

Cozen Currents: The Double Haters

The Cozen Lens

- Former President Trump's first criminal trial is scheduled to begin next month, and recent polling suggests a conviction in any of the four prosecutions he is facing could significantly damage his re-election prospects.
- In an era where presidents are elected by a few thousand votes across a handful of states, third parties more than have the potential to flip the outcome, especially this cycle.
- Although passing a comprehensive federal data privacy law remains elusive, momentum could be building for a narrowly targeted measure to protect children's online privacy and safety.

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The Political Danger of Trump's Conviction Risk

Trump's Crowded Calendar. Former President Trump's first criminal trial is set to begin on March 25, raising the possibility of a conviction before the election.

- The hush money case in New York will begin jury selection on March 25, starting Trump's first trial. The judge has estimated the case will last about six weeks, suggesting the conclusion could be in early May. Trump's lawyers will likely try to prolong this process as much as possible, a common thread in the former president's court cases.
- The federal case concerning Trump's role on January 6 could also see trial begin soon enough for a conviction before the election depending on how the Supreme Court decides to handle Trump's immunity claim. A quick dismissal could see the trial begin in late May or early June.
- Beyond these two cases, Trump's other two criminal cases – the classified documents charges in Florida and the election interference case in Georgia – are also proceeding. Both have trial dates set for later this year in May and August, respectively, but those could be pushed back.

The Consequences of a Conviction. Even if Trump appeals a decision that goes against him, minimizing the odds he faces any immediate penalty, polling suggests that a conviction alone poses a risk to his re-election odds.

- The latest national NBC News poll earlier this month showed that Trump led President Biden by five percent among registered voters, but Biden pulled ahead by two percent if Trump is convicted. This seven-point swing is pronounced in groups that supported Biden in 2020 but which he is struggling with this cycle, such as Latinos and younger voters. A New York Times/Siena poll from October found the effect was even more pronounced in six swing states, showing an aggregate 14-point swing.
- Similarly, in a Bloomberg News/Morning Consult poll of swing-state voters, 53 percent of respondents said they would not vote for Trump if found guilty. Significantly, 79 percent of so-called "double haters" who do not approve of either Trump or Biden said they would not vote for Trump if convicted. Given both candidates' high unfavorability ratings, this group is expected to be particularly key in the election's outcome.
- While Trump has been able to use his ongoing prosecutions to position himself as a victim and boost his support among the GOP base during the presidential primaries, he could fall out of favor even among some of his own party if he is convicted before the election. Per exit polling from this weekend's South Carolina GOP primary, 35 percent of



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primary voters believe that Trump would not be fit for the presidency if he were convicted of a crime.

What's in a Name. In theory, it would make sense if voters cared about which case Trump was convicted in, but the polling suggests that, at least for now, they are not making too much of a distinction among the prosecutions.

- Polling from YouGov from earlier this month found that most Americans felt all four cases were at least “somewhat serious.” Importantly, independents tended to reflect this national average.
- Notably, 50 percent of respondents in the YouGov poll said the most important case is the federal January 6 case.

Dissecting the Third-party Risk

The Perfect Storm. Record dissatisfaction with both major party candidates has prompted window-shopping for alternatives to President Biden's left and right.

- If Jill Stein voters in three states voted differently in 2016, Hillary Clinton would have been president. Even fractions of a percent can mean the difference between winning and losing: just ask Al Gore in 2000.
- One in five battleground state voters don't approve of either former President Trump or Biden, a historically high amount of “double haters.” Many have concerns about Biden's age or wish he would be more to the left or the right. And Trump is Trump. That means third parties have a large base of potential support to work with. Double haters may prove kingmakers again: Trump carried this group in 2016 before Biden won it in 2020.

Clowns to the Left of Me. The last few months have arguably empowered progressive challengers to be the larger threat to Biden's coalition.

- Two major candidates are snapping at Biden's heels from his left. Famed progressive intellectual and activist Cornel West is running as an independent after seeking the nomination of (then ditching) the People's and Green Party. Jill Stein, who was the Green Party nominee in 2012 and 2016, is seeking the party's nomination for a third time. The Green ticket has earned a spot on the ballot in the pivotal battleground states of Arizona, North Carolina, and Wisconsin.
- Both candidates have condemned Biden's foreign policy and called for an immediate ceasefire in Gaza. Progressives have also decried what they consider to be insufficiently strident policies on the environment and student loans.
- Biden's biggest vulnerabilities in his coalition are young voters and minority voters, and especially the intersection between the two. His worst polls show him only breaking even with Trump among a demographic the former won by double digits four years ago. Even if the margins remain the same, if less young people show up to the polls, that could spell disaster for Democrats.

Jokers to the Right. While the best-funded organizations lie on Biden's right, the last few months have proven devastating to their momentum.

- Senators Mitt Romney (R-IT) and Joe Manchin (D-WV) and Governor Chris Sununu (R-NH) have all ruled out a run with moderate organization No Labels, leaving a very thin bench of candidates who could conceivably attract bipartisan support (former Governor Chris Christie (R-NJ) has reversed course in recent weeks in holding the door open). The organization has canceled its nominating convention, belying an uncomfortable fact: the organization's threat appears so much larger while the ticket is undefined. The organization has a lot of money but a donor lawsuit suggests internal dispersion. Still, the organization has earned a spot on the ballot in the crucial states of Arizona, Nevada, and North Carolina.
- Robert F. Kennedy Jr. began this cycle running as a Democrat before switching to become an Independent. However, his anti-vaxxer views, penchant for conspiracy

theories, skepticism towards Ukraine, support for Israel, and isolationism seem poised to siphon off more votes from the right. It remains to be seen whether he would cut into Trump's base of support though.

What Congress Could Realistically Get Done on Data Privacy

Federal Data Privacy Legislation. Despite past bipartisan support, there's no realistic path for a comprehensive data privacy bill to pass Congress this year.

- The *American Data Privacy and Protection Act (ADPPA)* has no legs in this Congress. Cosponsored last year by then-House Energy and Commerce Committee Chair Frank Pallone (D-NJ) and Ranking Member Cathy McMorris Rodgers (R-WA), the bill would have set a national standard. It passed on a broad bipartisan committee vote in 2022 but has not been reintroduced during this Congress.
- Former House Speaker Nancy Pelosi's (D-CA) departure from leadership removed an obstacle to a federal privacy law. Pelosi *shared* fellow Californians' opposition to the ADPPA's pre-emption of the Golden State's privacy rules.
- On the other hand, leadership in the Senate Commerce Committee remains a roadblock. Chair Maria Cantwell (D-WA) has never backed the ADPPA, and the top Republican on the panel, Senator Ted Cruz (R-TX), is broadly suspicious of federal regulation. This is in contrast to his predecessor, Senator Roger Wicker (R-MS), who supported the ADPPA.

Children's Online Privacy and Safety. The more narrowly targeted Kids Online Safety Act (KOSA) has a greater chance of passing Congress than a wide-ranging bill.

- KOSA hit a milestone in the Senate when it *gained additional cosponsors* for a filibuster-proof total of 62 after an update from the bill's authors, Senators Richard Blumenthal (D-CT) and Marsha Blackburn (R-TN). The bill's new supporters include Senate Majority Leader Chuck Schumer (D-NY), Senate Minority Whip John Thune (R-SD), and Cruz. The substantial bipartisan support in the Senate, particularly the backing of Schumer, suggests that KOSA has a good shot of passing the upper chamber.
- KOSA would impose a requirement that platforms take "reasonable care" to prevent harm to children under 13 years old, make the strongest privacy settings the default for children, and allow children to opt out of algorithm-driven recommendations, among other provisions.
- The easiest path for KOSA to pass would be as an amendment to broader "must-pass" legislation given the amount of floor time required, but passage as a standalone measure is possible if the majority leader chooses to prioritize the bill and dedicate limited floor time to it.
- Despite the new momentum in the Senate, KOSA's path to passage in the House is less clear. A companion bill has not been introduced in the lower chamber, and lawmakers may want the opportunity to leave their own stamp on the issue rather than simply accept the Senate's bill.

Looking Ahead. House Energy and Commerce Committee Chair McMorris Rodgers is retiring.

- McMorris Rodgers' departure will leave comprehensive data privacy legislation without one of its biggest Republican champions.
- While the ADPPA was broadly popular with committee Republicans in 2022 (the only two committee members to vote against it were Democrats), a new chair or GOP ranking member may have other priorities. The Energy and Commerce Committee covers a wide range of issues, including energy, technology, and healthcare, and data privacy will be competing for attention.
- McMorris Rodgers' retirement could also potentially increase the chances of children's privacy legislation passing. As chair, she has not taken up legislation on this issue and instead has *maintained a focus* on the ADPPA. A new GOP House E&C chair or ranking member may be more willing to aim for a win on incremental legislation focused on children's privacy.

