

MEMORANDUM

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To Interested Parties

FROM Ivan Zapien

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SUBJECT **Washington Outlook October 2022**

Elevator Pitch: Gone Till November - With the government funded (for now) and Congress out of session (for the most part) until November, all eyes have turned to the midterms, where races appear to be tightening. Call us conventional, but we still see the Republicans in position to win back the House and the Senate as too close to call. While the tide seems to be turning back in favor of Republicans, this election is particularly hard to handicap. Not only has polling proven less-than-reliable in the past few cycles, but this is the first post-*Dobbs* election and it remains anyone's guess what impact the decision will have on the electorate.

Additionally, it is important to remember that the Georgia Senate election may require a run-off on December 8th, so we may not know which party will control the Senate until then, further complicating the lame duck. With that in mind, here is where we think things stand on the trail and what we see on Congress's agenda when it returns post-midterms:

Midterm Outlook: Spooky Season For Both Parties - Roughly a month until the midterms, the specter of October surprises loom large for both parties. Here is what is keeping both sides up at night:

For **Democrats**, the summer momentum they gained following the *Dobbs* decision and their legislative victories appears to be slowing. Whether that is just Republican voters "coming home" or represents a deeper shift in undecideds/moderates remains to be seen, but Democrats worry that the gloomy economic outlook will continue in October, leaving voters looking for someone to blame come Election Day. Even more scary is the prospect that inflation, and gas prices in particular, will spike again in October, a scenario that seems more likely after OPEC Plus announced Wednesday that it will cut oil production by 2 million barrels per day.

For **Republicans**, candidate strength (and potential skeletons) has always been the elephant in the room this cycle, with the issue rearing its head again this week in Hershel Walker's campaign. Republicans we have spoken to are holding their breath that their candidates can stay on topic, avoid self-inflicted wounds, and keep the focus squarely on President Biden and the Democrats for the next month. Whether their candidates can do that and there are no more October surprises, remains to be seen. If that were not enough to worry about, President Trump's revenge tour (aimed as much at Republicans as at Democrats) continues to roll on, and the former president still has the power to hijack any news cycle and veer it radically off course. The chaos will only increase if Trump is allowed back on Twitter before the midterms, now a distinct possibility thanks to Elon Musk's renewed effort to buy the social media platform. Buckle up!

Congressional Watch: The Not-So-Lame Duck - While much of the lame duck dynamics will be shaped by the midterm results, we do have a good sense of what Congress will focus on following the midterms. Here is what we are circling for the lame duck:

- **Government Funding: *Déjà Vu All Over Again***: When Congress returns in November it will have about a month to avert a December 16th shutdown – with a Thanksgiving recess week sandwiched in the middle. Assuming Republicans are successful in at least winning the House, look for the GOP to take a hardline

and insist on a short term CR until Q1 of 2023, when they will have more leverage in funding negotiations. That said, retiring Senate Appropriations Chair Richard Shelby (R-AL) would prefer a year-long spending bill to secure funding for legacy projects. How influential he remains, and how hard he wants to push on his way out the door, remains to be seen. At any rate, expect at least a few short term CRs until a longer deal is cut. Sound familiar?

- **NDAA: *The Last Horse Out of the Barn*:** Republicans and Democrats alike have been frustrated by the delay in the Senate's consideration of the NDAA, as this is the last-best vehicle for member priorities that fell by the wayside this congress. While the Senate will be in session briefly in October to tee up consideration post-midterms, House and Senate staff are beginning the process of sorting through amendments and informally pre-conferencing the bill as we speak. We expect passage in December.
- **Nominations: *Smoke'Em if Ya Got'em*:** Win or lose in November, expect Senate Democrats to push through as many judicial and executive nominations as possible in the lame duck. While this was once unheard of, particularly for a party that loses power in the midterms, the new normal for noms is that when you control the Senate and the presidency you wield your power until the bitter end – and Biden has 44 (count 'em) judicial nominations awaiting confirmation.
- **Antitrust: *They'll Take What They Can Get*:** While Senator Amy Klobuchar (D-MN) will continue to push for the American Innovation and Choice Online Act (S.2992), ambitious antitrust legislation aimed at Big Tech, there does not appear to be sufficient support for it to pass. Yet, due to her relentless efforts, Senator Schumer may still schedule the bill for a vote. Either way, assuming the bill does not pass, look for Klobuchar and other bipartisan antitrust hawks to pivot to push for a package of more moderate antitrust bills that the House recently passed. We expect Senator Klobuchar to try to salvage some victory in the antitrust space by including the package, or parts of it in the NDAA or year end appropriations bill. Republicans, however, are growing increasingly critical of President Biden's antitrust regulators and may draw a line in the sand, even on bills that were once non-controversial.
- **Tax Extenders: *Another December Tradition*:** In another yearly tradition, Congress will also work on a package to extend various expiring tax provisions and incentives; however, the specifics of that package will depend on the results of the midterms and bad blood from the Democrats Inflation Reduction Act may make Republicans less willing to play ball.
- **Bipartisan: *One Last Shot At A Kumbaya Moment*:** Despite partisan rancor, the 117th Congress has seen some remarkable bipartisan legislation, from the Infrastructure Investment and Jobs Act to gun control and veterans legislation to the CHIPS and Science Act. Regardless of the midterms, next congress is unlikely to enjoy the same bipartisanship as all eyes turn toward the 2024 presidential election. The lame duck offers a few final opportunities for bipartisanship to prevail, including: marriage equality; the Manchin permitting proposal; and Electoral Count Act reforms. Other long shots include a congressional stock trading ban and an immigration deal. We expect Senate Republicans' willingness to reach across the aisle to be largely informed by the midterms and which party will hold the gavels in 2023.