

# Arnold & Porter

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## Capital Snapshot

A Monthly Overview of the Issues, Events,  
Timelines, and Polling Data Driving Federal Policy  
Decisions

May 2022

## This Month's Capital Snapshot Deck Includes

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- Policy and political timeline for May/remaining Congressional calendar
- Overview of top Congressional priorities
- A look at the goals of the two Senators who are pivotal to passing a smaller *Build Back Better* package
- Summary of top year-end cases to be decided by Supreme Court in May and June
- Six months to Election Day—the state of the race for the key battlegrounds that will decide control of the Senate

# Congressional Schedule and Priorities for May 2022

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## Remaining Days in Congress

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### House

- Eight legislative days scheduled for May.
- 32 legislative days until August recess.
- 60 legislative days left in 2022.

### Senate

- 20 legislative days scheduled for May.
- 54 legislative days until August recess.
- 106 legislative days left in 2022.

# Congressional Agenda in May

Possible vote on a bill related to insulin costs

Potential negotiations on a smaller *Build Back Better* bill

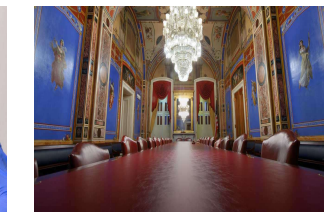
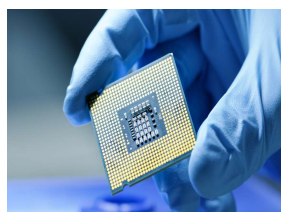
House and Senate Conference on USICA/America COMPETES Act

Possible legislation related to reducing gas prices

FDA User Fee Amendments reauthorization process

COVID supplemental bill, which could be combined with additional Ukraine aid

FY 2023 Budget & Appropriations considerations and drafting



# Congressional Schedule and Priorities for May 2022

Possible Senate vote on a bipartisan bill to cap out-of-pocket insulin costs



Potential votes on bills to address high gas prices, including a possible vote on a



Final Senate Appropriations Committee Submission deadline (May 27)



Early May

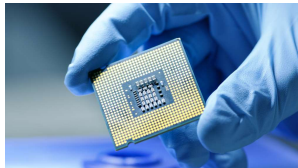
Early to Mid-May

Late-May

Early to Mid-May

Mid to Late-May

Late-May



House and Senate to begin conference on USICA/America COMPETES Act

Potential vote on a COVID supplemental bill and additional Ukraine aid

Possible Senate HELP and House E&C markups on FDA User Fee Agreements reauthorization

## Two Moderate Democratic Senators Control the Fate of Build Back Better Package: Sen. Joe Manchin (D-WV)

- **December 19, 2021:** Sen. Manchin announces opposition to \$1.7B *Build Back Better Act*, effectively killing hopes of a large economic, social and climate package passing on a straight party-line vote.
- **March/April 2022:** Sen. Manchin indicates he is open to a “skinnier” reconciliation bill (\$700B–\$1.5T) that addresses the following policy matters:
  - Tax reform: Corporate rate of 25%, capital gains rate of 28%, reduce loopholes
  - Prescription drug pricing reform
  - Climate and energy spending
  - Half of the bill’s revenue goes to paying down the national debt
- **April 26:** Sen. Manchin and Senate Majority Leader Chuck Schumer (D-NY) huddle on potential package details.
- **April 26:** Sen. Manchin stated any party-line reconciliation bill must be about “getting inflation under control, paying down this debt, getting a handle on what’s going on.”



Sen. Joe Manchin

## Two Moderate Democratic Senators Control the Fate of Build Back Better Package: Sen. Kyrsten Sinema (D-AZ)

- Sen. Sinema’s actions also make her a leading player who must be handled to pass a *Build Back Better* (BBB) package.
- Sen. Sinema’s goals for BBB sometimes conflict with Sen. Manchin’s policy objectives for the package.
- **Example:** Sen. Sinema prefers to raise taxes on wealthy individuals, while Sen. Manchin is focused on raising corporate tax rates and closing corporate tax loopholes.
- **April 12:** Sen. Sinema said she will “only support tax policies that promote economic growth and stability.” She added, “the entire country knows that I am opposed to raising the corporate income tax.”
- **April 12:** On prescription drug pricing, Sen. Sinema remarked she wants to “ensure that Arizonans can get drugs at the lowest prices possible,” but added she believes “very strongly that we must protect innovation and research and development.”
- Overall, she said if reconciliation negotiations progress, she will be “the same person in negotiations that I was in the negotiations last year.”



Sen. Kyrsten Sinema



# House Democratic Frustrations with Build Back Better Negotiations

- The Congressional Progressive Caucus (CPC) is increasingly disappointed with the lack of progress on advancing a reconciliation bill and is now urging the Biden administration to take executive actions to enact some of the Democratic Party's policy priorities.
- Meanwhile, moderate House Democrats are frustrated to be left twisting in the wind on BBB because it could hurt their reelection efforts, so these Representatives are looking for other legislative actions that show their voters progress is being made.
- Example: Moderate Elissa Slotkin (D-MI) introduced a stand-alone Medicare drug price negotiation bill in April, since BBB may not move.



Rep. Pramila  
Jayapal  
(D-WA)  
(CPC Chair)



Rep. Elissa  
Slotkin  
(D-MI)

# US Response to Russia's Invasion of Ukraine

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- As the war in Ukraine continues, calls for additional military and economic **aid to Ukraine** have increased. Congress failed to pass a package before the April recess, but **action is expected in May**.
- The White House is now asking Congress for \$33 billion in aid for Ukraine.
  - \$20.4 billion for military assistance
  - \$8.5 billion for economic assistance
  - \$3 billion for humanitarian assistance
- Democrats want to combine \$30 billion in Ukrainian aid with \$10 billion in COVID-19 supplemental funding.
- Republicans prefer splitting Ukraine and COVID relief into two separate packages and are demanding a vote to prevent President Biden from rescinding a COVID-era policy that reduces the number of migrants who can cross the border and claim asylum.
- The war in Ukraine has almost wiped out some US armament supplies—such as **Javelin anti-tank and Stinger anti-air missile stockpiles**. Congress will have to appropriate funds to rebuild these stockpiles and keep Ukraine supplied at the same time.



# FY 2023 NDAA and Defense Appropriations

FY23 National Defense Authorization Act (NDAA) Projected Timeline	FY23 Defense Appropriations Projected Timeline
June: Senate and House Armed Services Committee Markups	June–Aug: Committee Negotiations, Text Released
Aug–Sept: Conference	Sept–Oct: Conference
Oct–Nov: Final Passage	Dec: Final Passage (likely part of a larger appropriations package)

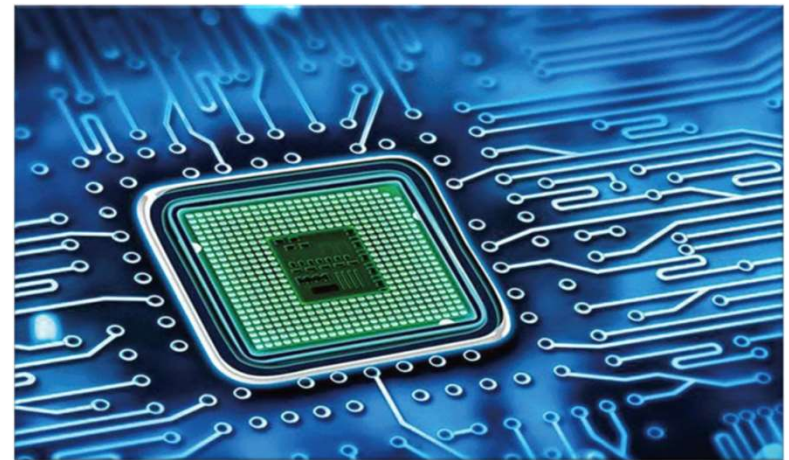


## FY23 Defense Priorities

- Democrats and Republicans have yet to agree on topline numbers for the FY23 cycle. President Biden requested \$773 billion for the Department of Defense, a 4% increase from FY22. Republicans have stated they cannot support anything lower than \$800 billion, citing current inflation rates.
- The NDAA and defense appropriations packages will focus on the war in Ukraine, replenishing US missile stockpiles and deterring China’s influence in the Indo-Pacific region.

# Congress Starts Negotiations to Complete Work on a Competitiveness and Innovation Package (America COMPETES Act / USICA)

- **First Week of May:** The Senate will vote on a series of 28 Motions to Instruct its Conferees on discrete policy issues, many of which also double as highly charged political issues headed into the 2022 election.
- **Scope of Package:** So many Congressional committees have jurisdiction that 107 Senators and Representatives are conferees: 26 Senators (13 Democrats and 13 Republicans) and 81 Representatives (50 Democrats and 31 Republicans).
- **Conventional Wisdom:** The Senate-passed USICA will be the framework for conference negotiations as opposed to the more partisan America COMPETES Act from the House.
- **Centerpiece of the Bill:** The CHIPS Act, which incentivizes domestic semiconductor manufacturing. Both the House and the Senate versions of the bill include \$50 billion for semiconductor manufacturing support.
- **Key Differences to Be Negotiated in Trade Provisions:** The House takes a more protectionist line, including expansive trade remedies rules, curtailing the de minimis rule and imposing an outbound investment screen. The Senate would require the reinstatement of Section 301 exclusions and, notably, impose an inspector general (IG) at USTR—the first time an IG would be reviewing actions of the executive office of the president.



# Supreme Court Outlook for the Remainder of the Term

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# Supreme Court Outlook: Major Cases to Be Decided by July 1

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- Whether pre-viability abortion restrictions can be lawful. (**Dobbs v. Jackson Women's Health Organization**, No. [19-1392](#))
- Whether denying concealed-carry handgun licenses for self-defense except on a showing of special need violates the Second Amendment. (**New York State Rifle & Pistol Association Inc. v. Bruen**, No. [20-843](#))
- Whether states may exclude sectarian schools from a school voucher program if they fund nonsectarian schools. (**Carson v. Makin**, No. [20-1088](#))
- Whether the Clean Air Act permits EPA to issue rules designed to eliminate power plants that emit unacceptably high levels of CO<sub>2</sub>. (**West Virginia v. Environmental Protection Agency**, No. [20-1530](#))



# Supreme Court Outlook: Major Cases to Be Decided by July 1 (cont'd)

- Major cases coming from SCOTUS before end of term July 1:
  - Whether the Biden administration lawfully rescinded the “Remain in Mexico” Policy. (**Biden v. Texas, No. [21-954](#)**)
  - Whether Congress may authorize suits against non-consenting states pursuant to its constitutional war powers. (**Torres v. Texas Department of Public Safety, No. [20-603](#)**)\*
  - Whether a public school may prohibit its employees from saying a brief, quiet prayer by themselves while at school and visible to students. (**Kennedy v. Bremerton School District, No. [21-418](#)**)



\*Arnold & Porter represents a party in this case.

# Six Months to Election Day: Battle for Control of Congress

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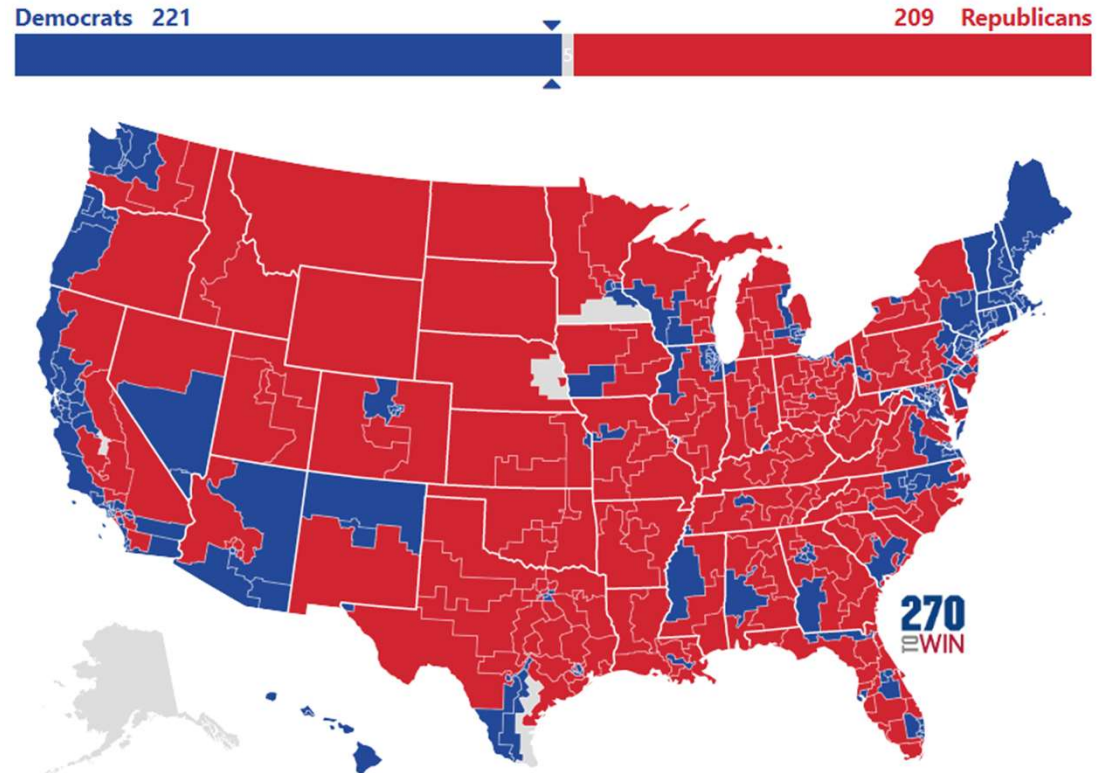




# Current House: 117th Congress

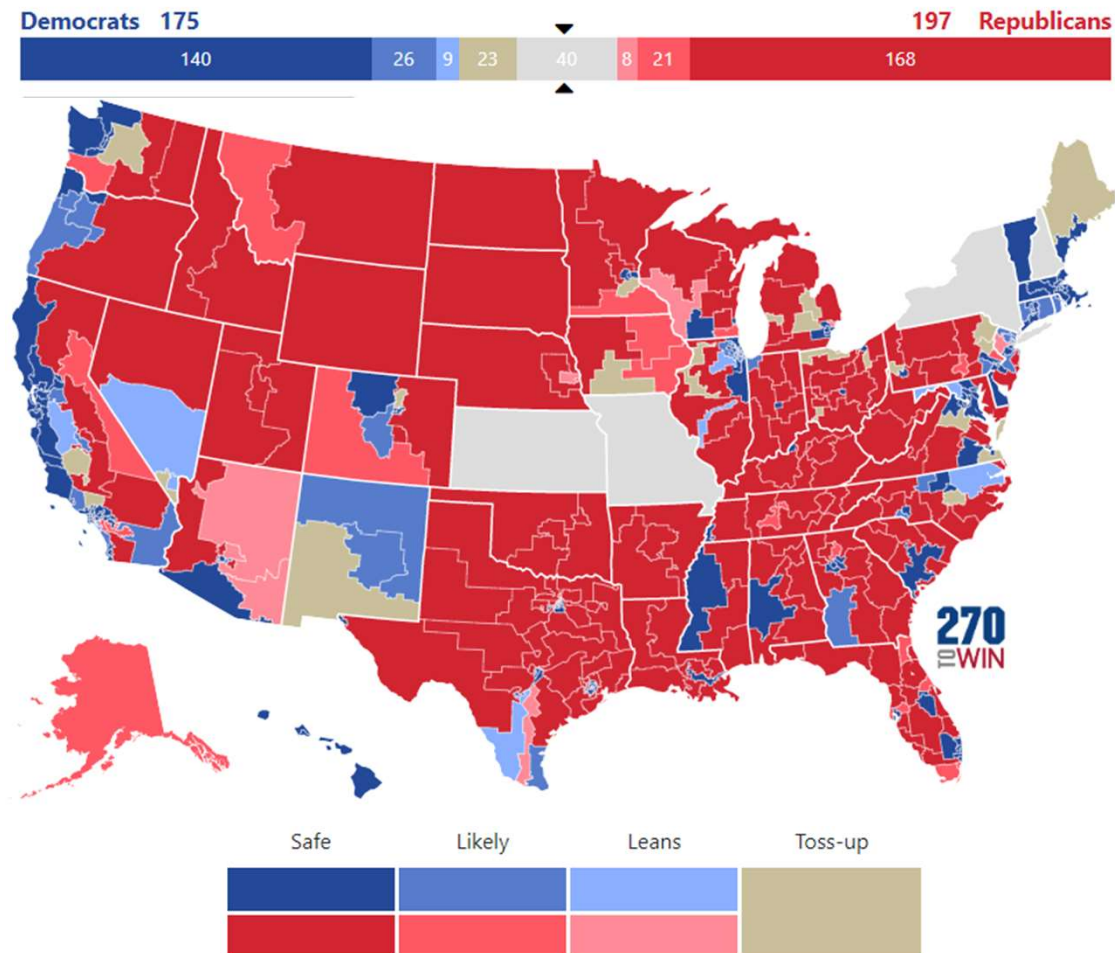
- Democrats hold a narrow 221-209 advantage.
- Republicans picked up 11 seats in 2020 even as Democrats won the White House and Senate.
- There are currently five vacant seats in the House in the 117th Congress.
  - Four were held by Republicans
  - One was held by Democrats

Current Makeup of the US House of Representatives



# 2022 House Election Outlook

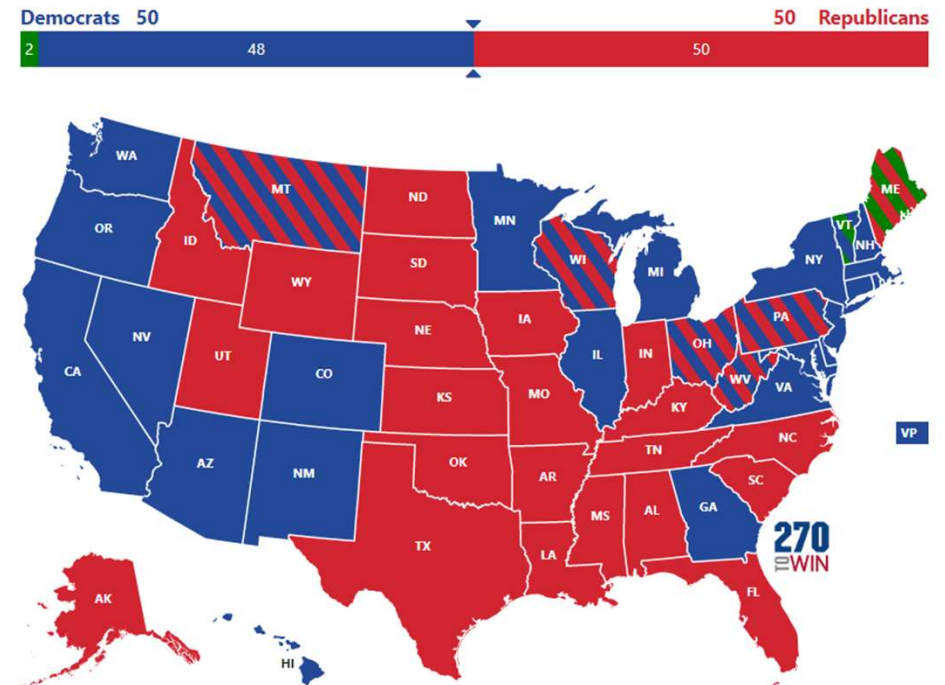
- **Current Conditions:** Narrow Democratic Control of the House + poor voter perception of the economy + President Biden's low approval ratings = Republicans as 2022 favorites to win the House.
- **2022 Redistricting:** Democrats did well early, but recent actions in Florida and New York now make it appear Republicans will emerge from this once-a-decade process with a net gain of a few more safe seats.
- **Not Done Yet:** Court cases challenging new redistricting maps have created uncertainty about district lines and primary dates in several states.



# Current Senate: 117th Congress

- The Senate is currently split evenly at 50-50, with both independent Senators caucusing with the Democrats.
- Senate Democrats are currently in the majority, as Vice President Kamala Harris (D), who is also the Senate President, can cast the tie-breaking vote.
- Only six states have a split Senate delegation, the lowest number in decades.

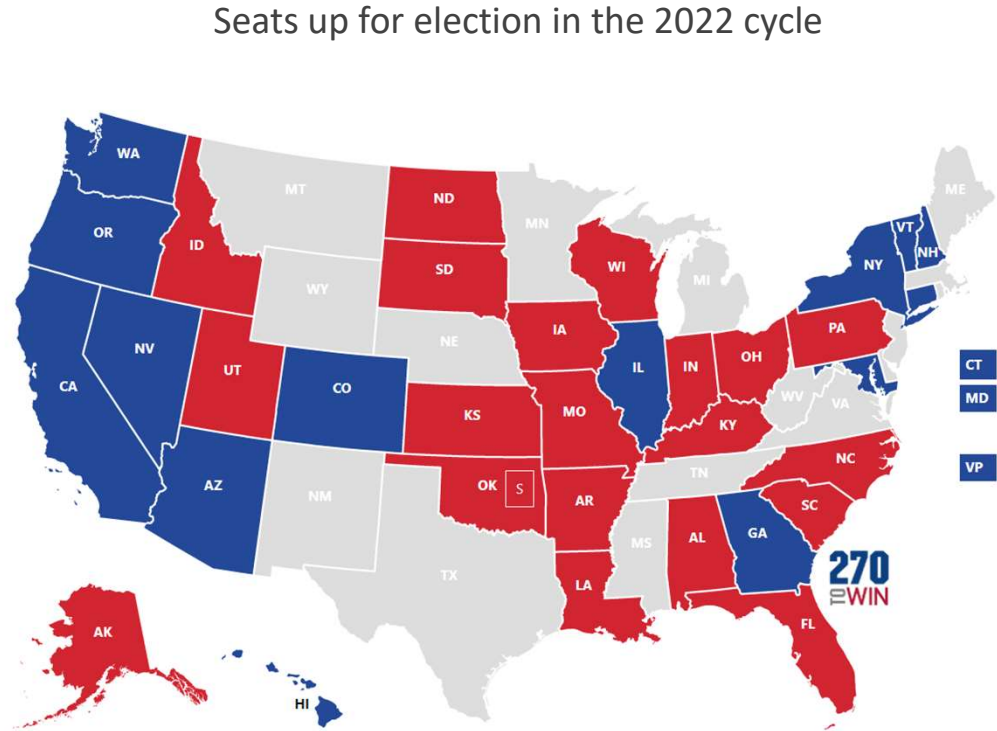
Current Makeup of the US Senate



# 2022 Senate Races

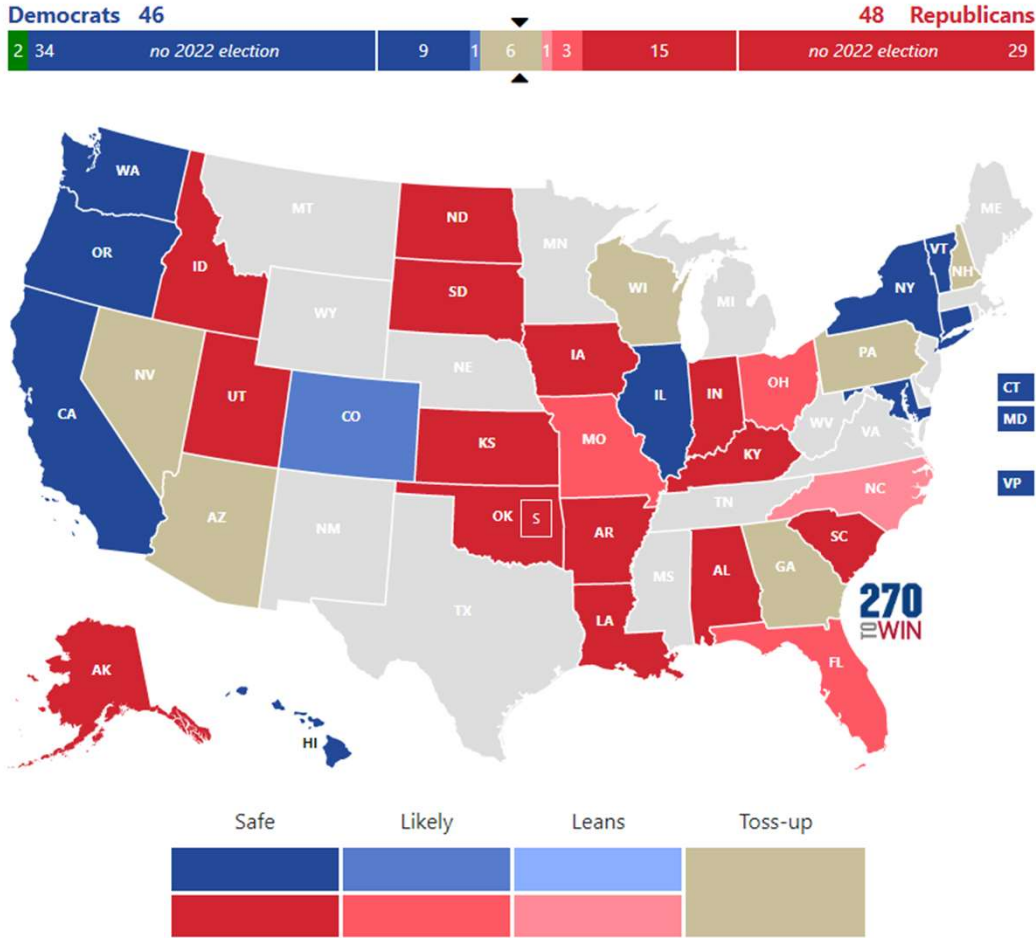
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- Republicans (in red on map) are defending 21 seats.
- Democrats (in blue on map) are defending 14 seats.
- While Republicans are defending more seats, Democrats are defending four of the six “toss-up” seats.



# 2022 Senate Election Outlook

- The most competitive Senate races will likely be Pennsylvania, Georgia, Wisconsin, Arizona, Nevada, and New Hampshire.
- The other Senate races that could be somewhat competitive include North Carolina, Florida, Ohio, Missouri, and Colorado.



# Pennsylvania

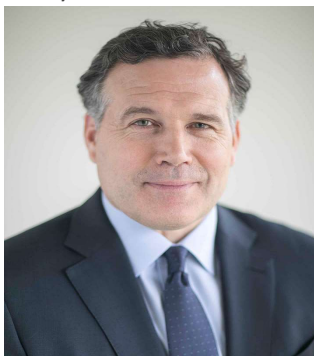
**Sen. Pat Toomey (R)**

Retiring



**David McCormick (R)**

Businessman; former Under Secretary of the Treasury for International Affairs



\$1,757,662 on hand

**Dr. Mehmet Oz (R)**

Television Personality; Former Cardiothoracic Surgeon



\$2,561,626 on hand

**John Fetterman (D)**

Lt. Governor of Pennsylvania



\$4,160,390 on hand

No significant general election polling has been done to date

Race Rating

**Toss-up**

PA Unemployment Rate

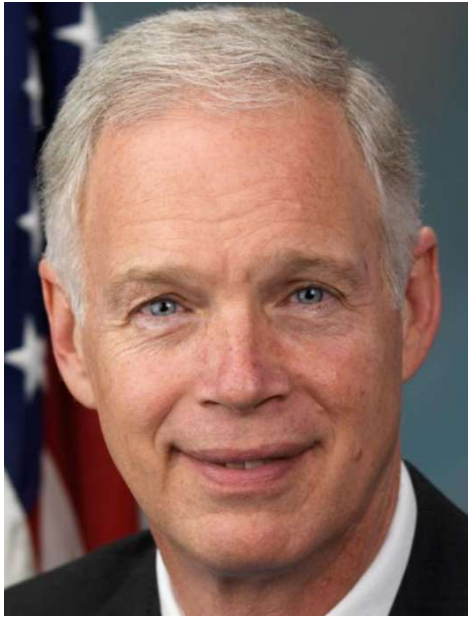
4.9%

# Wisconsin

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## Sen. Ron Johnson (R)

Incumbent



\$1,395,329 on hand

## Mandela Barnes (D)

Lt. Governor of Wisconsin



\$632,918 on hand

No significant  
general  
election polling  
has been done  
to date

Race Rating  
**Toss-up**

WI Unemployment Rate  
2.8%

# Georgia

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## Sen. Raphael Warnock (D)

Incumbent



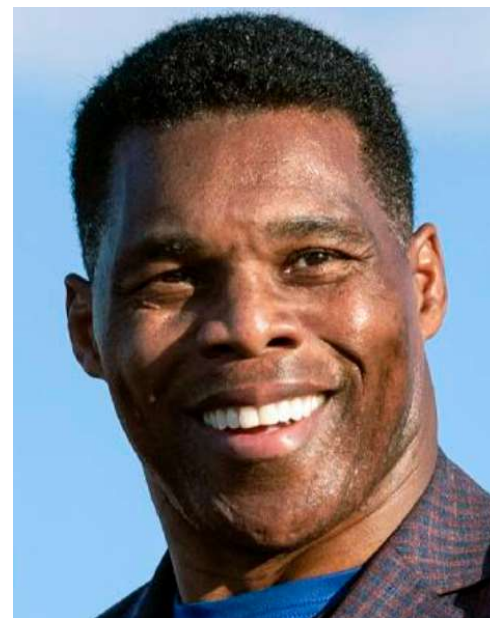
\$25,579,849 on hand

**Polling Results**  
46.2%–47.8%

**Race Rating**  
**Toss-up**

## Herschel Walker (R)

Former Football Player



\$7,422,031 on hand

**GA Unemployment Rate**  
3.1%

Source: All Senate polling data comes from RealClearPolitics (RCP). Polling results reflect the "RCP Average."



# Arizona

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## Sen. Mark Kelly (D)

Incumbent



\$23,320,192 on hand

**AZ Unemployment Rate**

3.3%

**Polling Results**

43%–39%

**Race Rating**

*Toss-up*

## Mark Brnovich (R)

Attorney General of Arizona



\$528,960 on hand

# Nevada

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## Sen. Catherine Cortez Masto (D)

Incumbent



\$11,082,821 on hand

**Polling Results**  
42.8%–39.6%

**Race Rating**  
*Toss-up*

## Adam Laxalt (R)

Former Attorney General of Nevada



\$2,238,736 on hand

**NV Unemployment Rate**  
5.0%

# New Hampshire

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## Sen. Maggie Hassan (D)

Incumbent



\$7,615,778 on hand

**Polling Results**  
44.3%–40.0%

**Race Rating**  
*Toss-up*

## Chuck Morse (R)

Former President of the NH State Senate



\$671,884 on hand

**NH Unemployment Rate**  
2.5%

# North Carolina

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**Sen. Richard Burr (R)**

Retiring



**Rep. Ted Budd (R)**

US Congressman  
(NC-13)



\$1,941,265 on hand

**Cheri Beasley (D)**

Former Chief Justice  
of the NC Supreme Court



\$5,139,088 on hand

**Polling Results**

50%–43%

**Race Rating**

*Lean R*

**NC Unemployment Rate**

3.5%

# Ohio

## Sen. Rob Portman (R)

Retiring



## J.D. Vance (R)

Venture Capitalist; Author



\$691,122 on hand

## Josh Mandel (R)

Former Treasurer of Ohio



\$1,398,021 on hand

## Matt Dolan (R)

Ohio State Senator



\$2,931,811 on hand

## Rep. Tim Ryan (D)

US Congressman  
(OH-13)



\$5,180,825 on hand

No significant  
general election  
polling has  
been done to  
date

Race Rating  
**Likely R**

OH Unemployment Rate

4.1%

# Florida

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## Sen. Marco Rubio (R)

Incumbent



\$13,137,174 on hand

**FL Unemployment Rate**

3.2%

**Polling Results**

49%–40%

**Race Rating**

**Likely R**

## Rep. Val Demings (D)

US Congresswoman  
(FL-10)



\$13,227,500 on hand

Thank you

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