

# ALCALDE & FAY

## GOVERNMENT & PUBLIC AFFAIRS FIRM



## ELECTION 2020: RESULTS AND ANALYSIS

### PRESIDENT

With many votes still being counted as several states continue processing record-level amounts of mail-in and/or absentee ballots, the Presidential election between President Donald J. Trump and former-Vice President Joseph R. Biden remains undecided at this time. At this time, there is currently a path to the White House for both candidates, with President Trump having secured 214 electoral votes and former-Vice President Biden having accumulated 253 as of Thursday morning (*there is some discrepancy between various news outlets about whether to call Arizona and its 11 electoral votes for Biden, but for these purposes we have it in the undecided column*).

Of the handful of battleground states that were decided on Tuesday night, almost all voted the same way they did in 2016, in many cases defying polling predictions. The President was able to secure victories in Florida, Iowa, Ohio, and Texas, all states he had previously won in 2016. Vice President Biden, on the other hand, was able to secure victories in New Hampshire and Minnesota; Hillary Clinton won both of these states in 2016 but the Vice-President secured larger margins of victory in both races, particularly in Minnesota. The Vice President was able to secure a key victory late Wednesday afternoon with all outlets projecting him as winning Michigan, edging out President Trump by a little over 100,000 votes. President Trump won Michigan in 2016, beating candidate Hillary Clinton by a razor thin margin of just over 10,000 votes. The Vice President also flipped Wisconsin back to the Democrats, securing a narrow victory by approximately 21,000 votes (nearly identical to President Trump's margin of victory in 2016). The Trump campaign has already said they will request a formal recount, which they are entitled to since the candidates are within 1 percentage point of each other.

As of Thursday morning, the race remains too close to call in several key battleground and/or toss-up states, including Arizona, Georgia, Nevada, North Carolina and Pennsylvania. Much of the remaining uncertainty regarding the results in these states surround the issue of mail-in ballots, which a record number of voters utilized this election due to the current state of the coronavirus pandemic. While many of these states only began processing the millions of mail-in absentee ballots on election day, they appear to be making steady progress and may have final counts completed in the coming hours, although for some it may take several days. The race remains extremely tight in several of the remaining states, including in Arizona and Georgia where the candidates are within a few thousand votes of each other at this time, which again increases the likelihood for recounts and/or further litigation over the counting of ballots. Of particular note, the Trump campaign has already filed lawsuits in Georgia,

Michigan and Pennsylvania (with plans for similar efforts in other states) which vary from challenging the legality of some votes to demanding increased access by the campaign to locations where votes are processed.

## U.S. SENATE

Although votes in several key races are still being finalized, Republicans are now slight favorites to maintain their majority control of the Senate in the 117th Congress, although control of the Senate will likely come down to upcoming runoff races to determine control of the two Senate seats in Georgia. Despite consistent polling indicating that Democrats were poised to win several Senate races and flip control of the Senate, Republicans vastly outperformed expectations across a number of key toss-up races, even securing wins in races where Republican incumbents were projected to lose. At this time, Republicans are currently projected to control 49 seats in the 117th Congress, leaving Democrats with 49 (*this total includes two independent senators, Bernie Sanders of Vermont and Angus King of Maine, who both caucus with Senate Democrats*), and the two Georgia seats left to be decided.

Of particular note, Republicans are projected to hold on to several Senate seats previously considered toss-ups or even leaning to Democrats, including in Maine where Susan Collins (R-ME) overcame a strong challenge from Maine's Speaker of the House Sara Gideon, as well as in South Carolina where Judiciary Chairman Lindsay Graham (R-SC) won a convincing victory over Jamie Harrison, South Carolina's former Democratic Party Chair. We are still awaiting a final vote count in Alaska, although that race appear likely to be held by the Republican incumbent, Senator Dan Sullivan (R-AK).

Several Senate races remain uncalled at this time, including in North Carolina where votes are still being counted in the race between incumbent Thom Tillis (R-NC) and Democratic challenger Cal Cunningham, although Tillis currently holds a seemingly insurmountable lead of nearly 100,000 votes with more than 90 percent of the vote counted. In Georgia, while Senator David Perdue (R) holds a lead of approximately 100,000 votes (or 50 percent of the vote) over Democrat Jon Ossoff, it remains unclear if Perdue can retain the 50 percent margin needed to avoid a runoff. In the state's special Senate election, however, no candidate was able to garner 50 percent of the vote, so a state-wide runoff will be held on January 5, 2021, between the top two vote-getters: incumbent Senator Kelly Loeffler (R) and Raphael Warnock (D). The special election will determine who will serve the remaining two years of former Senator Johnny Isakson's term. The latest projections suggest Republican voters in the state, split between Senator Loeffler and Congressman Doug Collins (R-GA 9th) in Tuesday's election, will likely unite behind Loeffler in the runoff, making it likely that Republicans retain the seat.

Across all Senate races on Tuesday, only a handful of seats changed party control. In Michigan, incumbent Senator Gary Peters (D-MI) and Ranking Member of the Senate Homeland Security Committee was able to hold onto his seat after a tight race against challenger John James (R). Democrats, however, were only able to flip two Republican-held seats, including in Colorado where former-Governor John Hickenlooper soundly defeated incumbent Republican Cory Gardner, and in Arizona where Mark Kelly soundly defeated incumbent Republican Senator Martha McSally. McSally previously ran for Senate in Arizona in 2018, losing to current Arizona Senator Kyrsten Sinema (D-AZ), but was appointed to the Senate by Republican Governor Doug Ducey following the passing of the late John McCain. In Alabama, Republican challenger Tommy Tuberville defeated incumbent Senator Doug

Jones (D-AL) in a lopsided victory, although Jones was long viewed as the most vulnerable Democratic incumbent.

Party	Current # of Seats	Projected # of Seats in the 117th Congress <i>(pending two Georgia races)</i>	Projected Net Gain/Loss <i>(pending runoffs)</i>
Republicans	53	49	-1
Democrats	47*	49	+1

\*Includes two Independents who caucus with the Democrats.

Senate Leadership is expected to remain largely unchanged, with Mitch McConnell (R-KY) and Chuck Schumer (D-NY) expected to retain their respective roles of Majority and Minority Leader *(pending the results of the runoffs in Georgia)*.

## U.S. HOUSE OF REPRESENTATIVES

As expected, Democrats will retain their majority in the House, but in perhaps the most surprising result of Tuesday's elections, Democrats are currently projected to suffer a net loss of seats once all races are finalized. As of Thursday morning there are still several House races across the country that remain uncalled, including several in California, Michigan and Pennsylvania where votes still being and it may take days to finalize the results.

Notably, and as charted below, the current vote tally would reflect a net gain of 5 seats for House Republicans, slightly reducing their current 35 seat disadvantage in the House and largely outperforming expectations which had Democrats gaining as many as 15 to 20 seats. Instead, Democrats have so far failed to defeat a single incumbent Republican, and expansion efforts in many states have come up short, including in Texas where Democrats failed to win any of the 10 seats targeted by the party. At this time, and as reflected in the below chart, several projections for the 117th Congress predict that Democrats will ultimately hold 227 seats, which would reflect net loss of 5 seats. In Louisiana, the one outstanding race will be decided by a district-level runoff election scheduled for December 5, 2020; however, two Republicans will vie for the state's 5th district, ensuring Republicans retain that seat.

Party	Current # of Seats <i>(currently 5 vacancies)</i>	Projected # of Seats in the 117th Congress <i>(pending runoff and final counts with 36 races pending)</i>	Projected Net Gain/Loss <i>(pending runoff, final counts)</i>
Democrats	232	209	-5
Republicans	197	190	+6
Independent*	1	0	-1

\*Justin Amash (I-MI) is not seeking reelection, and his open seat was won by a Republican.

House Leadership in both parties is expected to remain mostly unchanged in the 117th Congress, although it remains to be seen if the significant underperformance by House Democrats in Tuesday's elections could galvanize members of the caucus to challenge any members of the current leadership.

At this time, the top three Democrats in the House – Speaker Nancy Pelosi (D-CA), Majority Leader Steny Hoyer (D-MD), and Whip James Clyburn (D-SC) – are currently running uncontested for another two-year term in their respective roles. Speaker Pelosi (D-CA) indicated she would limit her leadership in the House to only four years if selected as Speaker following the 2018 elections, and recent reports indicate the Speaker could face a similar challenge to the one she overcame in 2018. Of particular note, the Number 4 position of Assistant Speaker is expected to be a hotly contested race between Democratic Caucus Vice Chairwoman Katherine Clark (D-MA), Democratic Policy and Communication Committee Chairman David Cicilline (D-RI), and Congressional Hispanic Caucus BOLD PAC Chairman Tony Cárdenas (D-CA). On the Republican side, Minority Leader Kevin McCarthy (R-CA), Minority Whip Steve Scalise (R-LA) and Conference Chairwoman Liz Cheney (R-WY) are all running unopposed and all expected to retain their positions.

Democratic Caucus Leadership elections are currently scheduled for November 18th & 19th, while the Republican Steering Committee will meet on the 17th for their own leadership elections.

## **EXPECTED COMMITTEE CHAIRS & RANKING MEMBERS**

When the 117th Congress convenes on January 3, 2021, Democrats will maintain control of the House, despite suffering a projected net loss of five seats, with several races across the country still pending. Majority control of the Senate, however, currently appears to hinge on the results of runoff races for both of the Georgia Senate seats. Despite some incumbent losses among House Democrats and a handful of incumbent Senators losing reelection, the vast majority of those races impacted more junior members of Congress and as such will not have much, if any, impact on Committee leadership. Instead, term limits and retirements will serve as the predominant sources of changes to Committee leadership in both Chambers.

### **EXPECTED SENATE LEADERSHIP OF KEY COMMITTEES**

#### **Appropriations**

- *Chairman:* Senator Richard Shelby (R-AL) is expected to remain as Chair.
- *Ranking Member:* Senator Patrick Leahy (D-VT) is expected to remain as Ranking Member.

#### **Budget**

- *Chairman:* Senator Mike Enzi (R-WY) is retiring and his successor is likely to be Senator Lindsey Graham (R-SC) who plans to relinquish the Chairmanship of the Senate Finance Committee to Senator Charles Grassley (R-IA).
- *Ranking Member:* Senator Bernie Sanders (I-VT) is expected to remain as Ranking Member.

#### **Commerce**

- *Chairman:* Senator Roger Wicker (R-MS) is expected to remain as Chair.
- *Ranking Member:* Senator Maria Cantwell (D-WA) is expected to remain as Ranking Member.

#### **Environment and Public Works (EPW)**

- *Chairman:* Senator John Barrasso (R-WY) is expected to remain as Chair.
- *Ranking Member:* Senator Tom Carper (D-DE) is expected to remain as Ranking Member.

## Finance

- *Chairman:* Senator Charles Grassley (R-IA) is term limited as Chairman and as noted above is expected to return to fulfill the remaining two years of his term as Chairman of the Senate Judiciary Committee. With Senator Grassley's likely departure, Senator Michael Crapo (R-ID) is expected to take over as Chair of the Finance Committee, foregoing another term as Chair of the Banking Committee.
- *Ranking Member:* Senator Ron Wyden (D-OR) is expected to remain as Ranking Member.

## Health, Education, Labor, and Pensions (HELP)

- *Chairman:* Senator Lamar Alexander (R-TN) is retiring after serving three terms as HELP Committee Chairman. Although Senator Richard Burr (R-NC) is next in line in seniority, his status remains unclear as he recently stepped down as Chairman of Intelligence Committee amidst an FBI investigation into his personal finances. Senator Rand Paul (R-KY) is next in line in seniority, and Senator Bill Cassidy (R-LA) has also expressed interest in leading the Committee.
- *Ranking Member:* Senator Patty Murray (D-WA) is expected to remain as Ranking Member.

## Homeland Security and Governmental Affairs

- *Chairman:* Senator Ron Johnson (R-WI) is expected to remain as Chair.
- *Ranking Member:* Senator Gary Peters (D-MI) is expected to remain as Ranking Member.

## Veterans Affairs:

- *Chairman:* Senator Jerry Moran (R-KS) is expected to remain as Chair.
- *Ranking Member:* Senator Richard Blumenthal (D-CT) is expected to remain as Ranking Member.

## EXPECTED HOUSE LEADERSHIP OF KEY COMMITTEES

### Appropriations

- *Chairman:* Representative Nita Lowey (D-NY) is retiring, and Representatives Marcy Kaptur (D-OH), Debbie Wasserman Schultz (D-FL) and Rosa DeLauro (D-CT) are all vying for the top seat on the Committee. While initially the frontrunner and heir apparently to Lowey, Congresswoman DeLauro is facing a strong challenge from Congresswoman Wasserman Schultz who has been working to shore up support among her allies and across the House Democratic caucus.
- *Ranking Member:* Representative Kay Granger (R-TX) is expected to remain as Ranking Member.

### Budget

- *Chairman:* Representative John Yarmuth (D-KY) is expected to remain as Chair.
- *Ranking Member:* Representative Steve Womack (R-AR) is expected to remain as Ranking Member.

### Education and Labor

- *Chairman:* Representative Bobby Scott (D-VA) is expected to remain as Chair.



- *Ranking Member:* Representative Virginia Foxx (R-NC) is expected to remain as Ranking Member.

### **Energy and Commerce**

- *Chairman:* Representative Frank Pallone, Jr. is expected to remain as Chair.
- *Ranking Member:* Representative Greg Walden (R-OR) is retiring. Next in line in seniority is Fred Upton (R-MI) who is term limited having previously chaired the Committee for six years, leaving Representatives Michael Burgess (R-TX), Cathy McMorris Rodgers (R-WA) and Bob Latta (R-OH) as potential replacements.

### **Homeland Security**

- *Chairman:* Representative Bennie Thompson (D-MS) is expected to remain as Chair.
- *Ranking Member:* Representative Mike Rogers (R-AL) is expected to remain as Ranking Member.

### **Transportation and Infrastructure**

- *Chairman:* Representative Peter DeFazio (D-OR) is expected to remain as Chair.
- *Ranking Member:* Representative Sam Graves (R-MO) is expected to remain as Chair.

### **Veterans Affairs**

- *Chairman:* Representative Mark Takano (D-CA) is expected to remain as Chair.
- *Ranking Member:* Representative Phil Roe (R-TN) is retiring and his likely successors include Representatives Gus Bilirakis (R-FL), Representative Jack Bergman (R-MI), or Representative Mike Bost (R-IL).

### **Ways and Means**

- *Chairman:* Representative Richard Neal (D-MA) is likely to remain Chair.
- *Ranking Member:* Representative Kevin Brady (R-TX) is likely to remain as Ranking Member.

## **LAME-DUCK CONGRESSIONAL FORECAST**

The House and Senate will return to Washington this month to begin the final weeks of the 116<sup>th</sup> Congress. With the Presidential race still undecided and majority control of the Senate likely dependent on the outcome of two runoff races in Georgia scheduled for early January, the full impact of the elections on the upcoming lame duck session remains unclear at this time. Of particular note, Congress will have only a few short weeks to act in order to avoid a government shutdown when the current Continuing Resolution (CR) expires on December 11th. While the House has passed 10 of its 12 spending bills via two minibus spending packages (leaving only the Legislative Branch and Homeland Security spending bills left to be considered), the appropriations process stalled in the Senate at the Committee level, making it more than likely that Congress will once again need to rely on a massive Omnibus spending bill. With limited time before the current CR expires, Congress will likely need to pass another short-term CR to provide negotiators enough time to draft the spending package and advance it through both chambers. There also remains the possibility that Congress ultimately opts to pass a longer-term CR and push the negotiations over the FY 2021 spending bills into the next session of Congress.

Negotiations on a comprehensive coronavirus relief package are also expected to resume during the lame duck, after the White House and Speaker Nancy Pelosi (D-CA) failed to reach an agreement on a final package before the elections. While the two sides seemed to get closer to an agreement on a topline number for the package, several key policy and funding issues remained unresolved, including on the issue of stabilization funding for state and local governments. Senate Republicans have strongly opposed the higher funding levels discussed by Pelosi and Mnuchin and have also pushed back against providing additional relief funding to state and local governments. While it is unclear what, if any, impact the election results could have on the prospects of Congress and the White House reaching an agreement on a relief package during the lame duck, all sides seem far from reaching a consensus on the numerous outstanding policy and funding components at this time.

While the prospects for passing both of these massive spending packages during the lame duck session remain unclear, there is a more positive outlook for completing negotiations on several bipartisan bills that could be approved by Congress during the lame duck session. While Congressional leadership has not necessarily committed to a specific list of bills to be considered in either chamber, we expect congressional negotiations to be completed on several pending bills in time for them to be considered this Congress, including but not limited to the FY 2021 National Defense Authorization Act (NDAA), legislation extending a number of expiring tax provisions (commonly referred to as 'tax extenders'), and the biennial reauthorization of the Water Resources Development Act (WRDA) which authorizes most Army Corps of Engineers and water infrastructure projects.

Given the potential impact that the elections could have on these legislative items, we will provide an update on the lame duck in the coming days.