



The Big Casino

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“Beware the Ides of March.” – William Shakespeare, “Julius Caesar”, Act I Scene ii

As we near the middle of March and we approach Shakespeare’s foreboding date, enough time has passed in 2023 that we can start to take stock of the 118th Congress and our current politics.

Political Environment

It is impossible to deny the 2024 presidential race has begun in earnest, albeit in fits and starts. As in 2016 and 2020, this contest will almost certainly be volatile and not follow conventional norms. Just about all of us are old enough to remember most of the pundits smirking at Trump riding down the escalator and the rest prematurely leaving the Biden candidacy for dead in early 2020.

The president is expected to announce formally his re-election effort in the spring, and so far his supporters have been able to tamp down talk of a primary challenge. In short, the party “establishment” is falling in line behind the incumbent and the power of the White House. However, [multiple surveys](#) have shown a deep disquiet among Democratic voters about the president, either because of his age or policy concerns, and the White House political apparatus continues to work feverishly to deter any serious challenger from emerging. On the other hand, the Republican “establishment” is hoping, and in many cases also feverishly working, to head off the candidacy of Trump, someone who still enjoys a strong, although somewhat diminished, following among party rank-and-file. In short, it is the opposite of the situation Democrats face, turning on its ear the old political adage that “Republicans fall in line and Democrats fall in love”. And all of this despite the fact that a solid majority of Americans do not want to see a [Biden/Trump rematch](#).

Historically, divided federal government going into a presidential campaign cycle has often been a precursor to legislative achievement. For instance, major legislation was passed in 2011 (fiscal policy), 2003 (establishment of Medicare prescription drug

program) and 1995 (welfare reform). But the paradigm for presidential politics has shifted, and it is unclear if President Biden's penchant for deal-making will prevail over the next 21 months. Traditionally, candidates in both parties followed former President Nixon's admonition that to win a Republican primary they needed "to run right, then run left". But the polarization of American voters has made – for Republicans and Democrats – an ultimate shift to the middle more difficult and led both parties to focus more on base turnout than appeal to centrists and independents. Perhaps the over-arching question of politics and legislation for 2023 and 2024 is to what extent, if any, congressional Republicans and the Democratic White House will move to the edge and then be able to move to the center. The initial moves by Democrats to focus on better touting past achievements (i.e., instead of focusing on new legislative initiatives) could provide a partial clue.

Post-Covid Politics

An over-arching theme in public policy over the coming months is how governments – federal and otherwise – act as the country puts (hopefully) the pandemic completely behind it. Over the past three years, trillions of dollars have been spent, and much public policy altered by the federal declaration of a public health emergency. The Biden Administration has indicated it will end the declaration this spring, and that has already begun to set in a series of events (e.g., recent paring of SNAP benefits to pre-pandemic levels) that while returning programs to previously "normal" settings will instigate changes many Americans will feel. Recognition of this has even led some Hill Republicans to stop using the word "cliff" to denote coming deadlines. More change will come soon as Medicare and Medicaid benefits are returned to pre-2020 levels, and it is quite understandable that over the last three years many Americans have grown comfortable with pandemic-era benefits and circumstances and will lead to some public outcry. For instance, we have heard directly from lawmakers in just the last few weeks who are concerned that SNAP benefits were just reduced while knowing they are soon likely to consider billions of dollars in new aid to Ukraine.

At the same time, the surprisingly robust labor market combined with a Federal Reserve laser-focused on reducing inflation means that we are likely to see and to feel a series of macro-economic crosscurrents in the near-term that will contribute to an uneven and unpredictable post-Covid landscape. As we have noted in previous memos, crisis spending is always followed by pointed fiscal debates in Washington as well as review of that spending. The audits and reviews by both House Republicans and the Biden Administration itself of Covid relief spending will be no different.

Labor Rising

Zeroing in on a specific area of economy and politics, President Biden's win in 2020 has clearly either presaged or ignited a revival for private sector unions in the U.S. Following the high-profile negotiations over rail labor issues last year, a number of other unions hold contracts that will expire this year and could lead to work stoppages. In Hollywood,

writers could strike as early as May, something that is sure to garner media attention. One of the largest Teamsters locals is threatening to strike UPS at the end of July, and many of the major car manufacturers – Ford, General Motors, and Chrysler – all must renegotiate labor deals this year. Also, Safeway’s agreement with some UFCW employees expires in late October. In short, labor politics will remain in the news spotlight this year, and events as well as potential legislative efforts on Capitol Hill will cut across multiple business sectors.

The Constancy of Change

Reviewing the past several decades of congressional elections, we can see only one consistent theme – change. It is trite but true that politics and parties are always shifting, but the fluidity of late is striking. For instance, for over a half-century (1954-2005) party control of the House changed once. It has flipped four times since then. In the past three decades, Senate control has now changed hands six times. At the beginning of this election cycle, it is easy to discuss the terrible map Senate Democrats face and how control of the House has only flipped once in a presidential cycle since World War II. The latent unpredictability should make us all skeptical of predictions and prognostications, especially this early in the game. The good news is it should be a fascinating time and many of us reading (and writing) this memo get paid to watch.

Legislative Agenda

Congress is off to a sluggish start in 2023, and we should expect a reduced amount of legislation to pass both the House and Senate in coming months. Several principal forces are at work here.

To start, the protracted process to elect Kevin McCarthy as speaker set the House back roughly two months behind a normal schedule. During the interregnum between Election Day and election of the speaker, a new House majority uses the time to organize and prepare. But doubt around the McCarthy campaign essentially froze the House in place and delayed until mid-January activities that normally take place much earlier. House Republicans are now trying to make up ground, working “at hyper speed” in the words of one senior staffer. But, overall, we should expect fewer bills to pass under a majority that is unlikely to measure accomplishment in terms of number of bills passed.

On the other side of the Capitol, Senate Democrats today hold a barely functioning plurality during the health-caused absences of Sens. Feinstein and Fetterman, and for now seem content confirming federal judges and Biden sub-cabinet officials. Debate on nominations will dominate the floor schedule through at least the Easter recess. This is in part a function of the chaotic, seat-of-the-pants way Sen. Schumer runs the floor, but also could preview a Congress where the Democratic Leader tightly controls

amendment votes and legislation to protect vulnerable incumbents. After all, this is the toughest of the three Senate election cycles for Democrats who must defend 23 incumbents, several in toss-up seats, versus 10 Republicans, all holding 'safe' seats. It is too early to think this will be a "do nothing" Congress, but one Republican senator did recently tell us he thought it safe to say it would be a "do little" Congress.

Overall, the split political control of Congress will have several notable effects. First, we are unlikely to see large, sprawling legislative packages as in the first two years of the Biden Administration. House Republicans are unlikely to go along with such efforts, and to insist on narrower, less obtrusive legislation. Also, their majority forecloses the ability of Democrats to use the fact-track budget reconciliation process to bypass the Senate filibuster rules to pass tax and spending bills with a simple majority. It was this process that enabled the Biden White House and congressional Democrats to enact much of the president's legislative agenda in 2021 and 2022. The House GOP majority is also going to use its oversight powers to examine the Biden Administration record from the past two years along with Covid emergency spending and other, more tangential matters (e.g., Hunter Biden). This will force both the White House and Senate Democrats to spend time and energy defending the record and further slow the normal flow of legislation.

As the House begins to ratchet up legislative activity, we will see a paradigm shift away from House/Senate cooperation (at least among House Democrats) back to a more common dynamic where most legislation from the House goes only to die a slow death on the Senate legislative calendar. The House will lament Sen. Schumer's "legislative graveyard" and Democrats will depict themselves as an indispensable line of defense against backward-looking "MAGA-Republicans".

Narrowing our focus to several leading legislative issues, here is how we currently see things:

- ❖ The Debt Ceiling –The ceiling has already been raised 20 times this century, and we have almost every reason to think Congress will send legislation to the president to do so again. This also means that lawmakers have been on almost every side of the issue, and frankly some of the rhetorical posing and hyperbole from both sides will be tiring. We are still relatively early in the process and many Democrats and Republicans are to some extent spoiling for a fight. Because the deadline is likely to be late summer, the debate will inevitably bleed into, and slow, the FY24 appropriations process.

House Republicans will continue to increase oversight of recent federal spending, looking for "waste, fraud and abuse", and even move to claw back unspent pandemic funds from state and localities. The release of the Biden FY24 budget will provide the platform for many on the left to argue for increased revenue to be part of an ultimate solution.

If we knew how this debate would turn out, we would have already purchased our futures contracts on the currency exchange markets and be shopping for real estate in a warm, comfortable locale. But we do know several things about past debt ceiling debates that could provide hints to the eventual outcome. First, the final solution will be bipartisan. It might not be popular, and opposition could well be bipartisan as well. But one party cannot resolve the matter on its own. Second, neither Republicans nor Democrats will get exactly what they want. The landing spot will represent at best a partial victory, especially if viewed through dealmakers' initial rhetoric and demands. Finally, the end product will not be an end in and of itself, but more like either a bridge to post-2024 efforts or perhaps a partial punt to a mechanism (e.g., a "fast-track" commission with delegated authority to make hard policy decisions lawmakers find distasteful).

- ❖ Who's Afraid of the BIG, Bad Wolf – "Big" is bad right now. Big Tech, Big Banks, Big Labor Bosses, etc. Name the problem or legislative dispute and advocates are likely to label those on the other side of the debate as defending "Big (insert bogeyman here)". This lingering distrust of large institutions enjoys a degree of bipartisan interest and is likely to undergird congressional efforts in 2023. Think of House Republicans' antipathy toward the U.S. Chamber of Commerce melded with Sen. Sanders's plan to haul "big corporate CEOs" before the Senate HELP Committee. This thematic undercurrent has helped inject life into congressional interest in antitrust efforts, increased the chances of rail safety legislation (following the recent incident in East Palestine, Ohio) and surely informed the Biden Administration's tax increases on "big business" and billionaires in its FY24 budget. Part of the struggle in politics is typically how best to be on the side of the "little guy", but that struggle is likely to be more intense and widespread than usual in the coming days on Capitol Hill especially in light of the collapse of Signature and Silicon Valley Banks.

Should We All Have Grown up to Become Regulatory Attorneys?

Congressional Republicans succeeded recently in using the Congressional Review Act to roll back a new criminal code in the District of Columbia. This follows on other recent efforts to overturn EPA water regulations (WOTUS, Waters of the U.S.) and Labor Department rules about pension investing in ESG funds. More CRA efforts are in the works for the coming weeks. Simultaneously, we can all safely assume the Biden Administration is going to work aggressively via administrative channels to enact as many policy initiatives as possible. We have joked this will be President Obama's "phone and a pen" strategy on steroids and will be especially handy for Democrats who will find it hard to push legislation past a GOP-held House and robust Senate Republican minority.

In the wake of the Dobbs decision last year, we have also heard from several lawmakers and staff how in fact the most far-reaching decision of the term was

actually *West Virginia v. EPA*, the Court case that held the EPA wrongfully overstepped into congressional authority by regulating carbon dioxide emissions. In the same vein, this spring there is a good chance the Court will strike down the Biden Administration's efforts to forgive student loan debt as regulatory overreach. In short, the Roberts Court seems to be moving actively to constrain the administrative state which would no matter one's political persuasion have a profound effect on Congress and law-making.

Worth A Read

Since 2020, 79 people have been killed in [USPS accidents](#).

This [geo-political analysis](#) of the coming several decades might not prove correct, but it will make you think.

Calendar

March 19-21	House GOP retreat in Orlando
March 22-24	National Lieutenant Governors Association Meeting in Washington.
March 30	Opening Day for the Washington Nationals.
April 3	National Chocolate Mousse Day.
April 6-9	The Masters golf tournament.
April 26	World Intellectual Property Day.
May 1	Writers Guild of America contract expires.
May 6	149th running of the Kentucky Derby.
May 11	Public health emergency expires.
June 30	Federal pause on student loan repayments expires.
July 31	Teamsters contract with UPS expires.
Dec. 31	FISA Sec. 702 (warrantless searches) expires.

