Alert

January 31, 2023

COZEN O'CONNOR

Cozen Currents: What Makes the GOP McTick in Divided Government

The Cozen Lens

- House Speaker Kevin McCarthy (R-CA) and Senate Minority Leader Mitch McConnell (R-KY) will have one of the most consequential relationships in Washington, DC over the next two years as Republicans try to govern and position themselves for 2024.
- Tight labor markets and President Biden's advocacy of a worker's rights agenda have fostered an environment in which states are increasingly taking action on labor policy.
- The Biden administration is pursuing an ambitious two-pronged industrial policy to "promote" the semiconductor industry by bolstering domestic chip manufacturing and also to "protect" national security interests by restricting China's access to advanced chips.

When McConnell Met McCarthy

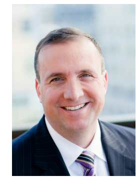
The McCarthy-McConnell Governing Relationship. The relationship between the longest serving Senate party leader ever and the newly-minted House speaker will play a critical role to how DC works (or doesn't) this year.

- Fewer members, longer terms, and the filibuster require negotiations and compromises among a more institutionalist-driven cohort in the Senate. Majority rule is the name of the game in the more partisan and chaotic House.
- McCarthy was forced to be more accommodating than demanding, empowering the far right to feel a part of the Republican conference. McConnell runs a tight operation with a top-down approach.
- McCarthy and McConnell have a good working relationship, but not a personal connection. McConnell speaks softly but is viewed as a strategic master with little real challenge to his leadership. McCarthy's greatest strength is knowing his members but isn't feared, or trusted, by the right flank.
- McConnell, who is the most unpopular senator in the country, may be a punching bag for McCarthy to appease the far right. McCarthy has publicly attacked Senate Republicans, for example blaming McConnell for facilitating a $1.7 trillion omnibus. For McConnell though, the attacks don't matter – as long as it helps McCarthy govern effectively.

How McCarthy and McConnell Navigate the Debt Limit. The biggest policy battle of 2023 is over the debt limit. McCarthy is the lead Republican negotiator for now, as McConnell waits until he is truly needed.

- McCarthy wants to prove he can lead and negotiate on behalf of Republicans. McConnell has been through the debt limit rodeo many times before.
- Like their personalities, McCarthy is talking while McConnell is keeping quiet. Both leaders know anything that passes the Republican House with the support of Biden could pass the Senate, not the other way around. McCarthy has the support of McConnell to be the face of the GOP, but he hasn't yet coalesced around a debt limit position that can get 218 House Republicans' support.
- If Plan A doesn't work for Republicans, McConnell will likely be forced to play a role in raising the debt limit. The Kentuckian has a preexisting relationship with President Biden that may be put to use once again to reach a deal if McCarthy can't deliver the votes in the House.

How McCarthy and McConnell Navigate 2024. The Republican Party today looks a lot different than when McCarthy and McConnell first arrived in Congress. Both want Republicans to



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Related Practice Areas

- Government Relations - Cozen O'Connor Public Strategies keep winning elections, but they have differing strategies.

- For 2024, the GOP haven't yet landed on a playbook to take on Democrats. In the midterms, McCarthy was more proactive with his “Commitment to America” agenda while McConnell sought to keep the focus on Democrats. But the choice and referendum strategies both underperformed.
- Candidate quality remains an issue in both chambers. After not regaining the Senate because of poor candidates, McConnell and the National Republican Senatorial Committee will play a more active role in competitive primaries. In contrast, McCarthy and his team have relinquished some control to conservative activists in their attempt to appease the far right.
- The Trump factor separates the two men. McCarthy tries to manage Trump while McConnell tries to ignore him. McCarthy has made several trips to Mar-a-Lago to remain in Trump’s good graces. McConnell hasn't spoken to Trump since 2020 as Trump regularly attacks him (and his wife).

Biden's Push for Workers' Rights Spurs State Action

Regulation of the Gig Economy. Worker classification and the rights of gig workers were hot state-level legislative issues in 2022, and they are set to be the subject of political battles this year as well.

- The Department of Labor (DOL) is developing a rule that would repeal a Trump-era standard on worker classification and replace it with a new test that would likely tighten companies’ ability to classify workers as independent contractors. Due to the complex nature of this rulemaking and the strong chance that it would face a legal challenge, its implementation is likely to take time.
- Washington, Alabama, and Georgia passed legislation relating to classification of gig workers last year, providing alternative blue and red state models. The Washington state law codifies rideshare drivers as independent contractors in state law and guarantees them a minimum rate of pay and certain benefits. The Alabama and Georgia laws, by contrast, classify gig workers as independent contractors without a guarantee of benefits if certain conditions are met.
- In the absence of a finalized DOL rule, states are poised to enact their own standards for gig workers. The Kansas House is considering a bill that would classify rideshare drivers as independent contractors under certain conditions. In Massachusetts, lawmakers have proposed union-backed legislation that does not address the thorny classification issue but would give rideshare drivers a minimum wage, sick leave, and collective bargaining. Governor Maura Healey (D-MA) filed suit against Uber and Lyft as attorney general alleging misclassification of workers and is thus unlikely to support any bills that classify gig workers as independent contractors.

Non-compete Agreements. The Federal Trade Commission (FTC) has announced a proposal to ban non-compete agreements in employment, but states may take up the mantle.

- The FTC’s proposed rule would be a major departure from the status quo as there currently isn’t one federal standard governing non-competes. The FTC is accepting public comments on its proposal until March 20th. It must then review the public input received and develop a final rule that aims to be legally sound, although legal challenges are inevitable. In a Wall Street Journal op-ed this month, US Chamber of Commerce CEO Suzanne Clark promised that her organization “will oppose the proposed regulation with all the tools at our disposal, including litigation.”
- While the outcome of the federal effort is uncertain, the FTC’s rulemaking could give cover to states to take their own aggressive action. To date, non-competes have been a state-by-state issue. Three states (California, North Dakota, and Oklahoma) and the District of Columbia ban them outright, while nine states ban them for workers with income below a certain threshold (Colorado, Illinois, Maine, Maryland, New Hampshire, Oregon, Rhode Island, Virginia and Washington). More Democratic-controlled states might seek to pass laws to tighten or ban use of non-compete agreements.
- Plaintiffs can also go to court seeking to restrict the use of non-competes based on existing state law. Such cases give the Biden administration an opportunity to weigh in and advance its

progressive view of non-competes. For example, last year the Department of Justice filed a statement of interest to overturn a non-compete in a Nevada case, citing antitrust law.

Other Labor Rules. Buttressed by tight labor markets and empowered by the White House, the labor movement is finding success in reforming pay and scheduling for workers in blue states.

- The California legislature passed a law last year creating a council of fast food workers, union representatives, and employers to decide on wages and working conditions for fast food restaurants. Last week, the secretary of state's office confirmed that an industry-backed petition had enough signatures to suspend the law and refer it to the 2024 ballot. This ballot referendum will trigger a major fight, but if the law survives, it could serve as a model for other blue states.
- Pay transparency laws took effect in California, Washington, and Rhode Island at the beginning of 2023, and a similar measure will apply in New York in September. Massachusetts lawmakers recently introduced a pay transparency bill, and other blue states could soon follow.
- In Colorado, Democrats are looking to pass legislation to regulate scheduling for hourly workers. The bill would require employers to give workers more advance notice of shifts and pay them extra if a schedule changes on short notice, among other provisions.

Biden Goes All-in on Semis

When Politics Override Economics. The push for an industrial policy for semiconductors was borne from economic and security concerns, but has now become increasingly political.

- While the government's promotion of domestic semiconductor chip manufacturing was spurred on by the pandemic's supply shortage and a lack of supply for automakers, it also entails security concerns over supply chain reliance on China and Taiwan.
- There are increasing economic indications that the chip shortage has quickly reversed into a glut of chips, but there is little political interest in slowing down support for the industry. National security concerns are driving a willingness to accept temporary market inefficiencies.
- This suite of industrial policies targeting semis could serve as a template for other advanced technology industries in the future, such as microelectronics, AI and quantum computing.
- However, as of late, the more business-friendly members of the Biden administration seem to be winning arguments against their more hawkish colleagues, a sign that it may take time for another industry to gain similar support.

Supporting Domestic Growth and "Onshoring". In the White House's two-pronged industrial policy, the first prong has come to be known as its "promote" agenda.

- As the name implies, this consists of policies that seek to bolster the industry in the US. For seminconductors, it has taken the form of subsidies, public-private partnership programs and tax incentives. While the federal offerings have gotten the most attention, some state and local governments have also created their own packages to attract companies to their region.
- One upcoming opportunity to watch is the Commerce Department's funding through the CHIPS for America program. This program consists of just over $50 billion in funding, of which $39 billion will be made available to the semiconductor ecosystem, including foundries, equipment manufacturers and material suppliers. According to a September release, the application process is expected to open as early as next month.

Locking Out China. The other prong of the Biden administration's industrial policy is its "protect" agenda.

- The most important aspect of this prong is the export controls imposed in October seeking to limit China's ability to access advanced chips and the technology needed to produce them.
- Other elements include the Commerce Department's entity list, which prohibits US companies from doing business with specific entities, Treasury's SDN List, which blocks assets and can result in seizure.
- Additionally, there is talk of a new outbound investment screening mechanism first proposed by Sens. John Cornyn (R-TX) and Bob Casey (D-PA). In the coming months, the White House is expected to unveil its own outbound investment review process in the absence

of congressional progress on the issue.

- The White House has also been lobbying allied nations that are home to other key firms in the semiconductor supply chain to impose restrictions on exports to China. It has so far had some success with news late last week that Japan and the Netherlands will join the US. The US goals are to create a level playing field for Western companies as well as to broaden the reach of restrictions on China's access to technologies of concern.