

# ANALYSIS OF THE 2020 ELECTIONS

ELECTION RESULTS AND POLICY IMPLICATIONS

**NOVEMBER 6, 2020**

November 6, 2020

Friends,

As we have done for every U.S. national election since 2004, we are pleased to share with you Kelley Drye's 2020 Election Analysis, prepared by the firm's Government Relations and Public Policy team.

This election has been challenging and we still don't have an unequivocal answer to who will be the next U.S. president. At this writing, the presidency still hinges on a few battleground states including Pennsylvania, Nevada, North Carolina and Georgia, and legal challenges have been filed in these states and others.

Despite these unknowns, we have endeavored to deliver a fulsome post-election report based on voting trends that have evolved over the last three days. In this report you will find our analysis of the 2020 presidential, congressional and state elections, as well as a look at the 116<sup>th</sup> and 117<sup>th</sup> Congress and the top policy issues facing the next administration and Congress.

We are closely monitoring election results nationwide and should the trajectory of any key national races change, we will follow with an update to this report.

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# 2020 Election Results: Topline

## White House



**Expected Winner**

Joseph R. Biden | Kamala D. Harris

Leads Electoral College 253-213  
*expected to exceed 270*

Leads Popular Vote  
by 2.8 points (+3M votes)

**5 states not yet called:**

AZ, GA, NV, PA (Biden leads)  
North Carolina (Trump leads)

## Senate

**48 / 48**  
GOP Dem

*as of 11/6, 10am*

To take majority, Democrats  
need to win two Georgia runoffs for  
50 / 50 Senate (VP tie-breaker)

Republicans flipped seat in AL  
Democrats flipped seats in AZ, CO

**4 races not yet called:**

AK, NC (GOP lead)  
GA (special) headed to 1/5 runoff  
GA (regular) headed to 1/5 runoff

## House

**209 / 196**  
Dem GOP

*as of 11/6, 10am*

House Democrats expected  
to maintain majority

Republicans netted 6 seats

**30 races not yet called:**

19 GOP leading  
11 Dem leading

# PRESIDENTIAL ELECTION

# The Big Picture

- Former Vice President Biden appears on track to be elected the nation's 46<sup>th</sup> President
  - Only the second Vice President in modern history to be elected President
- California's Kamala Harris looks likely to become the nation's first female Vice President
  - 12 years after he was elected alongside the nation's first Black President, a Biden victory would usher in the nation's first Black Vice President
- As anticipated, the election was decided in the battleground states – where results remain razor thin
  - Biden won Michigan and Wisconsin; leads in Arizona, Georgia, Nevada and Pennsylvania
  - Trump won Florida by a convincing margin and is ahead in North Carolina
  - Biden peeled off Trump voters in urban areas and capitalized upon shifting demographics
- President Trump has challenged the legitimacy of the vote, promising recounts and litigation in the weeks ahead
- For the second presidential election in a row, pre-election polls largely failed to capture Trump's energetic base, particularly in rural areas



# The Big Picture

- Should his current lead hold, Vice President Biden will take the presidency during a tumultuous and uncertain time for the country
- Despite winning the most votes of any candidate in history, there is no clear mandate, with slim margins of victory and no “Blue Wave”
  - The political divisions of the last four years have solidified and the urban-rural split is worse than ever
- Congressional Republicans far outperformed pre-election polling, maintaining their Senate majority and picking up seats in the Democratically-controlled House
  - Despite a massive fundraising advantage, Democratic Senate candidates were unable to knock of a handful of Senate Republicans in tight races
- Two Georgia runoffs will ultimately decide control of the Senate; Democrats must win both for a 50 / 50 split (with the Vice President serving as the tie-breaker) – most believe this would be difficult
- Should Republicans maintain control, a Biden administration will face a divided Congress
  - Whether that results in legislative gridlock or bipartisan compromise remains to be seen
  - Without the potential tools afforded by a Senate majority – including budget reconciliation and the potential elimination of the filibuster – ambitious Democratic legislative proposals are largely off the table

# 2020 Electoral College Map

**253**

270  
TO WIN

**214**

**Joseph R. Biden Jr.**

73,738,176 votes (50.5%)

**Donald J. Trump**

69,655,403 votes (47.7%)

Biden leads in:

Arizona

Georgia

Nevada

Pennsylvania

Trump leads in:

North Carolina

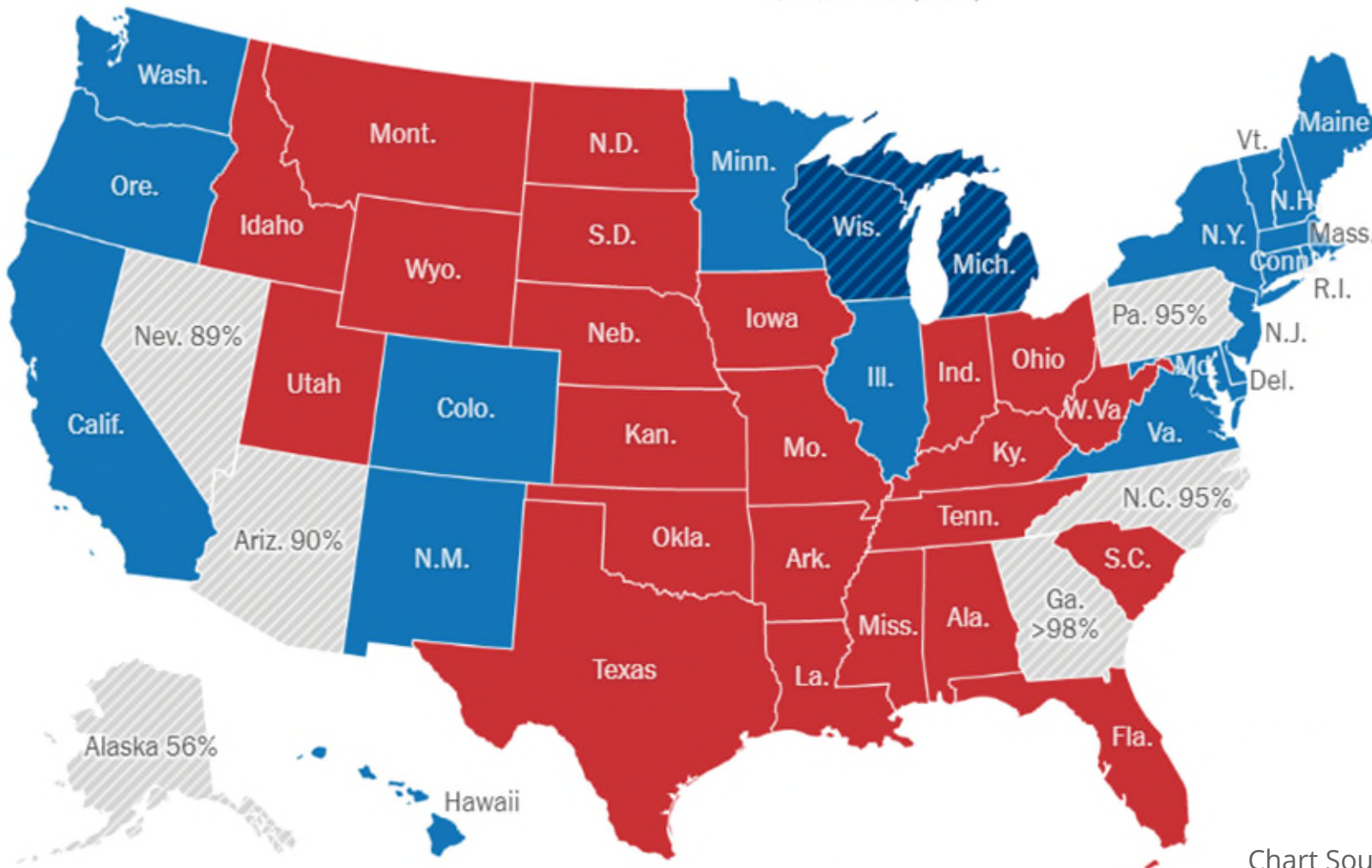


Chart Source: New York Times, 11/6

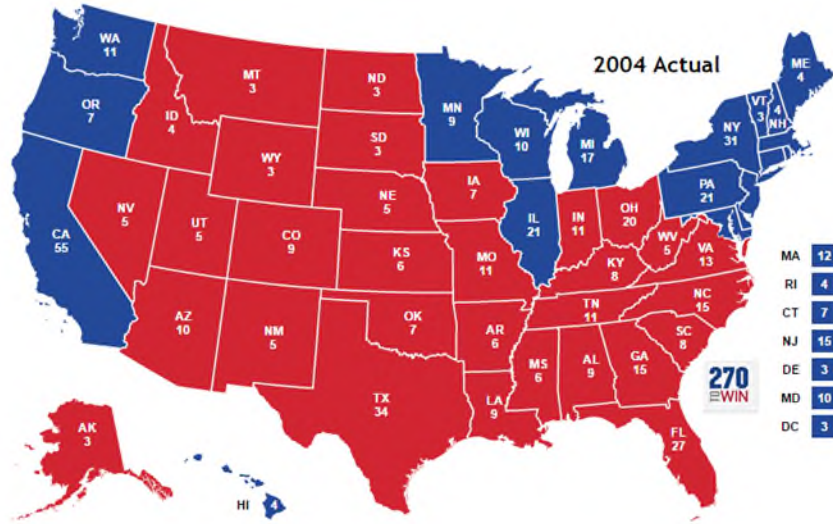
Biden ■ ▨ Trump ■ ▨ Reporting votes ■  
 Win Flip Win Flip

*Percentages are estimates of how much vote has been counted.*

# Historical Electoral College Map

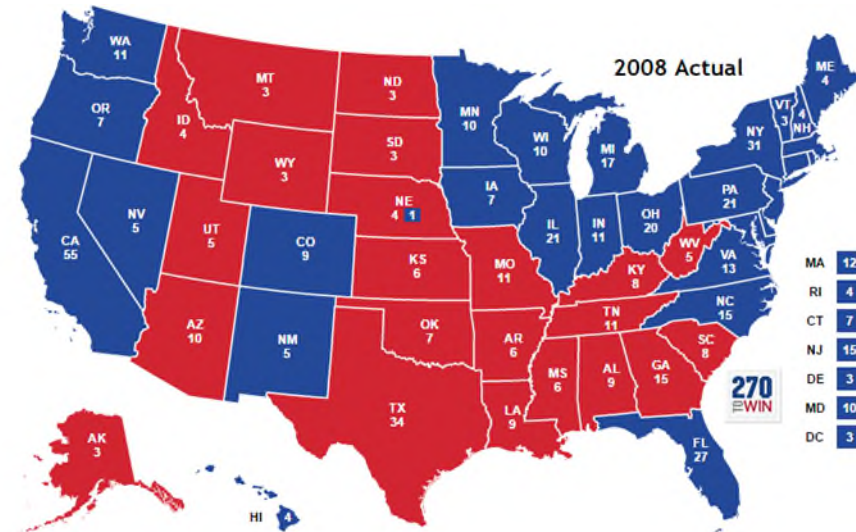
**2004**

Bush: 286  
Kerry: 251



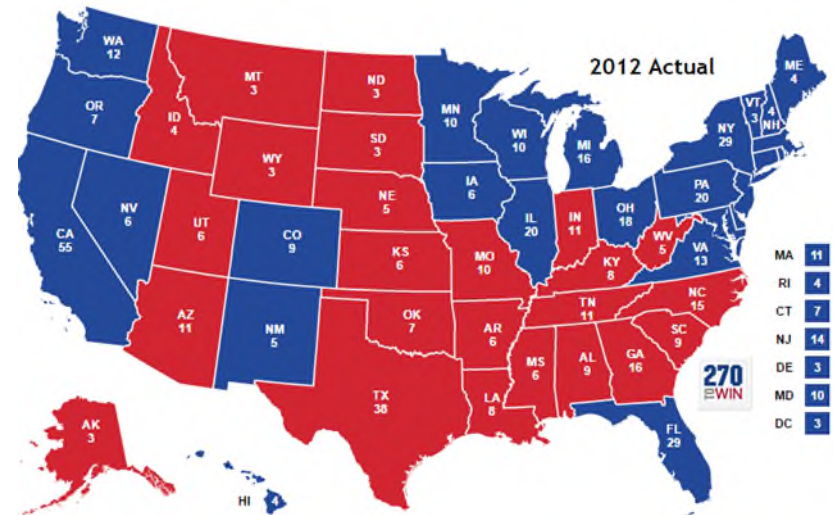
**2008**

Obama: 365  
McCain: 173



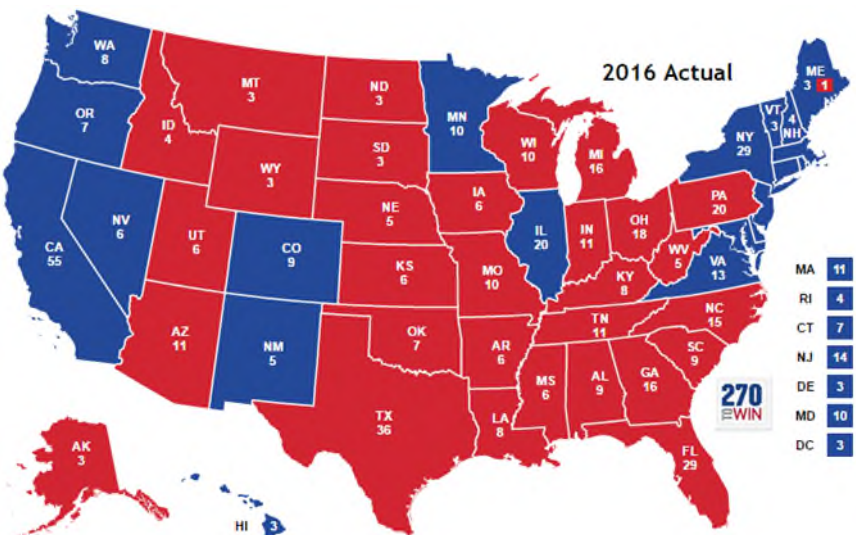
**2012**

Obama: 332  
Romney: 206



**2016**

Trump: 304  
Clinton: 227



# State of Play

- Where They Are Still Counting (November 6, 10am ET)

	Arizona	Georgia	Nevada	Pennsylvania	North Carolina
LEADER	Biden	Biden	Biden	Biden	Trump
MARGIN	47,000	~1,100	11,438	6,700	76,737
WHAT'S LEFT	~296,000 remaining ballots	~8,000 remaining ballots and as many as 9,000 ballots from military and overseas voters	~190,000 remaining ballots, primarily from Dem-stronghold Clark County	~160,000 remaining ballots	~150,000 mail-in and provisional ballots  Mail-in ballots have until 11/12 to arrive

- Trump **must win** Pennsylvania + Georgia + North Carolina + Nevada OR Arizona
- Trump campaign requested a recount in Wisconsin; cannot start until vote is certified 12/1
- Trump campaign can request a recount in Georgia if margin is less than 0.5 percent (expected)
- In Pennsylvania, recount required if the winning margin is 0.5% or less; would need to be completed by 11/24



# Battleground States and Polling Misses

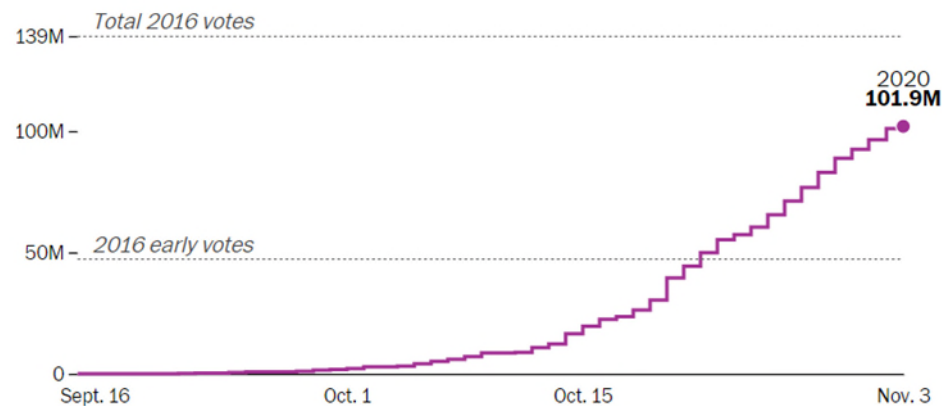
State	Electoral Votes	2020 Result (11/6)	Final Polling Average (11/2)	2016 Result
Arizona	11	<i>Biden leads +1.6</i>	Biden +2.6	Trump +3.5
Florida	29	Trump +3.4	Biden +2.5	Trump +1.2
Georgia	16	<i>Biden slight lead</i>	Biden +1.0	Trump +5.1
Iowa	6	Trump +8.2	Trump +1.5	Trump +9.4
Maine 2 <sup>nd</sup> CD	1	Trump +7.7	Biden +1.6	Trump +10
Michigan	16	Biden +2.6	Biden +8.0	Trump +0.3
Minnesota	10	Biden +7.1	Biden +9.1	Clinton +1.5
Nebraska 2 <sup>nd</sup> CD	1	Biden +6.5	Biden +3.2	Trump +3.3
Nevada	6	<i>Biden leads +0.9</i>	Biden +6.1	Clinton +2.4
New Hampshire	4	Biden +7.1	Biden +10.6	Clinton +0.3
North Carolina	15	Trump leads +1.4	Biden +1.7	Trump +3.6
Ohio	18	Trump +8.1	Trump +0.6	Trump +8.1
Pennsylvania	20	<i>Biden slight lead</i>	Biden +4.7	Trump +0.7
Texas	38	Trump +5.8	Trump +1.5	Trump +9.0
Wisconsin	10	Biden +0.6	Biden +8.3	Trump +0.7

# Turnout

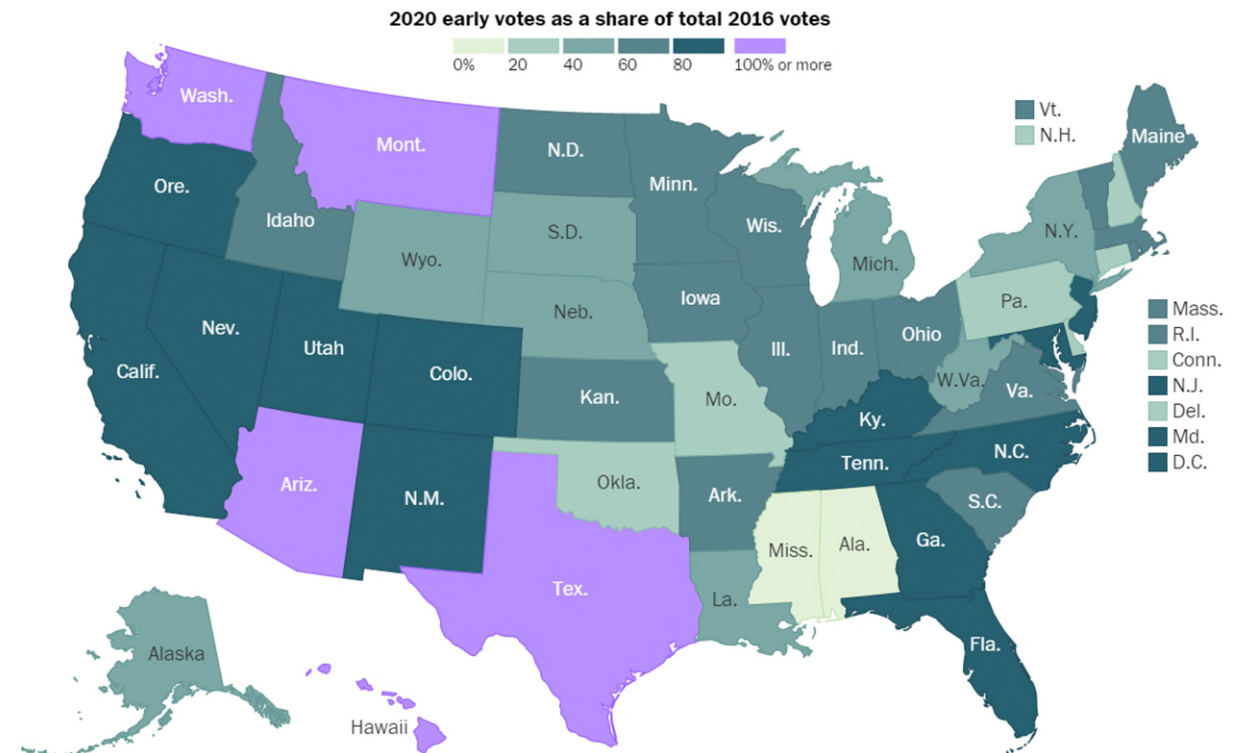
- Voter turnout was massive and is expected to be the highest in more than a century
  - At least 159.8 million Americans voted in this year's election
  - Turnout is expected to exceed 66% of the voting-eligible population, blowing by the 1960 turnout (63.8%), which was previously the highest rate since 1908 (65.7%)
  - In 2016, by contrast, turnout barely exceeded 60%
  - More than 20 states – primarily in the South and Midwest – broke 40-year turnout records
- Youth vote
  - Based on data through November 4, Tufts University's CIRCLE estimates youth voter turnout in 11 battleground states was as high as 49% – and could rise as high as 53%
  - By comparison, the youth turnout in 2016 was 46.1%
  - The all-time high youth turnout was 55.4% in 1972

# Early Voting

- **At least 101.9 million Americans voted before Election Day** –73% of total 2016 voters
  - By October 22, the nation exceeded total early votes cast in 2016 (the previous record)
  - 4 states exceeded total 2016 turnout BEFORE Election Day
- Biden campaign emphasized early voting, while the Trump campaign stressed Election Day turnout
- For the first time in modern history, more votes were cast early than on Election Day



Charts Source: [Washington Post](#), 11/3



# Exit Polling: Demographics

Source: National Election Pool data

- Biden rebuilding the Obama coalition – *but different*
  - Whiter, more suburban, more female, less working class
- Biden outperformed Clinton (2016) in some key categories
  - Voters 18-29 (who also turned out in far higher numbers)
  - Voters 65+ (COVID concerns?)
  - White, non-college educated
  - He also won independents by 14 points (Clinton lost them by 6)
- Biden equaled Clinton’s support with women, but lower than Dems’ 19 point advantage in the 2018 midterms
- Notably, Trump made inroads with both Hispanic and Black voters, particularly men

Demographic	2020	2016
Women	Biden 56%   Trump 43% => Biden +13	Clinton +13
Men	Biden 48%   Trump 49% => Trump +1	Trump +11
White	Biden 42%   Trump 57% => Trump +15	Trump +20
White Men	Biden 40%   Trump 58% => Trump +18	Trump +31
White Women	Biden 43%   Trump 55% => Trump +12	Trump +9
Black	Biden 87%   Trump 12% => Biden +75	Clinton +81
Black Men	Biden 80%   Trump 18% => Biden +62	Clinton +69
Black Women	Biden 91%   Trump 8% => Biden +83	Clinton +90
Latinx	Biden 66%   Trump 32% => Biden +34	Clinton +38
Latino (Men)	Biden 61%   Trump 36% => Biden +25	Clinton +31
Latina (Women)	Biden 70%   Trump 28% => Biden +42	Clinton +44
18-29 (17% of voters)	Biden 62%   Trump 35% => Biden +27	Clinton +19
30-44 (24%)	Biden 52%   Trump 45% => Biden +7	Clinton +10
45-64 (38%)	Biden 50%   Trump 59% => Trump +9	Trump +8
65 or older (22%)	Biden 48%   Trump 51% => Trump +3	Trump +7
College Educated	Biden 55%   Trump 42% => Biden +13	Clinton +10
White	Biden 49%   Trump 49% => EVEN	Trump +3
Nonwhite	Biden 71%   Trump 27% => Biden +44	Clinton +50
No College Degree	Biden 49%   Trump 49% => EVEN	Trump +7
White	Biden 35%   Trump 64% => Trump +29	Trump +37
Nonwhite	Biden 72%   Trump 26% => Biden +46	Clinton +56



# Exit Polling: Key Issues

- Exit polling, admittedly difficult given high levels of early voting, revealed a sharply-divided electorate
- The National Election Pool asked voters which issue mattered most in their vote:

Biden	Issue	Trump
91%	Racial inequality	8%
82%	Coronavirus pandemic	14%
17%	Economy	82%
28%	Crime and safety	71%
63%	Health care policy	36%

- Notably, 80% of Biden voters said it was more important to contain the coronavirus, even it hurts the economy; conversely, 76% of Trump voters said it was more important to rebuild the economy
- When asked about which “candidate qualities” mattered most, Biden voters overwhelmingly wanted a leader who could unite the country (76%) and had good judgement (68%) – Trump voters preferred a strong leader (71%)
- Rural voters preferred Trump 54% - 45%, while Biden won urban voters (+23 points) and suburban voters (+3 points)
- While 52% of Trump voters said theirs was a vote *for their candidate*, 67% of Biden voters said theirs was a vote *against Trump*

# Biden Team: Campaign

- **National Campaign Co-Chairs**
  - Rep. Cedric Richmond (D-LA) | LA Mayor Eric Garcetti | Rep. Lisa Blunt Rochester (D-DE) | MI Governor Gretchen Whitmer
- **Campaign Manager** Jen O'Malley Dillon
- **Key Advisors:** Anita Dunn | Greg Schultz | Symone Sanders | Ron Klain | Valerie Biden Owens | Mike Donilon  
Steve Ricchetti | Jake Sullivan | Sen. Chris Coons (D-DE)
- **Policy Director** Stef Feldman
- **Biden-Sanders Unity Task Forces:**

Climate Change	Criminal Justice	The Economy	Education	Health Care	Immigration
John Kerry	Chiraag Bains	Karen Bass	Marcia Fudge	Pramila Jayapal	Lucille Roybal-Allard
Alexandria Ocasio-Cortez	Bobby Scott	Sara Nelson	Heather Gautney	Vivek Murthy	Marielena Hincapié
Kathy Castor	Raumesh Akbari	Jared Bernstein	Alejandro Adler	Donald Berwick	Cristóbal Alex
Kerry Duggan	Justin Bamberg	Darrick Hamilton	Lily Eskelsen Garcia	Abdul El-Sayed	Veronica Escobar
Catherine Flowers	Vanita Gupta	Ben Harris	Maggie Thompson	Sherry Glied	Marisa Franco
Conor Lamb	Eric Holder	Stephanie Kelton	Christie Vilsack	Mary Kay Henry	Juan Gonzalez
Gina McCarthy	Symone Sanders	Lee Saunders	Randi Weingarten	Chris Jennings	Kate Marshall
Don McEachin	Stacey Walker	Sonal Shah	Hirokazu Yoshikawa	Robin Kelly	Javier Valdés
17 Varshini Prakash					

# Biden Team: Transition

- Obama-era centrists, progressive Democrats, and a few Republicans
- Transition team led by former Senator Ted Kaufman – longtime Biden adviser and Biden’s successor in the Senate – and Obama economic advisor Jeff Zients
- Additional co-chairs: Obama alum Anita Dunn, New Mexico Governor Michelle Lujan Grisham, and Rep. Cedric Richmond (D-LA)
- Transition Advisors:
  - Tony Allen
  - Jared Bernstein
  - Pete Buttigieg
  - Leslie Caldwell
  - Mark Gitenstein
  - Cecilia Martinez
  - Cindy McCain
  - Bob McDonald
  - Minyon Moore
  - Vivek Murthy
  - Susan Rice
  - Teresa Romero
  - Cathy Russell
  - Lonnie Stephenson
  - Felicia Wong
  - Sally Yates

# Biden Team: Transition

- Transition team staff

- General Counsel Jessica Hertz, Obama Justice Department alum and VP Biden advisor
- Spokesperson Cameron French, Obama administration and campaign alum
- Yohannes Abraham (running day-to-day operations), Obama White House alum
- Tanya Bradsher, CoS to Rep. Beyer (D-VA) and Obama administration alum
- Suzy George, Obama White House alum
- Don Graves Jr., Obama and Clinton White House alum
- Avril Haines, Obama national security advisor
- Cynthia Hogan, Obama White House alum and former Senate Judiciary staffer
- Tara Dawson McGuinness, Obama White House alum and former Center for American Progress Exec Director
- Carlos Monje Jr., Obama White House and DOT alum
- Cecilia Muñoz, Obama Domestic Policy Council director
- Darla Pomeroy, Biden Foundation, entrepreneur and former Senate Judiciary staffer
- Gautam Raghavan, CoS to Rep. Jayapal (D-WA) (Progressive Caucus Co-Chair)
- Angela Ramirez, long-time CoS to Rep. Lujan (D-NM); former Congressional Hispanic Caucus executive director
- Evan Ryan, Clinton and Obama White House staff
- Julie Siegel, advisor to Sen. Warren (D-MA)

# Biden Team: Advisors

- Economic Policy Advisors
  - Jeffrey Zients, former Obama economic advisor
  - Jared Bernstein, former economic advisor to Vice President Biden
  - Heather Boushey, head of Washington Center for Equitable Growth; former economist for the Center for American Progress and the United States Congress Joint Economic Committee
  - Ben Harris, former economic advisor to Vice President Biden
  - Penny Pritzker, Commerce Secretary (Obama)
  - Felicia Wong, President and CEO of the Roosevelt Institute

# Biden Team: Advisors

- **Public Health Advisory Committee**

- Dr. Zeke Emanuel, Obama OMB health care advisor
- Dr. Rebecca Katz, global health / infectious disease expert, professor
- Dr. David Kessler, Clinton FDA Commissioner
- Lisa Monaco, Obama Homeland Security advisor
- Dr. Vivek Murthy, Obama Surgeon General

- **Foreign Policy Advisors**

- Tony Blinken, Obama national security official
- Nicholas Burns, former diplomat, Bush 43 alum
- Dr. Colin Kahl, Obama national security advisor
- Brian McKeon, Obama national security advisor and former Biden Senate staffer
- Jeffrey Prescott, Obama national security advisor
- Dr. Ely Ratner, former national security advisor to VP Biden
- Liz Rosenberg, Obama Treasury alum
- Julie Smith, Obama Defense Department and former national security advisor to VP Biden
- Jake Sullivan, Obama State Department official

# Biden Team: Advisors

- **Climate Engagement Advisory Council**
  - Carol Browner, Obama climate official
  - Rep. Deb Haaland (D-NM)
  - Rep. Conor Lamb (D-PA)
  - Dr. Cecilia Martinez, professor
  - Harold Mitchell Jr., SC House of Representatives
  - Lonnie Stephenson, IBEW International President
  - Tom Steyer, former presidential candidate
- **Climate Policy Advisors**
  - Jason Bordoff, Obama CEQ
  - Brian Deese, Obama economic advisor
  - Ernie Moniz, former Secretary of Energy
  - Heather Zichal, Obama climate advisor

# Biden Cabinet Possibilities

- Expect Biden to announce his cabinet quickly, particularly positions critical to the COVID response
  - **State:** Susan Rice, Anthony Blinken, Sen. Chris Coons
  - **Treasury:** Federal Reserve Governor Lael Brainard, Obama Treasury alum Sarah Bloom Raskin, Atlanta Fed President Raphael Bostic, Mellody Hobson, Roger Ferguson, Sen. Elizabeth Warren
  - **Commerce:** Jeff Zients, former Obama official Tom Nides, former PepsiCo CEO Indra Nooyi, former HP CEO Meg Whitman
  - **Defense:** Michele Flournoy, Sen. Tammy Duckworth
  - **Justice:** CA AG Xavier Becerra, former Labor Sec Tom Perez, former Deputy AG Sally Yates, outgoing Sen. Doug Jones
  - **Health and Human Services:** NM Governor Michelle Lujan Grisham, former Surgeon General Vivek Murthy
  - **Housing and Urban Development:** Atlanta Major Keisha Lance Bottoms, Rep. Karen Bass
  - **Transportation:** LA Major Eric Garcetti
  - **EPA:** CARB Chair Mary Nichols, Washington Governor Jay Inslee, former PA environmental official Katie McGinty
  - **Interior:** Outgoing Sen. Tom Udall, NM Rep. Deb Haaland
  - **Agriculture:** Former Sen. Heidi Heitkamp, Ohio Rep. Marcia Fudge
  - **National Security Adviser:** Anthony Blinken
  - **Council of Economic Advisers:** Jared Bernstein
  - **United States Trade Representative:** former Deputies USTR Miriam Sapiro and Robert Holleyman, Mike Wessel
  - **Chief of Staff:** Ron Klain, Steve Ricchetti



# Biden Priorities

- Campaign identified crises that a Biden administration would prioritize
  - Twin public health and economic crises
  - Racial injustice
  - Climate change
- Biden campaign promises entail reversing many of President Trump's early actions
  - Rejoin Paris Climate Accord
  - Rejoin World Health Organization
  - Ending President Trump's Muslim ban
  - Reunifying migrant families
- Biden has also mentioned early executive action on immigration reform, gun control, ethics standards
- And – as is tradition – expect a January 20 regulatory “freeze” while the new administration conducts a review of ongoing agency regulations

# Key Dates

- November 9: Senate returns for Lame Duck session
- November 16: House returns for Lame Duck session
- November 17: House GOP Caucus leadership elections
- November 18-19: House Democratic Caucus organizing meeting / leadership elections
- Week of November 30: House Democratic Caucus elections for committee chairs (contested)
- December 8: States' Safe Harbor deadline to settle election disputes
- December 14: Electoral College delegations meet and vote
- January 3: 117<sup>th</sup> Congress sworn-in  
*January 3 is a Sunday, so Congress likely to pass resolution moving date to January 4<sup>th</sup> or 5<sup>th</sup>*
- January 5: Georgia Senate runoff
- January 6: Joint Session of Congress to count electoral votes, declare official results
- January 20: Inauguration

# CONGRESSIONAL ELECTIONS

# 2020 Election Results: Topline

- 2021 expected to bring another divided Congress, with slimmer House and Senate majorities
- Comparison of recent Congressional majorities:

President George W. Bush's  
2<sup>nd</sup> midterm election:  
Dems flipped the House  
and Senate

President Barack Obama's  
1<sup>st</sup> midterm election:  
Republicans flipped  
the House

President Barack Obama's  
2<sup>nd</sup> midterm election:  
Republicans flipped  
the Senate

President Donald Trump's  
1<sup>st</sup> midterm election:  
Democrats flipped  
the House

	109 <sup>th</sup> (2005-2006)	110 <sup>th</sup> (2007-2008)	111 <sup>th</sup> (2009-2010)	112 <sup>th</sup> (2011-2012)	113 <sup>th</sup> (2013-2014)	114 <sup>th</sup> (2015-2016)	115 <sup>th</sup> (2017-2018)	116 <sup>th</sup> (2019-2020)	117 <sup>th</sup> (2021-2022)
House*	R+31	D+31	D+79	R+49	R+33	R+59	R+47	D+36	D+?
Senate**	R+10	D+2	D+18	D+6	D+10	R+8	R+2 <i>started as R+4</i>	R+6	R+?
President	Bush	Bush	Obama	Obama	Obama	Obama	Trump	Trump	Biden?

\*House totals based on November election results

\*\*In the 109<sup>th</sup> Congress, the Democratic total included 1 independent who caucused with the party; in each subsequent year, it included 2 independents

# 2020 Election Results: U.S. Senate

**48 Democrats**

**Flipped 2 Seats (net gain +1)**

**4 Undecided**

51 for Control

**48 Republicans**

**Flipped 1 Seat**

- 2 Races not yet called
  - In North Carolina, Thom Tillis (R) is leading Cal Cunningham (D) by more than 96,000 votes (94% of votes in)
  - In Alaska, Dan Sullivan (R) is leading Al Gross (I) by more than 50,000 votes (56% of votes in)
- There will be two January 5 runoffs in Georgia (Regular and Special)
  - Incumbent Senator David Perdue (R) received just under 50% and will face Jon Ossoff (D)
  - Incumbent Senator Kelly Loeffler (R) will face Raphael Warnock (D)
    - In the Special Election, Warnock finished 1<sup>st</sup> with 32% of the vote, Loeffler (R) received 26% and Doug Collins (R) received 20%
- Senator Harris will have to resign her seat before January 20; Democratic Governor Newsom will appoint a successor

# Results of Key Senate Races

\*Indicates change in party control

State	Incumbent/Challenger	Winner
Alabama	Doug Jones (D) vs. Tommy Tuberville (R)	Tommy Tuberville (R)*
Arizona (Special)	Martha McSally (R) vs. Mark Kelly (D)	Mark Kelly (D)* <b>Will be sworn in Nov. 30</b>
Colorado	Cory Gardner (R) vs. John Hickenlooper (D)	John Hickenlooper (D)*
Georgia (Regular)	David Perdue (R) vs. Jon Ossoff (D)	<b>Jan 5 Runoff</b> – Perdue (R) vs. Ossoff (D)
Georgia (Special)	Kelly Loeffler (R) vs. Doug Collins (R), Raphael Warnock (D)	<b>Jan 5 Runoff</b> – Loeffler (R) vs. Warnock (D)
Iowa	Joni Ernst (R) vs. Theresa Greenfield (D)	Joni Ernst (R)
Maine	Susan Collins (R) vs. Sara Gideon (D)	Susan Collins (R)
Michigan	Gary Peters (D) vs. John James (R)	Gary Peters (D)
Montana	Steve Daines (R) vs. Steve Bullock (D)	Steve Daines (R)
North Carolina	Thom Tillis (R) vs. Cal Cunningham (D)	<i>Not yet called</i>
South Carolina	Lindsey Graham (R) vs. Jaime Harrison (D)	Lindsey Graham (R)

State	Retiring Senator (Open Seats)	Winner
Kansas	OPEN - Roberts (R)	Roger Marshall (R)
New Mexico	OPEN - Udall (D)	Ben Ray Lujan (D)
Tennessee	OPEN - Alexander (R)	Bill Hagerty (R)
Wyoming	OPEN - Enzi (R)	Cynthia Lummis (R)

# Incoming Senators



**Alabama:** Tommy Tuberville (R) (FLIP) defeated incumbent Senator Doug Jones (D). Tuberville was a long-time college football coach, including a successful 9-year tenure at Auburn as head coach. After his coaching career, he started a venture capital firm.



**Arizona:** Mark Kelly (D) (FLIP) defeated Senator Martha McSally (R), who was appointed to the seat in 2019 following the death of Senator McCain (R). Kelly is a retired Navy pilot who flew missions in the 1<sup>st</sup> Gulf War. He was later a NASA astronaut. He is married to former Rep. Gabby Giffords (D-AZ). Kelly will serve the final two years of McCain's term.



**Colorado:** John Hickenlooper (D) (FLIP) defeated incumbent Senator Cory Gardner (R). Hickenlooper is the former Governor of Colorado. Before his election in 2011, he was Mayor of Denver (2003-11).

# Incoming Senators



**Kansas: Roger Marshall (R) (HOLD)** defeated Barbara Bollier (D) to replace retiring Senator Pat Roberts (R). Since 2017, Marshall represented the 2<sup>nd</sup> Congressional District in the U.S. House of Representatives. While in the House, he served on the Agriculture, Science and Small Business Committees. He was also a member of the Republican Study Committee and the Western Caucus. Before public service, he was a practicing obstetrician.



**New Mexico: Ben Ray Lujan (D) (HOLD)** defeated Mark Ronchetti (R) to replace retiring Senator Tom Udall (D). Since 2003, he has represented New Mexico's 3<sup>rd</sup> Congressional District in the House of Representatives. During his tenure, he served in various party leadership positions rising to Assistant House Democratic Leader. He served on the Energy & Commerce Committee.



**Tennessee: Bill Hagerty (R) (HOLD)** defeated Marquita Bradshaw (D) to replace retiring Senator Lamar Alexander (R). Haggerty has had a long career in private equity. He previously served as Commissioner of the Tennessee Department of Economic and Community Development (2011-14). From 2017-2019, he was the U.S. Ambassador to Japan.



# Incoming Senators



**Wyoming:** Cynthia Lummis (R) (HOLD) defeated Merav Ben-David (D) to replace retiring Senator Mike Enzi (R). From 2009-17, she was the U.S. Representative for Wyoming's at-large Congressional district. During her congressional tenure, she served on the Natural Resources and Oversight & Government Reform Committees. She was also a member of the Western and Sportsmen Caucuses.

# 2020 Election Results: U.S. House

**209 Democrats**

**Flipped 2 Seats**

**30 Undecided**

218 for Control

**196 Republicans**

**Flipped 8 Seats (Net +6)**

- House Democrats retain control with a net loss of at least 6 seats (as of this writing)
  - At least 7 Democratic incumbents, including House Agriculture Committee Chairman Peterson (D-MN), lost their seats and others remain in jeopardy
    - Most of those defeated were moderates – in districts Trump carried in 2016 – elected in the 2018 “blue wave” that swept the party into the House majority
- At least a dozen women will join the House Republican ranks in the next Congress – more than ever before in a single election

Incumbent Losses (Democrats)					
Seat	Incumbent	New Member	Seat	Incumbent	New Member
FL-26	Debbie Mucarsel-Powell	Carlos Giménez	NM-02	Xochitl Torres Small	Yvette Herrell
FL-27	Donna Shalala	Maria Elvira Salazar	OK-05	Kendra Horn	Stephanie Bice
IA-01	Abby Finkenauer	Ashley Hinson	SC-01	Joe Cunningham	Nancy Mace
MN-07	Collin Peterson	Michelle Fischbach			

# 2020 Election Results: Races Yet to be Called (as of 11/6, 10am ET)

Seat	Race (Incumbents in Bold)	Seat	Race (Incumbents in Bold)
AK-AL	<b>Don Young (R) (+30)</b> vs. Alyse Galvin (I)	NV-04	<b>Steven Horsford (D) (+2.7)</b> vs. Jim Marchant (R)
AZ-01	<b>Tom O'Halleran (D) (+3.8)</b> vs. Tiffany Shedd (R)	NY-01	<b>Lee Zeldin (R) (+22.6)</b> vs. Nancy Goroff (D)
AZ-06	<b>David Schweikert (R) (+2.7)</b> vs. Hiral Tipirneni (D)	NY-02	OPEN (R) - Garbarino (R) (+17) vs. Gordon (D)
CA-08	OPEN (R) - Obernolte (R) (+7.4) vs. Bubser (D)	NY-03	<b>Tom Suozzi (D)</b> vs. George Santos (R) (+1.5)
CA-21	<b>TJ Cox (D)</b> vs. David Valadao (R) (+3.5)	NY-11	<b>Max Rose (D)</b> vs. Nicole Malliotakis (R) (+15.7)
CA-25	<b>Mike Garcia (R) (+1.0)</b> vs. Christy Smith (D)	NY-18	<b>Sean Patrick Maloney (D) (+2.6)</b> vs. Chele Farley (R)
CA-34	<b>Jimmy Gomez (D) (+5.6)</b> vs. David Kim (D)	NY-22	<b>Anthony Brindisi (D)</b> vs. Claudia Tenney (R) (+11.0)
CA-39	<b>Gil Cisneros (D)</b> vs. Young Kim (R) (+0.8)	NY-24	<b>John Katko (R) (+20.7)</b> vs. Dana Balter (D)
CA-48	<b>Harley Rouda (D)</b> vs. Michelle Steel (R) (+1.3)	PA-07	<b>Susan Wild (D) (+2.9)</b> vs. Lisa Scheller (R)
CA-50	OPEN (R) - Campa-Najjar (D) vs. Darrell Issa (R) (+5.8)	PA-08	<b>Matt Cartwright (D) (+3.4)</b> vs. Jim Bognet (R)
GA-07	OPEN (R) - Bourdeaux (D) (+2.3) vs. McCormick (R)	PA-17	<b>Conor Lamb (D) (+1.0)</b> vs. Sean Parnell (R)
IA-02	OPEN (D) - Hart (D) vs. Miller-Meeks (R) (+0.6)	TX-24	OPEN (R) - Valenzuela (D) vs. Van Duyne (R) (+1.3)
IL-14	<b>Lauren Underwood (D)</b> vs. Jim Oberweis (R) (+0.1)	UT-04	<b>Ben McAdams (D)</b> vs. Burgess Owens (R) (+0.8)
NJ-02	<b>Jeff Van Drew (R) (+4.6)</b> vs. Amy Kennedy (D)	VA-07	<b>Abigail Spanberger (D) (+1.1)</b> vs. Nick Freitas (R)
NV-03	<b>Susie Lee (D) (+1.9)</b> vs. Dan Rodimer (R)	WA-08	<b>Kim Schrier (D) (+4.7)</b> vs. Jesse Jensen (R)

# 117<sup>th</sup> Congress: Increased Diversity

## Replaced Incumbent of Same Party



CO-03  
Boebert (R)



NY-16  
Bowman (D)



MO-01  
Bush (D)



FL-03  
Cammack (R)



FL-19  
Donalds (R)



NM-03  
Fernandez (D)



TX-23  
Gonzales (R)



GA-14  
Greene (R)



TN-01  
Harshbarger (R)



CA-53  
Jacobs (D)



NY-17  
Jones (D)



MI-10  
McLain (R)



IL-15  
Miller (R)



IL-03  
Newman (D)



WA-10  
Strickland (D)



NY-15  
Torres (D)



GA-05  
Williams (D)

## Replaced Incumbent of Opposite Party



OK-05  
Bice (R)



MN-07  
Fishbach (R)



NM-02  
Herrell (R)



IA-01  
Hinson (R)



SC-04  
Mace (R)



NC-06  
Manning (D)



NC-02  
Ross (D)



FL-27  
Salazar (R)

# 2020 Election Results: House Open Seats

Seat	Retiring Member	New Member
AL-01	Bradley Byrne (R)	Jerry Carl (R)
AL-02	Martha Roby (R)	Barry Moore (R)
CA-53	Susan Davis (D)	Sara Jacobs (D)
CO-03	Scott Tipton (R) – Lost Primary	Lauren Boebert (R)
FL-03	Ted Yoho (R)	Kat Cammack (R)
FL-15	Ross Spano (R)	Scott Franklin (R)
FL-19	Francis Rooney (R)	Byron Donalds (R)
GA-09	Doug Collins (R)	Andrew Clyde (R)
GA-14	Tom Graves (R) (Resigned)	Marjorie Taylor Greene (R)
HI-02	Tulsi Gabbard (D)	Kai Kahele (D)
IA-04	Steve King (R) – Lost Primary	Randy Feenstra (R)
IL-03	Dan Lipinski (D) – Lost Primary	Marie Newman (D)
IL-15	John Shimkus (R)	Mary Miller (R)
IN-01	Pete Visclosky (D)	Frank Mrvan (D)
IN-05	Susan Brooks (R)	Victoria Spartz (R)
KS-01	Roger Marshall (R)	Tracey Mann (R)
KS-02	Steve Watkins (R) – Lost Primary	Jake LaTurner (R)
LA-05	Ralph Abraham (R)	Headed for Runoff
MA-04	Joe Kennedy III (D)	Jake Auchincloss (D)
MI-03	Justin Amash (I)	Peter Meijer (R) Pickup
MI-10	Paul Mitchell (R)	Lisa McClain (R)

Seat	Retiring Member	New Member
MO-01	Lacy Clay (D) – Lost Primary	Cori Bush (D)
MT-AL	Greg Gianforte (R)	Matt Rosendale (R)
NC-02	George Holding (R)	Deborah Ross (D) Pickup
NC-06	Mark Walker (R)	Kathy Manning (D) Pickup
NC-11	Mark Meadows (R) (Resigned)	Madison Cawthorn (R)
NM-03	Ben Ray Luján (D)	Teresa Leger Fernandez (D)
NY-15	José Serrano (D)	Ritchie Torres (D)
NY-17	Nita Lowey (D)	Mondaire Jones (D)
OR-02	Greg Walden (R)	Cliff Bentz (R)
TN-01	Phil Roe (R)	Diana Harshbarger (R)
TX-04	Radcliffe (R) (Resigned)	Pat Fallon (R)
TX-11	Mike Conaway (R)	August Pfluger (R)
TX-13	Mac Thornberry (R)	Ronny Jackson (R)
TX-17	Bill Flores (R)	Pete Sessions (R)
TX-22	Pete Olson (R)	Troy Nehls (R)
TX-23	Will Hurd (R)	Tony Gonzales (R)
UT-01	Rob Bishop (R)	Blake Moore (R)
VA-05	Denver Riggleman (R) – Lost Primary	Bob Good (R)
WA-10	Denny Heck (D)	Marilyn Strickland (D)
WI-05	Jim Sensenbrenner (R)	Scott Fitzgerald (R)

# 2020 Election Results: House Seat Changes

\*See Slide 34 for who is leading undecided races

<p><b>Alabama</b> 6R / 1 D</p> <p>AL-01 Carl (R) replaces retiring Byrne (R) AL-02 Moore (R) replaces retiring Roby (R)</p> <p><u>Retirements:</u> Byrne (R); Roby (R)</p>	<p><b>California</b> 5 R / 41 D – 7 undecided</p> <p>CA-08 OPEN (R) - Obernolte (R) vs. Bubser (D) CA-21 TJ Cox (D) vs. David Valadao (R) CA-25 Mike Garcia (R) vs. Christy Smith (D) CA-34 Jimmy Gomez (D) vs. David Kim (D) CA-39 Gil Cisneros (D) vs. Young Kim (R) CA-48 Harley Rouda (D) vs. Michelle Steel (R) CA-50 OPEN (R) - Campa-Najjar (D) vs. Darrell Issa (R) CA-53 Jacobs (D) replaces retiring Davis (D)</p> <p><u>Retirements:</u> Cook (R); Davis (D)</p>	<p><b>Delaware</b> 0 R / 1 D</p> <p><b>No change</b></p> <p><b>Florida</b> 16 R / 11 D <b>R+2</b></p> <p>FL-03 Cammack (R) replaces retiring Yoho (R) FL-15 Franklin (R) replaces Spano (R) [lost primary] FL-19 Donalds (R) replaces retiring Rooney (R) FL-26 Giménez (R) defeats Mucarsel-Powell (D) FL-27 Salazar (R) defeats Shalala (D)</p> <p><u>Retirements:</u> Yoho (R); Rooney (R), Spano (R) [Lost Primary]</p>
<p><b>Alaska</b> 0 R / 0 D - 1 undecided</p> <p>Don Young (R) vs. Alyse Galvin (I)</p>	<p><b>Colorado</b> 3 R / 4 D</p> <p>CO-03 Boebert (R) replaces Tipton (R), lost primary</p>	
<p><b>Arizona</b> 3 R / 4 D – 2 undecided</p> <p>AZ-01 Tom O'Halleran (D) vs. Tiffany Shedd (R) AZ-06 David Schweikert (R) vs. Hiral Tipirneni (D)</p>	<p><b>Connecticut</b> 0 R / 5 D</p> <p><b>No change</b></p>	
<p><b>Arkansas</b> 4 R / 0 D</p> <p><b>No Change</b></p>		

# 2020 Election Results: House Seat Changes

<p><b>Georgia</b> 8 R / 5 D 1 Undecided</p> <p>GA-05 Williams (D) replaces Lewis (D), died in office GA-07 OPEN (R) - Bourdeaux (D) vs. McCormick (R) GA-09 Clyde (R) replaces retiring Collins (R), [Ran for Senate] GA-14 Greene (R) replaces retired/resigned Graves (R)</p> <p>Retirements: Woodall (R); Graves (R), Collins (R) [Ran for Senate]</p>	<p><b>Illinois</b> 5 R / 12 D 1 Undecided</p> <p>IL-03 Newman (D) replaces Lipinski (D) IL-14 Underwood (D) vs. Oberweis (R) IL-15 Miller (R) replaces retiring Shimkus (R)</p> <p>Retirements: Shimkus (R), Lipinski (D) [Lost Primary]</p>	<p><b>Kansas</b> 3 R / 1 D</p> <p>KS-01 Mann (R) replaces retiring Marshall (R) KS-02 LaTurner (R) replaces Watkins (R)</p> <p>Retirements: Marshall (R) [Ran for Senate]; Watkins (R) [Lost Primary]</p>
<p><b>Hawaii</b> 0 R / 2 D</p> <p>HI-02 Kahele (D) replaces retiring Gabbard (D)</p> <p>Retirements: Gabbard (D) [Ran for President]</p>	<p><b>Indiana</b> 7 R / 2 D</p> <p>IN-01 Mrvan (D) replaces retiring Visclosky (D) IN-05 Spartz (R) replaces retiring Brooks (R)</p> <p>Retirements: Visclosky (D); Brooks (R)</p>	<p><b>Kentucky</b> 5 R / 1 D</p> <p>No Change</p>
<p><b>Idaho</b> 2 R / 0 D</p> <p>No Change</p>	<p><b>Iowa</b> 2 R / 1 D 1 Undecided R+1</p> <p>IA-01 Hinson (R) defeats Finkenauer (D) IA-02 OPEN (D) - Hart (D) vs. Miller-Meeks (R)</p> <p>Retirements: Loeb sack (D)</p>	<p><b>Louisiana</b> 5 R / 1 D</p> <p>LA-05 (R) headed to runoff to replace retiring Abraham (R)</p> <p>Retirements: Abraham (R) [Ran for Governor]</p> <p><b>Maine</b> 0 R / 2 D</p> <p>No Change</p>



# 2020 Election Results: House Seat Changes

<p><b>Maryland</b> 1 R / 7 D</p> <p><b>No Change</b></p>	<p><b>Minnesota</b> 4 R / 4 D <b>R+1</b></p> <p>MN-07 Fischbach (R) defeats Peterson (D)</p>	<p><b>Nebraska</b> 3 R / 0 D</p> <p><b>No Change</b></p>
<p><b>Massachusetts</b> 0 R / 9 D</p> <p>MA-03 Auchincloss (D) replaces retiring Kennedy (D)</p> <p><u>Retirements:</u> Kennedy (D) [Ran for Senate]</p>	<p><b>Mississippi</b> 3 R / 1 D</p> <p><b>No Change</b></p>	<p><b>Nevada</b> 1 R / 1 D <b>2 Undecided</b></p> <p>NV-03 Susie Lee (D) vs. Dan Rodimer (R) NV-04 Steven Horsford (D) vs. Jim Marchant (R)</p>
<p><b>Michigan</b> 7 R / 7 D <b>R+1</b></p> <p>MI-03 Meijer (R) replaces retiring Amash (I) MI-10 McClain (R) replaces retiring Mitchell (R)</p> <p><u>Retirements:</u> Amash (I), Mitchell (R)</p>	<p><b>Missouri</b> 6 R / 2 D</p> <p>MO-01 Bush (D) replaces retiring Clay (D)</p> <p><u>Retirements:</u> Clay (D) [Lost Primary]</p>	<p><b>New Hampshire</b> 0 R / 2 D</p> <p><b>No Change</b></p>
	<p><b>Montana</b> 1 R / 0 D</p> <p>MT-AL Rosendale (R) replaces retiring Gianforte (R)</p> <p>Retirement: Gianforte (R) [Ran for Governor]</p>	<p><b>New Jersey</b> 1 R / 10 D <b>1 Undecided</b></p> <p>NJ-02 Jeff Van Drew (R) vs. Amy Kennedy (D)</p>
		<p><b>New Mexico</b> 1 R / 2 D <b>R+1</b></p> <p>NM-02 Herrell (R) defeats Torres Small (D) NM-03 Fernandez (D) replaces retiring Lujan (D)</p> <p><u>Retirements:</u> Lujan (D) [Ran for Senate]</p> <p style="text-align: right;"><b>Kelley Drye</b></p>



# 2020 Election Results: House Seat Changes

## New York

**3 R / 17 D 7 Undecided**

NY-01 Lee Zeldin (R) vs. Nancy Goroff (D)  
 NY-02 OPEN (R) - Garbarino (R) vs. Gordon (D)  
 NY-03 Tom Suozzi (D) vs. George Santos (R)  
 NY-11 Max Rose (D) vs. Nicole Malliotakis (R)  
 NY 15 Torres (D) replaces retiring Serrano (D)  
 NY-16 Bowman (D) replaces retiring Lowey (D)  
 NY-17 Jones (D) replaces retiring Engel (D)  
 NY-18 Sean Patrick Maloney (D) vs. Chele Farley (R)  
 NY-22 Anthony Brindisi (D) vs. Claudia Tenney (R)  
 NY-24 John Katko (R) vs. Dana Balter (D)

Retirements: King (R), Serrano (D), Lowey (D), Engel (D) [Lost Primary]

## North Carolina

**8 R / 5 D D+2**

NC-02 Ross (D) replaces retiring Holding (R)  
 NC-06 Manning (D) replaces retiring Walker (R)  
 NC-11 Cawthorn (R) replaces retiring Meadows (R)

Retirements: Holding (R), Walker (R), Meadows (R)

## North Dakota

**1 R / 0 D**

**No Change**

## Ohio

**12 R / 4 D**

**No Change**

## Oklahoma

**5 R / 0 D R+1**

OK-05 Bice (R) defeats Horn (D)

## Oregon

**1 R / 4 D**

OR-02 Bentz (R) replaces retiring Walden (R)

Retirement: Walden (R)

## Pennsylvania

**9 R / 6 D 3 Undecided**

PA-07 Susan Wild (D) vs. Lisa Scheller (R)  
 PA-08 Matt Cartwright (D) vs. Jim Bognet (R)  
 PA-17 Conor Lamb (D) vs. Sean Parnell (R)

## Rhode Island

**0 R / 2 D**

**No Change**

## South Carolina

**6 R / 1 D R+1**

SC-01 Mace (R) defeats Cunningham (D)

## South Dakota

**1 R / 0 D**

**No Change**

# 2020 Election Results: House Seat Changes

<p><b>Tennessee</b> 7 R / 2 D</p> <p>TN-01 Harshbarger replaces retiring Roe (R)</p> <p><u>Retirements</u>: Roe (R)</p>	<p><b>Utah</b> 3 R / 0 D 1 Undecided</p> <p>UT-01 Moore (R) replaces retiring Bishop (R) UT-04 Ben McAdams (D) vs. Burgess Owens (R)</p> <p><u>Retirement</u>: Bishop (R) [Ran for Lt. Governor]</p>	<p><b>Washington State</b> 3 R / 6 D 1 Undecided</p> <p>WA-08 Kim Schrier (D) vs. Jesse Jensen (R) WA-10 Strickland (D) replaces retiring Heck (D)</p> <p><u>Retirement</u>: Heck (D) [Ran for Lt. Governor]</p>
<p><b>Texas</b> 22 R / 13 D 1 Undecided</p> <p>TX-04 Fallon (R) replaces retired Radcliffe (R) TX-11 Pfluger (R) replaces retiring Conaway (R) TX-13 Jackson (R) replaces retiring Thornberry (R) TX-17 Sessions (R) replaces retiring Flores (R) TX-22 Nehls (R) replaces retiring Olson (R) TX-23 Gonzales (R) replaces retiring Hurd (R) TX-24 OPEN (R) - Valenzuela (D) vs. Van Duyne (R)</p> <p><u>Retirements</u>: Radcliffe (R), Conaway (R), Thornberry (R), Flores (R), Olson (R), Hurd (R), Marchant (R)</p>	<p><b>Vermont</b> 0 R / 1 D</p> <p><b>No Change</b></p>	<p><b>West Virginia</b> 3 R / 0 D</p> <p><b>No Change</b></p>
	<p><b>Virginia</b> 4 R / 6 D 1 Undecided</p> <p>VA-05 Good (R) replaces Riggleman (R) VA-07 Abigail Spanberger (D) vs. Nick Freitas (R)</p> <p><u>Retirement</u>: Riggleman (R) [Lost nomination]</p>	<p><b>Wisconsin</b> 5 R / 3 D</p> <p>WI-05 Fitzgerald (R) replaces retiring Sensenbrenner (R)</p> <p><u>Retirement</u>: Sensenbrenner (R)</p>
		<p><b>Wyoming</b> 1 R / 0 D</p> <p><b>No Change</b></p>

# STATE ELECTIONS

# Gubernatorial Results

- Republicans will now control 27 governorships, increasing their total by one seat
- All incumbent governors running for re-election won (6 Republicans and 3 Democrats)
- In the nation's only competitive gubernatorial race, Rep. Greg Gianforte (R) prevailed in the race to succeed outgoing Montana Democratic Governor Steve Bullock

## Republican-held Seats

**Indiana:** Incumbent Eric Holcomb (R) re-elected

**Missouri:** Incumbent Mike Parson (R) elected

**New Hampshire:** Incumbent Chris Sununu (R) re-elected

**North Dakota:** Incumbent Doug Burgum (R) re-elected

**Utah: (OPEN):** Spencer Cox (R) elected

**Vermont:** Incumbent Phil Scott (R) re-elected

**West Virginia:** Incumbent Jim Justice (R) re-elected

## Democratic-held Seats

**Delaware:** Incumbent John Carney (D) re-elected

**Montana (OPEN):** Greg Gianforte (R) elected (FLIP)

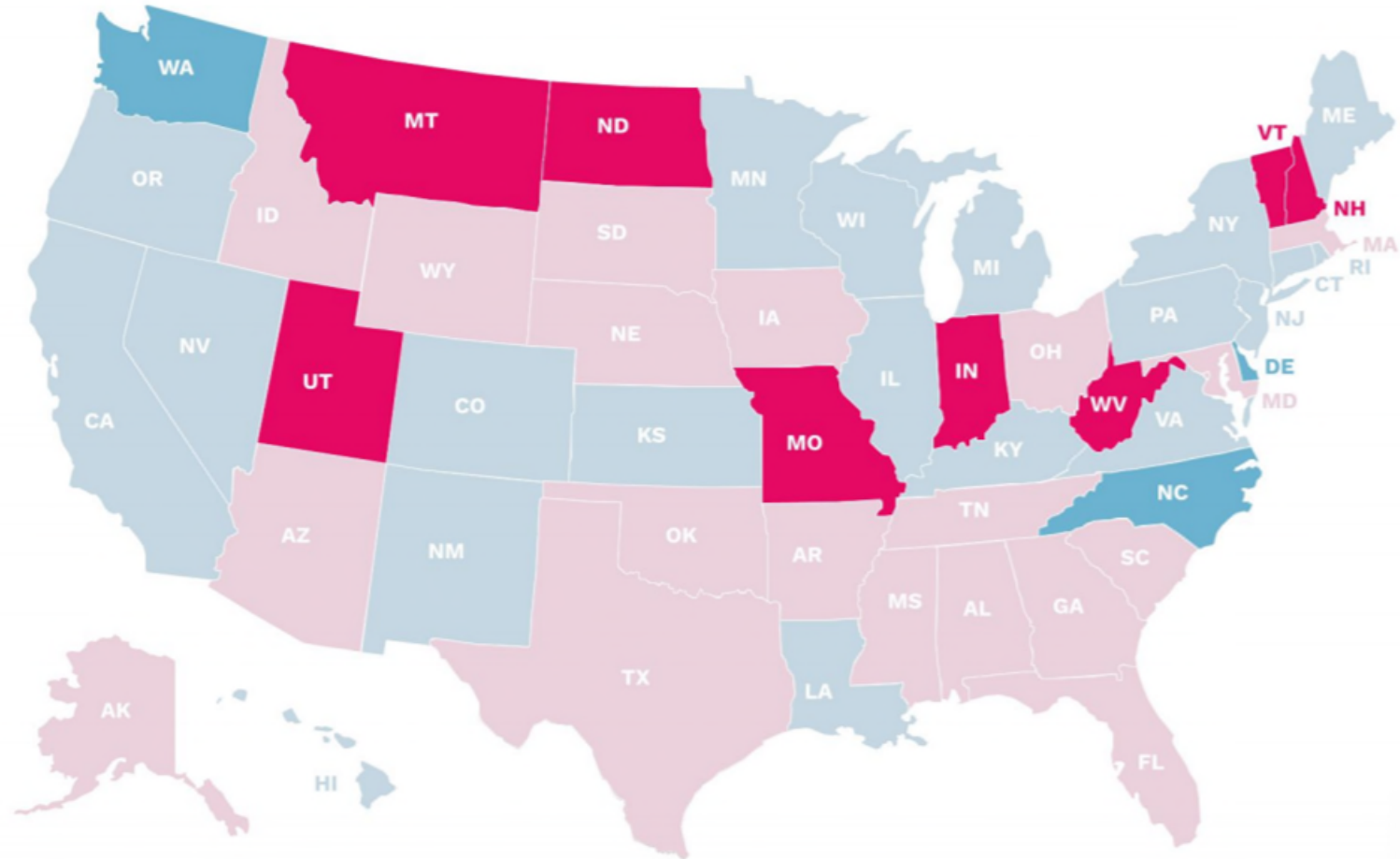
**North Carolina:** Incumbent Roy Cooper (D) re-elected

**Washington:** Incumbent Jay Inslee (D) re-elected

# Gubernatorial Results

## Governors | Partisan Breakdown

-  Democratic Governor Elected (3)
-  Republican Governor Elected (8)
-  No Election, Democrat Incumbent (20)
-  No Election, Republican Incumbent (19)



Source: MultiState.

Data as of 11/4/2020. Republicans gained one gubernatorial seat after the 2020 elections by flipping the open seat in Montana. In 2021, Republicans will have 27 governors and Democrats will have 23 governors.

# State Legislatures

- As of this writing, Democrats do not appear to have picked up a single state legislative chamber this year
- Republicans flipped control of both the New Hampshire House and Senate, and are likely to flip the Alaska House – bringing the total GOP advantage in state legislative chambers to 62-38
- 2020 saw the fewest number of chambers changing party control in more than 50 years

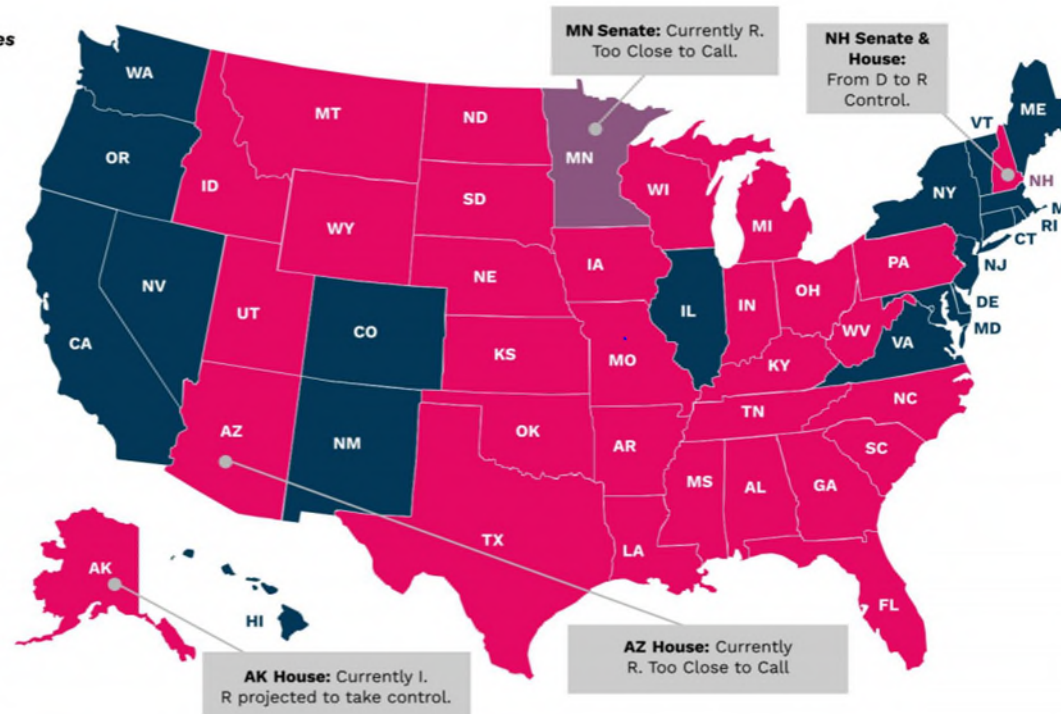
## Legislatures

*Grey boxes highlight competitive races only (see note section below).*

### Legislative Control:

- Democratic Control (18)
- Republican Control (31)
- Divided Government (1)

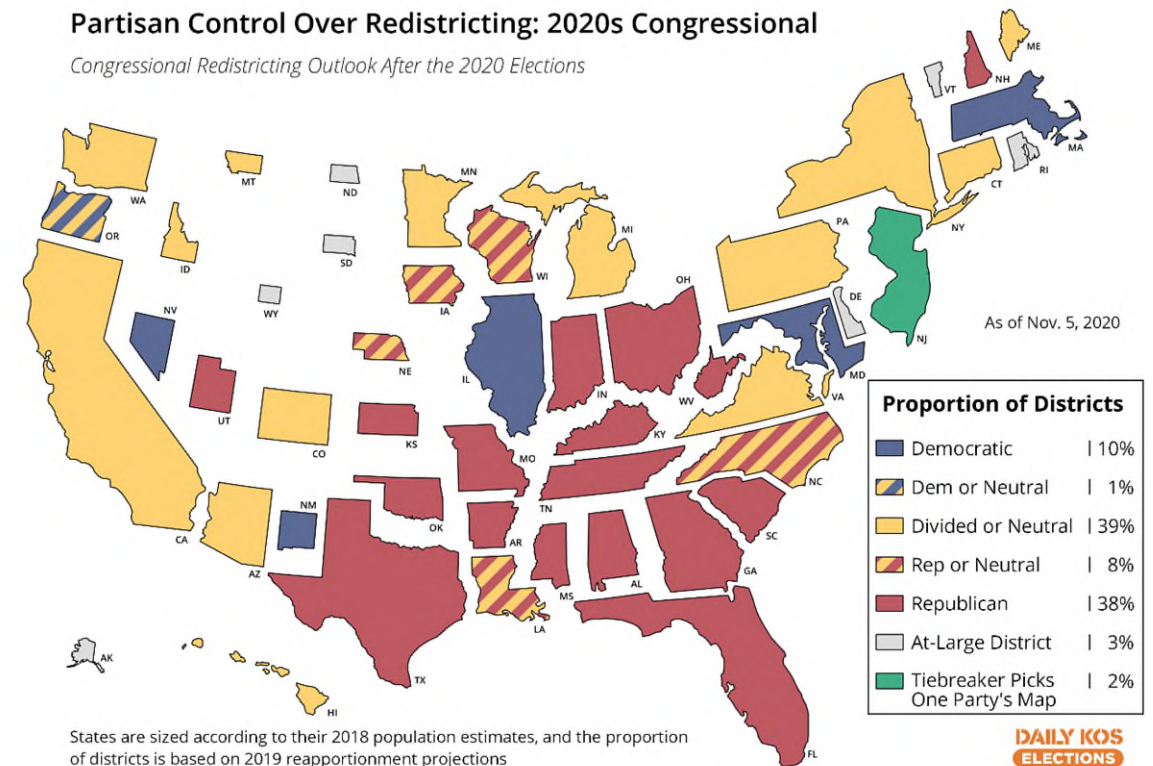
Source: MultiState. Data as of November 4, 2020. Pre-Election, Republicans control 59 state legislative chambers, Democrats control 39 legislative chambers, and a coalition controls the Alaska House. Post-election, Republicans have flipped control of the New Hampshire House and Senate and are projected to gain a majority in the Alaska House, which would net Republicans three state legislative chambers for 2021.





# Redistricting

- This year's elections were the last before once-a-decade reapportionment and redistricting
- **Reapportionment:** Continued shifts to the South and West
  - Final numbers will be based on 2020 Census results
  - Likely to gain seats in Congress: TX (+3), FL (+2), AZ, CO, MT, NC, OR
  - Likely to lose seats in Congress: AL, CA, IL, MI, MN, NY, OH, PA, RI, WV
- **Redistricting:** Republicans will hold more power when it's time to draw new Congressional maps
  - According to a post-election DailyKos analysis, Republicans are likely to draw 4-5 times as many Congressional districts as Democrats – similar to their advantage following the 2010 elections
  - Approximately 30% of districts will be drawn by independent commissions or through a bipartisan process
  - Voters will elect representatives in the redrawn districts beginning with the 2022 midterms



# Key Ballot Initiatives

- **Taxes**

- California Prop 15 would require commercial and industrial properties (except those zoned as commercial agriculture) to be taxed based on their market value rather than the purchase price – too close to call, but trailing
- Arizona Prop 208 – ahead in the vote count – would raise taxes on incomes greater than \$250,000 earmarking revenue for education
- Illinois voters defeated a constitutional amendment to replace the state’s flat income tax with a graduated one
- Alaska Measure 1 would increase production taxes on the oil industry - it looks likely to fail
- Louisiana voters rejected Amendment 5, which would have allowed certain energy and manufacturing facilities to make direct payments to local governments in lieu of property taxes

- **Employment**

- California’s Prop 22 passed, allowing app-based drivers to be classified as independent contractors and not employees – overriding the state’s 2019 law classifying gig economy workers as employees
- Florida voters approved Amendment 2 to increase the state’s minimum wage to \$15 per hour by 2026
- Colorado voters approved Prop 118 to create a new statewide paid family leave program



# Key Ballot Initiatives

- **Voting Reform**

- Florida Amendment 2 did not receive the 60% super majority required to create a “top-two” open primary system for primary elections for state legislators, the governor and lieutenant governor, and elected cabinet members
- Massachusetts voters defeated Question 2, which would have established “ranked-choice” voting for state officials and legislators and Members of Congress (though not presidential races)
- Alaskans are also on their way to defeating ranking-choice voting (Ballot Measure 2)
- Coloradans voted to join the National Popular Vote Interstate Compact
- Virginians voted to create a bipartisan redistricting commission

- **Privacy**

- Californians approved Prop 24 to expand the state’s consumer data privacy laws

- **Marijuana**

- Arizona, Montana, New Jersey, and South Dakota voted to legalize marijuana for personal use – bringing to 15 the number of states that have legalized recreational use
- Mississippi and South Dakota voted to legalize marijuana for medical use

# OUTGOING 116<sup>TH</sup> CONGRESS

# Accomplishments

- 182 laws enacted (so far) by current Congress – lowest total in decades
  - That said, 2019 year-end funding package was vehicle for dozens of other bills (e.g., EXIM reauth, SECURE Act, certain healthcare and tax extenders)
- Other major laws enacted by 116th Congress:
  - **COVID:** 4 major relief bills totaling ~\$2.5T; several smaller bills
  - **Defense:** FY20 National Defense Authorization Act; FY21 NDAA likely to be finalized during Lame Duck
  - **Budget / Approps:** Bipartisan Budget Act of 2019 (set budget caps; suspended debt limit through July 2021); FY20 government funding (2 “minibus” bills); FY19 government funding bills
  - **Trade:** USMCA Implementation Act; Extension of the Caribbean Basin Economic Recovery Act
  - **Foreign Policy:** Hong Kong Autonomy Act; Uyghur Human Rights Policy Act; Hong Kong Human Rights and Democracy Act; TAIPEI Act
  - **Conservation:** Great American Outdoors Act; John D. Dingell, Jr. Conservation, Management, and Recreation Act
  - **Comms / Tech:** U.S. SAFE WEB Act reauthorization; Broadband DATA Act; Secure 5G and Beyond Act; Secure and Trusted Communications Networks Act; Pallone-Thune Robocall law
  - **Education:** Building Blocks of STEM Act and FUTURE Act

# What's Left?

- Post-election “Lame Duck” agenda expected to be dominated by politics
- We may see some limited post-election progress, largely driven by “must pass” legislation
  - **FY21 government funding:** Current “continuing resolution” (CR) expires December 11 – will Congress reach agreement on an FY21 omnibus, or pass another CR into next year?
    - A number of other **expiring tax and health care programs** could ride along with a year-end package
  - **COVID:** Will spiking cases and further economic stress drive an agreement? At a minimum, leaders could add some additional funding to year-end spending bill
    - Several CARES Act relief policies are set to expire December 31
  - **FY21 defense authorization bill:** Congress has enacted an NDAA for 59 straight years; this year’s bill appears to be on track for passage during the Lame Duck
  - **Water Resources Development Act (WRDA):** Will Congress move it, or wait until next year?
  - **Trade:** Generalized System of Preferences (GSP) program and Miscellaneous Tariff Bill both set to expire at the end of the year; potential USMCA technical corrections bill
  - Other **parochial measures**, including priorities for outgoing Members
  - Senate rush to confirm outstanding Trump **judicial nominations**

# INCOMING 117<sup>TH</sup> CONGRESS

# 117<sup>th</sup> Congress: House Leadership

Expected Democratic Leadership		Expected Republican Leadership	
Speaker of the House	Nancy Pelosi (D-CA)	Republican Leader	Kevin McCarthy (R-CA)
Majority Leader	Steny Hoyer (D-MD)	Republican Whip	Steve Scalise (R-LA)
Majority Whip	Jim Clyburn (D-SC)	Republican Conference Chair	Liz Cheney (R-WY)
Assistant Speaker	<i>Running/Interested</i> Tony Cardenas (D-CA) David Cicilline (D-RI) Katherine Clark (D-MA)	Republican Policy Committee	Gary Palmer (R-AL)
Caucus Chair	Hakeem Jefferies (D-NY)	Conference Chair	Mike Johnson (R-LA)
Caucus Vice Chair	<i>Running/Interested</i> Pete Aguilar (D-CA) Robin Kelly (D-IL) Deb Haaland (D-NM)	Conference Secretary	Jason Smith (R-MO)

- Will we see any leadership challenges?
- Numerous committee leadership changes due to elections, retirements and GOP term limits

# 117<sup>th</sup> Congress: House Committee Leadership

Leadership changes highlighted

Committee	Likely Democratic Chair	Likely Republican Ranking Member
<b>Agriculture</b>	D. Scott (GA)   Costa (CA)   Fudge (OH)	Thompson (PA)   A. Scott (GA)   Crawford (AR)
<b>Appropriations</b>	Kaptur (OH)   DeLauro (CT)   Wasserman Schultz (FL)	Granger (R-TX)
<b>Armed Services</b>	Smith (WA)	Wilson (SC)   Turner (OH)   Rogers (AL)
<b>Budget</b>	Yarmuth (KY)	Johnson (OH)   Jason Smith (MO)
<b>Education &amp; Workforce</b>	Scott (VA)	Foxx (NC)
<b>Energy &amp; Commerce</b>	Pallone (NJ)	Burgess (TX)   Latta (OH)   CMR (WA)
<b>Financial Services</b>	Waters (CA)	McHenry (NC)
<b>Foreign Affairs</b>	Sherman (CA)   Meeks (NY)   Castro (TX)	McCaul (TX)
<b>Homeland Security</b>	Thompson (MS)	Rogers (AL)   Katko (NY) if Rogers to HASC
<b>Judiciary</b>	Nadler (NY)	Jordan (OH)
<b>Natural Resources</b>	Grijalva (AZ)	Westerman (AR)
<b>Rules</b>	McGovern (MA)	Cole (OK)
<b>Science</b>	EB Johnson (TX)	Lucas (OK)
<b>Small Business</b>	Velazquez (NY)	Radewagen (AS)   Balderson (OH)   Hern (OK)
<b>Transportation &amp; Infra</b>	DeFazio (OR)	Graves (MO)
<b>Veterans Affairs</b>	Takano (CA)	Bost (IL)   Bergman (MI), Dunn (FL)
<b>Ways &amp; Means</b>	Neal (MA)	Brady (TX)
<b>Intelligence</b>	Schiff (CA)	Turner (OH)   Wenstrup (OH) <i>Nunes is term limited</i>

# 117<sup>th</sup> Congress: Senate Leadership

- Few leadership changes expected

Republicans		Democrats	
Republican Leader	Mitch McConnell (KY)	Democratic Leader	Chuck Schumer (NY)
Republican Whip	John Thune (SD)	Democratic Whip	Dick Durbin (IL)
Conference Chair	John Barrasso (WY)	Asst. Dem. Leader	Patty Murray (WA)
Policy Committee Chair	Roy Blunt (MO)	Policy Chair	Debbie Stabenow (MI)
NRSC	Rick Scott (FL) Interested	DSCC	Jacky Rosen (NV) / Ben Ray Lujan (NM)

- Some committee leadership changes due to retirements and GOP term limits
  - New GOP leadership on: Agriculture, Banking, Budget, Energy, EPW, Finance and HELP Committees
  - Under conference rules, Senate Republicans limited to six years as chairman and (separately) six years as ranking member
- Not much change expected among top Democrats
  - Democrats do not have committee leadership term limits



# 117<sup>th</sup> Congress: Senate Committee Leadership

Leadership changes highlighted

Committee	Chairman	Ranking
<b>Agriculture</b>	John Boozman (AR)	Debbie Stabenow (MI)
<b>Appropriations</b>	Richard Shelby (AL)	Patrick Leahy (VT)
<b>Armed Services</b>	Jim Inhofe (OK)	Jack Reed (RI)
<b>Banking</b>	Pat Toomey (PA)	Sherrod Brown (OH)
<b>Budget</b>	Lindsey Graham (SC)	Bernie Sanders (I-VT)
<b>Commerce, Science, Transportation</b>	Roger Wicker (MS)	Maria Cantwell (WA)
<b>Energy &amp; Natural Resources</b>	John Barrasso (WY) <i>In line, but may stay at EPW   Lee (UT) next in line</i>	Joe Manchin (WV)
<b>Environment &amp; Public Works</b>	Shelly Moore Capito (WV) <i>In line assuming Barrasso moves to ENR</i>	Tom Carper (DE)
<b>Finance</b>	Mike Crapo (ID)	Ron Wyden (OR)
<b>Foreign Relations</b>	Jim Risch (ID)	Bob Menendez (NJ)

Committee	Chairman	Ranking
<b>HELP</b>	Burr   Paul   Collins   Cassidy	Patty Murray (WA)
<b>Homeland Security</b>	Rob Portman (OH)	Gary Peters (MI)
<b>Judiciary</b>	Chuck Grassley (IA)	Dianne Feinstein (CA)
<b>Rules</b>	Roy Blunt (MO)	Amy Klobuchar (MN)
<b>Small Business</b>	Rand Paul (KY)   Tim Scott (SC)	Ben Cardin (MD)
<b>Veterans Affairs</b>	Jerry Moran (KS)	John Tester (MT)
<b>Indian Affairs</b>	Lisa Murkowski (AK)	Brian Schatz (HI)
<b>Ethics</b>	James Lankford (OK)	Chris Coons (DE)
<b>Intelligence</b>	Marco Rubio (FL)	Mark Warner (VA)

# Authorization Expirations / Deadlines to Watch

- PHMSA's pipeline safety program (*expired* October 2019)
- Certain Foreign Intelligence Surveillance Act (FISA) authorities (*expired* March 2020)
- Generalized System of Preferences (GSP) trade preference program (December 31, 2020)
- Miscellaneous Tariff Bill (December 31, 2020)
- New Strategic Arms Reduction Treaty (New START) between the U.S. and Russia (February 5, 2021)
- Trade Promotion Authority (TPA) (July 1, 2021)
- Debt ceiling suspension (July 31, 2021)
- Surface transportation programs / exhaustion of Highway Trust Fund (September 30, 2021)
- National Flood Insurance Program (September 30, 2021)
- FDA medical device, prescription drug, generic drug, biosimilar user fee programs (September 30, 2022)

# Senators Up in 2022

## 13 Democrats

Bennet, Michael F. (D-CO)

Blumenthal, Richard (D-CT)

Cortez Masto, Catherine (D-NV)

Duckworth, Tammy (D-IL)

**Harris, Kamala D. (D-CA)**

*Successor to be appointed by Governor,  
on ballot in 2022*

Hassan, Margaret Wood (D-NH)

**Kelly, Mark (D-AZ) (Senator-elect)**

Leahy, Patrick J. (D-VT)

Murray, Patty (D-WA)

Schatz, Brian (D-HI)

Schumer, Charles E. (D-NY)

Van Hollen, Chris (D-MD)

Wyden, Ron (D-OR)

## 21 Republicans

Blunt, Roy (R-MO)

Boozman, John (R-AR)

Burr, Richard (R-NC)\*

Crapo, Mike (R-ID)

Grassley, Chuck (R-IA)

Hoeven, John (R-ND)

Johnson, Ron (R-WI)

Kennedy, John (R-LA)

Lankford, James (R-OK)

Lee, Mike (R-UT)

**Loeffler, Kelly (R-GA)**

*January 5 Special Election runoff*

Moran, Jerry (R-KS)

Murkowski, Lisa (R-AK)

Paul, Rand (R-KY)

Portman, Rob (R-OH)

Rubio, Marco (R-FL)

Scott, Tim (R-SC)

Shelby, Richard C. (R-AL)

Thune, John (R-SD)

Toomey, Patrick J. (R-PA)\*

Young, Todd (R-IN)

\*Not Seeking Re-Election

# POLICY ISSUES

# Coronavirus Response

## Biden Coronavirus Response Policy Overview

- Biden has already announced a Coronavirus task force to begin work during the transition

### Public Health Response

- Increase availability of free testing, including through mobile testing sites – and surveillance programs
- Eliminate cost barriers to preventative care and treatment for COVID-19; additional surge capacity
- Develop and deploy vaccine and therapeutics
- Enact OSHA Emergency Temporary Standard and increase oversight; provision of PPE for frontline workers
- Increase coordination with states and local health authorities
- Combat price gouging and address supply chain shortages / decrease reliance on foreign sources

### Economic Response

- Ensure emergency paid sick leave and care-giving leave (including reimbursement to employers)
- Provide emergency unemployment compensation and partial unemployment benefits for workers with reduced hours
- Establish new state and local emergency fund
- Provide additional financial assistance to small businesses, as well as to schools and child care facilities

# Coronavirus Response

## Congressional Response

- House Speaker Pelosi (D-CA) and Treasury Secretary Mnuchin were getting closer to agreement on a \$2 trillion stimulus package in the weeks leading up to the election
  - Areas of bipartisan agreement: small business aid (particularly for hard-hit restaurants and hotels), another round of stimulus checks, some enhanced unemployment insurance, airline payroll assistance
  - Remaining sticking points: long-term unemployment assistance, state and local funding (including for schools), testing and tracing, liability provisions (Dems' OSHA standard vs. GOP liability protections), funding for childcare, and boosts for the Earned Income Tax Credit and Child Tax Credit
  - Anything over \$1 trillion has faced resistance in GOP-controlled Senate
- Small package post-election?
  - Factors that could drive quick action: fall virus surge coupled with economic data – unemployment, stock markets, small business needs
  - Senate Majority Leader McConnell has recently said Congress would move a relief package before the end of the year – will the Trump administration still be on board?
  - Absent standalone relief measure, will there be bipartisan agreement for some emergency funding and policy measures as part of a year-end government funding bill?
- While Biden continues to champion a massive economic stimulus package, a Republican Senate will likely make that difficult

# Congress and the Budget

## Congressional Committee Leadership

- House Appropriations Committee Chair TBD (Reps. Kaptur (D-OH), DeLauro (D-CT), and Wasserman Schultz (D-FL) interested), Ranking Member Granger (R-TX)
- House Budget Committee Chair Yarmuth (D-KY), Ranking Member TBD (Reps. Johnson (R-OH) and Smith (R-MO) interested)
- Senate Appropriations Committee Chair Shelby (R-AL), Ranking Member Leahy (D-VT)
- Senate Budget Committee Chair Graham (R-SC), Ranking Member Sanders (I-VT)

## Issues to Watch

- Congress has yet to finalize any of its 12 Fiscal Year 2021 spending bills (FY 2021 began October 1)
  - House passed 2 minibus bills (comprising 10 of the 12 annual bills) earlier this year; Senate didn't markup any bills
  - A short-term continuing resolution (CR) is keeping the government funded through December 11
  - Will Congress finalize an omnibus bill next month and "clear the decks" or will they punt spending bills into 2021?
- Looking ahead, as Congress contemplates the FY22 budget process, they must once again reach agreement on spending caps and the debt ceiling (with the current suspension set to expire July 21, 2021)
  - For Republicans – and some moderate Democrats – expect growing concerns related to spending and increasing deficits
    - Federal debt is projected to surpass 107% of GDP in fiscal year 2023, exceeding World War II levels
  - As is typically the case in divided government, annual budget resolutions may be difficult to finalize
- Watch for the return of "earmarks" (Congressionally directed spending), banned in the House since 2011 – with many in House leadership supportive, albeit with certain guardrails and transparency requirements

# Infrastructure

- **Biden Infrastructure Policy Overview**

- Biden's 4-year, \$2 trillion "Build Back Better" infrastructure and clean energy proposal focuses on:
  - Repairing crumbling transportation infrastructure: roads and bridges, rail, ports and airports, water systems, electricity grids, universal broadband, and green spaces
  - Investing in the American auto industry, domestic auto supply chains, and auto infrastructure – including major investments in electrical vehicles and charging infrastructure
  - Promoting rail and municipal public transit, particularly zero emission options
  - Investing in clean energy technologies and resilient infrastructure, reducing GHG emissions
  - Investing in school construction, affordable housing, and weatherization programs
- Include pro-labor provisions and centers on robust provisions to make Buy America 'real'
  - Focus on creating union, middle class jobs
- While Biden has suggested raising the corporate tax rate from 21 to 28 percent to help pay for long-term investments, he is unlikely to pursue tax increases to fund any short-term stimulus programs – particularly with a Republican Senate



# Infrastructure

## Congressional Committee Leadership

- House Transportation and Infrastructure Chair DeFazio (D-OR), Ranking Member Graves (R-MO)
- Senate EPW Committee Chair Capito (R-WV), Ranking Member Carper (D-DE)
- Senate Commerce Committee Chair Wicker (R-MS), Ranking Member Cantwell (D-WA)
- Senate Banking Committee Chair Toomey (R-PA), Ranking Member Brown (D-OH)

## Issues to Watch

- Long a bipartisan priority, the economic crisis may spur infrastructure investments as a stimulus early next year
  - Policymakers continue to tout the importance of infrastructure investments – particularly given severe budget shortfalls at the state level
- Biden has prioritized infrastructure investments as part of his “Build Back Better” economic stimulus plan
- As always, how to pay for such investments will be a challenge, particularly with a divided Congress
  - Biden’s proposal to increase the corporate tax rate will hit a dead end in the Republican Senate
  - More generally, Republicans have traditionally eschewed major spending bills that add to the deficit
    - In 2009, the American Recovery and Reinvestment Act attracted no GOP votes in the House and only 3 GOP votes in the Senate (including then-Senator Specter who soon after switched parties)
    - Recent bipartisan infrastructure bills have attracted some GOP opposition, particularly in the House: 65 Republicans voted no on the 2015 highway bill

# Infrastructure

- The current Congress saw some legislative progress, as both chambers worked to reauthorize surface transportation programs prior to their September 30 expiration
  - Absent an agreement, however, a one-year extension (through September 2021) was included in the September continuing resolution
- By a unanimous vote, the Senate Environment and Public Works (EPW) Committee approved a five-year, \$287 billion bill in July 2019 – the bill was never considered on the Senate floor
- This July, House Dems passed H.R. 2, the Moving Forward Act – a \$1.5 trillion “green” infrastructure package
  - The bill reauthorized surface transportation programs – at almost \$500 billion – for five years and provided for major investments in a host of infrastructure priorities including drinking water and wastewater, schools, housing, broadband, and clean energy
  - The bill is expected to be the basis for infrastructure legislation in early 2021 and House Democrats have already begun coordinating with the Biden team
    - House T&I Chairman DeFazio has said to expect action as early as February
- Congress must address shortfalls in the Highway Trust Fund (the dedicated revenue source for surface transportation infrastructure assistance spending); H.R. 2 would have directed \$145 billion from the general fund
- A divided Congress may have a difficult time reaching an agreement on pay-fors, and Senate Republicans will likely balk at the massive package being contemplated in the House
- And while some “green” investments are possible – particularly those focused on resiliency – the “down payment” on climate legislation envisioned by Democrats is unlikely to come to fruition

# Infrastructure

- Congress could move a bipartisan 2-year Water Resources Development Act (WRDA) yet this year
  - The biennial legislation authorizes U.S. Army Corps water resources development projects and studies
  - In early May, the Senate EPW Committee voted unanimously to advance a two-year WRDA bill (America's Water Infrastructure Act of 2020) and in July, the House passed its bipartisan WRDA bill
  - Unresolved: Whether the 2020 WRDA reaches beyond Army Corps projects to include provisions for clean and drinking water infrastructure (e.g., reauthorization of the Safe Drinking Water Act (SDWA))
    - The Senate's WRDA bill includes a clean water title; in addition, Senate EPW approved in May the Drinking Water Infrastructure Act of 2020 to reauthorize SDWA programs
    - Last year, House T&I approved HR 1497, the Water Quality Protection and Job Creation Act, a bipartisan reauthorization of EPA clean water infrastructure assistance programs; drinking water provisions were included in the House-passed H.R. 2
- Congress has yet to renew PHMSA's pipeline safety program, which expired in 2019 (it continues to be funded)
  - In August, the Senate passed S. 2299, the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act by unanimous consent – the bill would authorize \$180 million for pipeline safety efforts in FY2020, increasing each year to \$195 million in FY2023
    - House progress has been stalled due to partisan differences
- Another priority is likely to be aviation safety, with bipartisan proposals in both chambers in the wake of the 737 MAX crashes

# Taxes

## Biden Tax Policy Overview

- Biden has proposed rolling back some of the 2017 Tax Cuts and Jobs Act (TCJA) to pay for investments in domestic priorities
- Corporate
  - Increase corporate income tax rate from 21% to 28% (prior to the TCJA, the rate was 35%)
  - Institute 15% minimum tax on global book income of \$100 million or greater
  - Raise Global Intangible Low-Tax Income (GILTI) rate from 10.5% to 21% and shift to country-by-country analysis
  - Expand green / clean energy tax incentives and repeal tax preferences for fossil fuels
  - Establish incentives / penalties to encourage domestic production
  - Terminate tax deferral for real estate transfers under Section 1031 exchange provisions
    - If enacted, could increase desirability of opportunity zone investments for real estate owners

# Taxes

## Biden Tax Policy Overview

- Individual
  - Reverse 2017 tax cuts for those with taxable income above \$400,000 (rates would return to 39.6%, up from 37%)
    - does not include 3.8% investment tax
  - Phase out Section 199A passthrough business deduction (currently 20%) for incomes over \$400,000
  - Impose 12.4% Social Security payroll tax on wages above \$400,000 (split evenly between employees and employers); wages between the current cap (\$137,700) and \$400,000 would not be taxed
  - Subject capital gains and qualified dividends to top marginal rate (39.6%) for those making greater than \$1M
  - For incomes above \$400,000, cap value of itemized deductions at 28% / reinstate Pease limitation
  - Estate and gift taxes
    - Return estate and gift tax rate and exemption to 2009 levels
    - Terminate grantor trust provisions for gift tax purposes – eliminates popular sale technique that avoids income tax while eliminating gift and estate taxes on property sold to trusts
    - Eliminate basis step-up on death; impose income tax on appreciation that is avoided under current law – unclear when income tax is imposed (e.g., date of death or when actually sold in the future)
  - Expand a number of tax credits, including the Earned Income Tax Credit and the Child and Dependent Care Tax Credit; create a new credit for informal caregivers; and restore the Obama-era first-time homebuyer tax credit

# Taxes

## Congressional Committee Leadership

- House Ways and Means Committee Chair Neal (D-MA), Ranking Member Brady (R-TX)
- Senate Finance Committee Chair Crapo (R-ID), Ranking Member Wyden (D-OR)

## Issues to Watch

- Tax policy is certain to be a component of major legislation in the coming months
  - 33 business and individual tax extenders are set to expire at the end of 2020
    - Expiring provisions may be renewed as part of a year-end spending deal or punted into 2021 to be dealt with retroactively
  - Any major COVID relief package is likely to include tax provisions to help stimulate the economy and provide assistance to struggling businesses, families and individuals
- While Biden has outlined a progressive plan to rollback part of the 2017 tax law to fund domestic investments, the Senate Republican majority will block any attempt to reverse its signature legislative achievement
- Looking further ahead, certain TCJA provisions are set to expire / be phased out, setting up potential battles and room for compromise on tax legislation (though not in the near term):
  - Individual tax cuts will expire in 2025
  - Starting in 2022, companies must amortize R&D costs over five years (vs. deducting them immediately each year)
  - Beginning in 2023, 100% expensing will be decreased 20% per year, expiring January 1, 2027

# Taxes

- Other priorities
  - We could see some bipartisan support for tax incentives / penalties to encourage reshoring / domestic production – something championed by both presidential candidates this year
  - Lawmakers on both sides of the aisle are united in their concerns related to digital services taxes (DSTs) imposed on U.S. tech companies by foreign governments
  - While we are unlikely to see major changes to Opportunity Zones – with the exception of possible deadline extensions – we may see but more reporting / oversight / local assistance to address how funds are invested and where
  - Democrats will continue to press for the elimination of the \$10,000 cap on the federal deduction for state and local taxes (SALT) imposed by the 2017 tax law – a nonstarter for Senate Republicans
    - House Democrats have advocated a 2-year suspension of the cap in COVID relief negotiations
  - Democrats are likely to push for expansion of the Earned Income Tax Credit as well as the Child Tax Credit, programs that have historically attracted some Republican support
    - Dems have pushed for temporary (COVID-related) as well as permanent enhancements
  - An area of possible bipartisan cooperation is retirement security
    - Ways and Means Chairman Neal and Ranking Member Brady recently introduced the Securing a Strong Retirement Act, which provides retirement savings incentives
    - The bill builds upon the SECURE Act, introduced by the pair and enacted in late 2019

# International Trade

## Biden Trade Policy Overview

- Biden has pledged to address domestic issues *before* pursuing new trade agreements
- When he does turn to international agreements, look for a greater focus on labor and environmental issues
  - Has called for “carbon adjustment fees” on imports from countries that don’t meet climate targets
- Expect him to reassert U.S. leadership at the WTO and play a more constructive role in reforming it
- May consider eventually rejoining the Trans-Pacific Partnership – with modifications
- Will seek to make Buy America “real” – he has pledged to strengthen and enforce existing domestic procurement requirements and proposed a \$400 billion in federal procurement of U.S.-made products
- To reshore supply chains, Biden has proposed a 10% offshoring tax penalty and a new “Made in America” 10% advanceable tax credit
- Expect continued tensions with China on trade, economic, and human rights issues
  - However, Biden will place a greater emphasis on cooperation with allies and working through multilateral institutions
  - Likely to increase focus on human rights, particularly with regard to Hong Kong and forced labor in the Xinjiang region
- Biden administration likely to continue Trump administration’s hard line on inbound Chinese investment in high tech companies and tough outbound controls on high tech exports
- Strong support for organized labor’s trade agenda, including enforceable provisions on worker rights in trade agreements



# International Trade

## Biden Trade Policy Overview

- Biden is unlikely to remove President Trump's signature trade and tariff programs, at least in the short-term – but expect program reviews and possible modifications
  - Section 201 Solar Tariffs
  - Section 232 Steel and Aluminum Tariffs
  - Outstanding Section 232 national security investigations related to transformers, mobile cranes, vanadium, and autos
  - Section 301 – China (IP / Forced Technology Transfer)
  - Section 301 – EU (Digital Services Taxes) *and* France (Digital Services Tax)
  - Section 301 – Vietnam (Timber and Currency)
  - Boeing / Airbus WTO dispute
- Trading partners may seek resolution of trade disputes or a renewed emphasis on multilateral work in the context of a Biden administration's reach out to restore our alliances and international relationships

# International Trade

## Biden Trade Overview

- Trade Promotion Authority – which provides for expedited floor consideration of trade agreements – will expire July 1
- Biden will be pressed by the business community and some in Congress to support rapid renewal, but there is no indication he will make it a short term priority
  - To qualify for current TPA procedures, a new agreement must be concluded by April 1
  - This means that new trade agreements will await TPA renewal, but since Biden doesn't plan any, that may not matter
  - Nevertheless, a Biden administration would likely continue ongoing bilateral trade negotiations with the UK, Kenya, and Japan if Trump does not conclude them
- There will inevitably be a negotiation with China

# International Trade

## Congressional Committee Leadership

- House Ways and Means Committee Chair Neal (D-MA), Ranking Member Brady (R-TX)
- Senate Finance Committee Chair Crapo (R-ID), Ranking Member Wyden (D-OR)

## Issues to Watch

- Expect ongoing focus from Congressional Democrats on implementation and enforcement of new U.S.-Mexico-Canada Agreement (USMCA), with Mexico's labor commitments a primary concern
- Increasingly, bipartisan focus on supply chains and raw materials production (reshoring)
  - The coronavirus pandemic shed light on major supply chain concerns for critical medical products – as well as concerns regarding vulnerabilities in domestic manufacturing capabilities more generally
- Continued focus on forced labor, particularly from China's Xinjiang region; this fall, the House passed two related measures that would likely be revived next year:
  - H.R. 6270, the Uyghur Forced Labor Disclosure Act, under which companies would have to disclose to the SEC the importation of manufactured goods / materials sourced from or produced in China's Xinjiang region (passed 253-163)
    - GOP has expressed concerns with the bill over the additional disclosure requirements it would place on companies
  - H.R. 6210, the Uyghur Forced Labor Prevention Act, which designates all goods produced in the Xinjiang region as being produced with forced labor unless U.S. Customs and Border Protection can determine, by clear and convincing evidence, that the good was not produced with forced labor (passed 406-3)

# International Trade

- Beyond human rights issues, expect continued bipartisan interest in China's trade and economic policies
  - While Democrats have not always agreed with President Trump's approach, they strongly agree with the need to crack down on China's trade and economic practices, from IP theft and forced technology transfer to industrial overcapacity
  - In September, Senate Democrats unveiled their America LEADS Act, a \$350 billion proposal to counter China's growing global influence in a host of areas
  - Also this fall, the House GOP China Task Force released its comprehensive report and related recommendations, covering ideology, supply chains, national security, technology, economics and energy, and competitiveness
    - Recently-introduced China Task Force Act includes 137 bipartisan bills / provisions recommended by the CTF
- We may see renewed Republican interest to reign in the president's trade and tariff authorities (e.g., Section 232) – despite interest in the current Congress, they were never able to reach consensus
- Trade Agreements
  - Democrats want to improve TPA, including more Congressional input and authority – and more emphasis on environment and climate issues
    - Progressives likely to seek carbon border adjustment measures
  - Notably, the last time TPA expired, Congress didn't renew it for 8 years

# International Trade

## Trade Litigation Sidebar

- Implications of U.S. Court of International Trade lawsuit challenging the President's authority to impose Section 301 China tariffs on List 3 and 4A products
  - Pendency of the case will determine whether hundreds of millions (maybe billions) of tariffs are refunded to importers with interest; may shape how future remedies taken under 301 actions are expanded beyond the original investigation
- WTO institutional reform, including the future of the Appellate Body within the multilateral dispute settlement system and designation of a new Director General
  - U.S. frustration with the AB has been bipartisan and there is no expectation the current position would be immediately reversed; more likely to see U.S. re-engagement and leadership on reforming longstanding concerns to improve the AB
- Trade policy implications for two WTO challenges the U.S. is presently defending, including:
  - Appeal of WTO decision ruling U.S. China Section 301 tariffs violate international rules, which is effectively before a non-functioning Appellate Body due to a U.S. block on filling vacancies
  - Hong Kong's request for consultations challenging the U.S.'s "Made in China" designation
- Where the Trump administration had a clear disregard for considering international norms when developing domestic policy objectives, will a Biden Administration develop responses to priority issues, such as a carbon tax for climate change, with an eye toward compatibility with WTO rules?
- Pending the outcome of several court actions challenging the President's authority to impose tariffs under Section 232 for national security concerns, there may be renewed Congressional efforts to review and potentially reassert the role of the legislature in these actions

# Energy, Environment & Climate

## Biden Energy, Environment & Climate Policy Overview

- Potential First 100 Days Executive Agenda:
  - Rejoin the Paris Climate Agreement
  - Freeze final agency actions of Trump Administration
  - Ban new oil and gas leasing on public lands and waters; close off ANWR to energy exploration
  - Direct federal agencies to develop rules to:
    - Develop new fuel economy standards for light- and medium-duty vehicles; work on standards for heavy-duty
    - Require public companies to disclose climate-related financial risks and the greenhouse gas emissions in their operations and supply chains
    - Set methane pollution limits for new and existing oil and gas operations
  - Rescind EPA and DOJ Environmental Enforcement and Compliance Policies
- Biden may have to scale back his agenda with a Senate Republican majority but there may be areas that can move in Congress as part of a larger legislative package or through the regulatory process
  - Propose funding of \$400B over ten years in clean energy and innovation; establish ARPA-C, a new research agency focused on accelerating climate technologies

# Energy, Environment & Climate

- Supports carbon capture and sequestration for eliminating emissions from electricity generation while still using natural gas
- Environmental justice will drive enforcement priorities and environmental permitting requirements
- Direct his EPA and Justice Department to pursue criminal anti-pollution cases to the fullest extent permitted by law
- Assist communities to ensure smooth transition to clean energy
- Apply a new climate test to federal infrastructure permits
- Amend and resume reliance on the OMB Interagency Task Force's Social Cost of Carbon estimates
- Regulate PFAS and potentially designate as "hazardous substance"
- Reverse major Trump Rules/Initiatives such as WOTUS, NEPA reform, CWA permitting, NSR Reform, etc.

# Energy, Environment & Climate

## Congressional Committee Leadership

- House Energy and Commerce Committee Chair Pallone (D-NJ), Ranking Member TBD (Reps. Burgess (R-TX) and Cathy McMorris Rodgers (R-WA) interested)
- House Natural Resources Committee Chair Grijalva (D-AZ), Ranking Member Westerman (R-AR) likely
- Senate Energy and Natural Resources Committee Chair Barrasso (R-WY), Ranking Member Manchin (D-WV)
- Senate Environment and Public Works Committee Chair Capito (R-WV), Ranking Member Carper (D-DE)

## Issues to Watch

- Expect continued focus from Democrats on climate change – including a push for “green” provisions in an infrastructure bill – but progress on more ambitious proposals is unlikely given a Republican-controlled Senate
- During the 116th Congress, the House and Senate (Democrats only) put down several policy markers on how they would address climate change
  - House and Senate Democrats created select committees and – along with other standing committees – held more than 60 hearings on climate-related topics
  - Both the House Select Committee on the Climate Crisis and Senate Democratic Special Committee on the Climate Crisis issued reports with recommendations on how to address climate change – calling for net zero emissions by 2050
  - The House committee called for an electricity standard to primarily achieve the goal
  - The Senate report supported any and all market mechanisms plus significant federal investments to achieve the goal



# Energy, Environment & Climate

- House Energy & Commerce Committee Democrats also unveiled a legislative framework, the CLEAN Future Act, which would establish programs and policies aimed at achieving net-zero, economy-wide greenhouse gas (GHG) emissions by 2050
  - The bill did not include a carbon pricing scheme or a cap-and-trade program since it was outside the Committee's jurisdiction
- In July, House Democrats passed H.R. 2, the Moving Forward Act – a \$1.5 trillion “green” infrastructure package that provided for major investments in a host of infrastructure priorities including clean energy
- In September, the House also passed, mostly along partisan lines, H.R. 4447, the Clean Economy Jobs and Innovation Act, which included funding for a wide variety of renewable energy, grid modernization, and other programs
  - Reauthorized the Advanced Research Projects Agency-Energy (ARPA-E) through fiscal 2025, expanded nuclear energy research programs, and initiated several projects related to carbon use and storage
  - Also incorporated provisions from a number of bills related to energy use by industry and manufacturing, as well as provisions that would direct federal agencies to help the energy sector address cybersecurity vulnerabilities
- There have been several legislative proposals focused on putting a price on carbon (also called a “carbon tax”) but none of them saw any progress during the current legislative session

# Energy, Environment & Climate

- House Republicans have rolled out their own proposals aimed at carbon capture and sequestration to present their alternative approach to addressing climate change
  - Permanently extend the carbon sequestration tax credit known as 45Q (H.R. 5883), sponsored by Reps. Schweikert (R-AZ) and Wenstrup (R-OH)
    - Make permanent the Section 45Q tax credit for carbon capture and sequestration systems installed at power plants and other industrial facilities. It would also increase a tax credit for direct air capture of carbon emissions
  - Carbon Capture, Utilization, and Storage Innovation Act (H.R. 5865), sponsored by Rep. McKinley (R-WV)
    - Making CCUS-related pipelines and direct air capture projects eligible for guaranteed loan support from the U.S. Department of Energy
    - The legislation also seeks to ensure quicker permitting of carbon pipeline infrastructure and would establish a 10-year program within the U.S. Environmental Protection Agency to award funds for direct air capture research
  - New Energy Frontiers Through Carbon Innovation Act of 2020 (H.R. 5864), sponsored by Rep. Crenshaw (R-TX)
    - The legislation would direct \$50 million of existing DOE funds toward research, development and deployment of carbon capture technology at gas plants, with another \$25 million per year of existing DOE funds to be set aside for a new “Carbon Innovation Hub” to examine solutions for carbon utilization
  - The Trillion Trees Act (H.R. 5859), sponsored by Rep. Westerman (R-AR)
    - Establish that the sense of Congress is that the U.S. should support a United Nations' initiative to encourage countries, corporations and individuals to help plant a trillion trees globally by 2050

# Energy, Environment & Climate

- Expected Senate Energy Committee leaders Barrasso (R-WY) and Manchin (D-WV) represent large coal-producing states – expect them to ensure that the industry is protected during any discussion of a climate or energy bill
- Both have also been leaders on promoting carbon capture and sequestration proposals
  - Enhancing Fossil Fuel Energy Carbon Technology Act (S. 1201), a bipartisan bill introduced by Manchin would direct the Energy Department to support coal and natural gas demonstration projects including large-scale carbon sequestration technologies
    - The bill was included in the Murkowski-Manchin American Energy Innovation Act but the overall bill has been stalled due to other priorities
  - Barrasso introduced the Utilizing Significant Emissions with Innovative Technologies (USE IT) (S. 383) Act with Senator Whitehouse (D-RI) that would support carbon dioxide utilization and direct air capture research, to facilitate the permitting and development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines
    - The bill is part of the Senate's FY21 Defense Authorization bill and conference negotiations on the overall defense bill likely to pass during the lame duck

# Energy, Environment & Climate

- Environmental Justice is an increasing priority for Democrats and was core tenet of Green New Deal and other Democratic climate plans
- Many of these proposals have been incorporated into Biden's environmental justice proposals
- A Republican Senate is unlikely to go along with most of the environmental justice efforts and therefore it will require the Biden Administration to implement initiatives under existing authority
  - Senator Harris and House Natural Resources Democrats authored the Environmental Justice For All Act (H.R. 5986, S. 4401) which included a provision to direct agencies to consider cumulative health impacts under the Clean Air Act and Clean Water Act in permitting decisions
  - Harris and Senator Sanders authored the Senate Climate Equity Act (S. 4513) which would Create a Climate and Environmental Equity Office to provide an equity score on bills – akin to the Congressional Budget Office's budget scores – to show how such legislation would affect communities of color as well as low-income and indigenous communities

# Energy, Environment & Climate

- Congress has spent a good amount of time attempting to address perfluoroalkyl and polyfluoroalkyl substances (PFAS) contamination of local drinking water systems – the effort has been bipartisan
- Senators Capito (R-WV), Gillibrand (D-NY) and Carper (D-DE) along with the 60+ members of the bipartisan Congressional PFAS task force – Kildee (D-MI) and Fitzpatrick (R-PA) co-chairs – have been pushing EPA and their colleagues in Congress to get more aggressive to address PFAS contamination
- In January, House Democrats and 24 Republicans voted in favor of Rep. Dingell’s (D-MI) PFAS Action Act (H.R. 535)
  - Senate EPW Committee Ranking Member Carper led the Senate bill
  - The bill would:
    - Effectively bar the manufacturing of new PFAS
    - Direct EPA to establish drinking water standards for the chemicals and designate certain PFAS as hazardous substances under the law that governs the Superfund cleanup program
    - Authorize \$100 million in both fiscal 2020 and 2021 for a grant program to support the installation of treatment technologies.
- We expect the Biden Administration to be more aggressive in its regulation of PFAS and provide increased funding for cleanup and health surveillance

# Energy, Environment & Climate

## Energy and Environmental Legal Sidebar

- Trump Administration pursued an aggressive deregulatory agenda and the legal challenges to the agenda were equally aggressive
  - Historic level of legal challenges to Trump agency actions
    - Fueled by record-breaking fundraising for environmental litigants
    - Also driven by blue state AGs
- Litigation has challenged all aspects of Trump's Energy and Environmental Agenda
  - Many challenges are still pending/in various stages of litigation/appeal
  - Climate: ACE, FOIA Rule, Methane rules, vehicle GHG standards.
  - Air: NAAQS standards and implementation; Industry-specific air rules; NSR Reform, Once-in, Always-in permitting policy, SSM
  - Water: WOTUS replacement; Section 401 rule; Nationwide Permitting
  - Land Use/Access: Permitting and leasing decisions offshore and on federal lands, pipeline permitting
  - Species: ESA reform rules; individual listing decisions; failure to act on listing petitions; hunting in NWR
  - Review: NEPA reform rule, other challenges to NEPA reviews, determinations
  - Other: Enforcement Policies/in various stages of litigation/appeal

# Energy, Environment & Climate

- DOJ/Agency approach under Biden Administration:
  - Expect many requests to stay litigation
  - Many cases will become moot if Biden Administration undue challenged rule/action
  - Some cases will be allowed to proceed to decision and some of DOJ's arguments will change
  - Some suits will be voluntarily dismissed
- Impact on Industry:
  - Industry Interveners in support of Agencies may try to carry defense in absence of aggressive DOJ defense
  - Blue state and red state AG roles reverse, with the latter challenging reversal of Trump policies
  - Environmentalist and Industry roles reverse (to some degree), with latter challenging reversals

# Health Care

## Biden Health Care Overview

- COVID-19
  - Rejoin the World Health Organization on Day 1; return to Obama-era pandemic response procedures
    - Immediately restore the White House National Security Council Directorate for Global Health Security and Biodefense
  - Testing: Improve testing capacity and accessibility
    - Increase drive-by testing twofold and speed up the development of at-home tests and instant tests
  - PPE: Expand access to personal protective equipment, or PPE
    - Wants to use the full authority of the Defense Production Act to create additional personal protective equipment
  - Vaccine: Establish a plan for effectively producing and safely distributing a vaccine
    - \$25 billion toward the manufacturing and distribution of an eventual vaccine
  - Race: Address disproportionate effects of COVID-19 on communities of color
    - Create a COVID-19 Racial and Ethnic Disparities Task Force, an initiative pushed by VP nominee Harris
    - After the pandemic ends, the task force would morph into an Infectious Disease Racial Disparities Task Force



# Health Care

## Biden Health Care Overview

- ACA expansion / access to insurance
  - Supports a public health insurance option to uncovered individuals, including offering premium-free access to the public option in states that have not expanded Medicaid
  - Increase tax credits to help people afford health insurance if not provided through employer
  - Depending on the Supreme Court's decision (*see [Health Care Sidebar Slide](#)*) on the ACA in spring/summer 2021, Biden may propose additional measures to shore up the ACA
- Drug Prices
  - Direct HHS to develop a rule that would allow Medicare to negotiate drug prices
  - Supports the establishment of review committee to recommend prices for new drugs; drug price increases to be tied to inflation
  - Supports allowing foreign importation of drugs
  - Wants to remove tax break for pharmaceutical advertising

# Health Care

## Congressional Committee Leadership

- House Ways and Means Committee Chair Neal (D-MA), Ranking Member Brady (R-TX)
- House Energy and Commerce Committee Chair Pallone (D-NJ), Ranking Member TBD (Rep. Burgess (R-TX) or Cathy McMorris Rodgers (R-WA))
- Senate Finance Committee Chair Crapo (R-ID), Ranking Member Wyden (D-OR)
- Senate HELP Committee Chair TBD (Burr (R-NC), Paul (R-KY), Collins (R-ME), Cassidy (R-LA)), Ranking Member Murray (D-WA)

## Issues to Watch

- Democrats will focus on improving / expanding and shoring up the ACA – and Congress may be compelled to respond to a Supreme Court decision to strike down the law (see [Health Care Sidebar Slide](#))
- In June, the House passed along party lines the Patient Protection and Affordable Care Enhancement Act (PPACEA) which included:
  - Expand premium tax credits beyond individuals making more than 400% of the federal poverty line; premiums for exchange plans would ultimately be capped at no more than 8.5% of income
  - Create several incentives to expand Medicaid, including giving states that haven't expanded Medicaid yet a renewed 100% in federal funds for the first three years post-expansion and reducing administrative matching funds for non-expansion states
  - Reverse Trump Administration rule allowing cheap insurance plans to be sold for up to 12 months, returning to a 3 month max

# Health Care

## Issues to Watch

- Congressional Progressives continue to push for adoption of “Medicare for All” as part of any expansion of the ACA, a nonstarter in a divided Congress
- While Biden prefers a more incremental approach to addressing insurance access – largely through a public option – he and Congressional Democrats will likely face strong opposition from a Senate Republican majority to major changes to the ACA
- Energy and Commerce Chairman Pallone (D-NJ), Ways and Means Chairman Neal (D-MA) and Senate HELP top Democrat Murray (D-WA) have not endorsed Medicare for All and instead have focused on improving the ACA as an alternative
  - Rep. Jeffries (D-NY), Chair of the House Democratic Caucus, has endorsed Medicare for All
  - Senator Sanders (I-VT) and Rep. Jayapal (D-WA) have been leading the charge on Medicare For All legislation, which would implement a government-run, national health care system that sets low caps on drug prices and allows consumers to pay next to nothing out of pocket
  - Several moderate Democrats – Senators Baldwin and Stabenow (D-MI) and Reps. Higgins (D-NY) and Courtney (D-CT) – have been pushing Medicare buy in proposals, which vary from letting in people 50 years of age and older to allowing anyone with limited insurance options to buy into the program

# Health Care

- Congressional scrutiny on COVID-19 response will continue
  - Since January, Congress has sent over 220 oversight letters to insurers, health care providers, test developers, labs, and federal agencies requesting information on use of COVID funds, safety protocols, vaccines and other issues. (Source: Brookings Institution)
    - Several of those letters have focused on COVID-19 testing, including the Trump administration's testing plans, FDA oversight of tests, prevalence of potential scams
    - Energy & Commerce Members Bucshon (R-IN) and DeGette (D-CO) are working on a comprehensive package of reforms on how diagnostic tests are regulated by FDA – expect revised legislation to be introduced in the 117<sup>th</sup> Congress and a congressional hearing
- The pandemic exposed gaps in the U.S. medical supply chain in not only supplies (PPE, testing media) but also foreign reliance on ingredients for drugs and treatments
  - Expect Congressional interest in security and resilience of supply chain to continue
- Current Pandemic and All-Hazards Preparedness authorization (enacted in 2019) does not expire until Fiscal Year 2023 but Congress could begin to develop a new reauthorization bill to address areas of concern brought about by the pandemic

# Health Care

- Drug Pricing
  - In June, the House-passed PPACEA included drug pricing reforms (including allowing Medicare to negotiate drug prices) as a budget offset to expand the ACA
  - Reps. Burgess (R-TX) and McMorris Rodgers (R-WA), front runners for the top GOP spot on Energy and Commerce, have authored separate bills on drug pricing focused on capping Medicare Part D out of pocket costs, greater transparency on drug prices and pharmacy benefit managers
  - Finance Committee Ranking Member Wyden (D-OR) had been working on a drug pricing bill with then Chairman Grassley but Wyden subsequently pulled his support
    - However, Wyden has expressed support for the House-passed bill which included Medicare drug price negotiation as well as provisions to cap out-of-pocket costs for Medicare Part D enrollees and limit how much drug makers can raise their prices in Medicare
  - Incoming Finance Chairman Crapo (R-ID) has introduced Lower Costs, More Cures Act which would establish an annual out-of-pocket cap for Medicare Part D enrollees, require drug manufacturers to provide pricing information on all direct-to-consumer advertising, decrease beneficiary cost sharing from 25 percent to 15 percent, and incentivize lower-cost alternatives, or biosimilars
  - Congress must reauthorize the FDA user fee authorization by September 2022 and this could be the vehicle for Congress to address any reforms on drug prices as well as testing

# Health Care

- “Surprise Billing”
  - Multiple congressional committees have been working on proposals to address surprise billing and work could restart in the new Congress
    - House Ways and Means, House Education & Labor, House Energy & Commerce, and Senate HELP all approved separate bills to address surprise billing
    - The measures generally align on how to limit what patients must pay in emergencies and when they are treated by an out-of-network provider at an in-network facility
    - The Ways and Means measure would allow arbitration for any medical bill while the other proposals would set a benchmark rate for payments and allow arbitration only for bills that are above a certain threshold
  - As mentioned earlier, there will be new leaders in Energy & Commerce and Senate HELP and a smaller Democratic majority in the House, which may change the dynamics for future efforts to address surprise billing
  - Biden supports barring health care providers from charging patients out-of-network rates during hospitalizations but has not provided specifics

# Health Care

## Health Care Sidebar

- On November 10, the Supreme Court will hear oral arguments in a case (*California v. Texas*) that could upend the landmark Affordable Care Act more than a decade after its enactment
- Case stems from the 2017 *Tax Cuts and Jobs Act* which eliminated the penalties associated with the ACA's individual mandate
  - Plaintiffs – and the Trump administration – argue that without the fines, the mandate is unconstitutional and is not severable from the rest of the law
- If SCOTUS finds the mandate unconstitutional and not severable, the entire 2,000 page law will be overturned
- If the court finds the mandate is severable, it must then determine what provisions of the law – if any – are so inextricably linked to the mandate that they must also be eliminated
  - Provisions most at risk are the law's private insurance reforms, including its protections for pre-existing conditions, prohibition on annual or lifetime coverage caps, and insurance exchange subsidies, among others
- The SCOTUS decision is expected in the spring or summer of 2021
- Congress could pursue “less ambitious” legislative actions to restore the law in its entirety, e.g., reinstating a (minor) financial penalty for individuals who do not buy insurance or declaring outright that the mandate is severable from the rest of the law – but that could prove difficult in a Republican Senate

# Communications

## Biden Communications Policy Overview

- FCC appointments
- Digital Divide policies will continue, with a twist
  - Affordability as well as access to broadband
  - Lifeline and E-rate (homework gap) are the primary beneficiaries
- 5G deployment issues also shift
  - Initial focus will be maps, maps, maps
  - We expect a moderate roll-back of policies limiting state and locality review of tower siting
  - Supply chain security will not change
- Here we go again: Privacy, cybersecurity and net neutrality return to the FCC's agenda
  - Democrats see a chance to reverse, yet again, the classification of broadband
  - This will shift jurisdiction back to the FCC (from the FTC) over customer privacy, throttling, cybersecurity and consumer protection



# Communications

## Congressional Committee Leadership

- House Energy and Commerce Committee Chair Pallone (D-NJ), Ranking Member TBD (Reps. McMorris Rodgers (R-WA) and Burgess (R-TX) interested)
- Senate Commerce Committee Chair Wicker (R-MS), Ranking Member Cantwell (D-WA)

## Issues to Watch

- Broadband infrastructure in play as part of the discussion on stimulus
- Supply chain security continues to have bipartisan support
  - Waiting to see if appropriations for “rip and replace” will follow this year’s authorization
- Tech in the crosshairs
  - IoT security could gain momentum after HR 116-19 (IoT Cybersecurity Act of 2020) passed in September
  - Telecom privacy to be in play but we see significant hurdles to national privacy legislation (a la CCPA)
  - Section 230 rewrite possible
    - Legislators on both sides of the aisle have proposed measures to update this provision, including bipartisan measures

# Communications

## Communications Litigation Sidebar

- *Facebook v. Duguid (SCOTUS)*
  - TCPA scope (ATDS definition); to be argued December 8, 2020
- *FCC v. Prometheus Radio Project (SCOTUS)*
  - Relaxation of media ownership rules; argument TBD
- *City of Portland v. FCC (9th Cir.)*
  - FCC 5G/small cell order upheld; cert petition possible
- *Huawei v. FCC (5th Cir.)*
  - Challenge to USF/Supply Chain order; argued November 4, 2020
- *Eugene, Oregon v. FCC (6th Cir.)*
  - Challenge to limits on cable franchise fees; argument TBD
- *USA v. California (ED CA)*
  - State net neutrality laws; FCC motion for preliminary injunction pending

# Privacy and Tech

## Biden Tech Policy Overview

- Technology policy has not been a main pillar of Joe Biden's campaign, and his efforts on the trail do not shed much light on what tech regulation may look like during a Biden administration
- To date, however, Biden has not indicated opposition to policies Congressional Democrats currently support, although a split Congress makes it unlikely those bills will proceed in their current form
  - Privacy:
    - While Biden has not said much about privacy specifically, he has indicated general support for a federal privacy law similar to Europe's General Data Privacy Regulation ("GDPR")
    - We are likely to see a more active FTC on both policy and enforcement
  - Big Tech & Antitrust:
    - Biden has stayed tight lipped regarding antitrust enforcement against Big Tech, but many believe that his running mate's roots in California may lend to a softer stance on Big Tech regulation than a Republican administration

# Privacy and Tech

## Congressional Committee Leadership

- House Energy and Commerce Committee Chair Pallone (D-NJ), Ranking Member TBD (Reps. McMorris Rodgers (R-WA) and Burgess (R-TX) interested)
- Senate Commerce Committee Chairman Wicker (R-MS), Ranking Member Cantwell (D-WA)

## Issues to Watch

- While comprehensive federal privacy legislation has been debated at length, and increasingly so after the 2016 election and passage of the EU's GDPR and the California Consumer Privacy Act (CCPA), prospects have stalled on party lines
  - Democrats favor limited preemption and a private right of action for consumers, while Republicans support full preemption and no private right of action
  - Both parties support increased transparency and data access requirements for companies collecting consumer data
- The most recent Congress has seen an increase in hearings and oversight, and proposed measures from Senate Commerce Committee Chairman Wicker and Ranking Member Cantwell, respectively
- A divided Congress may mean no action or compromise legislation
- Absent federal action, it's likely that states will continue to fill in the void with a patchwork approach to privacy
  - Additional state measures may increase Congress' likelihood to act on a federal level, regardless of its party makeup, though they also likely make federal preemption that much more of a sticking point

# Privacy and Tech

- With preemption and private enforcement rights remaining sticking points, it is unlikely that either side of the aisle will materially budge on their stated positions
  - With a divided Congress, preemption will likely still be the most contested issue
  - House Members from California have indicated that they will not support a measure that weakens the CCPA
  - The only way preemption seems likely to be an option is if the federal bill is about the same or more privacy protective than the CCPA
  - There is also a question on the breadth of any such preemption; existing federal consumer protection laws tend to have a narrow preemption scope
- California's privacy ballot initiative (CPRA or CCPA 2.0) also appears to have obtained enough votes to pass
  - It adds to the CCPA's privacy measures and will likely strengthen the California contingent's resolve to protect the law from any preemption provision

# Privacy and Tech

- Aside from privacy concerns, Big Tech (Google, Facebook, Amazon) has faced questions related to antitrust and content moderation
- Recent DOJ antitrust lawsuit against Google may set a precedent for antitrust regulation of big tech moving forward
  - While the Republican-led DOJ has pulled the first punch in its lawsuit, many Democratic state AGs are also looking into antitrust violations
  - Expect Biden administration review of the litigation strategy
- The FTC is also in the midst of an antitrust review of Facebook, which may result in regulatory action
- Both sides of the aisle have called for various approaches to regulating Big Tech's size
  - Rep. David Cicilline (D-RI) and House Democrats released a proposal to update antitrust laws
  - Republicans also favor legislative changes, though less sweeping ones
- It's unclear whether divided government will stall some of Cicilline's more aggressive proposals, such as banning certain tech acquisitions and barring companies from owning marketplaces while also selling competing products on them
- Possible changes to antitrust law also may have an effect on privacy policy / legislation

# Privacy and Tech

## Privacy, Tech and Ad Law Litigation Sidebar

- *FTC v. Credit Bureau Center, LLC; AMG Capital Management, LLC v. FTC*
  - These cases have been consolidated and are pending before the Supreme Court
  - At issue is the FTC's interpretation of Section 13(b) authority under the FTC Act to permit the agency to pursue equitable monetary relief in addition to injunctive relief
  - Decision could implicate the FTC's redress authority in privacy cases as well
  - Democrats and Republicans alike have signaled the importance of the FTC's Section 13(b) authority, with Sen. Wicker including a provision that would clarify such authority in his proposed privacy bill
- *U.S. v. Google LLC*
  - The DOJ and 11 Republican State Attorneys General filed a lawsuit against Google LLC accusing the company of violating Section 2 of the Sherman Act in its search, search advertising, and search text advertising practices
  - Outcome may have implications for Big Tech antitrust regulation more broadly
- Consolidated CCPA Cases
  - Consumer actions under the CCPA's narrow private cause of action may have implications for what a private cause of action looks like in a federal privacy statute

# Judiciary and Immigration

## Biden Immigration Overview

- Beyond broader immigration issues, in the 1<sup>st</sup> 100 days, Biden has committed to reversing many of President Trump's more controversial immigration actions
  - "Muslim Ban", prolonged detention of immigrants, family separation
- While Congress has failed to make significant progress on immigration proposals and immigration reform was not a major issue driving the electorate, Biden hopes to push Congress in the following areas on work-related visas
  - Establish a wage-based allocation process and establish enforcement mechanisms to ensure they are aligned with the labor market and not used to undermine wages
  - Expanding the number of high-skilled visas and eliminating the limits on employment-based visas by country
  - Increase the number of visas awarded for permanent, employment-based immigration—and promote mechanisms to temporarily reduce the number of visas during times of high U.S. unemployment



# Judiciary and Immigration

## Congressional Committee Leadership

- House Judiciary Chair Nadler (D-NY) and Ranking Member Jordan (R-OH)
- House Homeland Security Chair Thompson (D-MS), Ranking Member Rogers (R-AL) or Katko (R-NY)
- Senate Judiciary Committee Chair Grassley (R-IA), Ranking Member Feinstein (D-CA)
- Senate Homeland Security and Governmental Affairs Committee Chair Portman (R-OH), Ranking Member Peters (D-MI)

## Issues to Watch

- Democrats and Republicans have been vocal about changing visa programs for high-skilled temporary guest workers to better protect U.S. workers and visa holders
- It is possible that efforts at reform will continue in the 117<sup>th</sup> Congress
  - Senators Lee (R-UT) and Durbin (D-IL) reached an agreement on the Fairness for High-Skilled Immigrants Act (H.R. 1044, S. 386) that would eliminate per-country caps on job-based green cards but have been unable to get enough support in the Senate for passage
  - The House passed H.R. 1044 by an overwhelming bipartisan vote of 365-65 in 2019

# Agriculture and Food

## Biden Agriculture Overview

- Invest in sustainable agriculture and conservation research, as well as technology like methane digesters
- Broaden the federal Conservation Stewardship Program, which provides farmers and ranchers with tools to enhance sustainable practices such as carbon sequestration
- Prioritize strategies to reduce greenhouse gas emissions from land use
- Direct the U.S. National Telecommunications and Information Administration and the U.S. Department of Agriculture to support cities and towns that want to build municipally-owned broadband networks
- Expect renewed activity related to food safety and labeling, and school nutrition programs

# Agriculture and Food

## Congressional Committee Leadership

- House Agriculture Committee Chair TBD (Reps. David Scott (D-GA), Costa (D-CA), or Fudge (D-OH)), Ranking Member GT Thompson (R-PA), Austin Scott (R-GA), or Rick Crawford (R-AR)
- Senate Agriculture Committee Chair John Boozman (R-AR), Ranking Member Debbie Stabenow (D-MI)

## Issues to Watch

- Additional assistance for producers impacted by COVID, in addition to Agricultural Marketing Service purchases
- Expect continued support for farmers / ranchers, in part to offset the negative effects of ongoing trade disputes
- Support for rural broadband to get renewed attention in any potential infrastructure package in the next Congress
- Reauthorization of Child Nutrition Act and the Commodity Futures Trading Commission stalled in the 116<sup>th</sup> Congress and new committee leadership in both House the House and Senate may look to restart work on those programs
  - Child Nutrition reauthorization expired several years ago
  - Bipartisan CFTC reauthorization bill, backed by Chair Peterson (D-MN) (defeated for re-election) and Ranking Member Conway (R-TX) (retired), was approved by the committee by voice vote but did not see further action

# Looking Ahead: Key Questions

- How does focus on COVID response / recovery shape the policy agenda in 2021?
- Will a Republican Senate portend gridlock for a Biden agenda? Is bipartisan progress possible, particularly in areas such as infrastructure and the economy?
- How does House Democratic leadership balance its progressive wing, particularly with the loss of moderates – and a larger and likely emboldened GOP minority?
- Does divided government elevate role of bipartisan Problem Solvers Caucus?
- Following disappointments with key voting blocks – primarily Hispanics, but also Black men and working class whites – does the Democratic party reassess?
- Following this year's Presidential campaign, is the Republican party still Trump's party? Who will be the new Republican standard bearers?
- Do Congressional Republicans return to traditional GOP positions on fiscal restraint and international trade?
- Will the historic precedent of midterm losses for the president's party repeat itself in 2022?
- 2020 saw historical political spending, in many instances to no avail. Does that affect future giving?
- Will early voting become the norm? Can we trust the polls again? How do pollsters accurately capture the changing electorate?

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