



The Big Casino

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“Prediction is very difficult, especially if it is about the future.” – Niels Bohr

The 118th Congress is set to convene, under split control for the first time in eight years. The Georgia Senate seat runoff combined with ongoing uncertainty around the election of the next Speaker of the House means the legislative year will get off to a relatively slow start. But politicking of course continues and early maneuvering for the next presidential contest is already underway.

As the House and Senate prepare to re-open to the public and Washington adjusts after two years of Democratic control, here are some observations about what to expect in the days ahead.

Political Environment

Washington has had two months to chew on the results of the midterm elections, and we have observations about what the results mean for Congress at the outset of 2023.

A Short Review of the Midterms

First there is some good news. Despite the near-hysterical claims by partisans on both sides of the aisle, Election Day came and went without violence, fraud, and controversy. Some of us are still receiving cringy fundraising texts from the likes of Kari Lake, Charles Booker and a few others. But those are more grift than danger.

To borrow a phrase from everyone's high school U.S. history textbook, we generally agree with the [analyses](#) that argue voters opted for a “return to normalcy”, seeming to impose a penalty on eccentricity. For instance, they heavily opted for familiarity in returning a high number of incumbents to office. Not a single Senate incumbent lost in 2022, and only nine House incumbents (six Democrats, three Republicans) fell in general elections, each hurt by redistricting and losing in part because of factors beyond their control. In the states, 27 of 28 gubernatorial incumbents were re-elected, and while pre-election polling indicated voters were

[dissatisfied with present circumstances](#) the final results show a strong bias against radical change. In Pennsylvania, Josh Shapiro ran five points ahead of the more liberal Fetterman campaign. In Ohio, Gov. DeWine was often criticized from both the left and right in his first term, but he outperformed the more controversial J.D. Vance by 19 points. In New Hampshire, Gov. Sununu ran a whopping 24 points ahead of Don Bolduc.

While incumbents fared well at the ballot box, a large number of retirements helped continue the longer-term trend of new blood coming to Congress. Nearly 15% of the 118th Congress – seven senators (soon to be eight after Sen. Sasse departs) and 74 House members – are new to Congress. Surveys throughout the summer and fall seemed to show voters were primed for change, but in the end, they more opted for the status quo and more conventional candidates. This has led some observers to speculate that 2022 resembled 2020 where voters were biased toward familiarity, perhaps a reaction to Covid uncertainty and the unpredictability of the Trump White House.

Overall, Republicans won the popular vote by roughly three points, 51%-48%, a six-point turnaround from the Democrats' 2020 margin. But the all-important Independents, who had leaned toward the GOP in polling all cycle, ended up supporting Democrats 49-47, the key factor in Republicans falling short of the average 28-seat pickup in House seats in a midterm by the minority party. This success with Independents led to Democrats winning the toss-up races by a 2:1 margin.

There is Always a Next Election

In the 2024 cycle, the initial number of House and Senate battlegrounds races is relatively small. Senate Democrats must defend a whopping 24 seats, but only three senators – Brown, Manchin and Tester – represent states won by Trump in 2020. None of the 11 Republicans comes from Biden states. In the House, five Democrats hail from Trump districts; a larger group of 18 Republicans, many from California and New York, come from Biden districts. These senators and representatives form the core group that will be targeted for the next 22 months.

On a parallel path, we will all see and feel the usual undercurrents that come when senators maneuver around potential White House bids. While several Republicans (Cotton, Hawley) have already bowed out of the race, at least five others are either mulling campaigns or at a minimum working to keep their options open. This reality manifested itself already as the main force behind the slapdash effort to replace Sen. McConnell as leader and will be a daily reality for Republicans in coming months. If the president surprises us all and decides not to run, the surge of White House interest among Democrats will greatly complicate Sen. Schumer's scheduling and policy efforts.

The Trump Effect

It is 991 miles from Washington, D.C. to the Mar-a-Lago Club, but the presence of the former president continues to loom large in the capital every single day. Rep. McCarthy engaged Trump in the race to be Speaker of the House, and eight of the ten House Republicans who

voted to impeach the former president lost their bids to return to office. Democrats have and will continue to use him as a convenient foil for grievances real and perceived. Among Senate Republicans, Sen. McConnell continues to serve as a type of heat shield for colleagues, absorbing much of the vitriol from the former president. This buys him immeasurable goodwill within the GOP conference and played a key role in his easy dispatch of the ham-fisted leadership challenge from Sen. Scott.

Polling continues to show a slow diminution in support for Trump among Republicans, but it is too early to know if this seepage will be enough to deny him the nomination. Still, it clearly has emboldened other candidates to continue campaign preparations. Win or lose, the former president will be formidable in the next race, but most do not now see him as inevitable.

The stronger-than-expected showing by Democrats in the midterms mostly quieted the growing public chatter about whether the president should step back from a re-election effort. We have all along assumed the president runs again, and by multiple accounts he is driven in no small part by the belief that he, and only he, can and must defeat Trump again. As one Democratic official was quoted a few months ago, "he spent five decades getting to the White House...he's not leaving now because of speculation in the New York Times". Unlike Trump, there is no "Never Biden" faction among Democrats and the president's political team has done well over the last few months lining up support from putative challengers. This unity will assist the president in policy development in 2023.

Legislative Environment

For our first look at 2023 we will touch upon some broader trends and environmental factors at work on the Hill as lawmakers begin policymaking for the year ahead.

At the outset of a brand-new Congress, we think foolish the knee-jerk analyses postulating that divided control of government means "nothing is going to get done for two years". A restive House majority combined with the wiliness of Senate Republicans means there will be sharp rhetoric and brinksmanship in legislative discussions with the White House and Hill Democrats, but this is often an indispensable step before bipartisan legislative progress. See the 2021 infrastructure bill, the fiscal agreements between congressional GOP and the Obama Administration, and the balanced budgets/Medicare improvements/welfare reform efforts between Congress and the Clinton Administration. Enactment of serious legislation is a very real possibility in 2023.

Electing the Next Speaker

Kevin McCarthy's grind to be elected speaker has overshadowed recent events in the House and slowed Republican efforts to organize the House. A new majority always wants to hit the ground running to build on any residual momentum from the previous elections. But the uncertainty around the race for the speakership has delayed the selection of (some) committee

chairs which in turn has slowed the appointment of subcommittee chairs, the organizing of committees, the selection of staff and the formulation of policy. In talking to members and staff, we know there is of course some prep work underway; but, there is no doubt the drama surrounding Rep. McCarthy's trek ensures the House Republicans will get off to a slower start than they would like. In the meantime, even if House Republicans are slow off the mark in legislating, we can expect them to fill any void with oversight hearings based on work that incoming committee chairs Jamie Comer and Jim Jordan have been preparing for months.

As for Rep. McCarthy, his number one asset is his relationship with his members. This cannot be discounted in a process that truly relies on member-to-member conversations. His willingness to not close the door on anyone as well as his dogged pursuit to finding a path to "Yea" could play out up until the very last minute. Of course, his main problem is a very small group who whose demands are either unrealistic, lack the support of a majority of the conference, or who have zero intention of ever getting to "Yea". One way or another, saga – or at least the first chapter of it – will end tomorrow.

Once a speaker is chosen and the House begins to organize, it will recess for a few weeks, allowing Republicans to catch up on important housekeeping matters. Watch to see if they can regain some momentum before settling into earnest work on policy priorities. At the same time, the Senate will be in session but likely settling into an early grind to confirm outstanding judicial nominations and beginning work on replacement of potential Biden cabinet openings. For the most part, we expect a relatively quiet January and for the pace to begin to pick up with the president's still-to-be-scheduled State of the Union address and subsequent budget submission to the Hill.

The Coming Budget Battles

It is a matter of when, not if, Congress and the White House enter a stare down over taxing and spending. In part, they are all victims of larger forces. History teaches that crisis spending often leads to fiscal conflict. Most recently was the "fiscal cliff" and budget debates in the early 2010s following federal bailout spending in the wake of the 2008 financial crisis. Since the beginning of the pandemic, spending during the Trump and Biden Administrations on Covid relief, combined with the Inflation Reduction Act and new infrastructure spending, easily exceeds a whopping \$6 trillion. This does not even include the just-enacted FY23 omnibus spending behemoth. A reaction is inevitable.

While it is all but guaranteed there will be no budget reconciliation bills for the next two years, in 2023 there are multiple inflection points on the legislative calendar that will provide opportunities for conflict over taxing and spending. Treasury hitting the debt ceiling this summer, the arrival of the end of the fiscal year in September, and the usual end-of-year contretemps before Congress recesses for the holidays all represent deadlines that could and likely will provoke showdowns over fiscal policy. House Republicans have begun to focus on re-implementing the "Cutgo" budget rules, and while the recent election results seem to reflect a public more interested in cooperation than confrontation it is hard to see the White House and

Congress reaching the ultimate outcome without histrionics and hyperbole. The question will eventually be whether confrontation and conflict lead to tangible legislative results

The Difference Between 51 and 50

Senate Democrats have just a bit more breathing room now when it comes to operating the body on a day-to-day basis. They will not only have one-seat majorities on committees and subcommittees, a 51-seat majority will save floor time since they will not have to pass the extra motion to proceed to nominations and measures that emerge from committees on tied votes. We will also see in coming days what, if any changes, the new majority yields when it comes to staffing and budgets.

But, of course, the magic number in the Senate is still 60, a bipartisan threshold that will be even more important in absence of a majority-only budget reconciliation process. Democrats will go through the motions again of trying to eliminate the legislative filibuster, but after the Shermanesque statements of Sens. Manchin and Sinema last year this appears unlikely. Frankly, there was more bipartisan legislation passed in the last two years than senators on both sides would probably admit. Infrastructure investment, the CHIPS bill, defense policy, FY23 spending, gun safety, and postal reform are some of the bills that passed with broad support, something that tends to get lost in media coverage that too often focuses on clickbait and shrill personalities.

What remains to be seen is how the change in control in the House upends the formula that produced most of this legislation – near unanimous Democratic support combined with a core of 20-or-so veteran Republican senators from the more “institutional” wing of the party. Initially in the 118th Congress, we do not expect to see many, if any, of these “coalitions of the willing”. Many House conservatives, angry about passage of the FY23 omnibus spending bill, are unlikely to acquiesce any time soon to any effort where the Senate appears to be “jamming” the House: the narrowness of the House margin in the House will allow small knots of Republicans to fend off Senate-passed measures.

A Changing of the Guard

The outgoing speaker has not only dominated the House Democratic caucus for 20 years, she has been the indispensable woman for all Hill Democrats. Rep. Jefferies and his team will have the benefit of low expectations at least at the outset of their tenure, and Republicans will continue to mine past, undisciplined comments about “election denialism” and other topics. But following in the footsteps of Rep. Pelosi in and of itself will be a tall order. The same goes for Sen. Schumer and Senate Democrats. Pelosi was a veteran congressional leader when Schumer took the helm for Senate Democrats, and while they presented a united front it was clear her experience was indispensable when it came to implementing Biden and Obama priorities or rallying opposition to Trump policies. Now Schumer will have to become the Alpha and lead the less-experienced Jefferies in high-level strategizing, pivoting from relying on the Pelosi-dominated House as a legislative backstop to jousting with the new House majority. Congressional Democrats will figure it out, but the transition will likely be uneven at times.

Big is Probably Bad

The 117th Congress focused on a handful of sweeping bills that dominated the legislative landscape. The Biden Administration's Covid relief plan, the infrastructure bill and the BBB/IRA took up much of the available legislative bandwidth. To be fair, there were other legislative successes in 2021-22, but Democrats' strategic decision to lean heavily on reconciliation and must-pass appropriations spawned several legislative Frankenstein bills that the public and federal bureaucracy are still digesting. At the outset of 2023, we do not see this trend continuing. Rambunctious House conservatives seem determined to reverse what they see as runaway growth in federal spending and programs, and the natural inclination of "small c" conservatives will be against complex legislative text and government-based solutions. Of course, the time will come when the House majority wants to act quickly and in a bold way, when an omnibus legislative package might fit their needs. Withstanding the temptation of "big" could be challenging then.

A Phone and a Pen

The Biden Administration is certain to continue the bipartisan, decades-long trend of an aggressive executive pushing the bounds of administrative and regulatory authority. This will be a product both of a president's team preparing for a re-election campaign as well as inevitable frustration in struggling to implement an ambitious policy program in the face of an antagonistic House majority. It will be somewhat easier for the president to act in areas where Congress has traditionally show more deference to the White House – foreign affairs, trade, and international affairs. But expect the president to also focus on other priority areas, especially public health and climate change, not backing away from confrontation or spoiling to continue fights in the courts.

Worth A Read

Here is a helpful [summary](#) of contest elections for Speaker of the House.

[She](#) is about to become much more famous...at least until the next Speaker is elected.

Here is what you [eat](#) at a White House state dinner.

This [graphic](#) was making the rounds during House Democratic leadership elections.

When your [friends make good](#).

By the end of August there had been [172,681 official visitors](#) to the Biden White House.

Calendar

Jan. 8 Sen. Sasse resigns.

Jan. 22 50th Anniversary of Roe v. Wade decision.

Jan.23 National [Pie](#) Day.

Jan. 27 International Holocaust Remembrance Day.

Feb. 12 Super Bowl LVII.

Feb. 14 MLB pitchers and catchers report.

March 2-3 House Democratic retreat.

March 20-21 House GOP retreat.

June 30 Pause on student loan repayments ends.

Feb. 3, 2024 South Carolina Democratic presidential primary.



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