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Representing dairy farm families in New York and New England

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"If the Republicans and Democrats can't agree on what's naughty or nice, how do you expect a kid like me to know?!"

This Week in Congress

This week, congressional leaders continued bipartisan negotiations on a continuing resolution (CR) to fund the federal government beyond December 20th. The CR is expected to run through March. Still being negotiated is the size and scope of disaster aid and "anomalies" including $6.6 billion for veterans' health care and nearly $10.7 billion for Virginia-class and Columbia-class submarine procurement. In addition, the following authorizations are expected to hitch a ride onto the legislation:

- Health care extenders: A roughly $30 billion array of health care-related measures including various extensions of lapsing Medicare and Medicaid provisions
- Farm extension: A one-year extension of expiring farm bill programs
- Reauthorization of the Older Americans Act of 1965
- Reauthorization of a 2014 law authorizing Labor Department job-training and workforce development programs
- Coast Guard reauthorization
- China package: Senate-backed notification requirements for potential U.S. investments in Chinese-tech companies and legislation that would bar companies receiving federal funds from buying biotechnology equipment or services from certain Chinese-controlled firms
- Legislation to streamline the permitting process for energy-related infrastructure projects

The House voted on their version of the National Defense Authorization Act (NDAA), a bill that would authorize defense spending consistent with budget caps. The $883.7 bill includes pay raises for military personnel, 4.5 percent for all troops and an additional 10 percent raise on top of that for the lowest-ranking troops, plus so-called quality-of-life improvements in everything from child care to medical services to housing. The legislation prevents the Pentagon's TRICARE insurance program from covering gender-transition procedures. House Members also voted on two measures requiring a simple majority vote for passage: the Liberty in Laundry Act (H.R. 7673), which would limit the Secretary of Energy's authority to set energy conservation standards for washing machines, and the JUDGES Act (S. 4199), which would add 60 new judges to federal district courts over the next decade. Finally, the House voted on a major bill (S. 4367) to authorize numerous Army Corps of Engineers water resources projects, along with several other bills out of the Transportation and Infrastructure Committee, and bills out of the Homeland Security Committee relating to U.S. cybersecurity.

The Senate voted on Biden administration judicial nominees.

2024 Election Concludes

The 2024 federal election has finally concluded with Republicans winning 220 House seats to Democrats' 215. That represents a two-seat loss for Republicans as compared to the size of their majority after the 2022 elections. It is the second-smallest House majority in history, percentagewise, and the smallest in more than 100 years. The Republican majority likely will shrink to 217 seats in the early part of next year, thanks to already announced and expected Republican resignations. So, for some period of time in the first quarter of 2025, House Republicans will not be able to pass legislation without the support of every member of their conference or help from Democrats, assuming full attendance. Near perfect attendance is unusual in the House, and the House Republican conference does not always stick together on votes. So Democrats could have opportunities to block Republican legislation on the floor if they can get all of their members to D.C. for votes.

On Monday, December 9th, Reps. Kim (D-NJ) and Schiff (D-CA) both resigned from the House and currently, the chamber has 220 Republicans and 211 Democrats with four vacancies, giving Republicans a four-vote majority. That same day, interim Sens. George Helmy (D-NJ) and Laphonza Butler (D-CA) resigned. Helmy was appointed to the Senate by the New Jersey Governor to fill the seat held by Bob Menendez (D) until he resigned in August. The California Governor appointed Butler in October 2023 to fill the seat vacated by the death of former Senator Diane Feinstein (D). The states' Governors respectively appointed prior House members and Senators-elect Kim (D-NJ) and Schiff (D-CA) to fill the vacancies. Both were sworn in this week to serve through the end of this Congress. Seating them before the end of the current congressional session gives them seniority over others elected to the 2025 freshman class.

The 119th Congress by the Numbers?

When the 119th convenes on January 3rd, there will be 81 new Members of Congress from 31 states and territories including:

- 13 new U.S. Senators
- 68 New U.S. Representatives
- 38 New Republicans
- 41 New Democrats
- 2 Vacancies – Rep. Gaetz (R-FL) resigned, and Rep. Waltz (R-FL) resigned after being nominated as the National Security Advisory (a special election will be held on April 1, 2025).

Update: The Suspended Corporate Transparency Act

Brief Summary: The U.S. District Court for the Eastern District of Texas granted a nationwide injunction suspending enforcement of the Corporate Transparency Act (CTA) and its Beneficial Ownership Information (BOI) Reporting Rule. The injunction suspends obligations to file initial BOI reports by January 1, 2025. The court found that the CTA is likely unconstitutional, but an appeal is expected; however, businesses should monitor deadlines and be prepared to file.

Analysis: On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction temporarily suspending enforcement of the Corporate Transparency Act (CTA) and its Beneficial Ownership Information Reporting Rule. The injunction effectively suspends the requirement under the CTA for reporting companies to disclose their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). The injunction applies nationwide, providing that all businesses subject to the CTA's reporting requirements are relieved of their CTA filing obligations until further notice. For companies created prior to 2024, the ruling suspends their obligation to submit their initial BOI reports to FinCEN before the January 1, 2025, deadline. For companies created in 2024, this suspends their obligation to report within 90 days of formation.

Appeal Likely, Businesses Should Remain Cautious: Businesses should remain cautious and continue to monitor their reporting obligations. The district court's injunction is preliminary and likely to be appealed and could be reversed or vacated on appeal. If compliance requirements are reinstated, there is no assurance whether or how the prior reporting deadlines may be extended. In view of these developments, it seems likely that FinCEN will take action in response before the end of the year, such as issuing interim guidance or a position statement on the case.

Court Ruling: The court's decision to grant the injunction was based on the court's preliminary assessment that the CTA and the reporting rule is outside of the power granted to Congress and may violate constitutional protections. In his 79-page opinion, Judge Amos Mazzant ruled that the reporting rule "is likely unconstitutional as outside of Congress's power," noting that the law only regulates the "existence" of anonymous corporate entities, not their economic or commercial activity or operations. In granting the injunction, the court determined the injunction should apply nationwide, noting that the CTA and its reporting obligations apply to "approximately 32.6 million existing reporting companies" across the nation. The court determined it could not provide meaningful relief to those affected without enjoining the CTA and reporting rule nationwide.

Therefore, for the time being at least, reporting companies need not comply with the CTA reporting deadlines. The ruling, however, is not a final determination of the CTA's constitutionality; instead, it only temporarily halts enforcement while the case proceeds.

Per the FinCEN statement on CTA litigation from its website (last accessed at 1:00 PM EST on 12/9/24):

"*In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.*"