



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.

December 20, 2019

Are you tired? We're tired. The House of Representatives debated and voted on two articles of impeachment against the President of the United States, but the House and Senate also voted on bills to fund the government through the end of the next fiscal year, and the House struck a deal with the White House on the US-Mexico-Canada free trade agreement (USMCA). We're ready for the weekend. But first . . .

Congress approves spending bills

The House and Senate approved two spending bills that will keep the government running through September 30, 2020. [HR 1158](#) provides funding for the Departments of Defense, Commerce, Justice, Treasury, and Homeland Security; the Judiciary; the independent agencies; and all related agencies. [HR 1865](#) provides funding for the Departments of Labor, Health and Human Services, Education, Agriculture, Energy, Interior, Veterans Affairs, State, Transportation, Housing and Urban Development, and all related agencies. Among provisions of interest to our clients, the package includes:

- Reauthorization of the [Export-Import Bank](#) for seven years
- Reauthorization of [Brand USA](#) through 2027
- A requirement that HUD issue guidelines for including manufactured housing in community plans for housing affordability and community development, as described in [S. 1804](#)
- Retroactive renewal of the \$1-per-gallon biodiesel tax credit, with extension through 2022

House approves USMCA

Yesterday the House of Representatives voted 385-41 for [legislation to implement the US-Mexico-Canada Agreement \(USMCA\)](#). The USMCA would supersede the North American Free Trade Agreement; it includes many similar provisions but also covers e-commerce, digital trade, and stronger protections for intellectual property. The Senate must approve the bill as well. Senate Majority Leader Mitch McConnell (R-NY) said the Senate will not vote

on USMCA until after the President's impeachment trial, but Senate Finance Committee Chairman Chuck Grassley (R-IA) has [announced a markup](#) for January 7.

Crapo wants feedback on cannabis banking

Senate Banking Committee Chairman Mike Crapo (R-ID) [said this week](#) that he does not support the SAFE Banking Act, passed by the House to allow financial institutions to serve cannabis-based businesses in states where those businesses are legal. Crapo asked for public comment about how best to address the public health and money laundering concerns around cannabis sales and cannabis banking. He said that he remains "firmly opposed to efforts to legalize marijuana" at the federal level or in Idaho, but he is also concerned about "Operation Choke Point"-style efforts by regulators to prevent banks from providing services to lawful businesses for political reasons. He asked for comment about possible ways to address public health and safety concerns; legacy cash and money laundering; and restrictions on interstate commerce.

Treasury, IRS finalize rules on Opportunity Zones

Yesterday the Treasury Department and the Internal Revenue Service announced [final rules](#) on which investments qualify for Opportunity Zone tax incentives. Opportunity Zones offer capital gains tax relief for qualifying investments in areas designated as economically distressed. A [list of answers to frequently asked questions](#) explains the types of gains that may be invested in Opportunity Zones, several refinements to the rules' working capital safe harbor provisions, and the process through which large C corporations can invest in Opportunity Zones through consolidated groups. The final rules are effective 60 days after they appear in the Federal Register.

SEC proposes new "accredited investor" definition

The Securities and Exchange Commission (SEC) [voted Wednesday](#) to seek comment on a long-anticipated proposal that would expand the definition of "accredited investor" for private capital fundraising. SEC Chairman Jay Clayton said the current rule's focus on income or net worth no longer reflects today's market; the proposed changes would add qualifications based on professional knowledge, experience, and certifications, among other criteria. The proposal will be open for comment for 60 days once it is published in the Federal Register.

SEC small business panel recommends changes —

The SEC's Office of the Advocate for Small Business Capital Formation published its [first annual report](#) this week, which included five sets of policy recommendations to make it easier for small businesses to attract and retain capital investors. The panel said the very complexity of current requirements is a barrier to entry for small businesses and prevents

smaller firms from taking advantage of all the exemptions available to them. They urged the SEC to make its rules clear, accessible, and scalable to allow companies to grow over their life cycles. They recommended changes to the SEC's qualification requirements for accredited investors; allowing retail investors to have access to pooled vehicles; distinguishing between investment "finders" and broker/dealers, and updating crowdfunding rules and limits. They also encouraged the SEC to continue its efforts toward scaling regulatory obligations and pursuing a principles-based approach, rather than one based on size.

SEC greenlights inspection plan for broker-dealers

At its meeting on Wednesday, the Securities and Exchange Commission approved a four percent budget increase for the Public Company Accounting Oversight Board (PCAOB) and the PCAOB's plans for inspecting broker-dealers, starting in 2020. Earlier in the week, the PCAOB published a [concept release](#) for comment on potential revisions to the Board's quality control standards. The new standards would be based on proposed international standards, with certain modifications; comments are due by March 16, 2020.

OCC appeals ruling against fintech charter

The Office of the Comptroller of the Currency has asked the US Court of Appeals for the Second Circuit to review a lower court's decision to block the OCC's proposed fintech charter. The New York Department of Financial Services and the Conference of State Bank Supervisors (CSBS) challenged the special-purpose national bank charter in 2018, and the US District Court for the Southern District of New York ruled in October that the OCC may not offer this charter anywhere in the United States. The US District Court for the District of Columbia dismissed CSBS's suit against the OCC in September, ruling that the association lacked standing.

Confirmations, Nominations, Departures

- **Rep. Mark Meadows (R-NC)** announced that he will not seek reelection.
- **Reps. Deb Haaland (D-NM)** and **Katie Porter (D-CA)** have been appointed to the House Committee on Oversight and Reform, filling vacancies left by the death of Rep. Elijah Cummings (D-MD) and the resignation of Rep. Katie Hill (D-CA).
- The UK Financial Conduct Authority announced that **Andrew Bailey** will succeed Mark Carney as Governor of the Bank of England.
- FDIC Chief Information Officer and Chief Privacy Officer Howard Whyte is leaving that position for an opportunity in the private sector; Deputy CIO **Sylvia Burns** will serve in an acting capacity until a permanent replacement is appointed.

- The Securities and Exchange Commission has appointed **Robert A. Marchman** as Senior Policy Advisor on Diversity and Inclusion, a new position; and **David Bottom** as the SEC's Chief Information Officer (CIO).

Next Week in Washington

Congress has left town, to return on January 7, 2020 for the second session of the 116th Congress. GrayRobinson's offices will be closed on December 25 and January 1, and The Golden Apple will be taking next week off, at least. We wish you and your families a happy Hanukkah, a merry Christmas, a joyful Kwanzaa, and nothing but the best for the new year.

The Ellis Insight

Jim Ellis reports on political news

President

California: The California Democratic primary, slated for Super Tuesday, March 3rd, is evolving into a contest where four candidates will receive votes from the large 416 first ballot delegate contingent. A new Capitol Weekly study (12/3-7; 599 CA likely Democratic primary voters) sees Sen. Elizabeth Warren leading the pack with 23% support, as Sen. Bernie Sanders and former Vice President Joe Biden follow with 19% apiece. South Bend Mayor Pete Buttigieg places fourth with 14%.

Yet another current California Democratic presidential nomination poll from Change Research (12/6-10; 862 CA likely Democratic primary voters) sees Sen. Bernie Sanders (I-VT) topping the field with 26% preference. Sen. Elizabeth Warren (D-MA) and former Vice President Joe Biden closely follow with 23 and 19%, while South Bend Mayor Pete Buttigieg knocks on the door of delegate apportionment with 12% support. A four-way split of the large Golden State block would go a long way toward ensuring that more than one vote will be taken at the Democratic National Convention for the first time since 1952.

Iowa: The Civiqs organization released the findings of their latest Iowa Democratic survey (12/12-16; 632 IA likely Democratic caucus attenders) and it confirms other data results. It is becoming clear that the Iowa Caucuses are close among four candidates as we pull to within seven weeks of the vote.

According to Civiqs, South Bend Mayor Pete Buttigieg is leading the Democratic contenders with 24% support. Sen. Bernie Sanders (I-VT) is right behind with 21%, while Sen. Elizabeth Warren (D-MA) falls back to 18%. Former Vice President Joe Biden, who is showing weakness in Iowa, places fourth in this survey with only 15%. The Iowa Caucuses

are scheduled for February 3rd.

Senate

Iowa: Public Policy Polling surveyed the Iowa electorate for the End Citizens United organization (12/13-15; 944 IA registered voters) and asked leading questions to put Sen. Joni Ernst (R) in the most negative possible light. Even so, the ballot test still finds her leading real estate executive Theresa Greenfield, the Democratic leadership's candidate, by a 47-41% margin. Little national attention has been paid to this situation so far, but the Iowa campaign is expected to be a highly competitive contest next year, as will the presidential race and all four congressional campaigns here.

New Hampshire: The New Hampshire-based American Research Group conducted a new statewide survey (12/12-16; 539 NH registered voters) and tested former Trump campaign manager Corey Lewandowski (R) against Sen. Jeanne Shaheen (D). The ballot test unsurprisingly gives the Senator a commanding 58-35% lead but the more likely candidate to face her, retired Army General Don Bolduc (R), was not tested.

Though Mr. Lewandowski has not specifically ruled out challenging Sen. Shaheen, there is no tangible indication that he is planning to run. Gen. Bolduc, however, is building a campaign.

South Carolina: Change Research (12/6-11; 998 SC likely voters) returns a new South Carolina Senate poll that can be considered, at face value, to be an anomaly. The data shows Sen. Lindsey Graham (R) topping former South Carolina Democratic Party chairman Jaime Harrison (D), 47-45%, far different than the other publicly released surveys from earlier in the year.

In October, for example, Benchmark Research found Graham's advantage hovering in the 53-30% range. The only other previous survey not to find Graham with a substantial lead was again Change Research, back in September, when they posted the Senator to a 50-43% split.

Texas: The Democratic Senatorial Campaign Committee has taken a position in the Texas Senate primary as six credible contenders are vying for the nomination. The official party endorsement is awarded to retired Army helicopter pilot and 2018 congressional candidate M.J. Hegar, who the committee believes would be the party's strongest challenger to Sen. John Cornyn (R).

The other candidates are former Houston Congressman and 2014 gubernatorial nominee

Chris Bell, state Sen. Royce West (D-Dallas), Houston City Councilwoman Amanda Edwards, non-profit group executive Cristina Tzintzun Ramirez, and businesswoman Sema Hernandez. Polling has shown a close race. The eventual nominee will be a heavy underdog against Sen. Cornyn. The Texas primary is March 3rd with a run-off scheduled for May 26th if no candidate receives majority support in the original vote.

House

GA-6 & 14: Conservative businesswoman Marjorie Greene, who is an announced candidate in the 6th Congressional District that freshman Rep. Lucy McBath (D-Marietta) holds, is now switching to the open northwest Georgia 14th District from which Rep. Tom Graves (R-Ranger/Rome) is retiring. The 14th will feature a determinative Republican primary with a run-off battle to assuredly follow.

The unfolding development means that former Rep. Karen Handel is currently unopposed for the Republican nomination in the Atlanta suburban 6th District. Therefore, we will likely see a re-match between Rep. McBath and Ms. Handel. In 2018, Ms. McBath unseated then-Rep. Handel, 50.5 – 49.5%, a margin of 3,264 votes from over 317,000 cast ballots. Things could still change, however. The Georgia candidate filing deadline is March 6th for the May 19th state primary. If no candidate receives 50% in the first partisan vote, the top two finishers advance to a run-off election on July 21st. Regardless of the general election participants, the 6th District will be a top national political target.

MA-3: The House Ethics Committee announced that it is broadening its investigation of freshman Massachusetts Rep. Lori Trahan (D-Lowell) over questionable 2018 campaign loans that totaled approximately \$300,000.

Her closest Democratic primary contender, former Mayoral chief of staff Dan Koh who has since been elected an Andover city Selectman, has been weighing a challenge opportunity against her in the September Democratic primary. Losing to Ms. Trahan by only 145 votes a year ago, and now seeing her under investigation by an Ethics Committee controlled by their own party, certainly gives Mr. Koh more impetus to run.

NJ-2: Freshman New Jersey Rep. Jeff Van Drew (D-Dennis Township) has been in the news all week with his move to the Republican Party largely over the Trump impeachment process. The move makes the 2nd District 2020 campaign look very different.

Mr. Van Drew's new Republican primary is no easy run. Venture capitalist David Richter says that not only will he continue with his campaign for the Republican congressional nomination, but he will spend \$1 million of his own money to deny Rep. Van Drew the party nod. Four Democrats have already jumped into the race, college professor Brigid

Callahan Harrison, Atlantic County Freeholder Ashley Bennett, West Cape May Commissioner John Francis, and educator Amy Kennedy, the wife of former Rhode Island US Rep. Patrick Kennedy.

The 2nd District leans Republican. President Trump carried the seat 51-46%. Until Mr. Van Drew converted the district for the Democrats last year, Republican Frank LoBiondo held the congressional seat for the previous 22 years and averaged victory percentages in the high 50s.

NC-6: Redistricting victim Mark Walker, a three-term Republican Congressman from the Greensboro area has seen his safe seat turn into a heavily Democratic domain under the new boundaries that will be in effect for the 2020 election. He had reportedly been deciding between challenging Sen. Thom Tillis in the Republican primary or possibly Congressman Ted Budd (R-Advance) in the neighboring, and now safe Republican, 13th District.

Instead, Mr. Walker announced he will not be on the North Carolina ballot in 2020 but will likely return as a US Senate candidate in 2022 when incumbent Richard Burr (R) has pledged to retire.

NC-9: Hoke County Democratic Commissioner Harry Southerland submitted his candidate filing to challenge special election winner Dan Bishop (R-Charlotte) in the new 9th Congressional District. The most recent North Carolina redistricting map changes the 9th CD by approximately 20%, namely replacing Bladen County, which was the cause of the ballot harvesting controversy that kept the seat vacant for almost a year, and replacing it with Hoke County, from where Mr. Southerland hails, and part of Moore County.

The new district runs approximately ten points in President Trump's favor. Rep. Bishop defeated Democrat Dan McCready 51-49% in the September special election after the latter man spent over \$13 million dollars over two campaigns in an attempt to win the seat. Rep. Bishop is favored for re-election, but this seat, which stretches from Charlotte down the South Carolina border almost to Lumberton, will remain competitive under its new configuration.

NC-11: Former House Freedom Caucus chairman Mark Meadows (R-Skyland/Asheville) announced that he will not seek re-election less than 48 hours before the North Carolina candidate filing deadline. Rumors abound that the Congressman, who is a close confidant of President Trump, may soon be taking a job in the Administration. The newly configured 11th District created after another court-ordered re-map now fully contains

the city of Asheville but is still a solidly Republican district.

OH-1: The Ohio candidate filing deadline expired earlier in the week and lists of officially qualified congressional contenders are now available. Rep. Steve Chabot (R-Cincinnati) had a highly competitive re-election campaign in 2018, and it looks like he will again have a serious race in the current election cycle.

As expected, healthcare company executive Kate Schroder and Iraq War veteran and engineer Nikki Foster will square off in the Democratic primary for the right to face the Congressman in the general election. Another close finish is again forecast. Mr. Chabot defeated Hamilton County Clerk of Courts Aftab Pureval (D) in 2018 by a 51-47% count.

OH-13: Veteran US Rep. Tim Ryan (D-Warren/Youngstown), who was an early presidential contender before dropping out of the national race to seek a tenth term in Congress, has drawn a significant general election challenger. Former state Rep. Christina Hagan (R), who garnered 40% of the vote in the neighboring 16th Congressional District primary in 2018, has made the move to challenge Rep. Ryan in the current election cycle. Six other Republicans also filed, but only Ms. Hagan has been previously elected to office.

UT-4: Arguably the leading Republican candidate to face freshman Rep. Ben McAdams (D-Salt Lake City) in what will be a highly competitive 2020 campaign, state Sen. Dan Hemmert (R-Orem), has changed his mind about running. Mr. Hemmert's reason for departing the race certainly wasn't fundraising. He was the leader among Republicans in campaign resources, accumulating over \$445,000 in just the last quarter. State Rep. Kim Coleman (R-West Jordan) and former NFL football player Burgess Owens remain in the Republican primary race.

Governor

Utah: A new Republican gubernatorial poll has been released, the first since former Gov. Jon Huntsman (R) left his position as US Ambassador to Russia and entered the 2020 campaign to reclaim his past position. According to the Utah Policy organization poll (11/19-12/7; 911 UT likely Republican primary voters), Lt. Gov. Spencer Cox, armed with an endorsement from retiring Gov. Gary Herbert (R), leads with 41% followed by Mr. Huntsman who has 29% support. Rep. Rob Bishop (R-Brigham City), who is not an announced gubernatorial candidate, polls 9%.

West Virginia: A Research America survey for the local Metro News (12/4-9; 500 WV likely Republican primary voters) finds Gov. Jim Justice holding a strong lead over his GOP nomination challengers. The totals find Mr. Justice capturing 56% preference with former

state Commerce Secretary Woody Thrasher well behind with 21% even after running several waves of television advertising. Former state Delegate Mike Folk touches double digits with 11% support.

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