



The Golden Apple

Reporting on the latest discord from Capitol Hill

In classic Greek mythology, a golden apple of discord inscribed "For the fairest" was awarded to Aphrodite, beginning a chain of events that led to the Trojan War. GrayRobinson's newsletter reports on the most recent issues, individuals, and discourse deemed fairest in Washington.

May 24, 2019

It might not officially be summer yet, but you wouldn't know it from the streets of DC, where a remarkable percentage of the city has already cleared out for the holiday weekend. Congress has left town as well, and barring unforeseen developments, *The Golden Apple* will take next week off. **Look for our next issue on June 7, when we expect to have quite a lot to report.**

Objection blocks House vote on disaster relief, flood insurance extension

The Senate voted [85-8](#) yesterday to approve a supplemental spending bill that would provide \$19.1 billion to fund disaster recovery efforts around the country and would extend the National Flood Insurance Program (NFIP) for another four months, to the end of the fiscal year. House leadership sought approval for the legislation this morning under unanimous consent, but freshman Rep. Chip Roy (R-TX) objected, meaning that the measure will have to wait for a roll call vote. The NFIP officially expires on May 31; the next meeting of the House is scheduled for May 28, but most members will likely not return until June 4. In an effort to make sure that National Flood Insurance Program coverage does not lapse, the Senate also approved [S. 1693](#) yesterday, a bill introduced by Senator John Kennedy (R-LA) that would extend the program until June 14. The House could take that bill up under unanimous consent next week.

House approves SECURE Act to encourage retirement savings

Yesterday the House of Representatives [voted overwhelmingly](#) in favor of [H.R. 1994](#), the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019. H.R. 1994, introduced by House Ways and Means Committee Chairman Richard E. Neal (D-MA), would make it easier for businesses to participate in multi-employer pension (MEP) pension plans; offer tax credits to small employers for offering certain plans; clarify treatment of custodial accounts; and repeal the maximum age for traditional IRA contributions. It would also expand the permissible uses of 529 tuition plans, and allow

penalty-free withdrawals if a child is born or adopted. Senate Finance Committee Chairman Charles Grassley (R-IA) has said he plans to take up companion legislation.

Moving closer to beneficial ownership legislation?

The Senate Banking Committee held [the first of two planned hearings](#) this week on whether and how the federal government should collect beneficial ownership information from shell corporations. FinCEN Director Kenneth Blanco, FBI Section Chief Steven D'Antuono and OCC Senior Deputy Comptroller Grovetta Gardineer testified on the need to identify the true owners of business organizations, as banks are already required to do under FinCEN's Customer Due Diligence (CDD) rule. Requiring companies to disclose this information to a central federal repository upon registration would make law enforcement's work easier, and allow banks to confirm CDD information with an independent source, witnesses said. Blanco said that FinCEN would be the logical repository for this information, but would need considerably more resources in order to collect and secure it. At [Wednesday's House Financial Services Committee hearing on Treasury oversight](#), ranking member Rep. Patrick McHenry (R-NC) said that FinCEN had provided no evidence to justify the need for such a massive new data collection process, and told Treasury Secretary Steven Mnuchin that Director Blanco's responses to McHenry's requests for more information had been "insulting."

HUD and Justice are working to facilitate lender participation in FHA, Carson says

During a wide-ranging, sometimes contentious [appearance before the House Financial Services Committee on Tuesday](#), Housing and Urban Development Secretary Dr. Ben Carson said that his agency is working with the Department of Justice to clarify enforcement of the False Claims Act, which he said has driven many lenders out of the FHA loan program. Carson said that many community-based lenders had left the program because they feared prosecution over non-material mistakes on loan forms; resolving this question should make it easier for these banks to participate. Carson said that HUD is looking carefully at the potential effects of the current estimated credit loss (CECL) standard on construction lending, and is studying whether FHA would have to increase its reserves under the new standard.

Senate Judiciary Committee begins work on data privacy

The cumulative movement toward federal data privacy legislation continued this week as the Senate Judiciary Committee held a [hearing on the possible effects of data privacy rules on digital advertising](#). Chairman Lindsey Graham (R-NC) said it seemed clear that some form of federal legislation on data privacy would be necessary, and that he hopes this bill would address consumer expectations, consumers' rights to take content down, and how to harden the infrastructure against foreign interference. Senator Patrick Leahy (D-VT) said that in the absence of federal legislation, the California Consumer Privacy Act could become the model for other states to act; his own home state has enacted legislation to govern data brokerage that could also be a model.

SEC announces vote on Reg BI

The Securities and Exchange Commission will vote on regulations and guidance related to investment advisers' and broker-dealers' duty to customers at an open meeting on June 5. The [agenda](#) includes Regulation Best Interest — Standard of Conduct for Broker-Dealers; Form CRS Relationship Summary; Standard of Conduct for Investment Advisers; and an Interpretation of "Solely Incidental" for purposes of Section 202(a)(11)(C) of the Investment Advisers Act of 1940.

FDIC settles "Operation Choke Point" lawsuit

The Federal Deposit Insurance Corporation (FDIC) announced Wednesday that it had resolved a lawsuit brought by four payday lenders alleging that they had been illegally targeted by the federal regulators' Operation Choke Point, which sought to cut off funding to criminal enterprises. Operation Choke Point was officially discontinued years ago, and the FDIC continues to insist that it never instructed banks to stop serving legitimate customers. Wednesday's settlement included a [statement of the FDIC's internal policies](#) that says, "Regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at the FDIC." The statement came with a cover letter that said the FDIC would conduct additional training of its workforce on these issues.

DOJ opens antitrust investigation into real estate listing platforms

The Department of Justice is asking questions about the competitive practices of online multiple listing services (MLS) platforms, according to [reports published this week](#). DOJ's civil investigative demands of Corelogic and other vendors have asked for information about "practices that may unreasonably restrain competition in the provision of residential real estate brokerage services in local markets." They specifically want information about whether and how MLS members can search for listings based on compensation amounts and types.

SEC will hold roundtable to discuss "short-termism"

SEC Chairman Jay Clayton [announced on Monday](#) that the agency will host a roundtable on how best to balance the long-term interests of investors who are funding their retirement with the real-time information demands of traders and the companies themselves. "We should ask ourselves whether our disclosure framework and other regulations have encouraged a focus by companies—and not just securities traders—on the short-term over the long-term," Clayton said. The SEC asked for comment on this issue in December 2018, and the roundtable to be held this summer will seek participation from investors, issuers, and other market participants. The roundtable's agenda and date are still being finalized, but anyone interested in participating should email a request to roundtable@sec.gov.

Confirmations, Nominations, Departures

- The President [nominated](#) Brent McIntosh, General Counsel of the Treasury, to be Under Secretary of the Treasury, succeeding David Malpass, who went to the

World Bank. Deputy General Counsel Brian Callanan has been nominated to succeed McIntosh as General Counsel.

Next Week in Washington

- GrayRobinson's offices are closed on Monday, May 27, in honor of Memorial Day. Washington will be very quiet next week. The House will return for a pro forma session on May 28, but the Senate is out until June 3.
- May 31 at 9:30 a.m. — The Securities and Exchange Commission hosts the [2019 FinTech Forum](#), featuring panels on capital formation, trading and markets, investment management, and distributed ledger technology innovations. The forum is open to the public on a first-come, first-serve basis, but will also stream online at www.sec.gov.
- June 5 at 10:00 a.m. — The Securities and Exchange Commission will hold an [open meeting to vote](#) on Regulation Best Interest, the Form CRS Relationship Summary, the Standard of Conduct for Investment Managers, and the interpretation of "solely incidental." The meeting will stream live online at www.sec.gov.

The Ellis Insight

Jim Ellis reports on political news

President

Two Polls, Same Result: Both Monmouth University and Harris X (polling for the Hill Newspaper) conducted national Democratic presidential primary polls during the same period and arrived at virtually identical results.

Monmouth's small sample poll (5/16-20; 334 US registered voters likely to vote in their respective Democratic primary) found former Vice President Joe Biden leading Sen. Bernie Sanders (I-VT) by a 33-15% margin with Sens. Kamala Harris (D-CA), Elizabeth Warren (D-MA), Mayor Pete Buttigieg, ex-Rep. Beto O'Rourke (D-TX), and Sen. Amy Klobuchar (D-MN) following with 11, 10, 6, 4, and 3%, respectively.

Harris X (5/17-18; 448 US registered voters likely to vote in their respective Democratic primary) finds Biden's advantage over Sanders to be an almost identical 33-14%. They see a different second tier, however. Harris finds their order as Warren, Buttigieg, Harris, and O'Rourke at 8, 6, 6, and 5%.

Florida Poll: Florida Atlantic University polled the Sunshine State Democratic electorate (5/16-19; 1,007 FL registered voters; 403 likely FL Democratic primary voters) and finds former Vice President Joe Biden again establishing a solid advantage over the rest of the candidate field.

Here, he leads Sens. Bernie Sanders (I-VT) and Elizabeth Warren (D-MA), 39-12-12%, with South Bend (IN) Mayor Pete Buttigieg and California Sen. Kamala Harris trailing with 9 and 7%, respectively. Florida, with 219 first ballot votes, is the fourth largest voting entity in the Democratic nomination process. The state's electorate, along with those in Arizona and Illinois, will vote on March 17th.

Iowa Poll: A new Change Research poll (5/15-19; 615 Democratic likely IA Caucus attenders) for the Iowa Starting Line political blog finds that former Vice President Joe Biden's post-announcement bump may be dissipating. According to the results, Mr. Biden and Sen. Bernie Sanders (I-VT) are again tied for the lead at 24%. South Bend (IN) Mayor Pete Buttigieg is third with 14%, followed by Sens. Elizabeth Warren (D-MA) and Kamala Harris (D-CA) posting 12 and 10%, respectively.

Senate

Kentucky: Former state Rep. C. Wesley Morgan, who won a central Kentucky state House seat in 2016 but then lost re-nomination in 2018, announced his Republican primary challenge to Senate Majority Leader Mitch McConnell. After his defeat, Mr. Morgan said he was leaving the Republican Party and endorsed the Democratic nominee for the general election, a candidate who lost by just 23 votes. Now, it appears, Mr. Morgan is returning to the GOP to launch a political suicide effort against Sen. McConnell who was first elected in 1984 and has risen to the Senate's top position. No major Democrat has yet filed to oppose the Majority Leader, but we can expect to see some action after the Kentucky Governor's race comes to a close in November.

Maine: To the surprise of very few, freshman Rep. Jared Golden (D-Lewiston) has officially eschewed overtures that he will challenge Sen. Susan Collins (R), and announced he will run for re-election to his 2nd District House seat. At this point, Sen. Collins has drawn only minor Democratic and Republican primary opposition.

Massachusetts: Though Sen. Ed Markey (D) is not drawing a primary challenge from either upstart House member Seth Moulton (D-Salem) or Ayanna Presley (D-Boston) as originally speculated, he will have intra-party opposition, nonetheless. Labor lawyer Shannon Liss-Riordan this week announced her intention to challenge the 43-year congressional veteran, attempting to deny him re-nomination.

Ms. Liss-Riordan specializes in defending under-paid workers and has won lawsuits against American Airlines, FedEx, Harvard University, and Starbucks, among others. This will be her first run for public office, so Sen. Markey certainly begins as an overwhelming favorite to win the party nod and general election.

Mississippi: Wealthy businessman and Vice Chairman of the Mississippi Lottery Board Gerard Gilbert said late this week that he is considering challenging Sen. Cindy Hyde-Smith in next year's Republican primary. So far, this race has been quiet after the Senator, appointed to serve the remainder of Sen. Thad Cochran's (R) final term in office after his resignation for health reasons, defeated former US Agriculture Secretary and ex-Mississippi Congressman Mike Espy (D) in a 54-46% special election victory last November.

Wyoming: Mega GOP donor Foster Friess, who finished second in the 2018 open Wyoming Governor's primary losing 33-26% to now-Gov. Mark Gordon (R), is quoted as saying he is considering entering the open US Senate race now that incumbent Sen. Mike Enzi (R) is retiring. All political eyes, however, are still on at-large Rep. Liz Cheney (R-Wilson/ Jackson) to see if she will announce for the Senate.

House

CA-10: San Joaquin County Supervisor Bob Elliott (R-Tracy), a retired Army Colonel, was already an announced candidate for state Senate. Early this week, however, he switched gears and instead will file to oppose freshman US Rep. Josh Harder (D-Turlock). Also, in the GOP congressional race is Turlock former City Councilman Ted Howze (R), but he ran in 2018 and received only 15% in the jungle primary. Two other minor candidates have declared, but it appears that Mr. Elliott would be the strongest opponent for Rep. Harder in the general election at this point in time.

IL-14: In contrast to several other defeated Republican former Congressmen, ex-Rep. Randy Hultgren says it is "unlikely" that he will run again in 2020 in order to reclaim his former northern Illinois district. In November, Mr. Hultgren lost his bid for a fifth term to current freshman Rep. Lauren Underwood (D-Naperville), 52-48%. At this point, state Senator and frequent federal candidate Jim Oberweis (R-North Aurora) has announced his congressional candidacy along with three minor candidates. In the background, however, is state Sen. Sue Rezin (R-Morris), who appears to be taking steps toward constructing a congressional campaign apparatus. In what is usually a reliable seat for the GOP, we can again expect a highly competitive campaign to ensue.

IA-2: Despite Rep. David Loebsack (D-Iowa City) retiring after this term, 2016 and '18 Republican nominee Christopher Peters announced that he will not seek the open seat next year. On the heels of Mr. Peters declining to run, another Republican took himself out of the political picture. State Rep. Bobby Kaufmann (R-Wilton) confirmed

that he will not run for Congress next year. At this point, only Osceola Mayor Thomas Kedley is in the Republican field.

Former state Senator and 2018 Lt. Governor nominee Rita Hart (D) is fast becoming a consensus 2nd District Democratic candidate. Late this week, state Sen. Zach Wahls (D-Coralville), who was himself considering the congressional race, publicly endorsed Ms. Hart, as did state Rep. Wes Breckinridge (D-Newton). The latter man was also said to be contemplating becoming a congressional candidate. Since President Trump carried this usually reliable Democratic congressional district, 49-45% in 2016, this open seat could become competitive particularly in a year with Mr. Trump returning to the ballot.

MI-3: President Trump brandishing Rep. Justin Amash (R-Cascade Township/Grand Rapids) a “loser” after the latter man became the first Republican to call for the former’s impeachment upon reading the Mueller Report, is going to be a factor in a new primary challenge campaign. State Rep. Jim Lower (R-Greenville) declared his candidacy this week and released a survey that gives numerical support to the claim that Rep. Amash will be highly vulnerable in a Republican primary.

Mr. Amash, who repeatedly has bucked House Republican leadership during his nine years of congressional service, faced serious opposition in 2014 but the Congressman defeated challenger Brian Ellis, 57-43%. He was re-elected 54-43% in the 2018 general election against activist Cathy Albro (D) who spent less than \$160,000 on her campaign.

NY-19: Former US Representative, ex-state Assembly Minority Leader, and 2006 gubernatorial nominee John Faso (R) said this week that he will not seek a re-match with the Democrat who unseated him in November, freshman Rep. Antonio Delgado (D-Rhinebeck). The 19th District is likely to be a battleground region next year despite New York not being a competitive state at the presidential level. With Mr. Delgado winning with just over 50% (50.3) in 2018, we can expect another hard-fought political contest to develop in this eastern Upstate CD again next year.

NY-27: Rep. Chris Collins (R-Clarence/Batavia) has drawn a serious Republican primary challenge. Mr. Collins, who won a close re-election last November despite being indicted for insider trading even as three other New York Republicans went down in defeat, is scheduled for trial before the next election. State Sen. Chris Jacobs (R-Erie County) has announced that he will challenge Rep. Collins in next year’s Republican primary, saying that, “it’s hard for anyone to say Chris Collins is fully capable of advocating for this district.”

PA-12: Pennsylvania state Rep. Fred Keller (R-Mifflinburg) easily defeated Democrat Marc Friedenberglast Tuesday in the battle to succeed resigned-Rep. Tom Marino (R-Williamsport). Mr. Keller's victory margin was 68-32%, a stronger performance than both President Trump and Rep. Marino enjoyed in their most recent elections in the district.

More than 130,000 people voted in the special election, which was a strong number considering the outcome never seemed in doubt. Mr. Keller holding this seat for the GOP means the House party division is now 235 Democrats; 198 Republicans; and 2 vacancies that will both be filled on September 10th (NC-3; NC-9).

TX-10: Until last year's tight 51-47% re-election victory for eight-term Congressman Michael McCaul (R-Austin), Democrats had not aggressively challenged for the seat. Earlier this week, attorney Susan Hutcheson announced that she would join the burgeoning field of Democratic candidates. Already, 2018 nominee Mike Siegel and Dell Medical School assistant professor Pritesh Gandhi are in the race. Despite the closeness of the last contest, Rep. McCaul begins as a definitive favorite for re-election.

Governor

Kentucky: Attorney General Andy Beshear won the Democratic gubernatorial nomination Tuesday night on the strength of his performance in the Louisville area and western Kentucky, which off-set his being blown out in the eastern part of the state. Mr. Beshear defeated state House Minority Leader Rocky Adkins (D-Sandy Hook), and former state Auditor Adam Edelen, 38-32-28%.

Gov. Matt Bevin (R), who has been suffering from poor job approval ratings, won re-nomination with just over 52% of the vote, a very weak performance within his own party base. Like AG Beshear, Gov. Bevin was anemic in the eastern part of the state. Therefore, the region east of Frankfort and Lexington should be an interesting one since neither general election nominee performed well there.

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