

## Cozen Currents: How Corporations Need to Navigate a Divided Congress

### The Cozen Lens

- The environment, social, and governance (ESG) movement is growing, but corporations are getting squeezed in the political battles between activists on both sides of this issue.
- The politics of appropriations have shifted in recent years, with both parties more comfortable spending federal dollars. The next Congress will see changes in personnel and power dynamics though that will make negotiations more contentious, particularly given high inflation.
- President Biden has tried to tone down the rhetoric between the US and China since his recent in-person meeting with Chinese President Xi Jinping, but his new tone is inconsistent with his actions, not to mention that a divided Congress may make it increasingly challenging for him.

### Corporate America Caught in the Crossfire of ESG Political Battle

**Corporations on Defense with Democratic Regulators.** President Biden came into office looking to take a whole-of-government approach to climate change. Republican and corporate pushback isn't going to derail that effort.

- The Securities and Exchange Commission (SEC) is continuing to push a rulemaking – expected next year – to mandate that public firms disclose risks from climate change.
- The Federal Reserve last week released draft principles for how big banks can deal with financial risks from climate change. It's in line with principles from other prudential regulators.
- Corporations and Republicans are united in curbing the excesses of climate regulations in the courts, even if the former supports private ESG initiatives against the wishes of the latter. Legal challenges could revolve around the "major questions doctrine" whereby a regulator on major issues doesn't have the discretion to enact rules that are not explicitly set forth by Congress.

**Corporations on Defense with Republicans.** While Republicans agree with corporations that Democratic regulators shouldn't have a heavy hand on ESG, the ESG movement itself and the corporations involved are on the receiving end of attacks from a populist GOP.

- The GOP coalition today is less trustful of institutions of power, including in the private sector.
- The well-funded anti-ESG movement is pushing Republican activists, lawmakers, attorneys general (AGs) and regulators at the state and federal level to attack ESG-focused corporations as acting against their fiduciary, and the national, interests. For example, the Missouri, Arizona, Kentucky, and Texas AGs are leading a group of 19 Republican AGs in seeking documents from six big banks related to their involvement in the United Nations' Net-Zero Banking Alliance, who must set emissions reduction targets in their lending and investment portfolios to reach net zero by 2050.
- Some state-level GOP lawmakers and executives are boycotting financial firms for perceived involvement in ESG. In one such example, the Texas comptroller barred 10 companies and 348 investment funds from doing business with the state because they "boycott energy companies."
- Anti-Big isn't just a Democratic talking point. Some Republicans see big financial firms as violating antitrust rules in pooling money and proxy votes on ESG-aligned investments.



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**Corporations Can Still Find Middle Ground.** Despite challenges from the left and right, corporations have a way to find success, rather than controversy, with policymakers around ESG and beyond.

- "Go woke" doesn't necessarily mean, "go broke." After the public clash between Governor Ron DeSantis (R-FL) and Disney over LGBTQ+ issues, the company is working with Florida Republicans to reverse legislation stripping it of a special tax district.
- Industry can still have a say and sway on regulations. The Department of Labor recently released final rules allowing ESG options for retirement plans. The final rules were tailored more towards industry after pushback from proposed rules that would have required ESG considerations.
- Moderates continue to hold power in a closely divided Congress. The Republican House majority is built on wins in 18 Biden-won districts in states like New York and California. Like moderate Democrats, these Republicans are more receptive to working with industry.

### **The Changing Politics (and Politicians) of Government Spending**

**A Political Evolution.** We've come a long way since the Obama-era outlook on the federal budget.

- In recent years, there's been a shift in views of government spending. Under former President Trump, the national debt increased by almost \$7.8 billion, the third largest amount under any president. FY22 was the first appropriations cycle with earmarks since the practice was abolished a decade ago, and members of both parties in the House and Senate submitted requests. The House GOP, poised to retake the majority next year, voted by a margin of 52-158 against abolishing earmarks in a conference rules meeting last week.
- High inflation rates also influence the debate about appropriations. Rising prices undercut the value of federal dollars spent, creating a situation where lawmakers must spend more just to have the same purchasing power. A further increase in spending risks fueling inflation, however, creating a dilemma for appropriators.
- A certain degree of deficit sensitivity may return among Republicans next year. The GOP will likely push for lower increases for domestic spending while boosting defense spending to accommodate inflation. The narrow margins of House Minority Leader Kevin McCarthy's (R-CA) majority will amplify the power of the Freedom Caucus, which is likely to advocate for strict spending controls. The House GOP could push for spending offsets for a future debt ceiling increase, but Democrats are likely to play hardball.

**Changes in Leadership.** With a new Congress comes turnover in key leadership posts for appropriations.

- In the 118th Congress, the four lawmakers known as the "Four Corners" of appropriations – the top Democrat and Republican on the respective House and Senate Appropriations Committees – will all be women for the first time. In the House, Reps. Rosa DeLauro (D-CT) and Kay Granger (R-TX) are set to switch places as chair and ranking member.
- In the Senate, retiring Senators Pat Leahy (D-VT) and Richard Shelby (R-AL) will be replaced by Patty Murray (D-WA) and Susan Collins (R-ME). Historically, appropriators work in a bipartisan way, and this new duo is unlikely to change that dynamic. Collins, in particular, is considered one of the most bipartisan members of the upper chamber. The Lugar Center and the Georgetown University McCourt School ranked her as the second most bipartisan senator in 2021. Murray has a history of running the Senate Health, Education, Labor, and Pensions Committee in a bipartisan way with Ranking Member Richard Burr (R-NC). A potential complicating factor could be if Murray has leadership ambitions, which could require her to position herself as more of a partisan fighter.
- On the House side, McCarthy and incoming Minority Leader Hakeem Jeffries (D-NY) have historically not had much of a relationship. This untested dynamic is a wildcard factor and there will likely be friction if McCarthy seeks to shield himself from criticism from the GOP's right flank as Jeffries seeks to emerge from outgoing House Speaker Nancy Pelosi's (D-CA) shadow.

**Appropriations in the Lame Duck Session.** Congress is likely to pass an omnibus package

this month.

- With a narrow majority, McCarthy may face challenges in some of the basic tasks of governing, such as appropriations. This gives Republicans an incentive to work out an omnibus spending package during the lame duck session and clear the deck for the new Congress, although McCarthy can't afford to have his fingerprints on such a compromise, leaving it to Senate Minority Leader Mitch McConnell (R-KY) to manage. Moreover, faced with the alternative of a year-long continuing resolution with flat funding, defense hawks will find an omnibus preferable. An omnibus package would also provide a legislative vehicle for provisions that don't make it into the National Defense Authorization Act, such as year-end tax extenders.
- Roll Call reported late last week that the GOP's most recent appropriations proposal would boost defense spending by 10 percent and nondefense by 8 percent, though excluding veterans' health care, nondefense would increase by only 6 percent. That may be a tough sell for Democrats.
- Once the election results come in from today's Senate runoff in Georgia, there will likely be greater political flexibility for congressional leaders to hammer out a deal. And once budgetary topline are set, it will take about three weeks to complete work on an omnibus, which could allow lawmakers to finish up before the holidays if they get started promptly after the runoff.

### **Where Do Biden and Xi Go from Here?**

**Let's Be Friends.** One of the takeaways from the recent summit between President Biden and Chinese President Xi Jinping is that there is still mutual desire to not let the relationship slip into outright conflict.

- Coming out of the meeting, a number of Cabinet-level dialogues have resumed between the two superpowers. Many of these were halted in the wake of House Speaker Nancy Pelosi's (D-CA) Taiwan trip. Real deliverables from these conversations may be scant, but they create a floor between the two and serve as a reminder of areas where cooperation can be mutually beneficial.
- Even since the summit, the White House appears to be more cautious in its messaging, most notably with its remarks around the protests related to China's zero COVID policy. The Biden administration had to release a statement given the attention on the event, but it was clearly crafted in a way to not be inflammatory.

**Dissonance of Rhetoric and Action.** While this change in rhetoric is useful to tone down verbal sparring, Biden's recent and anticipated actions do not match.

- The Biden administration's recent export controls on semiconductors has been seen by some as the most dramatic escalation of the economic competition between the two countries to date. All indications are that the White House is not backing away; rather, it is considering stringent restrictions on other advanced technologies, such as AI and quantum computing.
- There is also an expectation that at some point in the coming months, Biden will announce an executive order to create an outbound investment screening mechanism. The most recent reports have also suggested that the White House is planning to include the power to block investments and not just have it be a notification system. While potentially far-reaching, this scrutiny will likely only apply to sectors deemed vital to national security by the Biden administration.
- Biden is also believed to be considering an executive order that would seek to manage the personal data of US citizens flowing to China. This has received increasing attention, especially as TikTok and the potential security risks it poses has come under greater scrutiny.

**Congress Cares Too.** Aside from Biden's own actions, Congress is likely to pose a challenge to his efforts to minimize tensions between the two countries.

- Given the bipartisan popularity of being tough on China, Democrats and Republicans are expected to be jostling to outflank each other to be seen as stronger on this issue. China-related investigations are expected to be a significant part of the House GOP's agenda, including creating a Select Committee on China. This will also mean capitalizing on any opportunities where they feel the White House is being weak on China, such as House Minority

Leader Kevin McCarthy's (R-CA) reaction to Biden's response to the zero COVID protests in China.

- China could also be one of the few areas of potential legislative success in a divided Congress. This last session showed the popularity of this with the CHIPS and Science Act and further measures that could still advance during the lame-duck period as attachments to one of the "must-pass" bills since they enjoy bipartisan support.
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