



大成 DENTONS

PRESIDENTIAL PREVIEW

The Battle for 1600
Pennsylvania Ave

With a raging, global COVID-19 pandemic, the US death toll from which has already topped 228,000, with more than 8 million infected, and a domestic economy contracting at an historic rate, the evidence, including the most recent polling, suggests that if the November election remains a referendum on President Trump’s first term, he will likely lose his bid for re-election. However, President Trump has a possible path to victory in the Electoral College but would have to draw an inside straight.

Indeed, current polling indicates that, if the election were held today, Vice President Biden is near the 270 electoral votes he needs to win election. No vaccine nor stimulus check will emerge before the November 3 election that will materially affect the way the President’s handling of the pandemic is perceived by the public at this point. For better or worse, opinions about the candidates are largely formed and hardened and it’s unlikely that many already committed voters will change their minds.

Safe/likely Biden		Battlegrounds		Safe/likely Trump	
226 EEV		187 EEV		125 EEV	
CA	CT	FL	GA	AL	AR
DC	DE	IA	ME-2	ID	KY
HI	IL	NC	OH	LA	MS
MA	MD	TX	AZ	ND	NE-1
ME-1	NJ	MI	NE-2	NE-3	NE-AL
NM	NY	NV	PA	OK	SD
OR	RI	WI		TN	WV
VT	WA			WY	AK
CO	ME-AL			IN	KS
MN	NH			MO	MT
VA				SC	UT

Via the Wall Street Journal

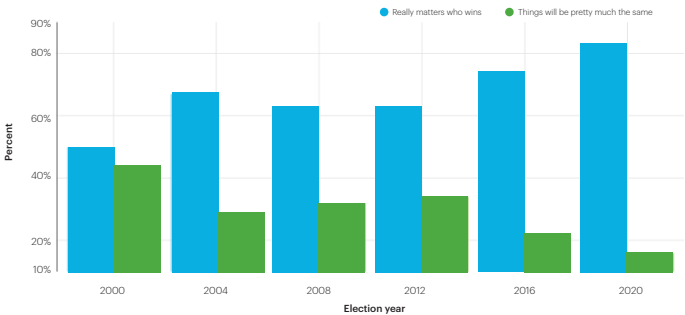
Americans’ intensity about this election is at record levels. We’ve seen early voting totals eclipse past levels with seven days to go before election day. Hawai’i is among several states on pace to surpass its 2016 total turnout in early voting before election day. Yes the pandemic has changed voter behavior but consider this: Prior to the 2000 election between George W. Bush and Al Gore, just 50% of the voters thought that it really mattered who won versus 44% who thought that things would be pretty much the same whoever won. This year, a record 83%—including 85% of Democrats, 86% of Republicans—say that who wins really matters.

What the data from 2020 tells us is that there is every reason to expect a record turnout in 2020. The American voter is restless. If these numbers hold, one could argue that 2018 provided a preview when the turnout in the midterm elections was the highest since 1914, even though Republicans were less mobilized than Democrats, a difference unlikely to be repeated this year.

The Numbers

It is fair to say that Presidential polling in the 2020 race suffers from the sins of its father. The failures of Presidential polling in 2016 have shaken the public’s confidence. It is also fair to say, calling it correctly, as polling did in the 2018 midterm, will serve as a battle

“Does it really matter who wins the presidential election?”
Voters, 2000-2020



Question text: “As far as making progress on the important issues facing the country is concerned, does it really matter who wins the presidential election, or will things be pretty much the same regardless of who is elected president?”

Via Pew Research Center

field confessional and potentially clean the slate. National polling has consistently had Biden outside the margin of error since Labor Day. At the Battleground level, except for Florida, the former Vice President is up, but not as big as nationally.

Recent polling by the New York Times and Siena College, whose methodology the Trump campaign vociferously questioned, indicates that a seeming majority of voters now prefer Vice President Biden’s policy positions over those of the President on almost all major issues. Biden has a 12 point lead over Trump on whom they trust to lead on the COVID-19 pandemic, and 6 point lead over

Dave Wasserman
[@RedistrictPOC](#)

A few days out, the picture of this race is pretty clear:

- 1) Biden's lead (52%-43%) larger & more stable than Clinton's in '16
- 2) Far fewer undecided/third party voters than '16
- 3) District-level polls (which showed big problems for Clinton in '16) back up national/state polls

10/25/20, 9:59 PM

Trump on whom they trust to choose Supreme Court justices and maintain law and order. By 20 points, Biden is seen as more capable than Trump of uniting the country.

Even on the President’s signature issue, the management of the economy, the issue on which the President hoped and expected to run for re-election, voters are now evenly split on which candidate

Top Battlegrounds: Trump vs. Biden				
RCP Average	Date	Biden (D)	Trump (R)	Spread
Top Battlegrounds	10/28	49.4	45.6	Biden +3.8
Florida	Oct. 28th	47.8	48.2	Trump +0.4
Pennsylvania	Oct. 28th	49.6	45.8	Biden +3.8
Michigan	Oct. 28th	50.6	41.9	Biden +8.7
Wisconsin	Oct. 28th	51.2	43.4	Biden +7.8
North Carolina	Oct. 28th	48.7	48.0	Biden +0.7
Arizona	Oct. 28th	48.6	46.2	Biden +2.4

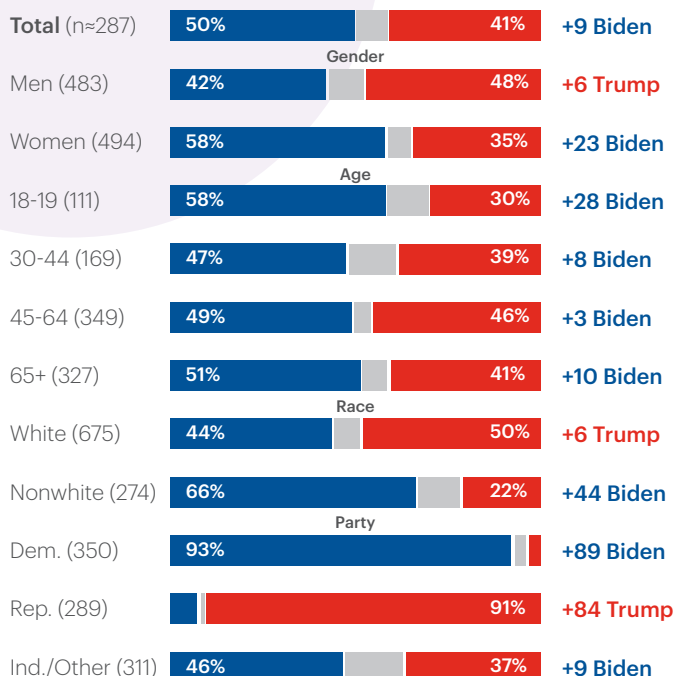
Via Real Clear Politics

they trust more to manage the economy. Trump enjoyed a lead on this issue outside of the margin of error in the September edition of this poll.

Polling also reveals that key segments of the electorate, particularly women, minorities and white voters with college degrees, now have a very unfavorable impression of the President and they appear to be rejecting the President's efforts to frame Vice President Biden an unacceptable alternative. The President has seen modest growth amongst Black and Latinx men this cycle which could prove pivotal if Texas does truly come into play.

The second and final presidential debate was a more routine affair, when compared to the fireworks in the first, but there is no evidence that in the polling to suggest that the debate changed many minds. Nor is there evidence the President's efforts to spark a furor over unsubstantiated claims about Hunter Biden's international work with questionable circumstances has made a substantial impact. And while there still could be a very late October surprise, be it a foreign policy breakthrough or a COVID-19 remedy, it is rather late-stage in the cycle for any such development to reconfigure the race and materially enhance the President's re-election prospects. This is true even before you consider the massive early voting across the country.

Joe Biden leads Donald Trump among most groups, and Mr. Biden is notably ahead among voters age 45 and older, who typically lean Republican.



Based on a New York Times/Siena College poll of 987 likely voters in the United States from Oct 15. to 18.

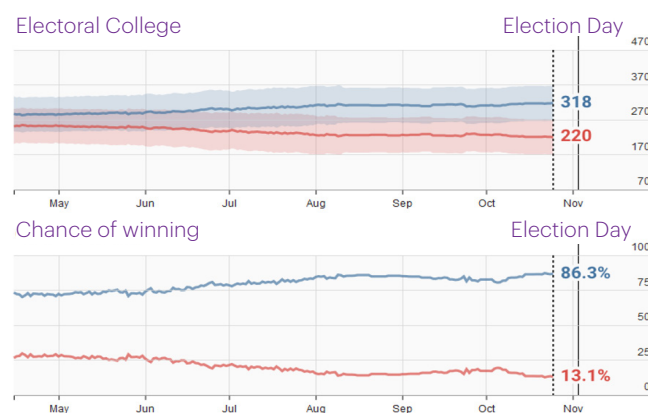
Via the New York Times

The Path Forward

The final days of the campaign will show the President energized in a twofold effort to highlight Biden's seemingly subdued public calendar as an indication of his "sleepiness" and appeal to his base supporters. He'll attempt to do it as he did in 2016, with mass rallies. The Trump campaign's hope and expectation is that their turnout in states like Pennsylvania, Michigan, Wisconsin, Florida, North Carolina and Ohio, largely on election day, will be enough to provide him with the votes he needs to win those states narrowly and retain his Electoral College majority.

The map on the next page shows the voters the President is targeting. The dark red shows a 30% growth in the GOP vote margin from Romney in 2012 to Trump in 2016. A region of the country once thought to be a Democratic stronghold saw a populist economic message and a promise to shake up the Washington establishment as reason enough to back his brand of the Grand Old Party and not, now Senator, Romney's.

Because the President appears to face an uphill battle in winning a referendum on his COVID-19 pandemic response, to have a realistic chance of winning re-election, his campaign's strategy appears to be to make this election a choice between himself and Vice President



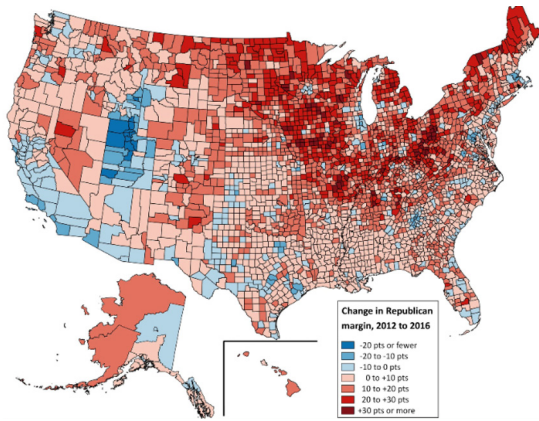
Via Decision Desk HQ

Biden, and to make a compelling case that Vice President Biden is not fit, and/or too far left ideologically for the average American, to serve as President of the United States. As a result, the President's attacks on Vice President Biden's mental acuity and ethics, and the claim that Biden is a puppet or captive of the progressive/socialist wing of the Democratic party, have continued, indeed have intensified, as the election has approached.

The President must capture the magic he found on election day in 2016. He cannot afford to lose his foothold in the Great Lakes and Rust Belt if he is to win the White House. Were he to stumble in Florida, Georgia, North Carolina, Texas or Arizona, the path to re-election grows significantly tighter. Texas and Georgia, while shifting may not be there yet, however Arizona is cause for concern for the President's campaign. The state has been trending towards the Democrats but has yet to break through at the Presidential level. Since 2016 the state has seen a 5% growth in population and that growth has primarily been in the minority communities.

Biden, if polling is to be believed, enjoys more paths to 270 than the President. Most of them require holding the states Clinton won in 2016. The Vice President happens to enjoy a 5 point or greater

Percent Change in GOP margin 2012 (Romney) to 2016 (Trump) at the county level



Via UVA Center for Politics

lead in those states today. It's the addition to the '16 count that gets interesting. Assuming he holds the Clinton-Kaine coalition, were he to bring Michigan, Pennsylvania and Wisconsin back to the blue column, he wins. If Pennsylvania stays Trump Country, but Biden manages to hold Michigan and Wisconsin, flipping Arizona and Nebraska's 2nd congressional district gets him exactly to 270. Biden is up greater than 5 points in Nebraska 2 and 4 in Arizona going into the final weekend. Flipping North Carolina and Florida, where the races are within the margin of error and holding Secretary Clinton's 2016 map gets Biden over 270 without any of the Great Lakes battlegrounds. There are other paths. One that recently emerged, again if you believe the polling, is Texas. Were Biden able to win Texas, we do think that is a stretch but we are watching the historic early vote for signs, he would need but one of a basket of 11 battleground states. Biden has polling leads in the majority of those battlegrounds.

Current polling suggests that Joe Biden is far more trusted and better liked than the Democratic candidate in 2016. Biden simply is not Hillary Clinton. The former Vice President is right side up on his favorable/unfavorable scores and the opposition to him is partisan. This is different than in 2016 when Secretary Clinton was underwater on her favorable/unfavorable numbers and the opposition was both personal and partisan.

Of course, if we accept that polling is both an art and a science, we must acknowledge that, as turned out to be the case in 2016, this cycle's polling may not offer as accurate a snapshot of the current state of the presidential race as we might believe it to be. With this in mind, despite the odds seemingly stacked against the President's re-election bid, we cannot rule out that the race is closer than the polls and prognosticators suggest, and thus, we cannot rule out a Trump re-election win when all of the votes are tallied.

When we will know the results

In addition to its devastating health and economic effects, the COVID-19 crisis is also having an enormous impact on the way that America votes this fall, producing huge increases in the number of Americans, particularly among Democrats, who are voting by mail. Election experts predict that the rate of mail voting will range from 50 to 70 percent nationwide this fall, compared with roughly 23 percent in 2016. Nearly half of all states will accept ballots that arrive by mail during a certain window after election day if their

postmark indicates they were sent by Nov. 3 or an earlier deadline. And roughly 30 states allow voters to fix errors that would otherwise lead to their ballots being rejected. In states where this is permitted after election day, it could draw out the time before final results are announced. Meanwhile, early results in some key states may provide enough information to declare a winner. States that are allowed to count ballots before election day and have strong early in-person and mail voting could release a sizable proportion of the results after polls close.

A survey of state election officials found that eight states expect to have at least 98 percent of unofficial results reported by noon the day after the election. Twenty-two states and the District of Columbia, which is still taxed without representation, just saying, allow postmarked ballots to arrive after election day, so the timing will depend on when voters return them.

New York, Rhode Island and Alaska will not report any mail votes on election night. Officials in Michigan and Pennsylvania, two key battleground states, have said full official counts could take several days.

While Florida remains a very close contest, Florida will have counted most of its votes by mail before the polls close on election night. Thus, unless the margin between the candidates is razor-thin, if Vice President Biden wins Florida, given the state's demographics, it is highly unlikely, indeed almost mathematically impossible, that President Trump would win enough of the other battleground states to get to 270 Electoral College votes. While President Trump still has an excellent chance to win Florida, if he fails to do so, it will likely be an early evening with the presidential race called for Biden by early in the morning on November 4.

If the race comes down to Pennsylvania, and it's close in the state,

When mail and absentee ballots are pre-processed

Upon receipt				Before Election Day				On Election Day			
AZ	GA	MN	NV	FL	IA	MI	NH	PA	WI	AL	MS
AK	CO	DC	HI	NC	OH	AR	CA				
ID	IL	IN	KS	CT	DE	KY	LA				
MA	MT	NE	NJ	ME	MD	MO	NM				
NY	SD	TN	UT	ND	OK	OR	RI				
VA	WA			SC	TX	VT	WV				
				WY							

 Key Presidential Battleground

Via The New York Times

we won't know until at least Thursday for two reasons. One, an early vote of at least 1.4 million ballots, there were only 290,000 ballots cast before election day in 2016, have been cast that won't be counted until election day. And two, a deadlocked US Supreme Court let stand a ruling by the state's highest court that allows election officials to count ballots postmarked by November 3 that are received up to three days after election day. As we go to print, the Pennsylvania GOP has a pending second request with the US Supreme Court to overturn the Court's earlier ruling, but yesterday the Court refused the GOP's request to face track consideration of its request.

As of 10/29 **75,580,179 Total Early Votes** •
In-Person Votes: 25,647,797 • **Mail Ballots Returned:**
 49,932,382 • **Mail Ballots Outstanding:** 42,002,995

Total Voted by Party Registration		
Reporting states with party registration data: AZ, CA, CO, CT, FL, IA, KS, KY, LA, MD, ME, NC, NE, NJ, NM, NV, OK, OR, PA, SD		
Party	Count	Percent
Democrats	17,350,160	47.3
Republicans	10,797,816	29.5
Minor	227,446	0.6
No Party Affiliation	8,288,395	22.6
TOTAL	36,663,817	100

Via the U.S. Election Project Michael McDonald • Professor, University of Florida

The Washington Post compiled the following list of counting and reporting plans for battleground states;

Arizona: The state allows mail ballots to be counted before election day, which means voters can expect to see more advanced results on election night, if everything goes according to plan. The process can start earlier than it did in 2018, when results remained unclear in a major Senate race for nearly a week. At least one major county has also upgraded its equipment. Election officials plan to release initial results around 8 p.m. local time, or about an hour after polls close, combining all ballots cast before election day by mail and in person. The next ballots to be counted will be those cast at polling locations on election day, followed by mail ballots returned that day.

Florida: The state allows mail ballots to be counted before election day, which means voters can expect to see more advanced results on election night, if everything goes according to plan. Initial statewide results are expected in Florida at 8 p.m. Eastern time on election night and will include ballots cast early in-person and by mail.

Georgia: Mail ballots cannot be counted until after polls close on election day. Secretary of State Brad Raffensperger has predicted that results for “very, very close” races will be available one or two days after the election at the latest. Results for less competitive races will be available on election night, he said.

Michigan: In jurisdictions with more than 25,000 people, mail ballots can be counted starting Nov. 2. Other jurisdictions must wait until election day. Michigan expects to have unofficial statewide results available Nov. 6, if not earlier, once all ballots are counted. Counties may release preliminary results before that.

Minnesota: The state allows mail ballots to be counted before election day and expects to release preliminary results after polls close around 8 p.m. local time that combine election day in-person, early in-person and mail votes.

North Carolina: Mail ballots cannot be counted until election day, but a heavy volume of early in-person votes this year means voters can expect to see more advanced results on election night, if everything goes according to plan. North Carolina expects to report results from early in-person votes and mail ballots cast before election day after all polls close statewide at 7:30 p.m. Eastern. election day votes will be counted last. The state expects it will report results on election night reflecting more than 95 percent of votes cast in the election.

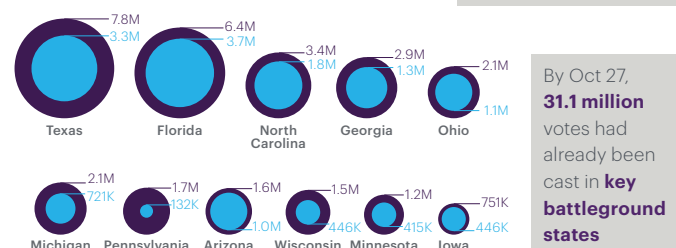
Ohio: Mail ballots cannot be counted until election day. Ohio plans to release preliminary results on election night that combine election day in-person, early in-person and mail votes returned by close of polls.

Pennsylvania: Mail ballots cannot be counted until election day, despite local election officials pleading with the legislature to give them more time. Secretary of State Kathy Boockvar has predicted that the vast majority of ballots will be counted “in a matter of days” or “by the weekend [after the election] ... maybe even significantly sooner.” A spokeswoman said the state is making changes to its system to provide an analysis of different types of votes cast and report the number yet to be counted, broken down by county.

Wisconsin: Mail ballots cannot be counted until election day. Wisconsin has no statewide reporting process for unofficial results on election night, but municipal clerks are required to report their tallies to county clerks within two hours of finishing the count. Most mail ballots are counted at precincts where the voter would have cast a ballot in person. Election officials have predicted they will finish counting on election night or the day after.

Early turnout in US battleground states

Early ballots cast one week from Election Day, in select battleground states



66.2 million Americans have already cast their ballots, almost half the total ballots cast in the **2016 election**.

Source: GZERO Signal Newsletter

What's Next?

If the election turns out to be very close, a byproduct of voting by mail is that it could be days or even weeks before we know who the winner is, and several commentators argue that, unless the election is a blow-out, the chances of an election night call of the race are slim.

On Wednesday morning, November 4, our Public Policy team will be issuing a detailed report on the election results that are then available. We will be updating this report later in the day, and on succeeding days as necessary, to provide not only the presidential results but a comprehensive picture of what the next US House and Senate will look like.

Whatever the outcome of the elections, once it becomes clear who will serve as the President as of January 20, 2021 and who will control the Congress, we also will be releasing additional reports that profile many of the people who are expected to play key roles in the next administration and that explore the central elements of, and prospects for, the legislative agenda of the winning presidential candidate.

Contacts

Please contact your usual Dentons relationship lawyer or professional, or any of the following members of our Public Policy team:



Eric J. Tanenblatt
Global Chair, Public Policy
and Regulation
Washington, D.C. / Atlanta
D +1 202 496 7373
eric.tanenblatt@dentons.com



Gary L. Goldberg
Senior Policy Director
Washington, D.C.
D+1 202 408 6396
gary.goldberg@dentons.com



Thurbert Baker
Partner
Washington, D.C. / Atlanta
D +1 202 496 7653
thurbert.baker@dentons.com



David Quam
Counsel
Washington, D.C.
D +1 202 496 7220
david.quam@dentons.com



Chris Fetzer
Partner
Washington, D.C.
D +1 202 408 9192
chris.fetzer@dentons.com



Margeaux Plaisted
Senior Managing Director
Washington, D.C.
D +1 202 408 3239
margeaux.plaisted@dentons.com



Sander Lurie
Principal
Washington, D.C.
D+1 202 408 7003
sander.lurie@dentons.com



Ashley Lawrence
Managing Director
Washington, D.C.
D +1 202 496 7399
ashley.lawrence@dentons.com



John R. Russell, IV
Principal
Washington, D.C.
D +1 202 408 6392
john.russell@dentons.com

ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

dentons.com

© 2020 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.