

MORNING COLOR

June 30, 2022

Today's Driving Events

- **Reconciliation Latest:** Democrats are narrowing in on a set of offsets for a potential budget reconciliation bill, but don't expect a deal quite yet with Senator Joe Manchin (D-WV).
- **Washington's TikTok Crazy Again:** TikTok has had a relatively quiet time in Washington since President Biden came into office, until a recent BuzzFeed report that has caused outcry from Republican members of Congress and regulatory officials.
- **Medication Abortions Are the Next Front in Abortion Culture War:** Though abortion has been left in the hands of states per the Supreme Court, the outlook for individuals in states with bans for accessing medication abortions is less clear.

A Reconciliation Understanding, Not a Reconciliation Deal: The art of the deal is all about leverage, according to Donald Trump according to Tony Schwartz. Senator Joe Manchin (D-WV) has leverage being the 50th vote on a Democratic reconciliation bill. He's leveraged that vote a lot, how much more remains to be seen. [Bloomberg News yesterday reported](#) that Senate Democrats are considering about \$1 trillion in offsets. Beyond drug pricing reforms (~\$300B) and IRS funding to close the tax gap (~\$120B), tax provisions include a 15 percent corporate minimum book tax, raising the global minimum tax (GILTI) to 15 percent, and instituting a five percent AGI surtax on income above \$10 million and eight percent above \$25 million. **All of these provisions under discussion could be pared down from the original form in the House-passed Build Back Better (BBB) bill.** The book tax would include a carveout for capex, the higher GILTI would be calculated on a global basis (as it is currently) rather than a country-by-country basis, and pass-throughs would be excluded from the surtax. **These potential modifications could create a meaningful change in revenue generated compared to the official score from the Joint Committee on Taxation (JCT) on BBB. None of which is to say where Senator Kyrsten Sinema (D-AZ) stands.** The Arizonan was seeking a carveout for pass-throughs back in December for the surtax, but is that still her

position today or does she want the provision completely gone, along with international tax measures? She has not formally been a part of the discussion besides public comments from her staff that any Senate deal works within the confines of the offsets passed in BBB (which they are). **Senate Majority Leader Chuck Schumer (D-NY) and Manchin may have an *understanding* of what's in play, but there may not be a *deal* until after running the procedural gauntlet of the Byrd Bath, JCT score, and Senate vote-a-rama. There are a lot of moving pieces and money before a Manchin "Yea."** If the official score comes back lower than expected, that may close the door or further restrict any measures to extend the Affordable Care Act premium tax credits. **Knowing Manchin is going to leverage his vote, Schumer may have an understanding with him to proceed anyways with a goal of passing a bill by the August recess.** Get legislation finalized for certain pieces, like drug pricing and climate, run it by the Senate parliamentarian, get an official score from the Congressional Budget Office, and see where the numbers stand as the legislation gets introduced on the Senate floor. It may be at this point, along with during the Senate vote-a-rama, that Manchin will decide the fate of individual provisions, along with the package as a whole.

The Buzz(feed) Around TikTok: Federal Communications Commission (FCC) Commissioner Brendan Carr, a Republican, yesterday released [a letter](#) calling for **Apple (AAPL)** and **Google (GOOGL)** to remove TikTok from their respective app stores. Carr was critical of the companies for not removing an app that he feels is in violation of their terms of service. **He described the app as “a sophisticated surveillance tool that harvests extensive amounts of personal and sensitive data.”** Carr called for both companies to respond to him by July 8th if they do not remove the app to explain “the basis for your company’s conclusion that the surreptitious access of private and sensitive U.S. user data by persons located in Beijing, coupled with TikTok’s pattern of misleading representations and conduct, does not run afoul of any of your app store policies.” This is not a legally binding date, but **Apple** and **Google** would risk more public criticism from Carr if they fail to respond by his deadline. This is a tactic commonly used by members of Congress on both sides of the aisle where they seek to “name and shame” companies in order to force them to change their business practices. Here is [an example from Senator Elizabeth Warren](#) (D-MA) and a group of progressives and here is [one from Senator Josh Hawley](#) (R-MO). **What has prompted Carr’s letter is a [BuzzFeed report](#) that employees of ByteDance, TikTok’s parent company, were able to access non-public data on US users.** This led to [some Republican outcry](#) last week and it appears Carr’s letter is just a part of the chorus, but taking a slightly different tack. We do not view the FCC as having the authority to compel these app stores to remove TikTok, making Carr’s letter largely an empty threat beyond the vocal criticism that he may bring against **Apple** and **Google**. Carr has a history of being critical of Chinese firms’ access to American data due to national security concerns, most recently calling for [stricter limitations on Chinese dronemaker DJI](#). **If a TikTok ban were to be put in place, it would not come from the FCC, but rather**

elsewhere in the executive branch, most likely the Commerce Department.

Former President Trump tried to impose such a ban, but his rule had legal issues and the [Biden administration chose to drop it](#). They replaced it with a [broader regulation](#) called the Information and Communications Technology and Services (ICTS) Rule. The idea being that this was a broader rule that could capture TikTok, but also other apps that were deemed to be national security dangers. Commerce has yet to finalize the regulation, a source of tension within the administration and led to [reports](#) of a potential executive order (EO) that would give the Department of Justice the authority to review and potentially block transactions involving the sale of or access to data if they are deemed to pose an undue risk to national security. This EO has not materialized yet, but in a sign that the issue is not dying, Senators Ron Wyden (D-OR) and Marco Rubio (R-FL) [introduced a new bill](#) last week that would give the Commerce Department the power to block exports of US personal data to countries that pose a national security risk, like China. **The desire to protect American data from China is a bipartisan goal, but it and a potential ban of TikTok do not appear to be at the top of Biden's agenda when dealing with technological issues in the US-China relationship.** [TikTok's move](#) to put all of the data produced by American users on servers controlled by **Oracle (ORCL)** is an effort to get ahead of this, but with the company still storing its own backups of that information, this may not be a sufficient fix in the end to avert further Washington scrutiny.

The Policy Thicket of Medication Abortion Post-Dobbs: The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* will not only have major political consequences but also raises a number of questions of policy and practicality for how Americans in states that have restricted abortion may still access the procedure by taking the abortion pill at home. Medication abortions using mifepristone and misoprostol were already becoming popular before Dobbs – in 2020 they [accounted](#) for the majority of US abortions at 54 percent – and the discretion of aborting in private has obvious benefits in the new political environment where women in some red states could face prosecution and criminal charges for ending their pregnancies. The Biden administration knows this, which is why Health and Human Services (HHS) Secretary Xavier Becerra named boosting access to medication abortion as one of the prongs of his immediate five-point response plan. **For blue states and the federal government, the ability to navigate the thicket of state laws, judicial rulings, telehealth, privacy rights in terms of data and posted mail, and even the right to physical movement across state lines are rapidly becoming need-to-know and must-defend issues.** Some advocacy groups are already mobilizing plans to establish mobile clinics in states with legal abortion but near the border with states that have banned abortion so that patients in those states where abortion is restricted can access the clinic and return with the pills. Others are planning for patients to access telemedicine in a state where abortion is legal and then have the prescriber mail the pills to a UPS access point or P.O. box in the legal state for the patient to pick up, making it so that the medicine is

not mailed to them in the state that has outlawed it. **These efforts could skirt restrictions in some red states that have focused on using regulation to ban the medication being shipped or prescribed rather than banning the pill itself. This is because of the murkier legal landscape given medication abortion's approval by the Food and Drug Administration (FDA) that could make a legal case for preempting the state bans.** This argument may be at play in a case being brought by the generic manufacturer of medication abortions in the US, **GenBioPro (GBIO)**, which said yesterday it plans to challenge state restrictions on its use. It also is similar to the saga over the over-the-counter access to the Plan B emergency contraception pill for teenagers that took place during the Obama administration. In that case, President Obama supported his HHS secretary's move to overrule the FDA's decision that the pill should be available to girls older than 11 without a prescription, which actually restricted access to contraception. This was struck down though by a federal judge who called the efforts to require a prescription against the FDA's initial decision "arbitrary, capricious, and unreasonable," and the Obama administration did not appeal. **But today's judicial makeup is significantly more conservative and the outlook for medication abortion ban enforcement is likely to be determined by a series of legal battles.** For example, Aid Access, a Dutch organization that mails abortion medication to Americans, is being touted by pro-choice members as a lifeline. The organization was sued in 2019 by the Trump administration but had its case dismissed and has since been viewed as difficult to prosecute for being overseas. **Individual circumstances such as how aggressively a state chooses to prosecute, its ability to access personal health data, and/or track distribution via mail will be other factors at play in subsequent legislation and litigation.**

House

The House is not in session this week, but committees will hold hearings.

Senate

The Senate is not in session this week.

White House

President Biden delivered remarks at and attended the third session of the NATO summit. At 8:00 a.m., the president will hold a news conference. At 9:40 a.m, Biden will depart Madrid, Spain to return to the White House where he is expected to arrive at 5:40 p.m.

Macroeconomic

At 1:00 p.m., the National Association for Business Economics will hold a virtual discussion titled "Outlook for the Economics Job Market in 2022-23." [More information here.](#)

Antitrust and Consumer Protection

At 10:00 a.m., the Center for Strategic and International Studies will hold a virtual discussion titled "A Time for Antitrust Reform in the United States and European Union." [More information here.](#)

Budget

At 10:00 a.m., the House Appropriations Committee will hold a markup of the FY2023 Transportation, and Housing and Urban Development, and Related Agencies Appropriations bill; the FY2023 Labor, Health and Human Services, Education, and Related Agencies Appropriations bill; and Revised Report on the Suballocation of Budget Allocations for FY2023.

Cryptocurrency

At 9:00 a.m., Commodity Futures Trading Commission Commissioner Caroline Pham will be interviewed by journalist Angie Law on the function stablecoins play in a future digital asset-based financial system. [More information here.](#)

Energy, Environment, and Natural Resources

At 10:00 a.m., the Atlantic Council's Global Energy Center and CALSTART's Drive to Zero Program will hold a virtual discussion titled "Transatlantic policies enabling deployment of zero-emission medium- and heavy- duty vehicles." [More information here.](#)

At 11:30 a.m., the House Energy and Commerce Committee Subcommittee on Environment and Climate Change will hold a hearing titled "No Time to Waste: Solutions for America's Broken Recycling System."

Financial Services

At 12:00 p.m., the House Financial Services Committee Task Force on Financial Technology Subcommittee will hold a hearing titled "Combating Tech Bro Culture: Understanding Obstacles to Investments in Diverse-Owned Fintechs."

At 1:00 p.m., the Government Executive Media Group will hold a virtual discussion titled "Building the Future of Finance." [More information here.](#)

Geopolitical

At 2:30 a.m., the North Atlantic Treaty Organization will hold its 2022 Summit. [More information here.](#)

At 3:00 p.m., the House Foreign Affairs Committee will hold a briefing titled “Outcomes from the Summit of the Americas.”

Judicial

At 12:00 p.m., the Hudson Institute will hold a virtual discussion titled "What the New Copyright Claims Board Means for Creators." [More information here.](#)

At 1:00 p.m., the American Constitution Society for Law and Policy (ACS) will hold a virtual discussion titled “The 2021-2022 ACS Supreme Court Review.” [More information here.](#)

Tax Policy

At 12:00 p.m., the Urban Institute and the Brookings Institution Tax Policy Center will hold a virtual discussion titled “The Prescription: Fiscal Policy for Today’s Economy.” [More information here.](#)

Tech-Media-Telecom

At 11:00 a.m., the US Chamber of Commerce’s Technology Engagement Center will hold a virtual discussion titled “National Telecommunications and Information Administration initiatives, broadband deployment, and affordability.” [More information here.](#) Expected participants include:

- Alan Davidson, administrator, National Telecommunications and Information Administration



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