MEMORANDUM

TO Interested Parties

FROM Ivan Zapien; Tim Bergreen; Ches Garrison

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SUBJECT Political and Legislative Roundup July 2023

Even the clouds of wildfire smoke that loomed over D.C. in June couldn’t stop political Washington from taking a cleansing deep breath after Congress and the Biden Administration reached an agreement and averted the debt limit crisis. However, it took all of a few days for attention to turn to Congress’ long “to-do” list and the relatively short amount of time to accomplish it. From government funding, to the NDAA, to a host of other big-ticket reauthorizations (some of which expire September 30), even the most functional of congresses would have its work cut out for it, and the 118th Congress can be described as many things, but “functional” isn’t among them. Layer over the long list and short calendar the residual hostility and mistrust from the debt limit negotiations, and we predict a contentious end of 2023. Despite the murkiness, we remain cautiously optimistic that Congress will get its work done; it is just a matter of when (December) and at what cost (holiday plans).

Political Outlook: There has been little movement that we can detect over the past few months in the early presidential horse race. On the Republican side, President Donald Trump continues to hold a sizable lead in the polls and take up nearly all the oxygen in the primary coverage. We have yet to see a Republican candidate find an effective strategy for taking on President Trump. Thus far, the tactics seem to fall into a few categories, from directly challenging the former president to ignoring Trump altogether to campaigning as “Trump without the sideshows,” no one seems to have thread the needle of going after Trump without alienating his base. Given that President Trump’s indictments did not change the primary dynamic, we expect the status quo to hold for the next few months, at least until the town halls and debates begin in earnest. Regardless of whether Trump participates in the debates, he will cast a shadow over the proceedings. We are watching to see if any of the other candidates can build some momentum from the debates or whether Trump’s renomination is a foregone conclusion.

On the Democratic side, with all due respect to Robert Kennedy, Jr.’s Venice Beach workout, we don’t see a primary candidate with the muscle to challenge President Joe Biden, who showed off his own beach bod at Rehoboth this past weekend. The overall environment should be a boon to Biden: he’s an incumbent; he has accomplishments to point to; the market continues to hold strong; employment is up; inflation is ticking down; and the Democratic base continues to be engaged post-Roe. Yet, we can’t help but sense the continued unease among Democrats. We hear a lot of lingering anxiety about Biden’s age, ability to clearly communicate the Democrats’ vision, and maintain a demanding campaign schedule (though we’ve also heard from a few strategists that Dems are most likely to vote when they are nervous). From Biden’s perspective, there is little he can do to combat those concerns other than show up in public. Call us cynics, but we think that the recent Axios story about Biden’s f-bomb laced back-and-forths with staff may have been planted by Biden’s allies to show the president’s vigor.

With the caveat that this is still politics, we haven’t seen anything thus far to cause us to reconsider our prediction of Biden-Trump II in 2024 (we of course reserve the right to amend that prediction and deny we ever made it in the first place!).
As far as congressional elections, things still look murky. In the Senate, the map certainly favors Republicans who look poised to take back the Senate, but until we see the candidate field we aren’t betting our lunch money. As for the House, at least one of your authors predict that Dems will win back control, seizing on a number of battleground districts that should favor Biden. However, the same author thinks the Dems to lose the House again in 2026, a pattern that won’t stop for a while.

**Legislative Outlook:** While Congress was able to craft a debt ceiling deal to stave off a default, we expect the same underlying political, procedural, and policy factors that made those negotiations so precarious will continue to vex Congressional leadership as they attempt to work through this year’s other must-do items, including government funding, NDAA, the Farm Bill, and the FAA Reauthorization, all of which expire on September 30, and FISA Section 702, which sunsets on December 31.

**Big Picture:** we expect that Republicans and Democrats will use July to jockey for the upper-hand when Congress gets down to brass tacks after the August recess. We don’t expect any of these bills to get to the President before the end of September, meaning Congress will have to pass a short-term CR and extensions of the various expiring programs and authorities, likely through December. It looks as if Congress will do the usual autumnal dance: buy time and hope the threat of Christmas in Washington forces a deal.

While none of these bills will be an easy lift, and the overarching funding bill will certainly inform the other negotiations, it is possible that if Congress if considers these four massive legislative vehicles holistically, there may be enough priorities on the table for everyone to get something the other negotiations, it is possible that if Congress if considers these four massive legislative vehicles holistically, there may be enough priorities on the table for everyone to get something they want and declare victory. Less optimistic, Congress may spend the remainder of 2023 focusing on reaching a deal on funding and the NDAA and merely extend the FAA and Farm Bill into 2024.

- **A Note on Speaker McCarthy:** Color your authors impressed with how Speaker Kevin McCarthy (R-CA) has been able to navigate his precarious speakership. He also has proven adept at handling the Capitol Hill press corps and driving the narrative on a daily basis. However, finding a compromise on funding and the NDAA potentially could put Speaker McCarthy’s job in jeopardy again, especially if the bills are passed over opposition from the Freedom Caucus. Yet, at present time, there doesn’t seem to be anyone else that wants the job. Perhaps, McCarthy’s most underrated attribute is his willingness to be Speaker and endure attacks from all sides. We will be watching closely how McCarthy’s desire to maintain his speakership will shape negotiations.

- **Government Funding:** It appears that McCarthy will run his debt ceiling playbook in the government funding fight. That means, the House will pass various appropriations bills, at greatly reduced funding levels, on party-line votes to appease the Freedom Caucus and fiscal hardliners. That’s the easy part. The hard part will come when he has to cut a deal, not only with Senate Democrats but also with Senate Republicans who are not onboard with the House Republicans’ fiscal austerity. We do not expect a deal will come together before September 30th, and there will be a lot of posturing and “will-they-or-won’t-they” moments in the coming months. Today, our best guess is that Congress passes a CR through mid-December.

- **NDAA:** As with government funding, the NDAA is shaping up to be another battle royale between House Republicans and the Senate. As of this writing, the House Republicans look committed to using the NDAA as the next culture war battlefield, tacking on a host of provisions related to abortion, LGBTQ issues, and “anti-woke” priorities. We don’t think Senate Republicans will have the same appetite to tackle those issues, especially on one of the few legislative vehicles that is typically loaded up with Member priorities. Further, we don’t see Democrats, who are already livid with Senator Tommy Tuberville’s (R-AL) blockade of military nominees and promotions, capitulating on abortion and other social issues on the
eve of the 2024 campaign. Couple that with a brewing House-Senate fight over continued aid to Ukraine, and we predict a tough slog for the NDAA, and a temporary extension is almost a certainty. While we still think the NDAA will ultimately pass, we can’t rule out that this may be the first time in over six decades that Congress doesn’t pass the legislation.

- **Farm Bill and FAA Reauthorizations**: In addition to the government funding expiring, the Farm Bill and the FAA Reauthorization also face September 30th deadlines. We don’t see a path to either of these bills being passed in the next two months, especially with broader funding negotiations still to work out. If there isn’t time or these bills get bogged down in the government funding fight, Congress may be forced to punt these bills into next year.

**Other Legislative Items**: While the above bills will dominate the Congressional agenda for the coming months, there are a few other items we’re monitoring:

- **AI**: Senate Majority Leader Chuck Schumer (D-NY) has not been shy about his desire for Congress to pass broad AI-related legislation. While details of any legislation are scant, he has organized a bipartisan (for now) effort to educate members and staff and try to craft consensus on how Congress should meet the challenge posed by this fast-evolving technology. Although there are certainly areas of consensus, especially around national security and competition with China, we expect the same partisan pitfalls that have plagued Congress’s attempts to regulate technology to emerge, including fights over content moderation, preemption of state law, and privacy. That said, we do sense a sincere desire from lawmakers on both sides to understand AI better and meet the moment before the technology has outpaced Congress’ ability to legislate on it (as seems to have happened with social media). Rather than a comprehensive, cross-industry AI bill, we think a more likely outcome will be smaller scoped industry specific bills, with a heavy emphasis on agency studies and internal agency policies to better inform Congress going forward.

- **ESG**: House Republicans have declared July “ESG Month” to push back on “woke-ism” in the private sector. Your authors are interested in the approach House Republicans take, and whether they will directly challenge companies for their ESG policies or, instead, attack the Biden Administration and regulators for foisting ESG requirements, like the SEC climate disclosure rulemaking, on industry. We think the latter is more comfortable ground for Republicans, but we sense a growing desire from lawmakers on both sides to understand AI better and meet the moment before the technology has outpaced Congress’ ability to legislate on it (as seems to have happened with social media). Rather than a comprehensive, cross-industry AI bill, we think a more likely outcome will be smaller scoped industry specific bills, with a heavy emphasis on agency studies and internal agency policies to better inform Congress going forward.

- **Banking**: Senate Banking Committee Chair Sherrod Brown (D-OH) and Ranking Member Tim Scott (R-SC) have fostered a strong bipartisan relationship in a typically partisan committee. Senator Schumer has indicated the Senate will consider a number of bipartisan banking bills, including the RECOUP Act, a post-Silicon Valley Bank bill that would clawback compensation from executives of failed banks, and the SAFE Banking Act, which would permit financial institutions to service the cannabis industry. Should Senator Schumer actually commit floor time to these bills, instead of, say, judicial nominations, these bills have a strong chance at Senate passage. House Financial Services Chair Patrick McHenry (R-NC) has been mum on whether he will support the legislation but does appear open to at least engaging with the bills. While neither of these bills is a sure bet to pass this year, they do bear watching, especially in a legislative environment bereft of bipartisan bills.