

Cozen Currents: The State of the Union is...

The Cozen Lens

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The State of the Union address is typically a forgettable affair, but President Biden has reason to try to seize the moment as he embarks on his expected re-election campaign.

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President Biden's selection of Jeff Zients as the incoming White House chief of staff underscores the shift in his focus from passing his legislative agenda to implementing it as he gears up for the 2024 election.

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The rapid development of artificial intelligence has made it a growing topic of interest for both Congress and the White House.

Reading Between the Lines of Biden's State of the Union Address

The State of the Union's Historical (In)Significance. A constitutional duty of the executive branch, President Washington set the standard in delivering an annual message to Congress each year to inform about the "State of the Union" (SOTU) and give policy recommendations he judges as "necessary and expedient." But the prominence of this annual tradition has ebbed and waned.

- The SOTU is a way for the president to use the bully pulpit in front of not just Congress but the American people. Tens of millions of voters tune in every year.
- The practical and political importance is limited though. Those who tune in tend to already be supporters of the president. The average change of a president's approval rating from the SOTU is 0.2 points and just 25 percent of policy proposals in the SOTU end up getting passed by Congress (that number is lower in a divided Congress).
- The SOTU address isn't always memorable, but it can sometimes provide moments for a president to change the narrative. The right phrase can create a captivating narrative – think President Clinton's "the era of big government is over" in 1996 or President Bush's "axis of evil" reference to Iran, Iraq, and North Korea in 2002.

Biden's Informal Re-Elect Kickoff. President Biden will be the first person to deliver a SOTU as an octogenarian. He also plans to run for re-election. Tonight's speech is the informal campaign kickoff.

- Biden wants to project strength in his speech. The phrase or near phrase "the state of the Union is strong" has been uttered in every SOTU address over the last 30 years. Today, most Americans believe the country is in or about to enter a recession. A top goal of Biden for his re-election is to change that mindset.
- Biden wants to build enthusiasm for his re-election. Right now, a majority of Democrats don't want Biden to run for president. This is a moment for him to speak to his base about what he has done and what his administration will do in the year ahead.
- Biden wants to make the negative case against Republicans. Biden may be unpopular, but the GOP House is even more unpopular according to an NBC News poll. The president could employ the playbook of President Truman in 1948 against a "do-nothing" Republican Congress in the face of high inflation.



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The Republican Balancing Act. During the SOTU and the Republican response afterwards, the GOP is looking to leverage its base's opposition to the president by offering a MAGA perspective with a broader appeal than that of former President Trump.

- The opposing party can steal the show. The most memorable SOTU moment of Trump's term was in 2020 when House Speaker Nancy Pelosi (D-CA) tore up his speech. President Obama's most memorable moments were when Rep. Joe Wilson (R-SC) yelled "you lie!" in 2009 and when Supreme Court Justice Samuel Alito mouthed the words "not true" in 2010.
- The GOP chose Governor Sarah Huckabee Sanders (R-AR) to give their response. Sanders serves as a bridge between MAGA 1.0 and 2.0 as she hails from outside DC and is a new governor but she does not represent a new face as the former press secretary for Trump.
- Republicans also want to broaden their appeal by reaching out to a growing segment of the population. Freshman Rep. Juan Ciscomani (R-AZ) was chosen to give a response in Spanish.

The White House Pivot

Ch-Ch-Changes. It is common for a president to cycle through chiefs of staff, each of whom serves a different purpose and fits the particular priorities at that point in the president's tenure. President Biden's shift from Ron Klain to Jeff Zients signifies his transition from policy development to implementation and the need to demonstrate governing competence while he and his top political advisors are increasingly focused on his re-election campaign.

- After finding himself with an unexpected unified Democratic control of Congress at the start of his term, Biden was able to push through a prodigious legislative agenda. Getting these massive bills passed, like the American Rescue Plan, Infrastructure Investment and Jobs Act, Inflation Reduction Act, and CHIPS and Science Act, was no easy feat, but now the task becomes executing the myriad new programs.
- Zients has a history of taking on big implementation roles, including leading the fix of the botched Affordable Care Act website rollout in the Obama administration and then serving as Biden's lead coordinator on the Covid-19 response.

Hurdles Still to Clear. Zients may have the experience to make him qualified for the role at this point in time, but there are still factors that are beyond his control that will present challenges.

- One of these struggles will be ensuring that the agencies are properly staffed as the aging career workforce has suffered from an exodus of talent due to the Trump administration's efforts to combat the so-called "deep state," the pandemic, and rising retirements. This could be compounded if political appointees use the halfway mark of Biden's term to depart as well, as the need to confirm new nominees could delay requisite executive branch actions.
- Just as important is getting all of Biden's pending nominees confirmed by the Senate. Democrats have an extra vote in the upper chamber now, but Republicans will still look to eat up the clock with procedural tactics. With the pile of nominees outstanding, Zients will need to work with Senate Majority Leader Chuck Schumer (D-NY) to prioritize those deemed most valuable.

2024 Looms Large. The success of Zients' efforts to realize tangible results from the legislative achievements Klain delivered will have a real and direct impact on Biden's re-election chances.

- Central to Biden's re-election narrative is to show how the government can still work for the people. This is underscored by his multiple recent trips to various ribbon cutting ceremonies across the country celebrating new infrastructure projects.
- Biden will look to contrast this with what he will describe as Republicans' incompetence and extremism. He will argue that while the GOP is seeking to cut entitlements and risking default, Biden is actually getting things done for the American people. It is too early to know how successful Biden's pitch will be, but if implementation of the new programs gets bogged down, it will be harder to sell his case to voters. While passing these bills with grand aspirations makes for nice talking points in Washington, they could end up not having the desired political impact at the local ballot boxes if voters don't see the benefits in time.

AI is DC's Shiny New Toy

Voluntary Guidance from the Biden Administration. To date, federal artificial intelligence (AI) policy has generally taken the form of recommendations and voluntary guidance.

- The White House’s major AI initiative is the Office of Science and Technology Policy’s (OSTP) [Blueprint for an AI Bill of Rights](#). Announced in October, it is designed “to help guide the design, development, and deployment of artificial intelligence.” It outlines five core protections for all Americans who interact with AI. These include protections from unsafe or ineffective AI, protections from algorithmic discrimination, data privacy, notice and explanation of how an AI system is being deployed, and access to human alternatives to AI to resolve issues.
- The blueprint is not binding, but it includes a [supplement](#) titled “From Principles to Practice” intended to guide the public and private sector in the development and deployment of AI. If the White House chooses to pursue AI regulation, these principles may serve as a starting point.
- Last month, the National Institute of Standards and Technology (NIST) released its [AI Risk Management Framework 1.0](#), a voluntary set of guidelines to encourage entities to take trustworthiness into account in the development, deployment, and evaluation of AI.

Regulatory Agencies. The Consumer Financial Protection Bureau (CFPB), Federal Trade Commission (FTC), and Equal Employment Opportunity Commission (EEOC) each have equities in federal AI policy.

- The CFPB is increasingly indicating a focus on automated decision-making and algorithmic bias in consumer financial products. In November 2021, CFPB Deputy Director Xixta Martinez [highlighted](#) “black box algorithms perpetuating digital redlining and discrimination in mortgage underwriting.” Last March, Martinez [said](#) that the CFPB was “increasing our research of algorithms and machine learning to understand how these technologies affect fair lending outcomes,” and CFPB Director Rohit Chopra released a [statement](#) saying that “we will be working to implement a dormant authority in federal law to ensure that algorithmic valuations are fair and accurate.”
- The FTC’s stake in AI policy is closely related to privacy. The agency’s [rulemaking](#) on data security and what it terms “commercial surveillance” touches on automated decision-making systems in domains including housing, credit, and employment. In a [fact sheet](#) on this rulemaking released last year, the FTC highlighted issues with algorithms including inaccuracy and bias.
- The EEOC under Biden is also focusing on AI. Included in its list of subject matter priorities in a [draft enforcement plan](#) released last month is the use of AI and machine learning in recruiting candidates for positions, making hiring decisions, and employment screening.

Congress. Unlike other tech issues, such as content moderation and online speech, AI has historically been a bipartisan topic in Congress, but that doesn’t mean much will happen under divided government.

- In recent years, the annual National Defense Authorization Act (NDAA) has often included notable provisions to support and manage AI development. The [FY21 NDAA](#) directed NIST to create its risk management framework and the [FY23 NDAA](#) directed the Department of Homeland Security to develop policies to guide AI acquisition, use, and the risks associated with AI within 180 days and the Office of Management and Budget to ensure that federal AI contracts comply with guidance. If political divisions in the fractious House scuttle passage of an FY24 NDAA for the first time in 63 years, it could eliminate a prime legislative vehicle for AI provisions to pass Congress this year.
- Though Congress has handled AI in a bipartisan way, that doesn’t mean that the parties don’t have differences in approaching this emerging technology. Both parties have indicated an interest in AI risks, such as accuracy, privacy, transparency, and accountability, but Democrats generally have had more of a focus on the harmful effects of bias on disadvantaged groups, while Republicans have generally emphasized the potential of AI to boost US industry.
- So far this year, Rep. Ted Lieu (D-CA) has [called](#) for the establishment of a new federal agency to regulate AI. Congress is unlikely to pass major legislation to regulate AI under divided government, but Lieu’s effort lays a marker for Democrats. Just weeks into the new Congress, House Republicans are beginning oversight of the Biden administration’s handling of AI. In a [letter to the White House](#) OSTP last month, House Science, Space, and Technology

Committee Chair Frank Lucas (R-OK) and House Oversight Committee Chair James Comer (R-KY) raised concerns with the White House's AI Bill of Rights for conflicting with NIST's risk management framework.
