



*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.*

October 2, 2020

## **Wear your mask!**

Some of us were still awake last night when the President announced that he and the First Lady had tested positive for COVID-19. This morning, Senator Mike Lee (R-UT) announced that he had tested positive as well. The CDC advises anyone who was within six feet of someone with COVID-19 to stay home for 14 days after their last contact with the infected person. We wish anyone who's sick a speedy recovery, and hope that everybody will continue to wash their hands, stay six feet apart from anyone not a close family member, and wear their masks.

## **Negotiations continue on pandemic relief, though House adjourns**

The House of Representatives is officially in recess until November 16, but negotiations continue between Speaker of the House Nancy Pelosi (D-CA) and Treasury Secretary Steven T. Mnuchin on reinstating relief programs for those affected by COVID-19. Several of those programs expired on Wednesday. Yesterday the House approved a revised package that would provide \$2.2 trillion in assistance to small businesses, the airline industry, families with children, and essential workers. It would deliver a second round of stimulus payments to American households, and would make it easier for those who have lost their jobs to keep their health insurance through the ACA exchanges. It would also restore the \$600/week unemployment payments, and provide additional support to renters and homeowners. Senate Republicans have rejected the House plan, but the White House is strongly motivated to get a plan approved, as airlines and major corporations announce thousands of job layoffs.

## **Fintech task force debates powers of nonbanks**

Whether and how fintech companies can lend and process payments was the topic of what's likely to be the [last House Fintech Task Force hearing of the year](#), on Tuesday. Witnesses and lawmakers agreed that the current statutory and regulatory framework doesn't fit the nonbank financial services being offered online. The witnesses did not agree on how best to address this, but offered a range of alternatives. Constitutional banking law expert Art Wilmarth argued that the National Bank Act does not allow for the kind of

special-purpose, nondepository national bank charter proposed by the Comptroller of the Currency. Brian Knight, Director of the Innovation and Governance Program at the Mercatus Center, called for federal legislation to create a national money transmitter license and allow for nationwide operations by state-licensed money transmitters.

### **House panel receives CFTC task force recommendations on climate change**

Commodity Futures Trading Commissioner Rostin Behnam [appeared before the House Select Committee on the Climate Crisis yesterday](#) to discuss a report by the CFTC's Climate-Related Market Risk Subcommittee on "[Managing Climate Risk in the US Financial System](#)." The CFTC formed the task force after concluding that climate risk amplifies existing risks to the financial system as well as presenting threats of its own, and that US regulators are behind their global counterparts in addressing these risks. The task force, comprising a wide range of representatives from market makers, farmers and agricultural businesses, academics, small businesses, and public interest groups, agreed that climate change poses a major risk to the stability of US financial markets, and made 53 policy recommendations they said should be flexible, open-ended, and adaptable over time. Most important among the recommendations, Behnam said, the US should establish a price on carbon as a strategy to drive investment toward carbon reductions. They also called for the development of a set of global metrics for evaluating climate risk.

### **SBA Inspector General, GAO raise concerns about PPP forgiveness**

A House Small Business subcommittee [heard testimony](#) yesterday from Small Business Administration Inspector General Mike Ware and GAO Director of Financial Markets and Community Investment William Shear about efforts to identify and prevent fraud and abuse in the Payroll Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program. The witnesses agreed that the speed of setting those programs up had led to gaps in internal controls and inevitable fraud, especially related to identity theft. But the two men also expressed alarm about the lack of progress in forgiving PPP loans, an essential element of the program for both borrowers and lenders. As of last week, the SBA had received forgiveness applications from only 96,000 PPP loan recipients, less than 2% of loans disbursed. The SBA has not yet processed any of these applications, although the CARES Act specifies that the SBA must return forgiven funds to lenders within 90 days of receiving a valid forgiveness application. Legislators have heard from many of the constituents about the complexity of the PPP forgiveness process, but Secretary of the Treasury Steven Mnuchin has said that simplifying it would require Congressional action.

### **CFPB reports that TRID disclosure rule is effective but expensive**

This week the Consumer Financial Protection Bureau (CFPB) published an [assessment of its TRID Integrated Disclosure Rule](#), which combines the requirements of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The report found that the rule did improve consumers' ability to find the most important information, and compare terms and costs between initial disclosures and final disclosures, and among different mortgage offers. It was not as clear that the rule improves consumers' understanding of forms, but the survey results suggested that it might. What was clear was that companies spent a lot of money to implement the new rule. Lenders reported that their ongoing costs have risen as well, but the Bureau said, "it is unclear if these increases are due to ongoing trends or if these increases can be attributed to the Rule.

## Treasury issues advisories on ransomware attacks

Treasury's Office of Terrorism and Financial Intelligence [issued two advisories this week](#) about how to prevent, detect, and report ransomware scams and attacks, which the Treasury says are increasing in frequency and scope. The advisory issued by the Financial Crimes Enforcement Network (FinCEN) describes how ransomware attacks use financial institutions as intermediaries, with information on how financial institutions can report and share information about ransomware attacks in the most effective way. The Office of Foreign Asset Control's "Advisory on Potential Sanctions Risks for Facilitating Ransomware Payments" warns about the possible penalties companies may face for facilitating ransomware payments on victims' behalf.

## Offshore bitcoin exchange faces money-laundering charges

This week the Acting US Attorney for the Southern District of New York and the New York field office of the FBI [announced the indictment](#) of four cryptocurrency exchange executives for violating the Bank Secrecy Act (BSA) and conspiring to violate the BSA by willfully failing to set up an anti-money laundering regime at the Bitcoin Mercantile Exchange (BitMEX). BitMEX, though incorporated in the Seychelles, served and solicited business from US traders, so was required to register with the Commodity Futures Trading Commission (CFTC) and implement an anti-money laundering (AML) program that included a "know your customer" component. The indictment charges that BitMEX's know-your-customer procedures were "toothless and easily overridden." Only one of the four defendants was captured and detained in the United States.

## The Week Ahead

The House is officially in recess, but committees may have a few remote hearings between now and its official return date, November 16.

- **October 5 at 9:30 a.m.** The Securities and Exchange Commission's [Fixed Income Market Structure Advisory Committee meets](#) to discuss a recommendation for defining "electronic trading," and lessons learned within the corporate bond, municipal securities, and ETF markets during the pandemic.
- **October 5 at 10:00 a.m.** The Supreme Court's [October term begins](#).
- **October 6 at 9:00 a.m.** The Financial Literacy and Education Commission (FLEC) of the Consumer Financial Protection Bureau (CFPB) holds a public meeting to address the FLEC's new National Strategy for Financial Literacy 2020 and response to the pandemic emergency.
- **October 7 at 10:00 a.m.** Senate Commerce Committee holds a [hearing to examine passenger and freight rail](#), focusing on the current status of the rail network and the track ahead.
- **October 7 at 10:00 a.m.** House Oversight Subcommittee on Oversight and Reform holds a hearing on "IRS in the Pandemic."

## The Ellis Insight

Jim Ellis reports on political news

## President

**ME-2:** Maine's 2nd Congressional District, located in the northern part of the state, gave President Trump an extra electoral vote in 2016, and he needs it again. Maine and Nebraska are the two states that split their electoral votes meaning that even if a candidate loses the statewide count, he or she can gain an extra vote by taking a congressional district. In mid-September, Quinnipiac University released a survey (9/10-14; 476 ME-2 likely voters; live interview, online combination) that found Joe Biden leading President Trump by a surprisingly large nine percentage points, 53-44%.

Late last week, we saw a third poll refuting those numbers, this one by Maine's own Colby College (9/17-23; 425 ME-2 likely voters; live interview) that found the two candidates falling to within three points of each other, 46-43%. This confirms both the Siena College/NYT and Suffolk University results.

**NE-2:** A new Siena College/New York Times survey of Nebraska's 2nd District, from one of two states that splits its electoral votes (9/25-27; 420 NE-2 likely voters; live interview), sees former Vice President Joe Biden leading President Trump, 48-41%. Should this margin hold, Mr. Biden would gain an extra electoral vote from this red state.

Under the scenario where Mr. Biden converts Michigan and Pennsylvania back to his column and takes the 2nd District of Nebraska with the remainder of the 2016 map holding in place, the election would end in a 269-269 Electoral College tie. In such an instance, the vote would then proceed to the House of Representatives to break the deadlock.

**New Hampshire:** New Hampshire, with its four electoral votes, has proven to be a swing state in the 21st century. Four years ago, the domain went for Hillary Clinton, but only with a 2,736 vote margin. Therefore, President Trump's campaign is again targeting the state. A just-completed Emerson College poll (9/30-10/1; 700 NH likely voters; interactive voice response system), however, finds Democratic nominee Joe Biden now taking a 52-45% lead over President Trump, a range well beyond the polling margin of error.

## Senate

**Georgia:** Democratic endorsements, including from former President Jimmy Carter and the Democratic Senatorial Campaign Committee, have been piling up for Baptist pastor Raphael Warnock in an effort to propel him into what appears to be a sure January run-off election from the November 3rd jungle primary. Now, polling suggests that the strategy is paying off as two new Georgia Senate polls find him leading the field.

The Civiqs polling organization, surveying for the Daily Kos Elections website (9/26-29; 959 GA likely voters; online) gives Rev. Warnock a 38-25-21% lead over Rep. Doug Collins (R-Gainesville) and appointed Sen. Kelly Loeffler (R), respectively. Businessman Matt

Lieberman (D), who had been competitive in polling until now, drops to 5% support. While Warnock leads the race, he trails the combined Republican figure by eight percentage points.

Quinnipiac University (9/23-27; 1,125 GA likely voters; live interview) sees a similar candidate division. Their numbers find Rev. Warnock's lead to be 31-23-22% over Sen. Loeffler and Rep. Collins with Mr. Lieberman polling 9% preference.

**Kansas:** The open Kansas race is starting to attract more attention, and three different polls were released yesterday. All three surveys, from the Civiqs organization polling for the Daily Kos Elections website, the GBAO firm, and the co/efficient organization were all in the field between September 15-29.

The polling samples ranged from 600 (GBAO) to 794 (co/efficient). In two of the three, Rep. Roger Marshall (R-Great Bend) opens leads of four (co/efficient) and seven (Civiqs) percentage points. GBAO found state Sen. Barbara Bollier (D-Mission Hills) forging a two-point margin.

**Maine:** The second Maine survey conducted mostly during the period since the Supreme Court vacancy became a national issue was just released. The timing also includes the day when Sen. Susan Collins (R) made her statement that she would not support a vote before the election.

Colby College surveyed the Pine Tree State (conducted by the SocialSphere firm; 9/17-23; ME-2 likely voters; live interview, online combination) and finds state House Speaker Sara Gideon (D-Freeport) leading the four-term incumbent, 45-41%. This is a better result for Ms. Gideon than the other post-vacancy poll, from Moore Information, that found the two candidates tied.

**Michigan:** Two new Michigan Senate surveys were released this week from the Trafalgar Group and Marist College. The Marist data comes in the early part of the September 19-25 sampling period (9/19-23; 799 MI likely voters; live interview) and finds Sen. Gary Peters (D) leading challenger John James (R) by a five-point margin, 49-44%. Within the same period, Trafalgar, that attempts to quantify the "shy" right of center voter (9/23-25; 1,047 MI likely voters), sees the two candidates tied at 47% apiece. Once again, we observe different methodologies producing disparate results.

**New Mexico:** Public Opinion Strategies ran a research study for New Mexico Republican Senate candidate Mark Ronchetti and finds that this thought-to-be safe Democratic race is turning more competitive. The POS survey (9/26-28; 500 NM registered voters; live interview) projects Mr. Ronchetti to be pulling within six percentage points, 46-40%, of Rep. Ben Ray Lujan (D-Nambe), who was originally thought to be the prohibitive favorite in this

open seat race.

The present polling sees Mr. Ronchetti gaining after initially posting Rep. Lujan to a favorable advantage. The very first survey conducted here in June found the spread to favor Rep. Lujan by 14 percentage points, which surprised no one. Another ballot test made public at the beginning of September produced a nine-point Lujan lead, and now we see the advantage dwindling yet again. Expect more money and activity to come into this seat if this closing trend continues.

**North Carolina:** Two more polls were released in the Tar Heel State Senate race from sampling groups conducted within the same relative time period, and this time the swing is nine percentage points between the YouGov and Meredith College polling entities. According to YouGov (9/22-25; 1,213 NC registered voters; online; weighted) former state Sen. Cal Cunningham (D) leads Sen. Thom Tillis (R), 48-38%, while Meredith (9/18-22; 705 NC registered voters; online) finds the margin between the two candidates only at one point, 43-42%.

**South Carolina:** While we haven't seen a public financial disclosure here since June 30th as the Federal Election Commission books close on the third quarter today, it is clear the money war in South Carolina is out of control. At the end of June, both Sen. Lindsey Graham (R) and Democrat Jaime Harrison had raised in the \$30 million range, with each gaining the benefit of about \$2 million in independent expenditures either for their own candidacy or attacking their opponent.

The Super PAC Security is Strength had long ago reserved an additional \$2.6 million in media time to help Sen. Graham, but now the Senate Majority PAC is committing a new \$6.5 million to assist Mr. Harrison. The Senate Leadership Fund is coming in with \$10 million to help Graham, and it is becoming clear that combined spending here will likely top \$80 million in a state of just seven congressional districts. All polls since the beginning of August have shown the two candidates falling within three percentage points of each other.

**Texas:** A trio of research entities tested the Lone Star State Senate campaign during the same period, September 15-22, and found Sen. John Cornyn (R) leading Democratic challenger M.J. Hegar in all instances, but with different margins.

Data for Progress (9/15-22; 726 TX likely voters; web panel respondents) projects the spread to be only 40-38%. Siena College/New York Times (9/16-22; 653 TX likely voters; live interview) saw a six-point margin, 43-37%. Finally, Quinnipiac University (9/17-21; 1,078 TX likely voters; live interview), produced the largest division, 50-42%, using the largest polling sample within the shortest time period.

Texas Democratic Senate candidate M.J. Hegar's spokespeople are reporting that the

campaign will report raising \$13.5 million since the third quarter began on July 1st, bringing her total receipts-to-date to approximately \$20 million. Yesterday the reporting period closed, and dollar figures will be made public soon after the October 15th Federal Election Commission filing deadline. Ms. Hegar's opponent, three-term Republican Senator John Cornyn (R), has yet to indicate what his campaign raised for the 3rd quarter, but he had already banked \$22 million even before this period began.

## House

**AZ-6:** A new Public Policy Polling survey (9/22-23; 527 AZ-6 voters; interactive voice response) sees Rep. David Schweikert (R-Fountain Hills/Scottsdale), who was earlier found in violation of eleven different ethics charges, again languishing in a close contest with physician Hiral Tipirneni (D). The PPP margin projects Rep. Schweikert's lead at 45-43% in the formerly safe Republican congressional district.

The numbers confirm two other published polls that produced similar results. Quick to respond and refute the PPP result, the Tipirneni campaign released their Greenberg Quinlan Rosner Research poll (9/23-26; 500 AZ-6 likely voters), which forecasted their candidate topping the Congressman, 49-45%. It is clear the 6th District race, with an incumbent tainted with ethics violations, has crossed into toss-up mode.

**CA-25:** In May, California freshman Rep. Mike Garcia (R-Santa Clarita) scored an impressive ten-point special election upset victory over state Assemblywoman Christy Smith (D). A new poll suggests a much different regular election result, however. According to the Democratic firm Normington Petts for the House Majority PAC (9/21-23; 400 CA-25 likely voters; live interview), Ms. Smith would lead the new Congressman, 48-45%, and 51-45% when those leaning to each candidate are added to the totals.

**GA-5:** The first round of the special election series to replace the late Georgia Rep. John Lewis (D-Atlanta) was held, and the result forces a runoff election on December 1st for a term that will last possibly less than one month.

Former Atlanta City Councilman Kwanza Hall placed first with 32% of the vote, and he advances into the secondary election while former Morehouse College president Robert Franklin placed second with 28%, ahead of state Rep. Mable Thomas' (D-Atlanta) 19 percent. The Democratic nominee for the general election, and person who will assume the seat in the next Congress, is state Sen. Nikema Williams (D-Atlanta), but she did not enter the special election. Therefore, the eventual December victor will serve one of the shortest terms in history.

**MN-2:** As predicted last week when Minnesota Rep. Angie Craig (D-Eagan) sent a message to her supporters telling them to vote for her as usual in the regular general election, a lawsuit has now been filed contesting the Secretary of State's ruling that the

2nd Congressional District general election be postponed to February 9th. Under Minnesota election law, if a major party candidate dies within 79 days of a general election, the vote is postponed for a period of three months, in this case to February 9th.

In this year's 2nd District election, Legal Marijuana Party candidate Adam Weeks passed away suddenly last week. Under Minnesota election law, this entity rather surprisingly constitutes a major party; hence, the election postponement. Ms. Craig will undoubtedly argue this state statute conflicts with the federal election law that requires all states hold their federal office elections on the same day. Therefore, exactly when this election will be held remains unclear.

**NE-2:** Above, we cited the new Siena College/New York Times NE-2 poll (9/25-27; 420 NE-2 likely voters; live interview) that gives Joe Biden a lead over President Trump beyond the polling margin of error. The same survey, however, finds Rep. Don Bacon (R-Papillion) forging a small lead over his Democratic opponent, 2018 congressional nominee Kara Eastman, 45-43%.

**NC-8:** We now see a second brilliant corners Research & Strategies survey projecting a close race between four-term Rep. Richard Hudson (R-Concord) and former state Supreme Court Justice Patricia Timmons-Goodson (D). The new survey, conducted for the Timmons-Goodson campaign (9/28; 614 NC-8 likely voters; internal flash poll), again gives Mr. Hudson a two-point lead, 44-42%. In late July, the campaign first released their internal data that found a very similar 43-41% split. Like all other districts in North Carolina, the state Supreme Court redrew the 8th District for this 2020 election.

**PA-10:** A new Pennsylvania Survey Research study (9/22-24; 401 PA-10 likely voters; live interview) shows Democratic congressional challenger and State Auditor Eugene DePasquale (D) opening a lead beyond the polling margin of error. His seven-percentage point spread, 50-43%, over four-term Rep. Scott Perry (R-Dillsburg/Harrisburg) clearly suggests that the incumbent is in position to lose what was formerly a safe Republican district. The seat was significantly changed in the 2017 state Supreme Court redistricting plan, making it much more Democratic.

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[Charlie Gray](#) | [Keenan Hale\\*](#) | [Rheb Harbison\\*](#) | [John Harris\\*](#) | [Mike Huey](#) | [Ty Jackson](#)  
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