These days, legislation normally needs sixty votes to pass the Senate. This can be a huge barrier. But there's an exception: the reconciliation process allows taxing and spending measures to pass the Senate on a majority vote. Republicans have big plans to use reconciliation to advance their agenda. That would certainly have advantages for them, but they're also going to face some serious challenges.

Procedural Limits on Reconciliation

The first issue faced by GOP leadership comes from the statute that authorizes the reconciliation procedure. A provision called the Byrd rule, after the Senator who proposed it, requires that a reconciliation provision's budgetary impact must be more than "incidental." The idea is to limit the use of the reconciliation procedure to provisions that are primarily budgetary in nature, as opposed to using a minor budgetary impact as a screen for an important policy change.

My colleague Jon Gould has done extensive research into how this requirement has been applied. The key player is the Senate parliamentarian, who has some independence from the majority party in the Senate. According to Gould, the parliamentarian "is more likely to find consistent with the rule provisions that, for example, involve direct rather than indirect budgetary impacts, do not impose mandates on private parties, do not target particular entities, and do not concern certain substantive topics. "

The parliamentarian will reject provisions with a modest budgetary impact if the substantive policy impact is much larger, as he did with a GOP provision promoting home-schooling. Provisions that are highly divisive politically are also more likely to be disapproved, according to Gould. In theory, the GOP majority could overrule the Parliamentarian, but Majority Leader Thune has already said he would oppose any such effort since it would amount to the elimination of the filibuster.

These constraints would not prevent Republicans from rolling back provisions in the Inflation Reduction Act. The IRA was itself passed through reconciliation, so it can be undone that way. But Republicans have also talked about using reconciliation to accomplish permitting reform and other substantive changes. The Byrd rule is going to be make that very difficult. The argument for permitting reform would be that it will have a budgetary impact by stimulating the economy and increasing royalties from production of oil, gas, and coal on federal land. But the Parlimentarian would likely find the budgetary impact outweighed by the substantive shift in environmental policy, particularly since permit reform would probably require

amendments to substantive environmental law such as NEPA (which the Parliamentarian generally does not allow through reconciliation). Advocates of permit reform are already beginning to acknowledge that reconciliation will not work for them.

Political Constraints

Although the IRA could be repealed outright through reconciliation, the large amount of spending flowing to Republican congressional districts makes that unlikely. But the leadership also faces some more general issues.

The GOP leadership will probably have to rely solely on their own party, since a reconciliation bill is likely to contain provisions that are unacceptable to Democrats. In addition, Democrats will feel little motivation to help Trump accomplish his agenda.

In the Senate, Republicans have a fairly comfortable margin and can afford to lose four votes, given Vane's tie-breaking vote. That still points some constraint on how extreme a reconciliation bill can be. Huge budget cuts for EPA, for instance, might cross the line.

But the biggest problem will be the House, where the Republicans have a razor-thin majority. As the experience of the last few years show, factional warfare in the House makes it difficult to pass even routine budget legislation. We saw this in December, when it took Mike Johnson three tries to get a continuing budget resolution through the House — and had to rely heavily on the Democrats' support. That won't work for a reconciliation bill.

The Republicans' single highest priority will be renewing Trump's 2017 tax cuts for individual taxpayers. Even that is going to be difficult to accomplish given how much it will contribute to the federal deficit. The House Freedom Caucus has already shown its willingness to buck the President in the name of budgetary purity. They are likely to insist on huge budget cuts that will be difficult to sell to other Republicans facing what are likely to be tough reelection contests. Trump himself has shown no inclination toward managing delicate budget negotiations – it is more his style to wait until a compromise is on the table and then make additional demands, torpedoing the deal.

A failure to extend the tax cuts would be a political disaster from Trump, so he will

have a weak hand in negotiating. The current plan is also to lift the debt ceiling through reconciliation, which will also be difficult to achieve on a party-line vote given the number of Republicans who pride themselves on never having voted to for a debt-ceiling increase.

If Republicans fail to achieve their purposes through reconciliation, they will have three choices. First, they can negotiate with Democrats to pass legislation, as they've ended up doing during the past couple of years. This will require compromise, however, which doesn't come easily to Trump. Second, they can give up, which they will be loathe to do. Or third, they can resort to unilateral presidential action, which may be the most attractive option for them. It comes with the price, however, of putting the fate of their initiatives in the hand of the courts. I know some people are cynical about the current Supreme Court, but I think that Trump's more extreme unilateral efforts are going to run into serious resistance.

I expect that at the very least Republicans will figure out a way to extend their tax cuts through reconciliation. They may be able to do a lot more, or they may get stuck. Wrangling Trump and the various House factions is going to be a daunting exercise for the GOP congressional leadership.