



# 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.*

September 20, 2019

We extend our deepest sympathies to Rep. James Clyburn (D-SC) and, indeed, to the people of South Carolina on the death of [Dr. Emily Clyburn](#), librarian, philanthropist, and civil rights activist. Ms. Emily, as she was known, was a public school librarian before spending 29 years as a medical librarian at Charleston Naval Base and Dorn VA Medical Center. Emily England and Jim Clyburn were students at South Carolina State University when they met in jail, imprisoned for civil rights activism on campus. A pedestrian bridge at SCSU bears her name, and the Clyburns' contributions made it possible for SCSU to reestablish its Honors College. She leaves behind her husband, three daughters, four grandchildren, and a lasting legacy.

## Scalia applauds SEC Best Interest rule, but says Labor will not cede ERISA authority

Eugene Scalia, nominated to serve as Secretary of Labor, [told the Senate Committee on Health, Education, Labor & Pensions yesterday](#) that he had been glad to see the Securities and Exchange Commission address the responsibilities of investment advisers and broker-dealers through Regulation Best Interest, but he is mindful of the Department of Labor's "special role" in protecting employee retirement savings. Federal ethics rules will govern his own role in the Department of Labor's consideration of revisions to its own fiduciary rule, Scalia said; he will seek guidance on the question, but did not offer to preemptively recuse himself. He pointed to actions he had taken as the Department of Labor's Solicitor to protect workers' pension plans in the early 2000s, and he said that DOL under his leadership would not cede its authority under the Employment Retirement Income Security Act (ERISA)

to the SEC. He also said that "something needs to be done" about impending crises in pension funds such as Central States, which threaten not only millions of retirees but the integrity of the Pension Benefit Guarantee Corporation. The HELP Committee is scheduled to vote on Scalia's nomination next Tuesday.

### Senate oversight hearing questions federal antitrust structure

Appearing before a [Senate Judiciary Subcommittee on Tuesday](#), the Chairman of the Federal Trade Commission and the Assistant Attorney General for the Justice Department's Antitrust Division both said they thought it would be worthwhile for Congress to re-evaluate the agencies' parallel, overlapping and sometimes duplicative enforcement authority over anticompetitive practices. Senator Mike Lee (R-UT), Chairman of the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, voiced concern about the FTC and Justice conducting parallel or duplicative investigations of monopolistic activity at the same tech firms. While FTC Chairman Joseph Simons and AAG Makan Delrahim said duplication and conflicts were minimal, both admitted that the system for dividing responsibilities between agencies had broken down in places, and the current enforcement structure was "not the best model of efficiency." Senator Amy Klobuchar (D-MN), the Subcommittee's ranking member, said she'd "rather have a split investigation than no investigation."

### FDIC finalizes simplified capital rules for community banks

At its board meeting on Tuesday, the Federal Deposit Insurance Corporation finalized a rule to implement a [new community bank leverage ratio framework](#), as required by last year's Economic Growth, Regulatory Relief and Consumer Protection Act. Community banks qualify for this framework if they have a Tier 1 leverage ratio of at least 9 percent; less than \$10 billion in consolidated assets; and limited off-balance sheet exposure. Banks can begin to use the new framework with the March 1, 2020 call report.

### CFPB's Consumer Complaint Database will remain public, with changes

The Consumer Financial Protection Bureau (CFPB) announced Wednesday that it will continue to publish consumer complaints, but "with enhanced data and context that will benefit consumers and users." The [Consumer Complaint Database](#) will include all previously published data fields, including consumers' own descriptions of their complaints, but will more prominently display disclosures that make it clear these complaints are not a statistical sample, and will display messages that let consumers know they can

communicate directly with financial institutions to address their concerns, and can get answers to frequently asked questions before they submit a complaint. The CFPB will explore expanding companies' ability to respond in public to complaints listed in the database, and look for ways to put complaints in context with other data.

### CFPB seeks legislation to resolve “constitutional defect” of Director’s position

This week the Consumer Financial Protection Bureau joined the Department of Justice's brief in *Seila Law LLC v. CFPB*, taking a position against itself in a petition for Supreme Court review. The lawsuit challenges as unconstitutional a provision in Dodd-Frank that would allow the President to fire the CFPB Director only for cause. CFPB Director Kathy Kraninger wrote to Speaker of the House Nancy Pelosi (D-CA) and House Majority Leader Mitch McConnell (R-KY) asking them to take legislative action to correct this “constitutional defect.” She said the CFPB would no longer defend its enabling statute, but would argue that the provision violates Constitutional separation of powers. Supreme Court Justice Brett Kavanaugh, in his position as Judge on the US Court of Appeals for the D.C. Circuit, first found the Director’s status unconstitutional in his ruling on *PHH Corp. vs. CFPB* in 2017. An en banc ruling later overturned that decision.

### CFPB, FTC announce public workshop on accuracy of credit and background reports

The CFPB and Federal Trade Commission (FTC) will host a public workshop on December 10 to explore issues affecting the accuracy of consumer credit reports and background screenings. Industry representatives, consumer advocates, and regulators will discuss methods for improving accuracy, appropriate strategies for dispute resolution, the effects of removing information about medical debt on credit reports, the opportunities and challenges presented by new technology and more. Those wishing to participate as a presenter or panelist should email requests to [AccuracyWorkshop@ftc.gov](mailto:AccuracyWorkshop@ftc.gov); the public can submit comments [here](#).

## Confirmations, Nominations, Departures

- Rep. Paul Cook (R-CA) announced that he will not run for reelection to the US House of Representatives, but will seek a position on San Bernardino County's Board of Supervisors instead. Cook was first elected to Congress in 2012.

- The Senate confirmed the nominations of Brent McIntosh to serve as Undersecretary of the Treasury for International Affairs and Brian Callanan to serve as General Counsel of the Treasury.

## Next Week in Washington

- September 24 at 10:00 a.m. House Committee on Financial Services holds a hearing on "[Oversight of the Securities and Exchange Commission: Wall Street's Cop on the Beat.](#)"
- September 24 at 10:00 a.m. House Appropriations Subcommittee on Financial Services and General Government holds a hearing on "IRS Oversight: Treasury Inspector General for Tax Administration."
- September 24 at 10:00 a.m. House Science Subcommittee on Investigations and Oversight holds a hearing on "[Online Imposters and Disinformation.](#)"
- September 24 at 10:00 a.m. Senate Committee on Health, Education, Labor, and Pensions meets to vote on the nomination of Eugene Scalia to be Secretary of Labor.
- September 24 at 2:00 p.m. House Science Subcommittee on Research and Technology holds a hearing on "[Artificial Intelligence and the Future of Work.](#)"
- September 24 at 2:00 p.m. House Financial Services Subcommittee on Diversity and Inclusion holds a hearing on "[Examining the Racial and Gender Wealth Gap in America.](#)"
- September 25 at 2:00 p.m. Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights holds a hearing on "[Competition in Digital Technology Markets: Examining acquisitions of nascent or potential competitors by digital platforms.](#)"
- September 25 at 10:00 a.m. House Financial Services Subcommittee on Consumer Protection and Financial Institutions holds a hearing on "[Promoting Financial Stability: Assessing Threats to the US System.](#)"
- September 25 at 10:00 a.m. House Appropriations Subcommittee on Financial Services and General Government holds a hearing on "Federal Trade Commission: Protecting Consumers and Fostering Competition in the 21st Century."
- September 25 at 10:00 a.m. Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on "[Facilitating Faster Payments in the United States.](#)"
- September 25 at 10:00 a.m. Securities and Exchange Commission holds [an open meeting](#) to consider new rules on Publication or Submission of Quotations without Specified Information; Solicitations of Interest Prior to a Registered Public Offering; and Exchange-Traded Funds.
- September 25 at 2:00 p.m. House Financial Services Subcommittee on Housing, Community Development, and Insurance holds a hearing on "[Protecting Seniors: A Review of the FHA's Home Equity Conversion Mortgage \(HECM\) Program.](#)"

- September 26 at 10:00 a.m. House Financial Services Committee holds a hearing on [“Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices.”](#)
- September 26 at 2:00 p.m. House Financial Services Task Force on Financial Technology holds a hearing on [“The Future of Real-Time Payments.”](#)

## The Ellis Insight

Jim Ellis reports on political news

### President

**California Poll:** Emerson College conducted a poll in Sen. Kamala Harris' home state (9/13-16; 474 CA likely Democratic primary voters) and finds that the Senator has even dropped behind New York City businessman Andrew Yang on her own political turf. Emerson projects a close and crowded top tier, with former Vice President Joe Biden and Sen. Bernie Sanders (I-VT) tied at 26% apiece. Sen. Elizabeth Warren (D-MA) is close behind with 20% support. Mr. Yang and Sen. Harris post 7 and 6%, respectively.

This poll confirms that the Democratic race has evolved into a three-way race among Biden, Sanders, and Warren, even in California. Such a tight configuration, if it were to hold, would also suggest a virtually even split among the state's 416 first ballot delegates, the largest contingent heading to the Democratic National Convention next July in Milwaukee.

The new Change Research survey conducted for San Francisco radio station KQED (9/12-15; 3,325 CA likely Democratic primary voters; online) also sees a very close presidential nomination race developing and with home state Sen. Harris removed from the upper echelon. This data finds Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) in a virtual tie (Warren 25; Sanders 23), and former Vice President Joe Biden trailing with 18% support. Sen. Harris records an 11% preference score, an improvement from the recent Emerson College poll but still far behind, while South Bend Mayor Pete Buttigieg registers 10 percent.

**Florida Poll:** A rare Florida presidential primary poll was released at the end of the week from Florida Atlantic University (9/12-15; 407 FL likely Democratic primary voters), and while former Vice President Joe Biden has an advantage beyond the polling margin of error, the seeds are planted for a tight three-way contest.

The results find Mr. Biden leading with 34%, while Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) are tied at 24% apiece. Way back are South Bend Mayor Pete Buttigieg at 6%, California Sen. Kamala Harris pulling only 4%, Miramar, FL Mayor Wayne Messam finally getting on a polling board at 3%, and ex-Rep. Beto O'Rourke (D-TX) and businessman Andrew Yang attracting 2% apiece.

**Iowa Polling:** Two new Iowa Democratic presidential polls both show South Bend Mayor Pete Buttigieg returning to the candidates' top tier, reversing his recent single-digit performance. According to the Civiqs research firm, polling for Iowa State University (9/13-17; 572 IA likely caucus attendees), Sen. Elizabeth Warren (D-MA) has opened up a lead over former Vice President Joe Biden and Sen. Bernie Sanders (I-VT). The results find the spread at 25-16-16%, with Mayor Buttigieg creeping up on second place with his own 13% showing.

The second Iowa survey, from Dave Binder Research (9/14-16; 500 IA likely Democratic caucus attendees), sees Mr. Biden still claiming the lead at 25%, with Sen. Warren closely

behind with 23%. In this poll, Mayor Buttigieg eclipses Sen. Sanders for third place, posting 12% to the Vermont lawmaker's 9%. While there are wide ranges for several candidates between these two polls, the Buttigieg number is consistent. Another contender needing to make a strong Iowa showing, Sen. Amy Klobuchar (D-MN), does so on the Binder survey coming in just behind Sen. Sanders at 8% preference, by far her best showing in any political poll.

**New Jersey Poll:** The new small-sample Monmouth University poll (9/12-16; 325 NJ Democratic registered voters) was publicized on Thursday and a close race is developing here, too. Though home state Sen. Cory Booker is improving, up to 9% support in this survey, the top three are still dominating the decided preferences.

Former VP Joe Biden tops the field with 26% followed by Sen. Elizabeth Warren (D-MA) at 20% and Sen. Bernie Sanders' (I-VT) 18 percent. Falling well behind are Sen. Kamala Harris (D-CA) and South Bend Mayor Pete Buttigieg who both post 6% support figures. The New Jersey primary is one of the latest contests in the nomination cycle, scheduled for June 2, 2020. The state has 107 first ballot delegates.

**New York Poll:** Siena College just published the results of their New York state poll (9/8-12; 359 NY likely Democratic primary voters), which yields a close finish here, too. Siena sees former Vice President Joe Biden taking first place, but with only a 22% support level. Sen. Elizabeth Warren (D-MA) is next with 17%, followed closely by Sen. Bernie Sanders (I-VT) with 15%.

**YouGov Poll:** The YouGov international polling firm again conducted a national Democratic Primary poll (9/14-17; 603 US likely Democratic primary voters) and generally confirms other recent data results. YouGov finds former Vice President Joe Biden leading the field with 25%, while Sens. Elizabeth Warren (D-MA) and Bernie Sanders (I-VT) follow with 19 and 15%, respectively. Sen. Kamala Harris (D-CA) again comes in at only 5%, while New York City businessman Andrew Yang posts 3%, as does ex-Rep. Beto O'Rourke (D-TX).

## Senate

**Arizona:** A new Democratic poll, from the Bendixen & Amadi International firm for the Arizona Sheet Metal Workers union (9/9-12; 520 AZ registered voters), again produces similar results to previously published data. The Bendixen data finds appointed Sen. Martha McSally (R) and retired astronaut Mark Kelly (D) tied at 42% apiece. Clearly, this campaign is going to be a premier national US Senate contest with both candidates raising millions of dollars and seeing no more than a point or two separating them from its inception.

**Colorado:** Since former Gov. John Hickenlooper has returned from the presidential campaign and jumped into the US Senate race, three Democrats have ended their efforts: former state Sen. Mike Johnston, ex-US Attorney John Walsh, and former US Ambassador and State Department official Dan Baer. This, however, has not stopped a new candidate from emerging.

Denise Burgess, owner of a national construction management company, officially joined the Senate field yesterday. Mr. Hickenlooper is still a strong favorite for the nomination, but it is clear he is not yet a consensus nominee. The eventual Democratic winner challenges Sen. Cory Gardner (R) in the general election.



**Georgia:** Freshman Rep. Lucy McBath (D-Marietta), who upset then-Rep. Karen Handel (R-Roswell) in the 6th District 2018 general election, said she will not enter the special US Senate election after Sen. Johnny Isakson (R) resigns and a replacement is appointed. Instead, Ms. McBath reiterates that she is committed to her job in the House and will seek re-election. There is a good possibility of a re-match occurring here. Ms. Handel has already announced her intentions to run again, though she will face Republican primary opposition.

**Massachusetts:** The Associated Press is running with a story that indicates Rep. Joseph P. Kennedy III (D-Newton) will announce his Democratic primary challenge to Sen. Ed Markey on Saturday. There has been much speculation about such an impending race, and now the predicted move looks to have legs. Rep. Kennedy recently said he would decide in a few weeks, but apparently the timetable has accelerated. Sen. Markey, who has been in Congress since 1977, shows no signs of retiring. This campaign has a long election cycle. The Massachusetts state primary is not until September 15, 2020.

## House

**CA-8:** As predicted a couple of weeks ago, four-term Rep. Paul Cook (R-Yucca Valley) announced that he will not seek another term in the US House but will instead file for an open seat on the San Bernardino Board of Supervisors. Mr. Cook, who will be 77 years of age at the next election, will be able to continue in public service should he be elected but won't have to travel cross country almost every week. Immediately, state Assemblyman Jay Obernolte (R-Hesperia) announced that he would run for Congress, and just as quickly Rep. Cook endorsed him. The 8th District is one of the few safe Republican seats in California.

**CA-48:** With Republicans clearly coalescing behind Orange County Supervisor Michelle Steel to challenge California freshman Rep. Harley Rouda (D-Laguna Beach), a new TargetPoint poll already finds the race tied. The survey fielded a month ago but just now released (8/10-11; 336 "active" CA-48 voters) projects each candidate attracting 42% support. Former Rep. Dana Rohrabacher (R) represented the area comprising the current 48th District for 30 years until losing to Mr. Rouda, 54-46%, in last year's election. The 2020 race here will be a top national Republican conversion target.

**CA-50:** Former California Congressman Darrell Issa (R) reportedly has received word that the Senate will soon move forward on his nomination as director of the US Trade and Development Agency, but the retired nine-term House member says he will continue preparing to run for the 50th Congressional District unless he is confirmed by November 3rd. Rep. Duncan Hunter (R-Alpine) is under indictment and faces a trial after the first of the year. Four other Republicans have already announced their intention to run. One Democrat, 2018 nominee Ammar Campa-Najjar, has also declared his 2020 candidacy.

**CA-53:** San Diego City Council President Georgette Gomez has officially declared her congressional candidacy for the newly open 53rd District, hoping to succeed retiring US Rep. Susan Davis (D-San Diego). Already in the race is former congressional candidate and ex-State Department official Sara Jacobs. Ms. Jacobs, who is independently wealthy, spent \$2.15 million in her 2018 campaign for the open 49th District. She placed third in the jungle primary that launched current Rep. Mike Levin (D-San Juan Capistrano) into the seat.

**MA-4:** With Rep. Joseph P. Kennedy III (D-Newton) heading to challenge Sen. Ed Markey in next year's September Democratic primary, state Treasurer Deb Goldberg (D) got the jump on her potential opponents and announced that she will run in the 4th District Democratic congressional primary. We can anticipate seeing a crowded Democratic field form for an open and determinative primary election that will decide who next serves in the House.

**NJ-3:** Freshman New Jersey Rep. Andy Kim (D-Bordentown), who claimed one of the closest victories in the 2018 election cycle (50.0 – 48.7%), may be drawing his first major re-election opponent. Burlington County Freeholder Kate Gibbs (R), largely with the support of the Burlington County Republican apparatus, has filed a 2020 congressional exploratory committee to test her ability to unseat Mr. Kim. This seat will also be a top GOP conversion target.

**NY-12:** In 2018, hotel executive and attorney Suraj Patel spent over \$2 million of his own money to challenge Rep. Carolyn Maloney (D-New York City) in the Democratic primary. The first returns showed a tight race, but when all the ballots were counted, Rep. Maloney posted a comfortable 60-40% re-nomination victory. Late this week, Mr. Patel announced that he will return for a re-match, though two other minor Democrats have also already filed. He also promises to run a campaign that emphasizes what he says are more relevant issues than during his last effort.

**WI-5:** As expected, state Senate Majority Leader Scott Fitzgerald (R-Juneau) announced his intention to run for the open Milwaukee suburban House seat from which veteran Rep. Jim Sensenbrenner (R-Menominee Falls) is retiring. The seat is safely Republican, so the April GOP primary will ultimately determine who succeeds Mr. Sensenbrenner. The Congressman is completing what will be 42 consecutive years of service at the end of this Congress. He is second in House seniority.

## Governor

**Louisiana:** Two polls find Gov. John Bel Edwards (D) hovering around the 50% mark for the October 12th jungle primary, but not yet reaching the magic number to avoid a runoff. A newly released internal Remington Research campaign poll (conducted for the Ralph Abraham for Governor campaign; 9/10-11; 1,144 LA likely voters via interactive response system) sees Gov. Edwards commanding 45% support as compared to US Rep. Ralph Abraham's (R-Alto/Monroe) 27%, and developer Eddie Rispone pulling 19%. In a



November 16th run-off election, however, the race tightens. Gov. Edwards would lead Rep. Abraham only 48-44%, and Mr. Rispone 49-44%.

But Baton Rouge-based JMC Analytics, a frequent Louisiana pollster, sees the Governor in a tighter race than other research firms. According to the JMC data (9/14-17; 600 LA likely voters), Mr. Edwards secures only 41% support as compared to Rep. Ralph Abraham's (R-Alto/ Monroe) 24%, and developer Eddie Rispone who posts 16 percent.

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