

Cozen Currents: No News is Good News

The Cozen Lens

- With the standoff over raising the debt ceiling, Washington, DC is asserting its prerogative to be the center of the universe. All eyes are on whether policymakers can once again raise the debt ceiling or if this time really is different.
- The expiration of Title 42 authority under the Covid-19 public health emergency late last week means that immigration is poised to become a more prominent issue going into the 2024 election.
- The first two years of President Biden's term saw the use of generous tax incentives to address climate change. The latter two years will see more stringent regulations added to the mix.

Debt Ceiling in the Spotlight

The Art of a Deal. On the surface, there's an intractable impasse between Republicans and Democrats on raising the debt ceiling. But below the surface, the elements are there for a potential deal to be made.

- Getting to yes on a deal means both sides being able to declare victory in a highly publicized policy fight. Neither side wants a default, but both House Speaker Kevin McCarthy (R-CA) and President Biden want to keep their jobs, which means not upsetting their respective bases. McCarthy needs to show he extracted concessions from Biden. The president needs to show he didn't pay a ransom to the GOP's "hostage taking" of the debt ceiling.
- Getting to yes means being on the same page with negotiations. Right now both sides generally agree that discretionary spending levels, rescinding unspent Covid-19 aid, and energy permitting reform are open to negotiation. Republicans are still pushing for greater work requirements on government aid and Democrats have ruled out repealing elements of the Inflation Reduction Act.
- Getting to yes means good faith negotiations away from the limelight. While political principals are attacking each other publicly, their staff have been working together behind the scenes. As long as there is space for staff-level negotiations, that represents progress.
- Getting to yes means having a real deadline. A forcing mechanism pushes both sides to compromise if they view a negotiated outcome as the best route to raising the debt ceiling.

The Known Unknowns. While good faith negotiations are ongoing, there are still several unanswered questions about how negotiations will go and how feasible alternative routes to raise the debt ceiling are.

- When will the Treasury run out of money to pay its obligations? Most are pegging this "X-date" to early June, but analysts won't have a definitive answer until May tax receipts become clearer.
- Will far-right Republicans revolt against McCarthy on any deal? Members of the House Freedom Caucus likely won't vote for any bipartisan deal. But whether they just grumble or seek to depose McCarthy and move more mainstream conservative elements of the party against a compromise will influence McCarthy's willingness to accept a deal. It could also influence the willingness of moderate and Senate Republicans to try to craft their own deal with Democrats.
- What's the legality and market reaction of executive action? If negotiations don't pan out, the Biden administration could look to take unilateral action. This could include debt



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prioritization or invoking the public debt clause of the 14th amendment to say the debt ceiling is unconstitutional. But legality, implementation, and market impact of unilateral action remains uncertain.

Everyone's Waiting on the Debt Ceiling. The debt ceiling negotiations are taking up all the oxygen for other policy negotiations and are leaving other institutions to intervene if negotiations go off the rails.

- Debt ceiling negotiations are leaving several other must-pass policy items at a standstill. Negotiations for FY24 appropriations, defense authorization, and the farm bill are all being held up by the debt ceiling, which includes policies related to spending and SNAP work requirements. The longer the impasse, the harder it'll be to get other items done in a timely manner.
- Debt ceiling negotiations impact other institutions of power. A market-rattling debt ceiling showdown could impact the Federal Reserve's agenda to tighten monetary policy. Executive action by Biden could create legal uncertainty that the Supreme Court would have to resolve.
- Even the presidential campaign is taking notice of the debt ceiling. Former President Trump wants Republicans to fight, even if it means defaulting and a resulting recession. Trump's self-interested position as a 2024 candidate may not be taken seriously by most congressional Republicans, but it complicates McCarthy's calculus in being able to declare victory.

The Politics of Immigration

Immigration After Title 42. The expiration of the Covid-19 public health emergency late last week marks a turning point in the politics of immigration.

- The federal public health emergency for the Covid-19 pandemic ended last Thursday at midnight, and with it, so did Customs and Border Protection's (CBP) Title 42 authority. In effect for three years under Presidents Trump and Biden, Title 42 allowed CBP to quickly expel migrants who illegally enter the US, often without processing of asylum claims. CBP now has to process migrants under lengthier standard procedures and the federal government will now be able to criminally charge migrants who return illegally after being expelled.
- The end of Title 42 is expected to be followed by a surge in migrants seeking to cross the southern border and claim asylum. Last Tuesday, CBP recorded over 10,600 illegal border crossings, a record for a single day. This virtually guarantees that immigration will dominate front pages and cable news, growing in prominence in the lead up to the 2024 presidential election and teeing up a major challenge for Biden.

Republicans Are Unified. House Speaker Kevin McCarthy (R-CA) succeeded in getting the often divided House GOP on the same page regarding immigration last week.

- Despite the razor-thin margin of their majority, House Republicans passed the Secure the Border Act of 2023, indicating that for all the divisions within the conference, immigration is an issue on which they're all on the same page. The bill would fund construction of the border wall championed by Trump, require asylum-seekers to stay in Mexico or in US detention facilities, and expedite the deportation of unaccompanied minors. The bill would also require employers to use the E-Verify system to certify workers' citizenship and make overstaying a visa by more than 10 days a criminal offense. All but two Republicans, Reps. Thomas Massie (R-KY) and John Duarte (R-CA), supported the bill, while all Democrats opposed it.
- The timing of this bill is not coincidental. As the Biden administration reckons with the aftermath of the end of Title 42, the GOP's legislation seeks to demonstrate that the opposition party has a better plan. McCarthy said that "everyone knows we are days away from disaster" and that the House GOP's bill was "the strongest border security bill to come through Congress in more than 100 years." The bill has no chance of passing the Democratic-controlled Senate.
- A greater focus on immigration in the 2024 campaign could give a boost to Trump and other MAGA Republicans in GOP primaries. Trump has made the southern border a signature issue of his political career and it would be difficult for others in the party to outflank him on it.

Democrats Are Divided. While the GOP is united in its approach to immigration, Democrats are split.

- The Biden administration, anticipating an increased number of migrants, aims to contain the fallout by enacting a temporarily stricter approach to the border. Under its new emergency policy, which will be in effect for two years, migrants will not be able to claim asylum in the United States if they passed through another country on their way to the southern border where they could have done so. The administration also sent 1,500 military service members to the border.
- Some Democrats have objected to Biden's plan, while others have taken a more centrist position on immigration. Senators Kyrsten Sinema (I-AZ), Thom Tillis (R-NC), Joe Manchin (D-WV), and John Cornyn (R-TX) have proposed reinstating Title 42 policy for two years through legislation, while the New Democrat Coalition, a center-left caucus of House Democrats, has advocated bipartisan immigration reform that includes investing more resources in the border.
- Biden in a no-win position. He will never be as tough on the border as the GOP, making it impossible to please immigration hardliners. Being perceived as weak on the southern border could cost Biden and Democrats with independents and moderates, but a move to the middle could risk alienating the Democratic base, and vice versa. Democrats appear politically vulnerable on this issue. A Reuters/Ipsos poll conducted earlier this month before the end of Title 42 found 60 percent disapproval of Biden on immigration. Senator Sherrod Brown (D-OH), one of the most endangered Democratic incumbents up for re-election in 2024, has come out in favor of the proposal to retain Title 42 for two years, while Senate progressives are against it.

Biden's Sticks and Carrots on Climate Change

The Rewards. Before they lost the House of Representatives, the Democrats reshaped the economy with legislation meant to aid climate-friendly sectors.

- In 2009, Democrats attempted to pass a blockbuster cap-and-trade bill, but it failed to overcome a Senate filibuster, leaving many in the House who had voted for it on the hook for supporting a controversial bill. The left has learned that fighting climate change by raising taxes is near impossible, and that one catches more flies with honey than vinegar.
- The Inflation Reduction Act (IRA) is the largest climate bill in US history. Rather than impose costs on polluters, the new strategy is to significantly alleviate costs for green businesses. It extends tax credits for wind and solar for another decade, makes an electric car tax credit permanent, creates a green bank, and supports nuclear power.
- The Infrastructure Investment and Jobs Act also contains billions for environmentally-friendly pursuits. It provides funding for electric charging stations, shutting down orphan wells, and green hydrogen. Also included are provisions giving the Department of Energy \$45 billion for innovation and industrial strategy and \$73 billion for power infrastructure (desperately needed to catch up with renewable demands).
- The Coming Punishment. As friendly as incentives are from the legislative branch, the executive branch is pedal-to-the-medal on implementing strong regulation.
- Last week, the Environmental Protection Agency (EPA) unveiled a *marquee rule* to limit emissions from power plants. At its core, it aims to reduce carbon dioxide from coal and natural plants by 90 percent by 2035. Regulating plants under the Clean Air Act has been a white whale for Democrats since a failed attempt by the Obama administration.
- Another significant regulation issued this year would provide limits on car exhaust that would make *two-thirds* of new cars electric by 2032. The executive branch does not have the authority to outright ban a sector of the market, but is utilizing its power to implicitly make selling only gas-powered cars, or coal without nearly complete carbon capture, practically impossible.
- Even other agencies without the environment as their key priority are taking related action. The Securities and Exchange Commission is noticeably trying to instate a *climate disclosure* requirement and has expressed interest in the ESG space. All of this illustrates that this is a whole-of-government approach being collectively pursued by many different agencies.

One Hand Washing the Other: Though the regulatory and legislative approaches complement each other, one being thwarted likewise undermines the efficacy of the other.

- One fascinating dynamic is the mutual support these approaches provide. The tax incentives

make the regulatory pushes more defensible which, in turn, drives tax incentive uptake. This adds to the ballooning cost of the IRA; the Congressional Budget Office scored it as a \$391 billion bill, but the Brookings Institution (among others) now believes its cost will exceed a trillion dollars.

- While these bills support each other, they aren't invincible. Republicans are already trying to repeal parts of the IRA and likely will if they regain unified control of the Congress and White House in 2025. Agency rulemaking is vulnerable to litigation and the Congressional Review Act. Even worse, erasure of one component makes the rest weaker.
 - It's hard for trillions of dollars and public-facing regulations to not affect the political landscape. Republicans are already trying to tie a compelling narrative on high prices to Biden's actions on energy. While progressives bemoan some actions to reduce prices, Democrats need to win both them and swing voters concerned about the economy.
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