.
  - Development of a national network of charging stations.
  - Removal of lead pipes.
  - Provision of high-speed internet in communities across America.
  - Publishing Notices of Funding Opportunities (NOFOs) for new and existing programs provided funding under the IIJA.
- President Biden also highlighted his commitment to domestic manufacturing and procurement, noting that “every Administration says they’ll do it, but we are actually doing it.”
  - The administration has emphasized “Buy American” policies from his presidential campaign into the administration, setting up a Made in America Office at the Office of Management and Budget to coordinate these responsibilities.
  - In late February, the Administration released seven reports identifying key weaknesses in some of the nation’s most crucial supply chains and devising multiyear strategies to address those weaknesses.
  - We anticipate that this focus will tighten in the deployment of the Infrastructure Investment and Jobs Act resources and in pending legislation, such as the bipartisan China competition bill.
- The Department of Transportation has started to publish NOFOs for programs funded under IIJA that support infrastructure investments in port infrastructure, freight movement and supply chain resiliency.

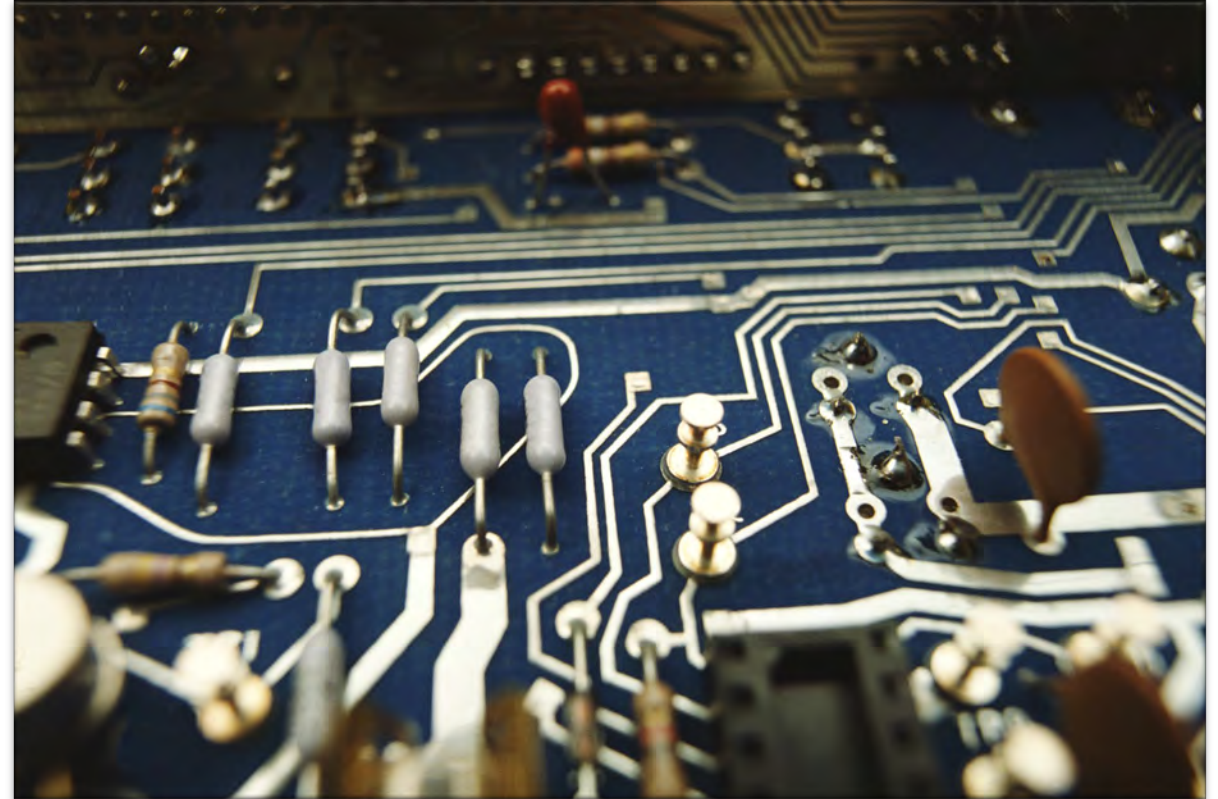
# Next Steps: American Manufacturing, Innovation & Competitiveness

**SOTU:** “All they’re waiting for is for you to pass **this bill.**” President Biden called on Congress to pass a consolidated version of USICA (S.1260)/the America COMPETES Act (H.R.4521), legislation that would:

- Expand domestic high-tech research and development.
- Provide substantial incentives to deploy semiconductor and other high tech manufacturing efforts.
- Potentially restore and expand lapsed trade programs.
- Re-orient US policy towards competition with China.

## Next Steps

- The Senate must take up a motion to conference the bills—regular order may be required.
- Conference process could take two to three months given complexity.





# Next Steps: Healthcare

**SOTU:** “Let’s cap the cost of insulin at \$35 a month so everyone can afford it....let’s let Medicare negotiate the price of prescription drugs....the American Rescue Plan is helping millions of families on Affordable Care Act plans to save them \$2,400 a year on their health care premiums. Let’s close the coverage gap and make these savings permanent.”

## Next Steps

- While Build Back Better remains stalled, drug pricing reforms remain on the list of potential policies to include in a “skinny” package.
- We also note that stand-alone measures to cap insulin prices have been introduced in recent weeks; potential interest in moving independently to demonstrate progress.
- What to watch: Senate Finance Committee is expected to hold a drug pricing hearing mid-month, which will keep the issue in the headlines but falls short of a formal markup. Also watch committee activity on FDA User Fees legislation which could provide a vehicle for other bills.





# Next Steps: Child Care

**SOTU:** “My plan would cut the cost in half for most families and help parents, including millions of women, who left the work force during the pandemic because they couldn’t afford child care, to be able to get back to work. Generating economic growth.”

- The President asked Congress to pass legislation to hold the cost of child care to seven percent of a family’s income and provide other social services, such as long-term care, affordable housing and universal pre-K programs, all of which were also included in the Build Back Better Act.

## Next Steps

- Senate HELP Chair Patty Murray (D-WA) to negotiate with Sen. Joe Manchin (D-WV) on what’s possible for child care through reconciliation.
- Senate Republicans will introduce an alternative pathway to support the child care system through the Child Care and Development Block Grant (CCDBG).



# Next Steps: Tax Reform

**SOTU:** “I’m not looking to punish anybody. But let’s make corporations and wealthy Americans start paying their fair share. ... Last year, 55 of the Fortune 500 companies earned \$40 billion in profit and paid zero in federal taxes. Look, it’s not fair. That’s why I proposed a 15 percent minimum tax rate for corporations.”

## Next Steps

- No book tax or other increases without Democratic agreement on size of smaller package.
- Revival of book tax (and wealth surtax) could spare TCJA tax cuts on corporations and individuals.

Form **1120**  
Department of the Treasury  
Internal Revenue Service

**U.S. Corporation Income**  
For calendar year 2015 or tax year beginning

► Information about Form 1120 and its separate instructions

**A Check if:**

**1a** Consolidated return (attach Form 851) ☐

**b** Life/nonlife consolidated return ☐

**2** Personal holding co. (attach Sch. PH) ☐

**3** Personal service corp. (see instructions) ☐

**TYPE OR PRINT**

**E Check if:** (1) ☐ Initial return (2) ☐ Final return

Name \_\_\_\_\_

Number, street, and room or suite no. If a P.O. box, see instructions \_\_\_\_\_

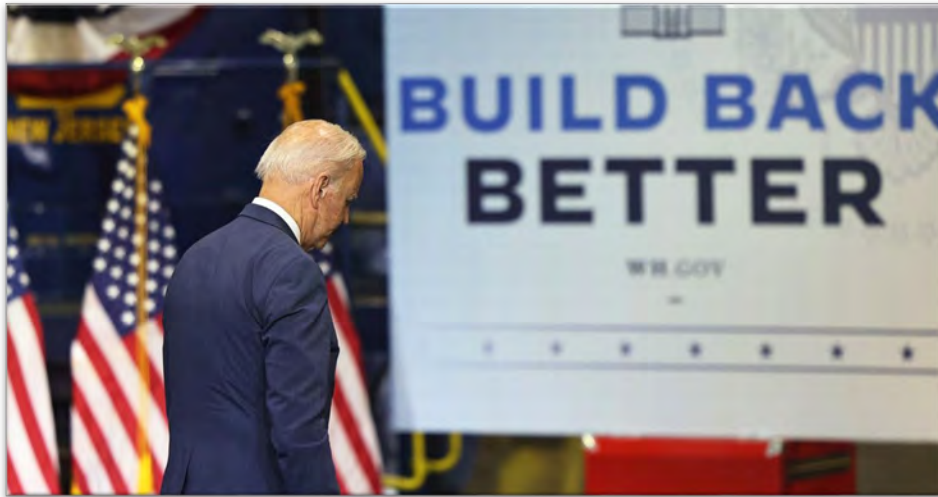
City or town, state, or province, country, and ZIP or foreign country \_\_\_\_\_

Points or sales \_\_\_\_\_

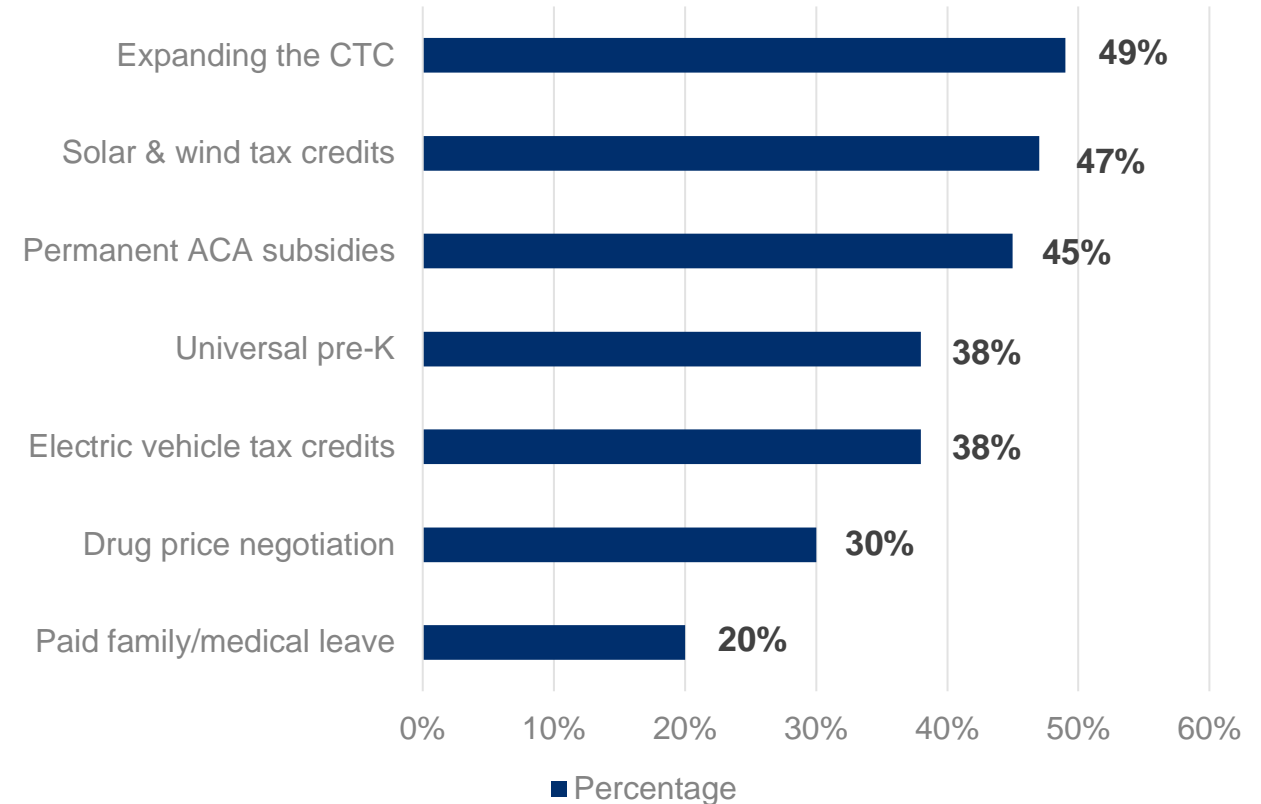
line 1a

# Build Back Better: What Congressional Insiders Think Might Pass in 2022

- 89% of senior congressional Democratic aides said Democrats should pass whatever they can before the midterms, even if it means breaking up elements of BBB into multiple bills.
- Even if BBB elements are broken up, the closely divided Senate means such legislative packages can probably only pass via reconciliation.



## Democratic Congressional Predictions on BBB Provisions Most Likely to Pass in 2022





# **Policy Priority: Pursuing Racial Equity and Reconciliation**

---





# What President Biden Said in the SOTU

---

- “The most fundamental right in America is the right to vote—and have it counted. And look, it’s under assault. In state after state, new laws have been passed, not only to suppress the vote—we’ve been there before—but to subvert the entire election. We can’t let this happen. Tonight, I call on the Senate to pass the Freedom to Vote Act. Pass the John Lewis Voting Rights Act. And while you’re at it, pass the Disclose Act so Americans know who is funding our elections.”
- “Let’s come together and protect our communities, restore trust and hold law enforcement accountable. That’s why the American Rescue Plan that you all provided \$350 billion that cities, states and counties can use to hire more police, invest in proven strategies. Proven strategies like community violence interruption—trusted messengers breaking the cycle of violence and trauma and giving young people some hope. We should all agree: The answer is not to defund the police. It’s to fund the police. Fund them. Fund them. Fund them with resources and training. Resources and training they need to protect their communities.”

## Next Steps: Racial Equity

---

- Senate confirmation of Supreme Court Nominee Judge Ketanji Brown Jackson, the first African-American woman nominated to the highest court in the land.
- Department of Justice continues to push back against new state-level laws that may reduce minority turnout.
- Additional efforts to overcome Senate filibuster of Freedom to Vote and John Lewis Voting Rights Act.
- Possible House consideration of legislation creating a commission to study reparations for African-Americans (H.R.40).
- Expected increases in FY23 Budget request from President Biden to spur racial equity programs across all federal departments, agencies and programs.

# Policy Priority: Addressing Climate Change

---



# What President Biden Said in the SOTU

---

- “We’ll create good jobs for millions of Americans, modernizing roads, airports, ports, waterways all across America. And we’ll do it all to withstand the devastating effects of climate change and promote environmental justice.”
- “We’ll build a national network of 500,000 electric vehicle charging stations, begin to replace the poisonous lead pipes, so every child—every American—has clean water to drink at home and at school.”
- “Cut energy costs for families an average of \$500 a year by combating climate change.”
- “Let’s provide investment tax credits to weatherize your home and your business to be energy efficient and get a tax credit for it; double America’s clean energy production in solar, wind and so much more; lower the price of electric vehicles...”



# Next Steps: Clean Energy and Climate Change

**SOTU:** The President asked Congress to pass legislation to invest in clean energy. The House-passed Build Back Better Act features roughly \$325 billion in incentives to expand clean energy production and to increase energy efficiency.

## Next Steps

- Senate leaders must land on a package of tax and policy incentives for clean tech, energy efficiency and climate mitigation that Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) can support.
  - Early signals suggest Sen. Manchin could support a limited package.



# **Additional Policy Priorities from the State of the Union**

---



# Confirm US Supreme Court Nominee

---

Judge Ketanji Brown Jackson



- The Senate Judiciary Committee will hold a nomination hearing for Judge Jackson on March 21, 2022.
- The full Senate is expected to hold a floor vote on Judge Jackson's nomination in April 2022.



# Other Notable Agenda Items from the State of the Union

- Enacting a “Unity Agenda for America” that includes:
  - Funding to respond to the opioid crisis.
  - Improving mental health.
  - Supporting veteran health.
  - Strengthening the “Cancer Moonshot” by funding ARPA-H.
- “Controlling” Covid-19.
- “Protecting our communities, restoring trust and holding law enforcement accountable.”
  - President Biden said we need to “fund the police,” rather than the opposite.
- Ensuring the protection of individual rights.
  - Border security & immigration reform.
  - Passage of the Equality Act.
  - Protecting *Roe v. Wade*.



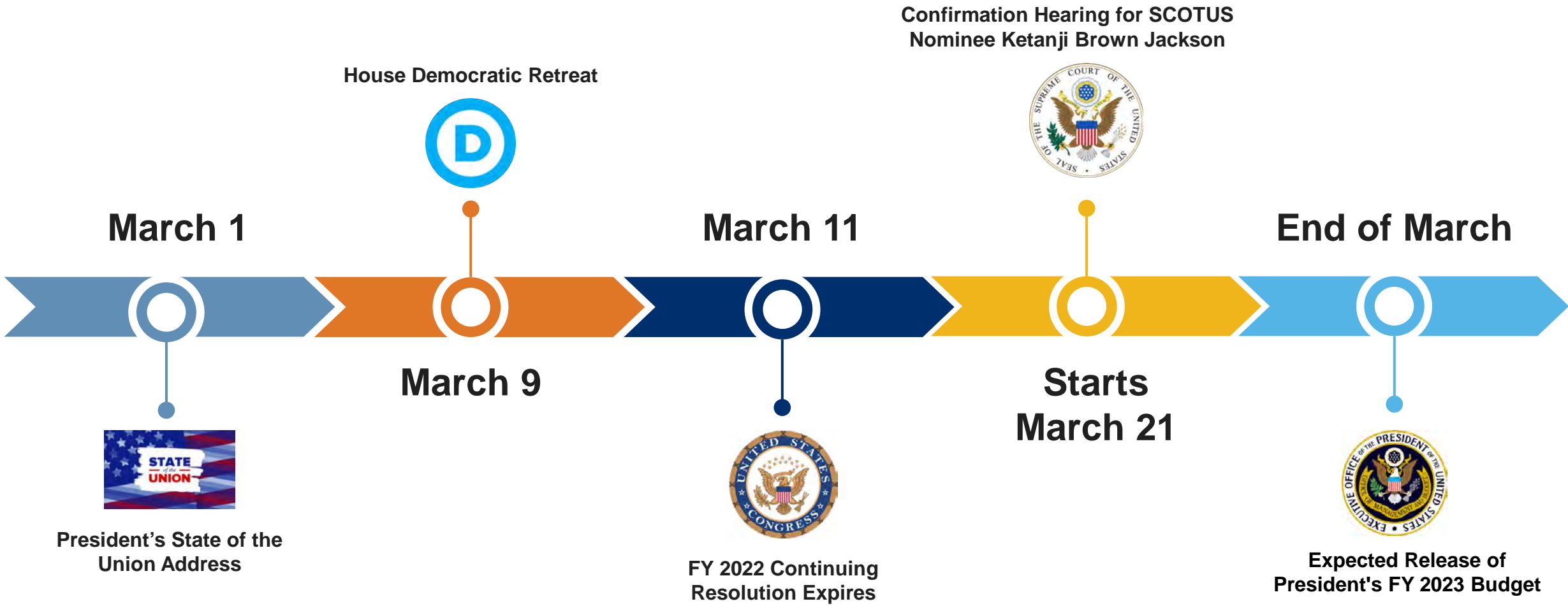


# Congressional Schedule and Priorities for March 2022

---



# Congressional Schedule and Priorities for March 2022



# Congressional Agenda in March

Russian Sanctions



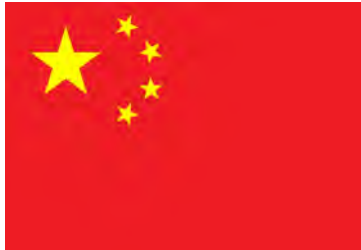
Ukraine Military and Humanitarian Support Package



FY 2022 Appropriations Package



China Competitiveness (USICA/America COMPETES Act)



Unbundle and Repackage Popular Elements of Build Back Better



Confirm US Supreme Court Nominee



# Remaining Days in Congress

---

## House

- 12 legislative days remain in March.
- 53 legislative days until August recess.
- 84 legislative days left in 2022.

## Senate

- 19 legislative days remain in March.
- 84 legislative days until August recess.
- 136 legislative days left in 2022.



# Political Landscape

---



# What Could Lead to a Best-Case Election Scenario for Democrats?

- Americans begin to credit President Biden/congressional Democrats for recent record economic recovery.
  - Real GDP increased 5.7% in 2021, compared to a decrease of 3.4% in 2020.
  - Unemployment rate fell from 6.4% in January 2021 to 4% in January 2022.
- Positive impact of \$1.9T American Rescue Plan.
- President Biden's approval rating climbs back into the high 40s or better.

## Current Indicators

- Congressional redistricting is net positive for House Democrats.
- Endangered incumbents are generally well-funded.
- Republicans fail to recruit top-level candidates in key Senate races like AZ, CO, MD, & NH.

Source: US Department of Commerce, Bureau of Economic Analysis; Gross Domestic Product, 4<sup>th</sup> Quarter and Year 2021 (2<sup>nd</sup> Estimate)

Source: US Dept. of Labor, Bureau of Labor Statistics; Labor Force Statistics from the Current Population Survey



# What Could Lead to a Best-Case Election Scenario for Republicans?

- Inflation persists, dampening public perception of a full economic recovery.
- Russian invasion of Ukraine succeeds, and voters perceive a fall in American prestige.
- President Biden continues to poll in the low 40s or high 30s.

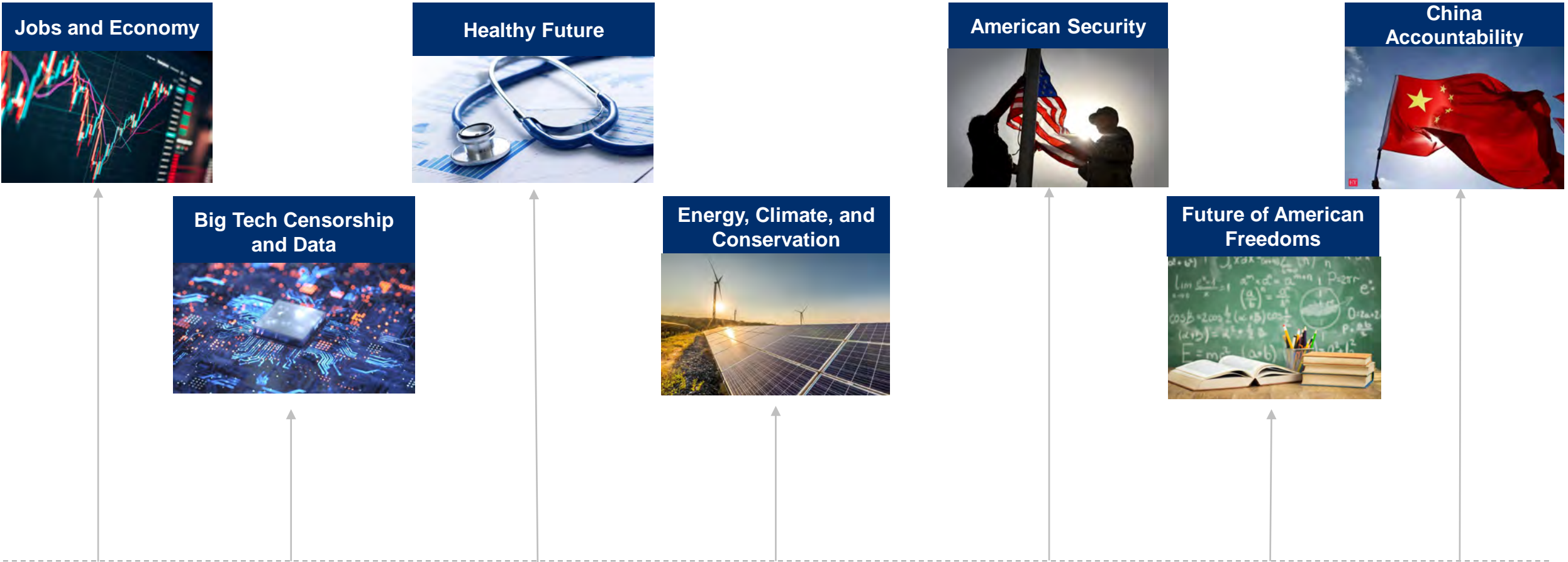
## Current Indicators

- Senate Republicans have about 30% more cash on hand at the party level.
- 31 House Democrats are retiring, compared to just 15 House Republicans.
- Republicans lead in the congressional generic ballot by 7 points right now.





# House Republicans Launch 7 Task Forces to Prepare a 2023 Legislative Agenda

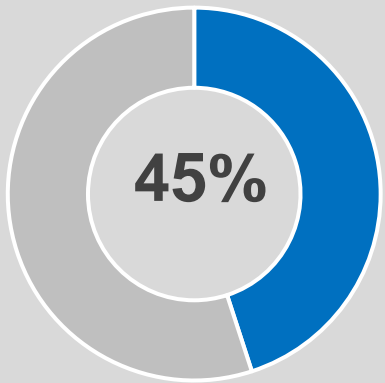


**54% (114) of the House’s 211 Republicans are serving on a task force. The task forces are actively meeting and taking input from stakeholders to introduce legislation in 2023 if they win in November’s elections.**

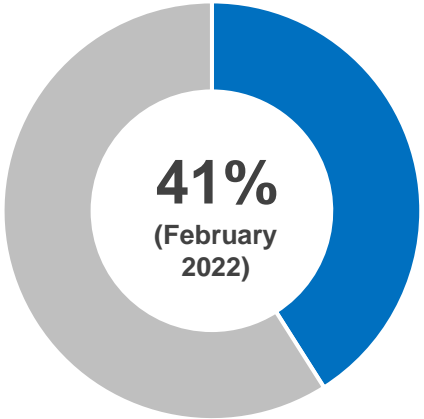
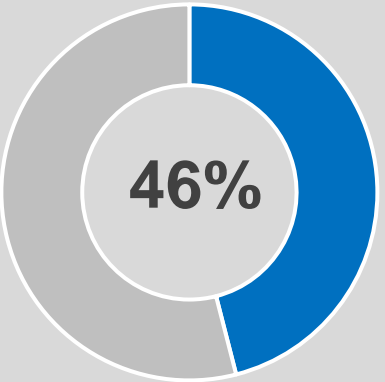


# Low Presidential Approval Ratings in Off-Year Elections Are a Leading Indicator of Wave Elections by the Other Party

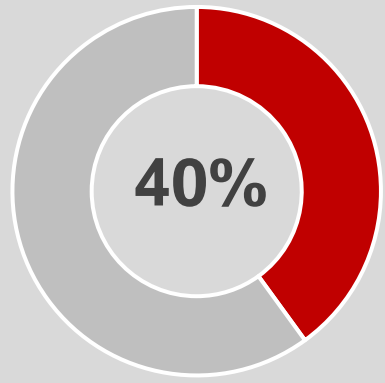
President Obama: Lost 63 seats (2010)



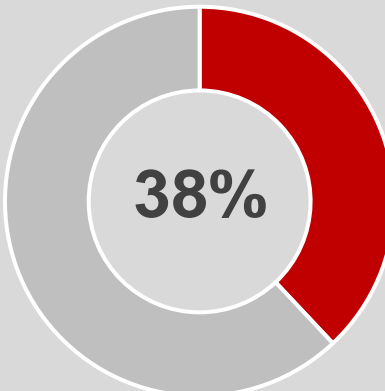
President Clinton: Lost 53 seats (1994)



President Biden: Democrats currently only hold a five-seat majority in the House (2022)



President Trump: Lost 40 seats (2018)



President Bush: Lost 30 seats (2006)

Source: Gallup; Presidential Job Approval Center.

# Historic Data on Generic Congressional Ballot Forecasts Republican Wave in 2022

Year	Generic Ballot Margin	House Seats Won	Senate Seats Won
1994	Dem +4	GOP Gain of 54	GOP Gain of 8
2006	Dem +13	Dem Gain of 31	Dem Gain of 6
2010	GOP +9.4	GOP Gain of 63	GOP Gain of 7
2014	GOP +2.4	GOP Gain of 13	GOP Gain of 9
2018	Dem +7	Dem Gain of 41	GOP Gain of 2
2022	GOP +7 (Feb. 2022)	???	???

Thank you

Arnold & Porter

[www.arnoldporter.com](http://www.arnoldporter.com)

Arnold & Porter