

## Cozen Currents: What Does Congress Do Now?

### The Cozen Lens

- The Fiscal Responsibility Act is passed, the debt ceiling is raised, and a DC-manufactured crisis is averted. While there are lessons to be gleaned from the theatrics, there's consequential legislation to come later this year that won't necessarily follow the same political path.
- Many of 2023's most pressing technological issues, including data transfer, artificial intelligence, and data privacy, are transnational in nature, presenting a challenge to national policymakers and requiring international cooperation to address them.
- The Republicans hold a structural advantage in 2024 over Democrats in the race for control of the Senate. With trillions in spending and taxes on the line, the GOP establishment is trying to take a more hands on approach in competitive seats without upsetting the MAGA base.

### What the Debt Ceiling Deal Means for What's Next

**The Post-Debt Ceiling Dynamics.** A high-stakes debt ceiling deal left DC with some winners and losers. But the losers will have opportunities for wins later in the year.

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President Biden and House Speaker Kevin McCarthy (R-CA) feel emboldened. The two most underestimated politicians in DC proved naysayers wrong in getting a deal with limited blowback. McCarthy got two-thirds of House Republicans to raise the debt ceiling. Biden got even more House Democrats, as well as 90 percent of Senate Democrats.

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The partisan extremes largely folded, for now. But the theoretical leverage to challenge the job security of McCarthy (motion to vacate) or Biden (primary and general election support) leaves the two leaders needing to give red meat to their bases.

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The House out-Senated the Senate. The Senate wants to return the favor. The Biden-McCarthy debt ceiling negotiations forced the upper chamber to swallow the Fiscal Responsibility Act (FRA) from the lower chamber, a rare switch in congressional power dynamics. But senators, particularly defense hawks, want to reverse the dynamic when it comes time for money to get authorized and appropriated.

**FRA's Cloudy Future.** Sometimes a done deal isn't a done deal in DC, as future negotiations on appropriations and authorizations bring new dealmakers and dynamics into the mix.

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The governing majority in Congress supported the FRA. They also want to change it. Most members of Congress believe the FRA's three percent increase in defense spending for FY24 is insufficient. Most Democrats oppose the cuts to non-defense spending. This puts increased pressure on sizable defense authorization and supplemental appropriations packages to bypass the FRA's spending caps.

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The FRA included changes to SNAP work requirements. Not all agriculture leaders are ready to call the issue settled. Some Republicans want to implement further reforms to work



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requirements in the Farm Bill while Democrats are unhappy with the reforms put in place by the FRA.

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The "Fiscal Responsibility Act" does not imply future austerity or so-called fiscal responsibility. Negotiations continue over trillions in tax cuts with House Republicans expected to release their opening bid on a tax package later this month.

**The Big Questions for What's to Come.** The FRA has brought new questions and dynamics to congressional relations and spending for the rest of the year.

- Can Republican leaders manage the new fissures? McCarthy's strength with the debt ceiling was GOP unity. After the FRA, House Freedom Caucus members voiced renewed distrust of McCarthy and Senate Republicans voiced renewed distrust of House Republicans. Disunity only weakens McCarthy and empowers Democrats in future negotiations.
- Can Congress prevent a sequestration? The FRA included an automatic continuing resolution with a one percent cut across all discretionary spending if all 12 appropriations bills aren't passed by the end of the calendar year. DC often needs a crisis to act and the resolution of the debt-ceiling crisis may have spawned a sequestration crisis.
- Will there be another omnibus? The last time all appropriations bills were passed on time was FY97. To expedite the process and pressure rank-and-filers, leadership often crafts omnibus bills that combine several pieces of legislation. It's often-times considered a "Christmas tree" that opens the door to policy riders. Many lawmakers, especially far-right Republicans, detest omnibuses. But there's a reason it has become the appropriations norm.

#### **National Regulation of Borderless Issues**

**China.** Representatives from the United States and European Union (EU) met for the fourth meeting of the US-EU Trade and Technology Council (TTC) last week, and limiting tech transfer and outbound investment to China was a major issue.

- Though the [joint statement](#) released at the end of the meeting largely does not mention China by name, it includes several provisions targeting Beijing, including a shared interest in investment screening, coordinating approaches to outbound investment controls, and concerns about non-market practices and economic coercion.
- The EU [removed references](#) to China and watered down the outbound investment section. The final document states that outbound investment controls "could be important to complement existing tools of targeted controls on exports and inbound investments" and does not commit to specific action. Nevertheless, Secretary of State Antony Blinken sounded an optimistic tone about being on the same page with the EU regarding China. "I have not seen a time, actually, where there's greater convergence between the United States and Europe—as well as with key partners in Asia—on the approach to China," Blinken [said](#) at a press conference.
- While the US government is working with the EU to address China, it is also poised to move forward with its own national outbound investment controls. President Biden is expected to release an executive order (EO) on the subject. All indications seem to be that the text of the EO is completed, but that the White House is simply waiting for the right moment to release it. The [expectation](#) is for the EO to be released later this summer.

**Artificial Intelligence (AI).** Since ChatGPT took the world by storm in recent months, generative AI has become more of a priority for governments to address.

- The first section of the US-EU TTC [joint statement](#) pertained to AI, indicating how elevated it has become as an issue. The two sides announced three expert-level groups to work on AI terminology, standards for trustworthy AI and risk management, and monitoring of AI risks, respectively. This initiative is part of the implementation of the TTC Joint Roadmap on Evaluation and Measurement Tools for Trustworthy AI and Risk Management agreed upon at the previous TTC meeting.
- The two sides also discussed the development of a voluntary code of conduct for AI, which is still in informal stages. Margarethe Vestager, the EU's digital commissioner, [said](#) in an

interview that it was a two-page note at the time. Vestager said that “within the next weeks we will advance a draft of an AI code of conduct,” and expressed hope that it would be finalized “very, very soon.”

- So far, Europe has generally taken a stricter regulatory approach to the emerging technology, with its AI Act currently under consideration, while the US government has opted for more voluntary guidance. Biden administration officials reportedly diverge on how to respond to the rise of generative AI products like ChatGPT. Some in the White House and Commerce Department back the EU’s approach, while others in the national security field and the State Department fear that overzealous rules could result in a competitive disadvantage for the UA on AI globally.

**Data Privacy.** With US big tech companies operating globally, the collection and treatment of data is a major issue in the US-EU relationship.

- The EU fined Meta \$1.3 billion last month, the largest such penalty under the EU’s General Data Protection Regulation. The fine centered on Meta’s use of standard contractual clauses (SCCs) to transfer European Facebook users’ data to the United States. A US-EU deal to govern data flows between the two entities had been in place, but was struck down by the European Court of Justice in 2020 due to concerns about US intelligence services’ surveillance practices. As part of this decision, the court also imposed stricter requirements on the use of SCCs. Meta has until October 12th to stop relying on SCCs for its transfers. Without a new agreement to govern transatlantic data flows, the company has said it could have to shut down services in Europe.
- A new data flows agreement is in the works. A European Commission spokesperson said in a press conference last month that “We expect this data protection framework between the EU and the U.S. to be fully functional by the summer. This will guarantee stability and legal certainty.” Finalization of a deal by this timeline is not a guarantee, however.

#### **Republicans Hold Upper Hand in 2024 Senate Races**

**Republican Map Advantage.** This election cycle sees multiple good pick-up opportunities for Republicans as the 2024 Senate map leaves them almost entirely on the offense and Democrats on the defense.

- Senate Democrats in 2024 are defending three states former President Trump won handily in 2016 and 2020: West Virginia, Montana, and Ohio. They’re also defending seven more states President Biden won by single digits.
- Republicans are only defending half the number of seats (11) as Democrats (23). The only vaguely competitive GOP seats are Florida (which had a red tsunami in 2022) and Texas (which has narrowing margins but is still safely red).
- If Republicans win the presidency, they need only to flip a single seat to have the upper hand in a split Senate; if Biden wins re-election, they need to flip two seats.

**Fool Me Twice, Shame on Me.** Republicans narrowly lost almost every battleground race in the Senate last year due in part to poor candidates. They’re trying not to repeat their mistake.

- In 2022, then-National Republican Senatorial Committee Chair Rick Scott (R-FL) took a hands-off approach to primary races, contributing to a number of controversial GOP candidates winning primaries. Current Chair Steve Daines (R-MT) and the rest of leadership are being more interventionist this time around.
- The GOP has worked to line up electable recruits in key races so far. Governor Jim Justice (R-WV) is running for Senator Joe Manchin’s (D-WV) seat, and is popular in the state. Doug Mastriano, who lost big for Pennsylvania governor in 2022, is passing on a Senate run while businessman Dave McCormick is looking to be a yes. Senate GOP leadership is also trying to get decorated veteran and businessman Tim Sheehy to run in Montana.
- Despite these successes, Republican leadership can’t plug every hole. Arizona may see the return of MAGA election deniers Kari Lake or Blake Masters, both of whom won contested Republican primaries but lost in the general election last year. Daines is having to navigate that the base often prefers Trumpy candidates in the primaries who are less likely to win in the general.

**2024 Elections Create High Stakes for 2025 Policies.** The outlook for trillions in spending and taxes are on the line based on which party controls the Senate, House, and White House.

- 2025 will be a banner year for policy. Trillions of individual and business provisions from the Tax Cuts and Jobs Act expire, the enhanced Affordable Care Act subsidies from the Inflation Reduction Act expire, and the debt ceiling will have to be raised/suspended again.
  - The policy outlook is night and day between unified Republican control, unified Democratic control, and divided government.
  - The Senate as an institution won't change, but it can still pass consequential legislation. There's little likelihood of changing the rules of the Senate, including the 60-vote filibuster threshold on most legislation. But the Senate has gone along with pushing the envelope of reconciliation legislation, and could continue to do so if there's unified control by one party.
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