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 25, 2020

A pioneer passes

Supreme Court Justice Ruth Bader Ginsburg lies in state at the U.S. Capitol this afternoon. "Women belong in all places where decisions are being made," she said, making it all the more appropriate that she is the first woman ever to lie in state at the Capitol. Before she became the second woman Supreme Court justice, she argued the landmark cases that established that the 14th Amendment's "equal protection" includes protection from discrimination on the basis of gender. Her dissents have been as influential as her decisions, and that was how she wanted it: "Dissents speak to a future age," she said. "The greatest dissents do become court opinions, and gradually over time their views become the dominant view. So that's the dissenter's hope: that they are writing not for today, but for tomorrow."

Jim Smith, 1930-2020

We are also sad to note the passing of our friend and former colleague James E. Smith, who served as Comptroller of the Currency from 1973 to 1976 and is credited with modernizing bank supervision to emphasize bank policies, internal procedures, and risk management. Smith had a long career as a consultant, co-founding the bipartisan Smith-Free Group in 1995.

SEC adopts amendments to shareholder-proposal rule

The Securities and Exchange Commission voted on Wednesday to modernize its shareholder proposal rule for the first time since 1998. The amendments will take effect 60 days after their publication in the Federal Register and will apply to any proposal submitted for an annual or special meet occurring on or after January 1, 2022. They will replace the current ownership threshold for shareholder proposals, which requires the proposer to own at least $2,000 or 1% of a company's stock for at least one year, with three alternative ownership standards: $2,000 of the company's securities for at least three years, $15,000 for at least two years, or $25,000 for at least one year. The new rule will require greater transparency in the proxy voting process. It will limit shareholders' ability to offer multiple proposals at a single meeting, and it will raise the threshold of shareholder support a proposal must receive in order to be

resubmitted.

Federal Reserve proposes its own CRA revisions

On Tuesday, the Federal Reserve Board published its much-anticipated Advance Notice of Proposed Rulemaking (ANPR) to modernize its rules implementing the Community Reinvestment Act (CRA). The ANPR is open for comment for 120 days; Federal Reserve Board Chairman Jerome Powell said the long comment period is meant to allow a consensus to emerge so the federal banking agencies can agree on a coordinated approach to CRA. The ANPR proposes measuring large retail banks' CRA performance with both a Retail Test and a Community Development Test. It emphasizes the need to promote financial inclusion by proposing special provisions for minority depository institutions (MDIs), women-owned financial institutions, and low-income credit unions. It would modernize CRA assessment areas to reflect the broad adoption of mobile and internet banking, though it would maintain a focus on physical branches. It would replace the qualitative approach to CRA evaluations with one based on metrics, relying heavily on existing data in order to avoid additional data collection and reporting. It would tailor evaluations to bank size, business models, and local conditions, and it would recognize the special circumstances of small banks in rural areas.

Congressional action needed to save PPP

In appearances before the House Financial Services Committee and the Senate Banking Committee this week, Secretary of the Treasury Steven T. Mnuchin called for Congress to move quickly on legislation that would reactivate the Paycheck Protection Program (PPP), making $130 billion in unspent funds available to small businesses in the hardest-hit sectors through a second round of loans. Mnuchin said that extending the PPP and providing another set of federal direct payments to Americans in need were the two most important actions Congress could take to help those suffering because of the COVID-19 pandemic. Mnuchin and Federal Reserve Board Chairman Jerome Powell faced bipartisan questions in both chambers about whether and how the federal government can provide assistance to commercial real estate and other asset-based businesses. The witnesses acknowledged the acute need in those sectors, but said that the restrictions imposed by commercial mortgage-backed securities (CMBS) make it impossible for those businesses to take on additional debt.

Simplifying PPP forgiveness

Treasury Secretary Mnuchin also told the committees that he lacks the statutory authority to simplify the application requirements for forgiveness of PPP loans, and the House Small Business Committee looked at this issue in two separate hearings this week. A bank lender and private-sector borrowers described the uncertainties and gaps in the current system, and noted that many businesses are waiting to apply for forgiveness in hopes that the system will be streamlined. Rep. Steve Chabot (R-OH), ranking member of the House Small Business Committee, introduced a bill last week to reactivate the PPP, allow for second loans, and simplify forgiveness. Rep. Jaime Herrera Beutler (R-WA) is circulating a discharge petition to bring the bill to the House floor without the need for a Committee vote; it would require signatures from a majority of House members.

Senate hearing identifies areas of agreement on federal data privacy legislation

California Attorney General Xavier Becerra joined several former members of the Federal Trade Commission on Wednesday to [testify before the Senate Commerce Committee](#) on the need for nationwide data privacy standards. Committee Chairman Roger Wicker (R-MS) and Republican colleagues introduced the [SAFE DATA Act](#) last week to create a federal data privacy framework; the committee's ranking member, Senator Maria Cantwell (D-WA), introduced her own [Consumer Online Privacy Rights Act](#) last year. Other members of the Commerce Committee, including Senators Jerry Moran (R-KS), Richard Blumenthal (D-CT), and Ed Markey (D-MA) have introduced legislation to establish federal standards as well. Witnesses pointed out that the Wicker and Cantwell bills have more areas of agreement than differences. Senators agree on the need for a federal privacy standard, and agree that the Federal Trade Commission is the appropriate agency to administer and enforce it. The major areas of disagreement are the extent to which federal law should preempt state protections, and whether federal law should preserve a private right of action for those whose privacy is violated. Witnesses told the committee that they should act quickly on a law that codifies the points of agreement and resolve disagreements later, as the US is quickly becoming irrelevant to the establishment of global privacy standards.

The Week Ahead

- **September 29 at 12:00 p.m.** House Financial Services Subcommittee on Consumer Protection and Financial Institutions holds a hearing on "[License to Bank: Examining the Legal Framework Governing Who Can Land and Process Payments in the Fintech Age](#)."

- **October 1 at 10:00 a.m.** House Small Business Subcommittee on Investigations, Oversight, and Regulation holds a hearing on "[Preventing Fraud and Abuse of PPP and EIDL: An Update with the SBA Office of the Inspector General and the GAO](#)."

- **October 1 at 1:00 p.m.** House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law holds a hearing on "Proposals to Strengthen the Antitrust Laws and Restore Competition Online."

- **October 1 at 2:00 p.m.** House Select Committee on the Climate Crisis holds a hearing on "[Creating a Climate Resilient America: Strengthening the US Financial System and Expanding Economic Opportunity](#)."

The Ellis Insight
Jim Ellis reports on political news

President

Arizona/Florida: As a polling entity, the ABC News/Washington Post effort is rated as one of six A+ pollsters on the FiveThirtyEight statistical organization rating card. The media partners just released a pair of polls this week, one from Arizona and the other Florida. They both capture how much a survey sample can swing based upon segmentation, in this case from registered to likely voters.

The Arizona poll (9/15-20; 701 AZ registered voters; 579 AZ likely voters) finds President Trump trailing former Vice President Joe Biden, 47-49% with registered voters, but leading 49-48% among those who are most likely to vote.

In Florida, we see an even greater split. That ABC/WP survey (9/15-20; 765 FL registered voters; 613 FL likely voters) projects that Mr. Biden is holding a bare 48-47% edge among those registered to vote but leads 51-47% within the segment of those most likely to cast their ballot. This example underscores the importance of the voter participation model in determining election outcomes.

ME-2; NE-2: Maine and Nebraska are the two states that split their electoral votes, and the pair of districts that have a tendency to vote opposite their state and award an electoral vote to the losing statewide candidate, ME-2 and NE-2, show leads for former Vice President Joe Biden even though they are must-win races for President Trump.

Siena College/New York Times tested the 2nd District of Maine, the state's northern seat, (9/11-16; 440 ME-2 likely voters; live interview) and sees the Biden advantage to be 47-45%. The Democratic polling firm Global Strategy Group surveyed NE-2 (9/14-16; 400 NE-2 likely voters; live interview) and posts an even larger 51-45% Biden advantage in that district.

Suffolk University released their own Maine poll. The 2nd District portion (9/17-20; 233 ME-2 likely voters; live interview) also forecasts a 47-45% split, thus providing support for the Siena College/NYT conclusion.

Senate

Alabama: The Alabama Republican challenger campaign has generally drawn little national attention, but a new Morning Consult survey (9/11-20; 658 AL likely voters; online from pre-determined sampling group) suggests that retired Auburn University head football coach Tommy Tuberville (R) enjoys a major lead over Sen. Doug Jones (D). The MC results find Mr. Tuberville holding a strong 52-34% advantage over Sen. Jones. Winning this seat is critical to any chance the Republicans have of holding their Senate majority.

Arizona/Michigan: We have two more examples of pollsters testing the same electorate and arriving at vastly different conclusions. In Arizona, Morning Consult (9/11-20; 907 AZ likely voters; online from pre-determined sampling group) finds retired astronaut Mark Kelly (D) holding a nine-point, 49-40%, lead over appointed Sen. Martha McSally (R). While Fabrizio Lee & Associates also see Mr. Kelly with an edge, the margin is much different. From their survey (9/14-16; 800 AZ likely voters; live interview), Kelly's lead is only two points over Sen. McSally, 48-46%.

We see a similar pattern in Michigan. The Ipsos research organization (9/11-16; 637 MI likely

voters) detects Sen. Gary Peters (D) with a six-point, 49-43%, spread over manufacturing company owner John James (R), while the Marketing Resource Group (9/14-19; 600 MI likely voters) sees only a two point difference between the two, 42-40%, with a greater undecided factor.

Georgia-B: Siena College/New York Times and Data for Progress went into the field almost simultaneously and both found appointed Sen. Kelly Loeffler (R), Rep. Doug Collins (R-Gainesville), and Baptist pastor Raphael Warnock (D) all within range to capture either first or second position in the jungle primary that will be held concurrently with Election Day.

Siena/NYT (9/16-21; 523 GA likely voters; live interview) projects Sen. Loeffler pulling 23% support, with both Rep. Collins and Rev. Warnock posting identical 19% support factors. Data for Progress (9/14-19; 800 GA likely voters) sees Rev. Warnock in first place with 26%, followed closely by Rep. Collins (22%) and Sen. Loeffler (21%). Leaners were added to the original totals for all candidates. Together, the polls tell us that no one can reach 50% on the first vote, and that a tough political dogfight is brewing for the two runoff positions.

Maine: Contrary to opinion that Maine Sen. Susan Collins (R) may have blown her re-election chances by immediately moving to postpone the vote on a successor to the late Justice Ruth Bader Ginsburg, a Moore Information survey for the National Republican Senatorial Committee (9/20-22; 500 ME likely voters) finds Sen. Collins and state House Speaker Sara Gideon (D-Freeport) tied in their latest poll.

Ms. Gideon has been ahead in the race for months, but this survey finds both candidates drawing 42%, apiece. It remains to be seen if this rather surprising trend continues as the SCOTUS replacement process begins in earnest.

South Carolina: The latest Morning Consult survey (9/11-20; 764 SC likely voters; online from pre-determined sampling group) finds Sen. Lindsey Graham (R) and former SC Democratic Party chairman Jaime Harrison in a virtual tie, with the incumbent holding the slimmest of leads, 46-45%. It is clear that Sen. Graham will attempt to use his position as chairman of the Senate Judiciary Committee during the Supreme Court confirmation hearings as a way to improve his standing among Republican voters, a group with which he runs seven points behind President Trump on the party loyalty factor.

House

AR-2: A new brilliant corners Research & Strategies survey (9/10-16; 605 AR-2 likely voters; 102 over-sample of African American voters) has produced results that show three-term Rep. French Hill (R-Little Rock) actually falling behind his Democratic challenger, state Sen. Joyce Elliott (D-Little Rock), by a two-point margin, 48-46%.

This study follows a Hendrix College survey taken in earlier in September (9/4-9; 698 AR-2

likely voters) that found Mr. Hill leading the race with a similar 48-46% edge. The brilliant corners' over-sample of African Americans could explain the flip toward Ms. Elliott, but the long-term history of this district favors the Democrats.

CA-21: Republican pollster American Viewpoint returned a survey in California's 21st District, a seat that encompasses parts of the cities of Fresno and Bakersfield (9/8-10; 400 CA-21 likely voters; live interview), and sees former US Rep. David Valadao (R) leading freshman Rep. T.J. Cox (D-Fresno) by a 49-38% margin. In 2018, Rep. Cox unseated Mr. Valadao by an 862-vote margin. The Republican appears to be in strong shape for the general election even though President Trump will lose this district.

IL-3: The Ogden & Fry research firm conducted a flash poll on September 7th (759 IL-3 likely voters based upon a 2020 projection model) and found a surprising result. The respondents favored Democrat Marie Newman with only a 46-44% margin over Republican Mike Fricilone, a Will County Board member.

Even if this poll is accurate, the race won't turn into a competitive contest. Mr. Fricilone had only raised $49,000 through the last published financial disclosure report (June 30th), and is unlikely to have the resources to compete down the stretch. This is one of the eight seats where the incumbent, in this case Rep. Dan Lipinski (D-Western Springs), was defeated in his primary.

MI-3: We Ask America surveyed the district from September 19-20 (400 MI-3 likely voters; combination live interview and automated calls) and detects Republican Iraq and Afghan War veteran and grocery store magnate Peter Meijer leading attorney Hillary Scholten, 48-41%, with both candidates having almost identical favorability index ratings. Conversely, ALG (9/16-20; 501 MI-3 likely voters) arrives at a much different conclusion. This data finds Ms. Scholten holding a two-point, 44-42%, edge.

MT-AL: A Siena College/New York Times survey (9/14-16; 625 MT likely voters) finds Democratic former state Representative and 2018 congressional nominee Kathleen Williams taking a small lead over Republican State Auditor Matt Rosendale. The ballot test gives Ms. Williams a 44-41% edge, confirming that this race is turning into a toss-up campaign.

MN-2: An obscure law will take effect in this election because Legal Marijuana Now party nominee Adam Weeks unexpectedly passed away earlier this week. After the death of Sen. Paul Wellstone (D) eleven days before the election in 2002, which led to a fast and haphazard special election to replace him, an updated law was subsequently enacted that requires a special election well after the national Election Day if a major party candidate dies within 79 days of the general election.

Surprisingly, under Minnesota election law, the Legal Marijuana Now party is classified as "major." Therefore, the 2nd District election will now be decided in a special election on February 9th with a new Legal Marijuana Now nominee. This means incumbent Rep. Angie Craig (D-Eagan) will have a break in service as her term will expire at the end of the 116th Congress.

This new schedule will cause a number of ramifications and likely be subject to a lawsuit. It is possible the Justice Department will step in, since the law appears to violate the federal statute that requires all states to hold federal elections on the national Election Day.

NJ-2: Party-switching New Jersey Congressman Jeff Van Drew (R-Dennis Township/Atlantic City), who left the Democratic Party after a year in Congress, finds himself in a re-election fight with Amy Kennedy (D), the wife of former US Rep. Patrick Kennedy (D-RI). A new Public Policy Polling survey, without using push questions (9/14-15; 550 NJ voters; interactive voice response system), posts Ms. Kennedy to a five-point, 48-43%, lead over the incumbent Congressman. Expect this race to draw more attention from both parties in the closing campaign weeks.

PA-17: The OnMessage polling firm, conducting their survey for the Sean Parnell campaign (9/2-3; 400 PA-17 likely voters), finds a close race developing in the Pittsburgh suburbs. The OnMessage results find Rep. Conor Lamb (D-Pittsburgh) clinging to only a one-point edge, 45-44%, over Mr. Parnell, an author and Afghan War veteran. PA-17 is one of the 30 districts President Trump carried in 2016 that a Democrat currently represents.

VA-5: The Global Strategy Group again tested Virginia's 5th District, one of the eight seats where partisan voters upended an incumbent, in this case freshman Rep. Denver Riggleman (R), during the nomination procedure. GSG's latest survey, conducted for the 314 Action organization (9/10-14; 400 VA-5 likely voters; live interview) finds Republican Bob Good leading Democratic physician Cameron Webb by a slight 47-46% margin. Though the seat should be comfortably Republican, this appears another Virginia district that is headed into the highly competitive realm.

WI-3: Wisconsin Rep. Ron Kind (D-La Crosse) was first elected in 1996 and has had only one close re-election contest since, in 2010 when he received just 50.3% of the vote. President Trump, however, carried the district 49-45% in 2016, proving that a Republican can win here.

For the closing month, the Congressional Leadership Fund has decided to invest heavily here, reserving $2 million of media time in an effort to support Republican nominee Derrick Van Orden, a retired Navy SEAL and Afghan War veteran. Rep. Kind is more than prepared for the challenge, however. Through the July 22nd Federal Election Commission

pre-primary filing, the Congressman was showing more than $3 million cash-on-hand.

Governor

Vermont: Two-term Vermont Gov. Phil Scott, a rare Republican elected official in this state, looks to be in strong shape to secure a third two-year term. Braun Research for Vermont Public Radio and Vermont Public Broadcasting (9/3-15; 586 VT likely voters; live interview) finds Gov. Scott holding a whopping 55-24% lead over Lt. Gov. David Zuckerman (D).

Washington: A Strategies 360 survey (9/8-14; 501 WA registered voters; live interview) projects that two-term Gov. Jay Inslee (D) is poised to easily win a third term. The results find the Governor holding a strong 53-37% advantage over local town police chief Loren Culp (R) in a race that was never expected to be competitive.

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