Alert

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COZEN O'CONNOR

Cozen Currents: It's Still the Economy, Stupid

The Cozen Lens

- As James Carville quipped in 1992, "It's the economy, stupid." This likely still holds true for 2024.
- Former South Carolina Governor Nikki Haley's (R-SC) campaign for the GOP presidential nomination has been building momentum in recent weeks. But she still has considerable distance to make up between her and former President Trump.
- The Biden administration has put the fintech sector squarely in its crosshairs with proposed rulemakings from the Consumer Financial Protection Bureau.

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The Politics of the Economy in 2024

Congressional Showdown Threatens Fiscal Drag. The hopes for a soft landing may be dented by a fiscal drag with the possibilities of a shutdown and year-long continuing resolution looming.

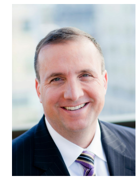
- When Congress returns in January, lawmakers will be staring down an immediate deadline to pass spending bills to avert a partial government shutdown on January 19. The rest of the government will shutter on February 2 if no deal is reached. There is a wide bid-ask spread between House Republicans and the rest of Congress, increasing the risk of a shutdown.
- Whether or not a shutdown is averted, FY24 spending will likely be flat at best in nominal terms with FY23 spending levels, which translates to a cut in real terms. Fiscal hawks led by the House Freedom Caucus are pushing for additional reductions as they believe they have leverage given that the Fiscal Responsibility Act provides across-the-board cuts if no deal is reached by May 1.

Powell's Politics of Being Apolitical. While Federal Reserve Chair Jerome Powell has been aggressive with rate hikes to tackle inflation, his priority of protecting the central bank's (and his) credibility could result in the Fed's rate cuts being more reactionary.

- One of Powell's top unspoken priorities at the Fed is maintaining its image as a politically neutral institution and avoiding the partisan perception now ascribed to the Supreme Court. Powell prefers to be seen in the image of Paul Volcker, whose legacy was as an independent inflation fighter, rather than Arthur Burns, who bowed to political pressure, resulting in prolonged stagflation for the economy and a black eye for the Fed.
- As a result, Powell is likely to wait for rate cuts to be the consensus move, which means that a pivot to less restrictive monetary policy could be reactionary rather than proactive. Notably, that will not be driven by the market but rather the consensus among the Beltway establishment with which he identifies.

Which Economy? President Biden's most significant threat to re-election has always been a recession. While the underlying numbers are strong, the "vibes" are negative among many voters, with the above macroeconomic threats potentially worsening the situation.

- Next year's election may be as simple as "it's the economy, stupid," but what that means will be in the eye of the beholder. Biden can tout strong job growth and calming inflation. The White House is often quick to point to its actions as driving down inflation, but slowing inflation may hint at a coming economic downturn.
- Among voters, there remains a stubborn perception that the economy is bad. There is an



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Related Practice Areas

- Government Relations - Cozen O'Connor Public Strategies especially large gap among young voters whose significant turnout helped Biden win in 2020. While this group will not likely vote for former President Trump, poor turnout among them could hurt Biden's chances, and the economy is not the only area in which he has come under pressure from this constituency.

- Given the ineffectiveness of his economic message, Biden is touting Bidenomics less and spending more time raising the threat of "MAGAnomics" as he refocuses his campaign on attacking Trump instead of heralding his own achievements. His goal is to make the election a choice between the two instead of a referendum on Biden's track record.

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Nikki Haley's Path Forward

Haley Heating Up. With just six weeks left until the Iowa caucus, former UN Ambassador and Governor Nikki Haley (R-SC) is rising in the polls and earning key endorsements.

- The leading entity in the Charlie Koch political network (Americans for Prosperity) announced its endorsement of Haley for president late last month. Besides granting her millions in sympathetic funds, it indicates that the Republican donor class is increasingly coalescing around her as the alternative to former President Trump.
- Haley is now just one point behind Governor Ron DeSantis (R-FL) nationally and two in Iowa, where DeSantis is going all in. In other early states — New Hampshire and Haley's home state, South Carolina — she's pulled ahead into a comfortable second.
- Couple the above with some strong debate performances and Haley has quickly become the candidate-de-jour, outlasting other opponents like former Vice President Mike Pence and Senator Tim Scott (R-SC). There's a good argument she's the real No. 2 of this race.

Best Case Scenario. The reason Haley is succeeding is based on the rising relative strength of her pitch to win. Here's how she could do it.

- If many of Haley's remaining non-Trump opponents were to drop out as soon as possible, it would allow her to consolidate Never-Trumpers who support former Governor Chris Christie (R-NJ) and Trump skeptics who back DeSantis. Claiming the unambiguous position as the Trump alternative would allow her to unite groups that are currently divided.
- Her elevator pitch would emphasize her relatively moderate positions and experience as well as Trump's age, but most importantly the baggage surrounding him that makes her electable and most able to carry out the party's priorities. Meanwhile, as 2024 rolls around, Trump will become further embroiled in his various legal and political battles, exacerbating her point.
- Ideally for her, he would face some disqualifying event (whether it be disqualification under the 14th amendment, a health crisis, or conviction/sentencing) so she doesn't have to take him in a fair fight. In any case, she peels away enough of the pro-Trump crowd to fend off the remaining "only-Trump" voters.

The Truth About the Nomination. The above may be Haley's best case, but it shouldn't be your base case. Despite the denial rampant among some GOP donors, Trump still remains the dominant frontrunner likely to walk away with the Republican nomination.

- Trump is polling 59 percent nationally to Haley's twelve. He's outpacing his next-place opponent by at least 25 in the first three states in the primary (including Haley's own South Carolina). No candidate polling this well has ever gone on to lose the nomination.
- Any legal trouble to come next year will only make Trump's name more unavoidable and suck any remaining political oxygen out of the room. Coming trials also grant him the opportunity to look like a martyr to his base, who believe his indictments represent political persecution.
- Meanwhile, a Morning Consult poll suggests that if Trump were out of the race — a dream scenario for any challenger — his voters would more likely go to DeSantis (40 percent have him as their second choice) or Vivek Ramaswamy (22 percent) over Haley (10 percent). Haley's had a great month to be sure. But it'll take a few more of those before she can be considered a serious threat to Trump's position as chief of the Republican Party.

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CFPB Takes on Big Tech

Surveillance Capital. Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra is bringing bank-style supervision to Big Tech companies that handle an increasing volume of consumer transactions.

- The CFPB's newly proposed large market participant rule would bring 17 of the largest digital wallet and payment providers under its oversight, including Apple's Apple Pay, Alphabet's Google Pay, PayPal, and Block's CashApp. Under the proposed rule, CFPB examiners could investigate non-bank digital payment providers for unfair, deceptive, or abusive practices.
- The proposal is a key feature of Chopra's efforts to prevent Big Tech from collecting and monetizing sensitive consumer financial data. Chopra has likened the blurring of finance, e-commerce, and social media platforms in the US to the rise of Alipay and WeChat Pay in China.
- The traditional banking sector is supportive of the rule, having long believed non-bank payment platforms unfairly escape regulatory scrutiny. While Big Tech companies are making their displeasure known, industry experts believe the new rule would fall well within the CFPB's legal authority. The CFPB is hoping to finalize the regulation toward the middle of 2024 to avoid repeal if Republicans sweep into power in 2025.

Data Protection. Concurrently, the CFPB has proposed a sweeping reform to management of consumer data by financial institutions including fintech platforms.

- Known as the "open banking" rule, the proposal would give consumers greater control over their financial data by requiring banks to provide much of it for free while restricting fintech platforms and third parties from exploiting access to it.
- The rule would require banks and payment providers to offer free access to consumer data such as transaction information, account balances, and credit card terms through publicly disclosed interfaces. Third parties and data aggregators can access a consumer's financial information to compare products or inform lending decisions only if expressly requested by the consumer. Use of the data is restricted only to activities related to the consumer's request and robust data security measures must be met.
- The rule is garnering support from a banking sector long annoyed by a perceived imbalance in the safeguards around data privacy for Big Tech payment platforms and traditional banks. Chopra and the Biden administration argue greater consumer access to their financial data will ease the transition between financial services, ultimately increasing competition.

The Enemy of My Enemy is (Not) My Friend. While the CFPB's latest announcements focused on fintech platforms, banks have not escaped scrutiny.

- The CFPB is at the forefront of the Biden administration's efforts to eliminate "junk fees," which President Biden is expected to champion throughout 2024. Chopra is targeting fees that are not subject to a competitive process which banks charge consumers.
- The CFPB issued a proposed rule in February to reduce credit card late fees. Under the proposal, the maximum late fee a bank can charge a consumer without facing a potential penalty, known as the safe harbor threshold, would be reduced from $30 ($41 in the case of repeat violations) to $8. The late fee would also be capped at no more than 25 percent of the cardholder's minimum payment regardless of the safe harbor threshold. The CFPB plans to finalize the rule next year, but banks are gearing up for a fight that could delay implementation.
- The agency is also expected to propose a rulemaking reining in bank overdraft fees this month. The CFPB does not plan to eliminate the practice, but instead restrict banks' ability to penalize consumers when they would not reasonably expect to be charged. The agency is also considering a proposed rule restricting banks' ability to levy non-sufficient funds fees on consumers, but the timing is uncertain.