



*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.*

November 22, 2019

It's been a long and contentious week in Washington, but we want to remind you that good things happen here, too. Senator Johnny Isakson (R-GA) made his last appearance on the floor of the House of Representatives this week, as he prepares to retire for health reasons at the end of this year. Rep. John Lewis (D-GA), a fellow Atlantan and dean of the Georgia Congressional delegation, delivered a heartfelt tribute to his colleague. Isakson, who suffers from Parkinson's disease, moved to thank Lewis, but Lewis stopped him: "I will come over to meet you, brother," he said. Take a few minutes to watch this video, and join us in thanking Senator Isakson for his service.



### Congress keeps the government running, extends flood insurance

This week the House and Senate approved a [continuing resolution](#) to fund the government and extend the National Flood Insurance Program and the Export-Import Bank, among other programs, through December 20, 2019.

### House, Senate Banking vote to reauthorize Terrorism Risk Insurance

The Senate Committee on Banking, Housing, and Urban Affairs voted unanimously on Wednesday to approve [S. 2877](#), the Terrorism Risk Insurance Program Reauthorization Act of

2019, which would extend the program for seven years. The bill would also require the Treasury Department to report on the availability and affordability of coverage, especially for churches, as part of its biennial report on the program. It directs the GAO to study and report on vulnerabilities and potential costs related to cyber terrorism, and whether the current Terrorism Risk Insurance program addresses those risks appropriately. The House passed its own reauthorization bill, [H.R. 4634](#), by a vote of [385-22](#) on Monday.

## House releases legislative calendar for 2020

House Majority Whip James E. Clyburn (D-SC) has published the House of Representatives' [2020 legislative calendar](#). The House will return on January 7, and will meet for eight legislative days before recessing for the Martin Luther King Jr. holiday. As customary in an election year, the House is not scheduled to meet in August at all, and will be out for almost all of October. Election day is November 3, 2020, and lame-duck sessions are scheduled for a week in November and nine days in December.

## OCC, FDIC seek to clarify "valid when made" rule

The [Office of the Comptroller of the Currency](#) and the [Federal Deposit Insurance Corporation](#) are seeking comment on proposed rules that would clarify that the interest rates permissible for a loan made by a bank or savings association would continue to be permissible after that loan is sold or transferred, regardless of any rate limits imposed by the buyer's home state. The U.S. Court of Appeals for the Second Circuit ruled in *Madden v. Midland Funding, LLC* (2015) that federal preemption of state usury laws did not convey with loans sold to non-banks. FDIC Chairman Jelena McWilliams said that the FDIC's proposal "seeks to remedy an ongoing market anomaly" and codify "longstanding supervisory guidance." Both proposed rules are open for comment for 60 days.

## House hearing highlights role of private equity

A House Financial Services Committee [hearing on the practices of private equity funds](#) explored the growing importance of private funds not only as a source of venture, growth, and buyout capital, but also as a valuable investment for pension funds and university endowments. The hearing focused on [H.R. 3848](#), the Stop Wall Street Looting Act, which seeks to prevent cases like ToysRUs, where private investors acquired firms that failed and left workers unemployed, but suffered no personal losses. Republican members objected strongly to provisions in H.R. 3848 that would make investors personally liable for losses in certain cases, and some Democratic members voiced doubt that H.R. 3848 was the appropriate way to address abuses.

## House fintech panel discusses data aggregation

Consumers don't know what information they're providing to financial services apps, and they don't know what financial services companies are doing with the data they collect, witnesses told the [House Financial Services Task Force on Fintech yesterday](#). The industry is developing application programming interfaces (APIs) such as [FDX](#), which give consumers control over how their information is shared, but most financial apps still gather data through "screen scraping," a practice widely acknowledged as substandard. Witnesses and lawmakers discussed the challenges of complying with multiple privacy rules once the California Consumer Privacy Act takes effect next year, and Reps. David Scott (D-GA) and French Hill (R-AR) said they continue to work on legislation to create a federal standard.

## Senate Democrats unveil framework for privacy and data protection

The Democratic members of the Senate Commerce, Judiciary, Banking and HELP Committees released a set of [privacy and data protection principles](#) to guide federal legislation this week. “Under our framework, consumers would control their personal information, and corporations, non-profits, and political entities would be held to higher standards for when and how they collect, use, share, and protect our data,” the senators said. The principles call for data minimization, limits on data sharing, data portability, safeguards against algorithmic bias, federal rulemaking and enforcement, and the preservation of state enforcement authority and a private right of action.

## Regulators finalize HVCRE rule

The Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency approved a final rule this week to modify the capital treatment of high volatility commercial real estate (HVCRE), as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The final rule, which takes effect on April 1, revises the definition of HVCRE and clarifies the exemption for one-to four-family residential properties.

## SEC revises accounting guidance in preparation for CECL

The Securities and Exchange Commission issued a [Staff Accounting Bulletin](#) this week to bring the agency’s guidance on accounting for loan losses into alignment with the Financial Accounting Standards Board’s move to the current expected credit losses (CECL) model. SAB 119 focuses on the documentation the SEC expects registrants to prepare and maintain in support of their CECL estimates, and will take effect when organizations adopt CECL standards.

## Federal Reserve, FDIC approve BB&T-SunTrust merger

This week the Federal Reserve Board and Federal Deposit Insurance Corporation approved the applications of BB&T and SunTrust Bank to merge and become Truist Bank. The regulators required Truist to divest 30 branches and \$2.4 billion in associated deposits, in order to offset the merger’s competitive effects. The Federal Reserve also issued a [consent order against SunTrust](#) over misleading or inaccurate statements related to operation and billing for some add-on products; SunTrust had already ended those practices and refunded approximately \$8.8 million in fees to customers.

## Confirmations, Nominations, Departures

- The House Democratic Caucus elected **Rep. Carolyn Maloney** (D-NY) to chair the House Committee on Oversight and Reform, succeeding the late Rep. Elijah Cummings (D-MD). Maloney is also Vice Chair of the Joint Economic Committee and Chair of the House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets.

## Next Week in Washington

Congress is out next week, and GrayRobinson's offices will be closed on Thursday, November 28 for Thanksgiving. We are grateful for many things, and particularly for you, our clients and friends. The Golden Apple will take next week off, and return on December 6. Here's what's on the schedule for the week of December 2:

- **December 4 at 9:30 a.m.** The Securities and Exchange Commission hosts a day-long conference on "[The State of Our Securities Market](#)." SEC Chairman Jay Clayton, senior SEC staff, and representatives of the private sector and the financial press will discuss current trends and the outlook for debt and equity markets. The conference is open to the public, and will stream online.
- **December 4 at 10:00 a.m.** House Financial Services Committee holds a hearing on "Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Financial Institutions."
- **December 5 at 10:00 a.m.** House Financial Services Committee holds a hearing on "Promoting Financial Stability? Reviewing the Administration's Deregulatory Approach to Financial Stability."
- **December 5 at 10:00 a.m.** Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on "[Oversight of Financial Regulators](#)."
- **December 5 at 2:00 p.m.** House Financial Services Subcommittee on Housing, Community Development, and Insurance will hold a hearing on "An Examination of the Federal Housing Administration and its Impact on Housing in America."
- **December 6 at 9:30 a.m.** House Financial Services Task Force on Artificial Intelligence holds a hearing on "Robots on Wall Street: The Impact of AI on Capital Markets and Jobs in the Financial Services Industry."

## The Ellis Insight

Jim Ellis reports on political news

### President

**Michael Bloomberg:** Former New York City Mayor Michael Bloomberg, who previously entered the presidential race in both Alabama and Arkansas but not in New Hampshire, has formally opened a national campaign committee with the Federal Election Commission. Mr. Bloomberg, who originally decided not to run for President, now believes that none of the current candidates will defeat Mr. Trump. He is also indicating that he will not participate in the early states, choosing to begin, if he follows through, with the Super Tuesday states on March 3rd.

**Emerson College Poll:** Emerson College tested the national Democratic electorate (11/17-20; 468 US likely Democratic primary voters) and finds former Vice President Joe Biden and Sen. Bernie Sanders (I-VT) tied with 27% apiece. Sen. Elizabeth Warren (D-MA) follows with 20%, and Mayor Pete Buttigieg continues to lag nationally in single digits with 7% support.

This is a small sample poll, so the results have a high error factor, but this data suggests a different pattern than what we've seen recently. According to other results, Mr. Biden has

again been establishing a lead and Sen. Sanders has been further back. There does seem to be a uniform momentum decline for Sen. Warren, which this poll also depicts.

**Iowa Poll:** The Civiqs polling firm tested the Iowa Caucus likely electorate (11/15-19; 814 IA likely Democratic Caucus participants) and confirms that Mayor Pete Buttigieg is surging within the state. This large sample survey finds him atop the field with a seven-point lead at 26%, followed by Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) who garner 19 and 18%, respectively, with former Vice President Joe Biden lagging badly behind with only 12% support.

**New York Poll:** Siena College released a rare survey of the New York Democratic electorate (11/12-18; 380 NY registered Democratic voters) and finds former Vice President Joe Biden putting distance between himself and the rest of the Democratic field. Here, Biden is at 24% preference, with Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) trailing with 14 and 13 percent. No other candidate, including Mayor Pete Buttigieg, even reaches the 5% plateau. The New York presidential primary is scheduled for April 28th. With 273 first ballot delegates, the Empire State delegation will be the second largest at the Democratic National Convention.

**South Carolina Poll:** The University of North Florida pollsters tested the Palmetto State Democratic electorate (11/5-13; 436 SC likely Democratic primary voters) and found former Vice President Joe Biden holding a strong lead. UNF projects Mr. Biden with 36% preference, while Senators Bernie Sanders (I-VT) and Elizabeth Warren (D-MA) follow with 10% apiece. Here, billionaire Tom Steyer places fourth with 8%, as Sen. Kamala Harris (D-CA) and Mayor Pete Buttigieg trail with 4 and 3%, respectively.

**Texas Poll:** The University of Texas at Tyler again conducted a Democratic presidential primary poll of the Lone Star State electorate (11/5-14; 427 TX registered voters) and sees former Vice President Joe Biden posting 28% support. Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) are tightly bunched with 19 and 18%, respectively. Mayor Pete Buttigieg falls back into single digits with an 8% preference factor.

Without ex-Rep. Beto O'Rourke (D-El Paso) in the race, the large Texas delegation (228 first ballot delegates) appears up for grabs. If this UT Tyler survey were the final vote, Biden would receive approximately 98 delegates, Warren 67, and Sanders 63. A candidate must receive 15% in the at-large vote or individual congressional districts to qualify for delegate apportionment.

**Wisconsin Poll:** The Marquette University Law School pollsters released their quarterly survey of the Wisconsin electorate (11/13-17; 340 WI likely Democratic primary voters) and project that former Vice President Joe Biden is expanding his lead in the Badger State. The data shows Mr. Biden pulling 30% support, ahead of Sens. Bernie Sanders (I-VT) and Elizabeth Warren (D-MA) who follow with 17 and 15%, respectively. Mayor Pete Buttigieg is trailing with 13%, but he expands into double digits for the first time in Wisconsin. The others are far back with no one even reaching 4 percent.

## Senate

**Georgia:** More than 500 people met Gov. Brian Kemp's (R) deadline to file an appointment application to replace resigning Sen. Johnny Isakson (R). The more notable names included US Rep. Doug Collins (R-Gainesville), state House Speaker Pro Tempore

Jan Jones (R-Milton), former Health & Human Services Secretary and ex-Congressman Tom Price, ex-US Congressmen Jack Kingston and Paul Broun, and author Jackie Gingrich Cushman, daughter of former House Speaker Newt Gingrich. It is unclear when Gov. Kemp will make his decision, but it is presumed he will act before Sen. Isakson leaves office on December 31st.

**Kentucky:** Kentucky Radio sports personality Matt Jones (D), who had been flirting with entering the US Senate race to ultimately face Senate Majority Leader Mitch McConnell (R), has decided not to run. This very likely means that retired Marine Corps helicopter pilot and failed congressional candidate Amy McGrath will become the Democratic nominee.

Though challenged by several Democrats, including state Rep. Charles Booker (D-Louisville) and retired Marine Corps officer and ex-newspaper editor Mike Broihier who are the most significant of her primary opponents, McGrath's overwhelming financial advantage – she has already raised \$10.7 million for the race – makes it difficult to see anyone being able to slip past her to win the party nomination. McGrath will receive national attention, and polling is likely to show this race close early, but Sen. McConnell is again the clear favorite.

**Mississippi:** Last week we reported that former Miss America Organization CEO Josh Randle is considering launching a Republican primary challenge to Sen. Cindy Hyde-Smith, but two other prominent Mississippi office holders followed with comments saying they will not run.

State Sen. Chris McDaniel (R-Ellisville), who forced the late Sen. Thad Cochran (R) into a run-off election, and former state Supreme Court Justice Bill Waller Jr., who advanced into a 2019 run-off election Gov-Elect Tate Reeves, both said late this week that they will not challenge Sen. Hyde-Smith. Former US Agriculture Secretary and ex-Mississippi Congressman Mike Espy (D) announced last week, however, that he will return for a general election re-match with the new Senator.

**North Carolina:** Despite early research studies finding a competitive Republican primary for Sen. Thom Tillis, the most recent Fox News Poll (11/10-13; 1,504 NC registered voters; 574 likely Republican primary voters) finds the first term incumbent overwhelming opponent Garland Tucker, 54-11%. Assuming he is re-nominated, Sen. Tillis will face former state Sen. Cal Cunningham in the general election.

**Texas:** The University of Texas at Tyler released the results of their statewide US Senate poll (11/5-14; 1,093 TX registered voters; 427 likely Democratic primary voters) and they find that none of the Democratic candidates even reach double-digits. A majority, 52%, say they are undecided or need more information about the candidates.

The primary ballot test finds retired Army helicopter pilot and failed congressional candidate M.J. Hegar tied with non-profit executive Cristina Tzintzun Ramirez at 9% apiece. State Sen. Royce West (D-Dallas) and Houston City Councilwoman Amanda Edwards are right behind with 8% each, and former Congressman and 2014 gubernatorial nominee Chris Bell records 7% support, meaning the five are virtually deadlocked. This tells us the March 3rd primary will almost assuredly lead to a May 26th run-off election between the top two finishers, regardless of who they may be. The eventual Democratic nominee faces three-term Sen. John Cornyn (R) in the general election.

## House

**CA-25:** Gov. Gavin Newsom (D) announced that the special election to replace resigned Rep. Katie Hill (D-Agua Dulce/Palmdale) will occur concurrently with the state primary on Super Tuesday, March 3rd. If no candidate obtains a majority vote that day, a run-off between the top two finishers is scheduled for May 12th.

Democrats hope to score a majority victory on March 3rd in the person of freshman state Assemblywoman Christy Smith (D-Newhall), but Republicans are fielding former Congressman Steve Knight, who lost to Hill in 2018. Much depends on who else enters the race. Candidates will file for the special election and for the regular term on December 6th. For this congressional district, two elections will occur on 3/3: the special election primary and the regular election jungle primary.

**GA-6:** This week, two Republican candidates dropped their congressional bids, meaning a re-match between Rep. Lucy McBath (D-Marietta) and former Rep. Karen Handel (R) is becoming more likely. State Sen. Brandon Beach (R-Alpharetta), who declared his candidacy long before Ms. Handel, announced that he is ending his congressional effort and instead will file for re-election to the state Senate.

Yesterday, Merchant Marine veteran Nicole Rodden also dropped out of the GOP primary, following Sen. Beach's lead. Ms. Handel's lone nomination opponent is businesswoman Marjorie Green, who the former Congresswoman is heavily favored to defeat.

**MD-7:** Former Baltimore Mayor Stephanie Rawlings-Blake (D), who left office with poor ratings after the Baltimore riots, announced that she will not enter the special election to replace the late Rep. Elijah Cummings (D-Baltimore).

As candidate filing closed for the special election to replace the late Rep. Elijah Cummings (D-Baltimore), state Delegate and physician Jay Jalisi (D-Owings Mills) became the 22nd of 24 Democrats who will battle for the nomination. It is now obvious that the Congressman's widow, Maya Rockey Moore Cummings, becoming a candidate did not dissuade others from filing. Also running are state Sen. Jill Carter (D-Baltimore), former Congressman and NAACP president Kweisi Mfume, state House Majority Whip Talmadge Branch (D-Baltimore), and state Delegate and surgeon Terri Hill (D-Columbia), among many others.

**MI-3:** State Rep. Jim Lower (R-Greenville) was primed to wage a primary campaign against former Republican Congressman Justin Amash (R-Cascade Township/Grand Rapids) before the latter man left the party to become an Independent. Mr. Lower cited his weak fundraising as the chief reason for making a decision to end his effort even before the campaign officially begun. He is expected to seek re-election to the state House. State Rep. Lynn Afendoulis (R-Grand Rapids), real estate analyst Peter Meijer, Lyon Village Trustee Joe Farrington, and at least three others are currently in the Republican primary.

**NJ-3:** Republicans scored a recruitment victory as ex-Burlington County Freeholder Kate Gibbs, who lost her re-election campaign in November to a lesser candidate, announced that she will challenge freshman Rep. Andy Kim (D-Bordentown). Last November, Mr. Kim

unseated then-Rep. Tom MacArthur (R) in a very close election (50.0-48.7%). Because the district's nature is typically Republican, we can count on this being a top tier GOP challenge race next year.

## Governor

**Louisiana:** Defying what is usually a poor trend in run-offs for incumbent Southern politicians forced into a secondary election, Gov. John Bel Edwards (D) recorded a 51.3% victory on November 16th to win a second term over GOP developer Eddie Rispone. Though polling correctly showed a tight race, the latest surveys suggested that the trend might be favoring a Rispone upset. The Governor's superior organization was able to capitalize on his strength in New Orleans and Baton Rouge, while keeping Rispone's margin down in some of the key Republican strongholds.

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