Memorandum

From: **The Smith-Free Group**

Date: **February 7, 2022**

RE: **The Big Casino – February 2022**

February is the Algebra class of months."
--Betty Layne DesPortes

As we slog through the cold and gloom of February, aspects of the mid-term campaign season as well as the congressional legislative agenda are coming into focus. We offer our latest observations and analysis below.

Political Overview

The president and his team press on into 2022 hoping soon to emerge from the winter of their discontent. But by practically all accounts the season remains bleak for them. The respected Wall Street Journal/NBC News survey recently followed other polls in pegging Biden's job approval at 43%, worse than any other president at a comparable point in their tenure except for Trump, and put respondents' right track/wrong direction attitudes at a bleak 22/72.

On the GOP side, the censure of Reps. Cheney and Kinzinger demonstrates Trump still holds sway over Republicans. He remains the dominant figure in the party whom others must react to. But there are preliminary signs pointing to a slow but definable decline in his influence. Recent polling shows that while GOP voters still like Trump, there are the beginnings of concern about his running again in 2024. Going back to the days after the 2020 election, the former president's approval among GOP voters was routinely measured around 90%. Following President Biden taking office, a formidable majority wanted Trump to run again. But those numbers are slowly falling. This is likely part a function of time and part of the de-platforming by Facebook, Twitter and others. For now, make no mistake about it: Trump is still the sun around which other GOP planets orbit. But all stars burn out eventually.

As for the coming mid-term elections, we are now just under nine months out and signs continue to point toward a rough cycle for the Democrats. Looking at the data, it will be a very difficult chore for President Biden and the Democrats to dig out of the hole in which they find themselves. Although congressional redistricting overall seems to be heading toward a surprisingly good outcome for congressional Dems, the warning signs still blink bright red. Around 30 House Democrats have announced their retirement, many "who've been through several of the majority-to-minority-to majority spin cycles may not want another turn in the minority", as Punchbowl News smartly put it. While there are some Republican retirements as well, many of the Democrats leaving Congress are either committee chairs or hail from districts that will be hard to hold. As we have noted in previous memos, in politics perception often becomes reality. The perception among lawmakers and staff with whom we have spoken continues to be that Democrats are going to struggle at the polls this fall.

In the Senate, both sides are almost exclusively focusing on a core of eight races. While President Biden won six of those states – Arizona, Georgia, New Hampshire, Nevada, Pennsylvania and Wisconsin – he did so by two points or less. Similarly, Trump won two states – North Carolina and Florida – by close margins. In every cycle there is usually a surprise addition to the toss-up list, so we think it is safe to assume the target map will expand. This small number of races assures the recent trend of elections for U.S. Senate races becoming nine-figure affairs will continue. A senator in a contested election now must raise almost as much money as a mid-level presidential contender, a staggering thought to us.

Legislative Agenda

Since last December, we have argued BBB supporters are coping with the collapse of the bill as if they are moving through the stages of "legislative" grief. The president and many in leadership seem now to have reached "acceptance" and are moving on, but others on and off the Hill are still mired in anger or even denial. We continue to believe Democrats will attempt to resuscitate the effort in some form, "in chunks" as the president described it, and will not leave a "live" reconciliation bill pending on the Senate Legislative Calendar. But this will not occur until a critical mass of lawmakers have moved on.

In the meantime, the repercussions of the BBB collapse continue to affect every other notable legislative effort on the Hill. Taking a step back even further, Senate Democrats should expect no quarter from Republicans during Sen. Lujan's convalescence, so get ready for nominations to continue to dominate the floor agenda. Depending on your legislative agenda, this could be a good or bad thing. In the House, it is increasingly hard to ignore the open speculation about Democratic leadership in the 118th Congress. Loyalty to the Speaker runs deep, but the recent Politico story of Rep. Jayapal's machinations is probably only the beginning. Jockeying behind the scenes and ensuing public speculation will only make legislating for the balance of the year more fractious.

As we near the two-year anniversary of Covid-19 in the U.S., expect to hear more about the success of the CARES Act and the American Rescue Plan. This could be a centerpiece of the State of the Union in March. It is possible, but we think unlikely, the anniversary could spur work on additional funding or legislative relief. Republicans are sure to highlight the close to $250 billion from the two bills that is even yet to be obligated by the federal government, especially as part of the ongoing criticism of the Biden Administration's economic policy (i.e., inflation). But, in any event, we should all pay extra admission later that month for how the Biden Administration accounts for funds and proposes to spend as part of its FY23 budget proposal.

Finally, running as always parallel to the legislative process, the Biden Administration will continue and perhaps even accelerate the trend of recent presidencies in bypassing a turgid Congress to foment policy via executive order. The soon-expected release of an E.O. on cryptocurrency is only the next example of a frustrated executive branch acting unilaterally.

Appropriations

Before the House leaves town later this week for the Presidents Day recess, the House will pass another continuing resolution for FY22 discretionary spending. The next deadline could be as early as March 11th, the beginning of the body's next recess or as late as April 7th when Easter recess starts. We would bet on earlier rather than later to try to keep the pressure on lawmakers.

The core of a deal for some sort of full-year solution certainly exists. There is the usual tension between defense hawks and those who want "parity" with other domestic spending, but that will likely be solved with increased spending. Democrats slowly seem to be coming to the realization that eliminating the "legacy" policy riders is a good talking point but almost certainly a non-starter. Additionally, the Biden Administration needs authorization language and updated spending levels to allow agencies to open fully the spigot when it comes to funds provided by last year's infrastructure bill. Finally, do not forget Sens. Shelby and Leahy are retiring and presumably have priority items they want to enact before leaving Capitol Hill.

The main hurdle as we see it to completing work on FY22 funding is the challenge in both parties ofreconciling themselves to the notion that a compromise will draw opposition from their respective bases. Any final spending bill will be a mishmash – what else is new? But once the thornier issues are handled, it could likely force both parties to agree to a product "in the middle" that will anger the more voluble partisans on both the left and the right. While this sort of agreement has been rare in the 117th Congress, we believe there are enough forces at work to bridge to a deal where leadership exhorts representatives and senators not to "let the perfect be the enemy" of the good. But as with many things during the pandemic, there needs to be more venting of angst before we reach an ultimate outcome.

<u>BBB2 …. or Whatever You Want to Call It</u>

If a legislative phoenix is to rise from the ashes of BBB, it is now clear the Manchin-Schumer "agreement" from last summer is the ceiling for a bill, and probably a high ceiling that will not be reached. The outlays in any potential appropriations agreement would also affect spending levels in any new iteration of BBB. Frankly, we are hearing practically nothing about resuscitating such efforts, but comments from the Biden Administration and others have made clear that if there is such an effort made it will be much less public than the soap opera we all watched last fall. It does bear pointing out again that there were large parts of the various versions of the legislation that had unanimous Democratic support – aspects of the drug pricing scheme, green energy incentives, etc. We assume we have not heard the last on this subject from the Hill.

<u>Supreme Court Nomination</u>

At this early juncture, the only thing of which we can all be sure is work in the Judiciary Committee and eventually the full Senate will suck time and energy away from other matters. That is generally bad news for Democratic leadership already struggling to manage demands on floor time as well as supporters of other legislative efforts (antitrust, criminal justice reform, etc.) in the Committee. If the president takes much of February to decide on a nominee and Sen. Lujan returns to Washington laer in March, it seems a final vote on a nomination could come by the Easter recess. That is a very preliminary guesstimate at this time, but such a timeline would provide for as much or more deliberation than the Senate gave to the Coney Barrett nomination and build in flexibility for unforeseen events. Because the Senate buildings are still largely closed to the public, the proceedings are much more likely to resemble those surrounding Coney Barrett than the Kavanaugh circus.

<u>China Competition/Supply Chain Legislation</u>

Following the House activity last week, we honestly do not even know what to call the bill, it has had so many name changes. But, however one looks at it, the drive to pass this legislation is the first serious effort at legislating following collapse of the BBB and thus a bellwether for what, if anything, will pass Congress in 2022. We are generally sanguine about the chances of this effort yielding law. One of the few things widely agreed upon right now across the political spectrum on the Hill can be summed up in just two words – "China…bad". If the bill's supporters can continue to keep lawmakers focused on the ostensible over-arching goal of the legislation – strengthening the American competitive posture toward China – and not let it get bogged down in turf wars or overloaded with random provisions, the consensus of needing to confront China should yield a Rose Garden signing ceremony by the summer.

Worth a Read
Embrace insomnia? It's more common than you think.

History is not on President Biden's side….

…. And last year was not kind to his party, either.

This Democrat argues the party has moved too far to the left.

Sometimes things don't work out like conventional wisdom says.

Calendar

February 18	Current continuing resolution for FY22 funding expires.
March 1	President Biden gives State of the Union speech.
March 2	Lent begins.
March 31	Medicare sequester takes effect.
April 7	Candidate filing deadline in New York.
May 1	Student loan interest and payment pause ends.
June 30	Trade Adjustment Act assistance ends.