

MACROCOSM

The 14th Amendment Enters the Debt Limit Negotiations

Monday, May 8, 2023

Donald Luskin

The nuclear option has been brandished, and it's classic deterrence theory against the GOP.

Section 4 of the 14th Amendment of the US Constitution says that US debt "shall not be questioned," which can be understood as rendering the debt limit, or even negotiations about it, unconstitutional. We have said that in an era in which the public has gotten used to exercise of previously intolerable levels of executive power President Joseph R. Biden could invoke it in order to keep issuing Treasury debt despite Congress's having not raised or suspended the debt limit (see ["Video: What you're not hearing about using the Constitution to fix the debt ceiling crisis"](#) April 25, 2023).

That idea has now entered the negotiations.

- On Friday, in [an interview on MSNBC](#), Biden was asked about it. He said, "I've not gotten there yet."
- *Yet.*
- Then on Sunday, in [an interview on ABC](#), under intense questioning about it by George Stephanopoulos, Treasury Secretary Janet Yellen was eager to keep the burden on Congress, but was far from ruling out Section 4.

"STEPHANOPOULOS: I'm still not exactly clear on whether it's on the table or off the table. Is it a 'break glass in case of emergency option'?"

"YELLEN: Look, I don't -- I don't want to consider emergency options. What's important is the members of Congress recognize what their responsibility is and avert what will surely be regardless of how it's handled, what option is used to handle it, an economic and financial catastrophe."

"STEPHANOPOULOS: It sounds like you're saying you don't want to, but you may have to."

"YELLEN: Well, what to do if Congress fails to meet its responsibility? There are simply no good options and the ones that you've listed are among the not good options."

- *"...among the not good options."*

Update to strategic view

US MACRO, US BONDS:

When asked about invoking Section 4 of the 14th Amendment and effectively declaring the debt ceiling unconstitutional, Biden said "I've not gotten there yet." The key word is "yet." Sunday morning Yellen continued to insist it's Congress's problem, but wouldn't rule out invoking Section 4, saying it's "among the not good options." This echoes the language of the best scholarship that characterizes it as "the least unconstitutional option." Biden and McCarthy meet tomorrow, so brandishing this nuclear option is classic deterrence theory, meant to limit the GOP's scope of action. Faced with the possibility that Biden will be a hero with bold constitutional action to save the economy, the GOP's only option is to back down as gracefully as possible. At the same time, money markets are increasingly worried about a technical default.

[\[Strategy dashboard\]](#)

- Not ruling it out means something. In the 2011 debt ceiling crisis, then-Secretary Timothy Geithner [did rule it out](#).
- And Yellen's choice of words means something, too. It suggests Yellen has read [the foundational scholarship](#) on Section 4 by Neal H. Buchanan and Michael C. Dorf – in which they describe invoking it as “the least unconstitutional option” (see: [“Video: A conversation on Constitutional options for solving the debt ceiling crisis, with Professors Buchanan and Dorf”](#) April 26, 2023).

The timing is propitious, with Biden [set to meet tomorrow](#), for the first time, with House Majority Leader Kevin McCarthy in the White House to discuss the debt ceiling impasse. Of course, Biden says he's not negotiating. But that's what brandishing Section 4 of the 14th Amendment is.

- It's a nuclear option, and Biden is using it the same way Russian President Vladimir Putin has used it since the invasion of Ukraine. It's [classic deterrence theory](#), designed to limit the scope of operation by the opponent.
- And speaking of “not good options,” that's all Biden is leaving McCarthy. The White House Council of Economic Advisors [said Wednesday](#) that a default would cost 8.3 million jobs. Biden said in that MSNBC interview Friday it would cost 750,000 jobs. Oh well. Either way, the administration is setting up a technical default as an emergency – from which what will be imaged as Biden's extraordinary, bold and heroic actions can save us. McCarthy's only play here is to see if he can get some scraps out of this negotiation – and whether he does or not, walk away.
- Markets aren't seeing it that way as of this writing. They appear to be bracing for a technical default. Just two weeks ago, the 30-day Treasury yield had collapsed to 3.04%, an astonishing 1.84% *below* the then-prevailing Fed funds rate, as savers fled from banks into Treasury money-market funds. Now that yield is 5.35%, *above* the now-prevailing funds rate by 0.23%. The difference is, one week ago, Yellen moved up her estimate of the date of technical default to June 1 – making those shortest-term Treasuries exactly the ones money-market funds won't want to hold.

Bottom line

When asked about invoking Section 4 of the 14th Amendment and effectively declaring the debt ceiling unconstitutional, Biden said “I've not gotten there yet.” The key word is “yet.” Sunday morning Yellen continued to insist it's Congress's problem, but wouldn't rule out invoking Section 4, saying it's “among the not good options.” This echoes the language of the best scholarship that characterizes it as “the least unconstitutional option.” Biden and McCarthy meet tomorrow, so brandishing this nuclear option is classic deterrence theory, meant to limit the GOP's scope of action. Faced with the possibility that Biden will be a hero with bold constitutional action to save the economy, the GOP's only option is to back down as gracefully as possible. At the same time, money markets are increasingly worried about a technical default. ▶

Contact TrendMacro

On the web at
trendmacro.com

Follow us on Twitter at
twitter.com/TweetMacro

Donald Luskin
Dallas TX
214 550 2020
don@trendmacro.com

Thomas Demas
Charlotte NC
704 552 3625
tdemas@trendmacro.com

Michael Warren
Houston TX
713 893 1377
mike@trendmacro.energy

[\[About us\]](#)