



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 18, 2019

And how was your week? Good news first: our Washington Nationals clinched the National League Championship on Tuesday night. This is what it looked like from center field. They play some team from the American League in the [World Series](#), which starts in some other city next Tuesday. They'll be back at Nationals Park on Friday, October 25.



But we woke up yesterday to the news that Rep. Elijah Cummings (D-MD) had died, and we still haven't quite taken that in. Cummings, who was first elected to Congress in 1996,

chaired the House Committee on Oversight and Reform. He was known for his deep compassion, a strong and fearless sense of right and wrong, and a nearly unmatched ability to make friendships across the aisle. We agree with the Oversight Committee's ranking member, Rep. Mark Meadows (R-NC), who told Politico that "Words are not adequate to express the loss."

Supreme Court will rule on CFPB constitutionality

This afternoon the Supreme Court granted certiorari in the case of *Seila Law v. Consumer Finance Protection Bureau*, which challenges the constitutionality of the Consumer Financial Protection Bureau's structure. The Department of Justice and CFPB director Kathy Kraninger had filed a brief agreeing with the plaintiff and asking for this review, and the House of Representatives has asked to be allowed to defend the structure of the CFPB. At issue is a provision of the law that allows the President to remove the Director of the CFPB only for "inefficiency, neglect of duty, or malfeasance in office," which the Seila Law Firm, the Department of Justice, and Director Kraninger all say is an unconstitutional curtailment of Presidential authority over the executive branch. Kraninger came in for some grilling about her position at the House Financial Services Committee's CFPB oversight hearing on Wednesday.

House approves three bills of support for Hong Kong

When the House of Representatives returned to Washington on Tuesday, members agreed by voice vote on three pieces of legislation to support the pro-democracy movement in Hong Kong. [H.R. 3289](#), the Hong Kong Human Rights and Democracy Act of 2019, would direct the Departments of State and Commerce to assess whether political developments in Hong Kong justify the continuation of Hong Kong's special US trade status; Senator Marco Rubio (R-FL) has introduced a companion bill that awaits Senate action. [H.R. 4270](#) would place restrictions on US exports of teargas and crowd control technology to various Hong Kong security organizations. And [H.Res. 543](#), the Stand with Hong Kong Resolution, calls on the Hong Kong government to begin negotiations with protestors to address their five central demands.

House Republicans announce new leadership for Financial Services subcommittees

Republicans on the House Financial Services Committee have named new ranking members to some of the subcommittees. Rep. Steve Stivers (R-OH) will serve as ranking member of the Subcommittee on Housing, Community Development, and Insurance. Rep. French Hill (R-AR) will serve as ranking member of the Subcommittee on National Security, International Development, and Monetary Policy. Rep. Tom Emmer (R-MN) will serve as ranking member of the Task Force on Financial Technology, and Rep. Barry Loudemilk (R-GA) will serve as ranking member of the Task Force on Artificial Intelligence. Separately, Rep. Bill Timmons (R-SC) has been named to the House Financial Services Committee, filling the vacancy left by Rep. Sean Duffy (R-WI), who stepped down from his seat last month.

Bipartisan agreement on need to renew TRIA

Witnesses and members at Tuesday's House Financial Services Housing Subcommittee [hearing on reauthorizing the Terrorism Risk Insurance Program](#) agreed on the urgent need to reauthorize the program, which witnesses described as a uniquely

successful public-private partnership. The program will expire at year-end 2020, and witnesses pointed out that failure to renew it before the end of 2019 will require adjustments to any policies that take effect after January 1. Subcommittee members generally supported the draft legislation being circulated by full Committee Chairwoman Maxine Waters (D-CA), but some expressed concern about whether and how cyberterrorist attacks would be covered. Treasury has issued guidance affirming that cyberattacks are covered under the program, but coverage under individual policies may not be clear.

House Financial Services Committee challenge Kraninger on enforcement, payday lending

At a [marathon hearing on Wednesday](#), Democratic members of the House Financial Services Committee berated Consumer Financial Protection Bureau Director Kathy Kraninger for what Chairwoman Maxine Waters (D-CA) called “undermining” the Bureau. On the morning of the hearing, the Committee’s Democratic staff released a 333-page report entitled “[Settling for Nothing: How Kraninger’s CFPB Leaves Consumers High and Dry](#)” that focused specifically on the CFPB’s handling of enforcement actions against Enova, a payday lender, and Sterling Jewelers. Republican members urged further changes to the small-dollar lending rule. Kraninger said that they would finish work on the underwriting provisions of the small-dollar lending rule “within 12 months,” but not before the end of the year. The Bureau is not yet focusing on the payments provision of the rule, and don’t see it as a priority while the rule remains tied up in litigation.

Senate Banking Committee grills Kraninger on student loans

At a less turbulent [Senate Banking Committee hearing on Thursday](#), CFPB Director Kraninger answered questions about how the CFPB will work with the Department of Education to protect student loan borrowers. Kraninger noted the recent hiring of Robert Cameron to serve as the CFPB’s student loan ombudsman, but stressed that the CFPB is responsible only for private student loans, which make up about 9% of the market. The Department of Education oversees servicing for the rest of the market, and the two agencies are in the process of entering into a new memorandum of understanding that will govern information-sharing between the two.

House panel argues over limits on stock buybacks

At a hearing the House Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets held yesterday on “[Examining Corporate Priorities: The Impact of Stock Buybacks on Workers, Communities, and Investors](#).” Democratic and Republican members disagreed about whether the notable increases in stock buybacks since the changes in federal tax laws warranted Congressional attention. The hearing sought testimony on four legislative proposals ranging from greater disclosure requirements to an explicit ban on open market stock buybacks. Subcommittee Chairwoman Carolyn Maloney (D-NY) cited a study by SEC Commissioner Robert Jackson that suggested executives might be abusing buybacks for personal gain, while ranking member Rep. Bill Huizenga (R-MI) said that stock buybacks are a tax-efficient way to return excess capital to shareholders, and allow managers to signal to investors that a firm is undervalued and strong.

Wyden introduces sweeping privacy legislation

Senator Ron Wyden (D-OR) [introduced the Mind Your Own Business Act this week](#), which would impose fines and prison terms on executives who misuse customers' personal information and lie about that to Congress. In announcing the bill, Wyden named Facebook's Mark Zuckerberg as someone who hadn't suffered enough consequences for violations of privacy and lying to the government. The bill expands on legislation Wyden circulated as a discussion draft last year; it would grant the Federal Trade Commission sweeping new powers to set privacy and cybersecurity standards, levy fines of up to 4% of a company's annual revenue, create a national Do Not Track system that lets consumers opt out of sharing their data online, and give consumers a way to review and challenge the personal information companies have collected about them. Wyden said that his bill would provide the most comprehensive privacy protections ever introduced, going further than the European Union's General Data Protection Regulation (GDPR).

Anti-money laundering laws apply to digital currencies, regulators say

The heads of the Commodity Futures Trading Commission (CFTC), Financial Crimes Enforcement Network (FinCEN), and Securities and Exchange Commission (SEC) have [issued a statement](#) to remind cryptocurrency firms and brokers that they must comply with laws against money laundering and financing terrorism (AML/CFT). The Bank Secrecy Act's definition of "financial institutions" includes futures commission merchants, introducing brokers who must register with the CFTC, money services businesses, and broker-dealers and mutual funds that must register with the SEC. Any digital asset that may qualify as a security, commodity, future or swap is subject to BSA requirements, but the agencies added: "Certain BSA obligations . . . apply very broadly and without regard to whether the particular transaction at issue involves a 'security' or a 'commodity' as those terms are defined under the federal securities laws."

Federal banking agencies seek comment on CECL

The Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, National Credit Union Administration (NCUA) and Office of the Comptroller of the Currency (OCC) requested comment this week on a proposed [interagency policy statement on allowances for credit losses](#). They issued the statement in response to upcoming changes in the Financial Accounting Standards Board's standards for measuring current expected credit losses (CECL). Smaller financial institutions have expressed particular concerns about the possible procyclical effects of CECL, and Rep. Blaine Luetkemeyer (R-MO) has repeatedly asked the Office of Financial Research to study its possible effects on the industry.

Comptroller says administrative solutions to Madden may be available

Comptroller of the Currency Joseph M. Otting told Rep. Barry Loudermilk (R-GA) last week that the OCC is considering "administrative solutions" to mitigate the consequences of the US Court of Appeals for the Second Circuit's decision in *Madden v. Midland Funding, LLC*, which overturned the longstanding "valid when made" doctrine applying to interest rate limits. "The valid-when-made doctrine supports commercial needs and fairness and is consistent with general principles of contract law," Otting wrote in an October 9 letter to Loudermilk. The OCC and FDIC have filed a joint amicus brief arguing for the valid-when-made doctrine in a similar case pending before the US District Court for the District of Colorado.

McHenry asks Fed about reserves

Rep. Patrick McHenry, ranking member of the House Financial Services Committee, wrote to Federal Reserve Board Chairman Jerome Powell and New York Federal Reserve Bank President John Williams this week to ask whether the system has reserves sufficient to act as a buffer in case of economic stress. McHenry said it was important to know whether and how regulatory policy is affecting monetary policy, and that any plans to grow the Fed's balance sheet should be public.

Federal Reserve Board names inaugural Insurance Policy Advisory Committee

On Wednesday, the Federal Reserve Board [announced the appointment of 21 members to its first Insurance Policy Advisory Committee \(IPAC\)](#). The Committee will advise the Board on domestic and international insurance issues, including negotiations at the International Association of Insurance Supervisors. Members will serve staggered terms of one to three years, but starting next year, new members will be appointed to three-year terms. Members include executives of insurance and reinsurance companies, actuaries, former regulators, and consumer advocates.

SEC takes action against 18 traders for stock manipulation

This week the Securities and Exchange Commission [filed for emergency action](#) and froze the assets of 18 traders who schemed to manipulate more than 3,000 US-listed securities, in a scam that generated more than \$31 million in illegal profits. The traders, mainly based in China, used multiple accounts to place small sell orders and larger buy orders for thinly traded securities in order to manipulate prices and sell them at artificially high rates. In a related case, the US Attorney's Office for the District of Massachusetts filed criminal charges against two of the traders.

Confirmations, Nominations, Departures

- The President nominated Paul J. Ray, of Tennessee, to be Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget.
- Steven B. Kamin, director of the Federal Reserve's Division of International Finance, will step down from that position early next year to become a senior adviser to the division. Kamin is a 34-year veteran of the Federal Reserve, and oversees the Fed's global economic forecasting activities. The Fed will open a search for Kamin's successor later this year.

Next Week in Washington

- **October 22 at 10:00 a.m.** House Committee on Financial Services holds a hearing on ["The End of Affordable Housing? A Review of the Trump Administration's Plans to Change Housing Finance in America,"](#) Secretary of the Treasury Steven T. Mnuchin,

Secretary of Housing and Urban Development Dr. Benjamin S. Carson, and FHFA Director Dr. Mark A. Calabria will testify.

- **October 22 at 10:00 a.m.** Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on "[Oversight of the Status of the Consolidated Audit Trail.](#)"
- **October 22 at 2:00 p.m.** House Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation holds a hearing on "[Preparing for the Future: An Assessment of Emerging Cyber Threats.](#)"
- **October 22 at 2:00 p.m.** House Financial Services Subcommittee on Consumer Protection and Financial Institutions holds a hearing on "[An Examination of the Decline of Minority Depository Institutions and the Impact on Underserved Communities.](#)"
- **October 23 at 10:00 a.m.** House Committee on Financial Services holds a hearing on "[An Examination of Facebook and its Impact on the Financial Services and Housing Sectors.](#)" Facebook CEO Mark Zuckerberg will testify.
- **October 24 at 10:00 a.m.** Senate Committee on Banking, Housing, and Urban Affairs holds a hearing on "[Data Ownership: Exploring Implications for Data Privacy Rights and Data Valuation.](#)"

The Ellis Insight

Jim Ellis reports on political news

President

Cash-on-Hand: More is becoming known about the presidential campaigns' financial status. The October 15th filing disclosure deadline is now past, and reports are becoming public. We knew from the announcements last week that Sen. Bernie Sanders (I-VT) had raised the most among Democrats during the quarter, and now we see that he has the largest dollar amount in his account, \$33.7 million. Next is Sen. Elizabeth Warren (D-MA) with \$25.7 million followed closely by South Bend Mayor Pete Buttigieg's \$23 million. Biggest surprise: former Vice President Joe Biden showing only \$9 million on hand, just ahead of businessman Andrew Yang's \$6 million.

Iowa Poll: We continue to see tight polling coming from the Iowa Caucus prelude, scheduled for a vote on February 3rd. Emerson College (10/13-16; 317 IA likely Democratic Caucus attenders) finds former Vice President Joe Biden and Massachusetts Sen. Elizabeth Warren tied at the top of the Democratic field with each posting 23% support figures.

South Bend Mayor Pete Buttigieg is seeing his Iowa efforts begin to bear fruit as he captures third position with 16% preference. Sen. Bernie Sanders (I-VT) drops to fourth position with 13%. California Sen. Kamala Harris who, like Buttigieg, also said she is making Iowa a top priority has failed to gel, drops all the way down to a tie for eighth position with only 2% backing.

New York Poll: Siena College surveyed the New York electorate (10/6-10; 742 NY registered voters; 340 NY registered Democratic voters) and found former Vice President Joe Biden and Sen. Elizabeth Warren (D-MA) locked in a flat tie at 21% apiece. Sen. Bernie Sanders (I-VT) is a close third with 16%. New York has 273 first ballot delegates after gaining 49 more in a recent Democratic National Committee nomination process adjustment. The addition makes New York the second largest contingent at the Democratic National Convention.

Senate

Colorado: Saying she has no path to victory after former Gov. John Hickenlooper entered the Democratic Senatorial primary, former state House Majority Leader Alice Madden announced over the weekend that she is ending her statewide campaign. She joins ex-state Sen. Mike Johnston and former diplomat Dan Baer in departing from the contest since Mr. Hickenlooper emerged after exiting the presidential campaign. Though eleven candidates remain in the Democratic primary, it appears obvious that the general election will feature Mr. Hickenlooper and Sen. Cory Gardner (R) in a campaign that will draw a great deal of national attention.

Kansas: It appears the Democrats have found their candidate to challenge for Sen. Pat Roberts' (R) open seat. Recently, party-switching state Sen. Barbara Bollier (D-Mission Hills) announced that she would run for the Senate, and has already earned the endorsement of an individual who appeared to be her strongest primary opponent. Former US Attorney Barry Grissom (D) has withdrawn from the race and announced his endorsement of Sen. Bollier.

Republicans will have a crowded primary at this point featuring US Rep. Roger Marshall (R-Great Bend), state Sen. President Susan Wagle (R-Wichita), former Secretary of State and 2018 gubernatorial nominee Kris Kobach, and Kansas Turnpike Authority chairman and former Kansas City Chiefs football player Dave Lindstrom. Rumors continue to persist that US Secretary of State Mike Pompeo may eventually become a candidate for the position.

Massachusetts: Author and businessman Steve Pemberton, who announced his US Senate candidacy back in July, has withdrawn from the Bay State race, citing a "rigged political system." Mr. Pemberton on leaving the contest said that he, "ran into an impenetrable wall of legacy and birthright — of incumbency and connections" thus denying him the ability to construct a viable campaign.

Rep. Joseph P. Kennedy III (D-Newton) entering the race to challenge incumbent Sen. Ed Markey in the Democratic primary makes this campaign very difficult for any other candidate. Attorney Sharon Liss-Riordan remains, but it is already clear that she will continue as a minor candidate. The Massachusetts primary is not scheduled until September 15th, so what appears to be evolving into a Markey-Kennedy race will develop over a long campaign cycle.

Michigan: The Marketing Resource Group just released their Michigan US Senate poll (10/7-10; 600 MI registered voters) and again find a close contest between Sen. Gary

Peters (D) and businessman and retired Army Ranger John James (R). The ballot test sees Sen. Peters clinging to a 43-40% edge. This is a similar result to an Emerson College poll conducted in March that found the two separated by a scant 44-43% spread. Last month, however, Target-Insyght released a much different result: Peters ahead 53-37%. Most observers believe this Senate race will evolve into a close contest.

North Carolina: Raleigh's Meredith College (9/29-10/7; 998 NC registered voters) finds a typically close race developing for the North Carolina Senate seat. Here, Sen. Thom Tillis (R) is in a dogfight with both state Sen. Erika Smith (D-Gaston) and former state Sen. Cal Cunningham (D). When each is paired with the Senator, both candidates received 33% support.

House

AZ-1: Former Major League Baseball pitcher Curt Schilling, who had been speculating that he might enter the 1st District Republican primary in order to challenge Rep. Tom O'Halleran (D-Sedona) in the general election, has now ruled out becoming a candidate. Though he indicated two weeks ago that he was leaning toward running, comments he made over the weekend about being interested in managing or coaching at the major league level was a clue that he had already made up his mind not to run. The 1st District is politically marginal and one of 31 Democratic seats that voted for President Trump in 2016.

CO-1: Former Denver state House Speaker Crisanta Duran (D-Denver) over the weekend dropped her Democratic primary challenge to veteran US Rep. Diana DeGette (D-Denver). Ms. Duran suffered a burst appendix less than a month ago, and said she came to the conclusion that she can "be more effective in pursuing transformational change through other means." Absent a strong primary challenge, Rep. DeGette again looks like a sure bet for re-election and should easily win a 13th term from this heavily Democratic urban seat.

IL-6: Former Illinois Lt. Gov. Evelyn Sanguinetti (R) this weekend announced that she will end her 2020 congressional bid. She had entered the race to attempt to unseat freshman Rep. Sean Casten (D-Downers Grove) but faced a Republican primary opposite conservative former state Rep. Jeanne Ives, the gubernatorial candidate who held incumbent Bruce Rauner to just a 51% primary victory that left him in a politically weakened state. He would go on to lose the 2018 general election to current Gov. J.B. Pritzker (D) in a 55-39% landslide. Ms. Ives will now almost assuredly square off against Rep. Casten in a seat that Republicans formerly held in the person of then-Rep. Peter Roskam.

MD-7: House Oversight & Reform Committee chairman Elijah Cummings (D-MD), serving his 12th full term in office, passed away yesterday morning at the age of 68. Now, Gov. Larry Hogan (R) has ten days to schedule a replacement special election to fill the vacancy. According to Maryland election law, the special primary must occur before the end of this year, with a general to follow within 65 days of the first vote. This means the entire cycle must be completed on or before March 5th.

We can expect a crowded Democratic primary to form as future candidates will battle to

become Mr. Cummings' successor. With a 68-16% party registration advantage, the 7th District will remain in Democratic hands. The Maryland vacancy now becomes the 26th open seat during the current election cycle, including the three vacancies: MD-7 (Cummings), NY-27 (Chris Collins), and WI-7 (Sean Duffy). Republicans currently hold 19 of the open seats, and Democrats now up to seven.

NY-17: There has been much speculation that former First Daughter Chelsea Clinton would enter the open 17th Congressional District race now that veteran New York Rep. Nita Lowey (D-Harrison) is retiring. Appearing on The View program, Ms. Clinton indicated that while running for Congress could be on her personal horizon at some point in the future, she is not looking to run in 2020. She responded to Whoppi Goldberg's question about whether she would become a candidate as saying, "...right now, the answer is no."

OK-2: The overwhelming number of the intra-party challenges to sitting House incumbents lie on the Democratic side in this election cycle, but Oklahoma Rep. Markwayne Mullin (R-Westville/Muskogee), who broke his three-term limit pledge during the 2018 campaign, has drawn a competitive 2020 Republican challenger. State Sen. Joseph Silk (R-Broken Bow), a strong social issues conservative leader who reportedly does not get along with his party's leadership in the legislature, announced that he will challenge the four-term Congressman next year.

TX-2: Mike Collier, the 2018 Democratic nominee for Lt. Governor who was reported to be considering challenging freshman Rep. Dan Crenshaw (R-Houston), says he will not run for Congress in 2020. This leaves educator Elisa Cardnell (D) as the Congressman's only political opponent. The candidate filing deadline, December 9th, is fast approaching. The development means that Mr. Crenshaw will likely sail to re-election next year.

WI-5: Rep. Jim Sensenbrenner (R-Menomonee Hills), second in US House seniority with what will be 42 years of congressional service at the end of the current term and not seeking re-election in 2020, looks to be yielding to a very strong successor. State Senate Majority Leader Scott Fitzgerald (R-Juneau) is rapidly building support to the point that he could actually run without strong opposition for a seat that hasn't been open in more than two generations.

Yesterday, wealthy entrepreneur and former US Senate candidate Kevin Nicholson (R) said he would not run for the House seat and endorsed Mr. Fitzgerald, following a long line of would-be office seekers who took similar action. Senator Fitzgerald's political strength is such that he appears a virtual lock to become a member of the next Congress.

WI-7: While Gov. Tony Evers (D) has not yet re-scheduled the special election for the open 7th Congressional District (Rep. Sean Duffy (R) resigned for family reasons) after his original election dates did not comply with the federal MOVE Act, two Democrats have finally entered the campaign contest. Wausau School Board member Tricia Zunker and businessman and Vietnam War veteran Lawrence Dale (D) have both announced that they will enter this race. Republicans have more candidates, but the race is essentially between state Sen. Tom Tiffany (R-Minocqua) and disabled Afghan War veteran and

Jason Church, also an ex-aide to Sen. Ron Johnson (R)

Governor

Kentucky: The Kentucky Governor's race will be decided on November 5th, and a new Mason-Dixon Polling & Strategy survey (10/10-13; 625 KY registered voters) paints a different picture of the race as the campaigns begin to enter the stretch drive. The last poll released here was in late August, from Garin-Hart-Yang Research, and it gave Democratic Attorney General Andy Beshear a 48-39% lead over Gov. Matt Bevin (R).

The Mason-Dixon results find a different trend. According to M-D, the race has now evolved into a flat tie with both candidates deadlocked at 46%. It is clear that Gov. Bevin has again made this race competitive, and we can now expect a dash to the political finish line.

Louisiana: While late race polling suggested that Gov. John Bel Edwards (D) had a chance to win re-election outright, he was instead sent into a November 16th run-off election with Republican businessman Eddie Rispone. In the jungle primary contest, Mr. Edwards finished with 46.6% of the vote, ahead of Mr. Rispone's 27.4% and US Rep. Ralph Abraham's (R-Alto/Monroe) 23.6%. Turnout exceeded 1.35 million voters, a 20.6% increase over the 2015 jungle primary. We can now expect a highly competitive run-off campaign. No Governor forced into a run-off has previously won re-election in Louisiana history.

North Carolina: The aforementioned Meredith College North Carolina survey (9/29-10/7; 998 NC registered voters) reports a positive result for first-term Governor Roy Cooper (D) who will stand for a second term next year. The Meredith data yields a 46-33% margin in the Governor's favor. In this poll, he was paired with the likely GOP 2020 gubernatorial nominee, Lt. Gov. Dan Forest (R).

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