

Washington Update NASTL Summer Conference 2024



ALLEN D. FREEMYER

EDUCATIONAL
OUTREACH



Agenda

End of the 118th Congress

Key Issue Updates

Congressional Review Act

Congressional Leadership Changes

Election Day, November 5, 2024



2025 Congressional Leadership Move Out/Move In

U S S E N A T E

- Republicans will elect a new Senate Leader with McConnell stepping aside.
- Manchin retirement and Barrasso moving to leadership position means new leadership on Senate Energy Committee
Henrich and Lee expected to fill leadership unless either one serves under a new President

U S H O U S E

- Leadership likely to be the same as Johnson has withstood attacks but will have to be re-elected by his own party.
- Democrat majority in House will test the leadership of Jeffries.
- House majority for either party will be slim
- Congressman Grijalva fighting cancer. Unknown if he will continue in Committee leadership.

Is Anything Happening in Washington?

A terrible debate performance, plummeting polling numbers for President Biden, Trump on a glide path to victory, Democrat Party turns against the President, a poorly timed COVID case, President Biden withdraws from election, Biden anoints Kamala Harris, Trump claims its not fair, Harris raises over \$300 million in days, polling numbers tighten, Democrat base energized, race is as tight as ever....but clearly moving in Harris's direction.



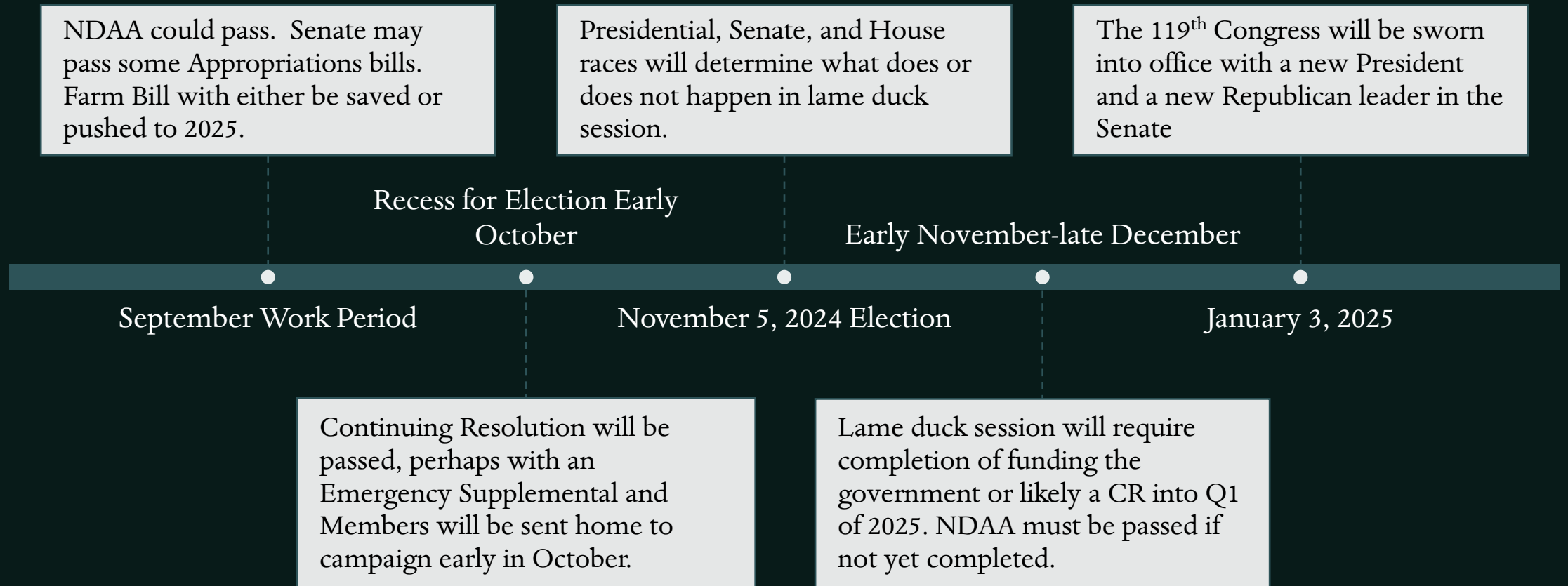
Washington DC



End of 118th Congress

- Fund the Government—Lame Duck
- National Defense Authorization Act—September?
- Farm Bill—prognosis is bleak. Plan on 2025.
- Public Lands Legislation—Manchin/Barrasso package with over 90 bills expected. House is willing to play ball with the Senate—Lame Duck.
- Permitting Reform—Lame Duck but more to come.

118th Congress Timeline



Key Issue Update

- BLM Conservation Landscape Rule
- USFS Old Growth Climate Resilience
- EPA NAAQS Rule
- Sage Grouse
- Permitting Reform
- Tribal Reserved Water Rights
- Chevron Doctrine
- Appropriation Riders

BLM Conservation Landscape Rule

- June 10, 2024-- Final Rule effective
- Implements conservation as a multiple use
- Increases use of ACECs
- Authorizes mitigation or restoration leases for non-use
- Litigation by nearly every industry on public lands filed in US District Court in Wyoming. Several States involved in the suit
- Initial briefings occurring
- Expect Loper decision to be part of litigation challenge
- BLM has issued implementation guidance to Field Offices
- Chairman Westerman says don't waste your time, Congress will stop the Rule

USFS Climate Resiliency and Old Growth Rule

- Advanced Notice of Proposed Rulemaking published on April 21, 2023.
- Proposed action appears to be the USFS version of the BLM conservation landscape Rule.
- Effort would amend 128 forest management plans to foster long-term resilience of old growth forests to climate change.
- Would redefine “old growth”.
- It does not appear the USFS will produce a draft Rule this year.
- The White House Regulatory Agenda now says “TBD” for timing.

NAAQS Rule

- EPA Rule lowering the National Ambient Air Quality Standard (NAAQS) for fine particulate matter PM_{2.5} to 9 micrograms/m³ down from 12 micrograms.
- Rule became effective May 6, 2024.
- House Appropriation bill prohibits implementation. May have bi-partisan support in the Senate.
- Prime target for a Loper decision challenge to the agency's deference in interpreting the Clean Air Act.

Sage Grouse

- Draft plan released March 14, 2024. Comment period ended June 13, 2024.
- Plan would revise 77 land use plans encompassing 121 million acres across 10 Western states.
- Great opposition in Congress from western states.
- Alternative 5 is the preferred alternative. Attempts to balance GRSG conservation with other public land uses. Fewest restrictions on resource uses and provides opportunities for compensatory mitigation. No new ACEC's.
- Attend ESA breakout session today for more information.

Permitting Reform

- Senators Manchin and Barrasso introduce the Energy Permitting Reform Act of 2024. Bipartisan Support
- Judicial Review: Shortens timelines before, during, and after litigation on all types of Federal authorizations for energy and mineral projects.
- Onshore Energy and Minerals: Accelerates leasing and permitting decisions for all types of energy and leasable minerals.
- Offshore Energy: Requires Secretary to hold at least 1 offshore lease sale for wind and oil and gas from 2025-2029.
- Electric Transmission: Reforms existing backstop siting authority for interstate transmission lines and requires interregional transmission planning.
- LNG Exports: Sets a 90-day deadline for DOE to grant or deny LNG export applications following environmental reviews. Applications deemed approved if DOE misses deadline.
- Hydropower: Allows FERC to extend start-construction deadlines for certain existing hydropower licenses.
- Hardrock mining: technical fix to overcome Rosemont decision regarding millsites.

Tribal Reserved Water Rights Rule

- Requirements for States: If a Tribe asserts a reserved right, states must:
- Consider the use and value of waters for protecting the tribal reserved right when adopting or revising designated uses.
- Consider the anticipated future exercise of the tribal reserved right, unaffected by water quality, when establishing relevant WQS.
- Establish water quality criteria to protect the tribal reserved right where designated uses incorporate or encompass the right.
- Litigation by several states has been filed with Idaho taking the lead.

Overturing Chevron

- June 28, 2024 Supreme Court overturns Chevron doctrine in Loper v. Raimondo case.
- Chevron doctrine required courts to defer to federal agencies' interpretations of ambiguous statutes in rulemaking and policies.
- Supreme Court ruled that courts must now exercise independent judgment in deciding whether an agency has acted within its statutory authority, rather than deferring to the agency's interpretation.
- Massive victory for industries.
- Huge loss for conservation advocates.
- Will require Congress to precisely legislate and leave less room for interpretation by agencies.
- Regulations under the Clean Air Act, Clean Water Act, Endangered Species Act, NEPA, etc. will all be subject to challenges under the Loper decision.

Federal Appropriations

- The House has passed 5 Appropriations bills for FY 25—The Senate has passed none.
- House passed bills contain riders:
 - Prohibits land withdrawals without Congressional approval
 - Prohibits implementation of new mining policies
 - Prohibits implementation of ESA Rules, implementation of Sage Grouse plans, listing of Lesser Prairie Chicken, listing Northern Long Eared Bat or the Dunes Sagebrush Lizard, establishment of experimental population of Bitterroot Grizzly Bear, and requires delisting of Yellowstone Grizzly.
 - Prohibits implementation of BLM Conservation Landscape Rule
 - Requires EPA to produce WOTUS guidance documents to Congress
 - Prohibits implementation of NEPA Phase I Rule
 - Prohibits implementation of EPA NAAQS Rule

Congressional Review Act

The Congressional Review Act (CRA) allows Congress to review and potentially overturn new federal regulations issued by government agencies.

1. **Submission of Rules:** Federal agencies must submit a report on each new rule to both houses of Congress and the Government Accountability Office (GAO) before the rule can take effect.
 2. **Congressional Review:** Congress has 60 legislative days to review the rule. During this period, any member of Congress can introduce a joint resolution of disapproval.
 3. **Expedited Process:** The CRA provides an expedited process for considering the resolution in the Senate. If the committee to which the resolution is referred does not act within 20 calendar days, it can be discharged from further consideration by a written petition of 30 Senators.
 4. **Presidential Approval:** If both houses of Congress pass the joint resolution, it is sent to the President for approval. If the President signs the resolution, the rule is nullified. If the President vetoes it, Congress can override the veto with a two-thirds majority in both houses.
 5. **Prohibition on Reissuing:** Once a rule is overturned, the CRA prohibits the reissuing of the same or substantially similar rule unless specifically authorized by a new law.
- The CRA has been used to overturn a total of 20 rules since its enactment in 1996.

2024 Election



P R E S I D E N T

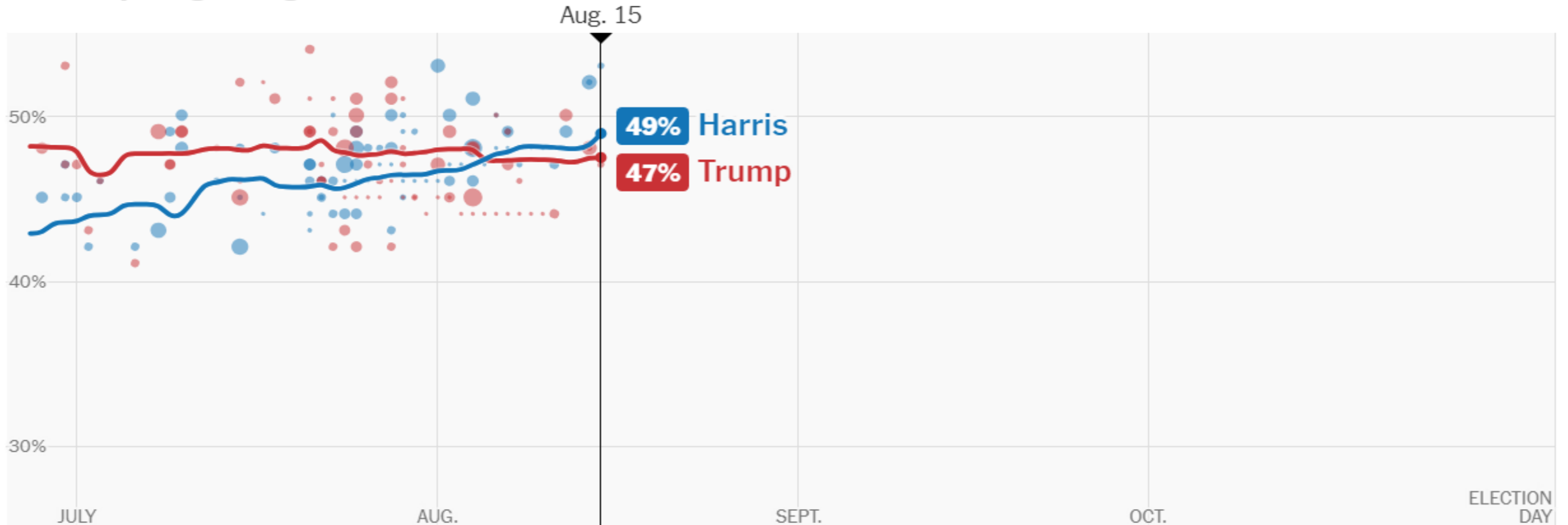
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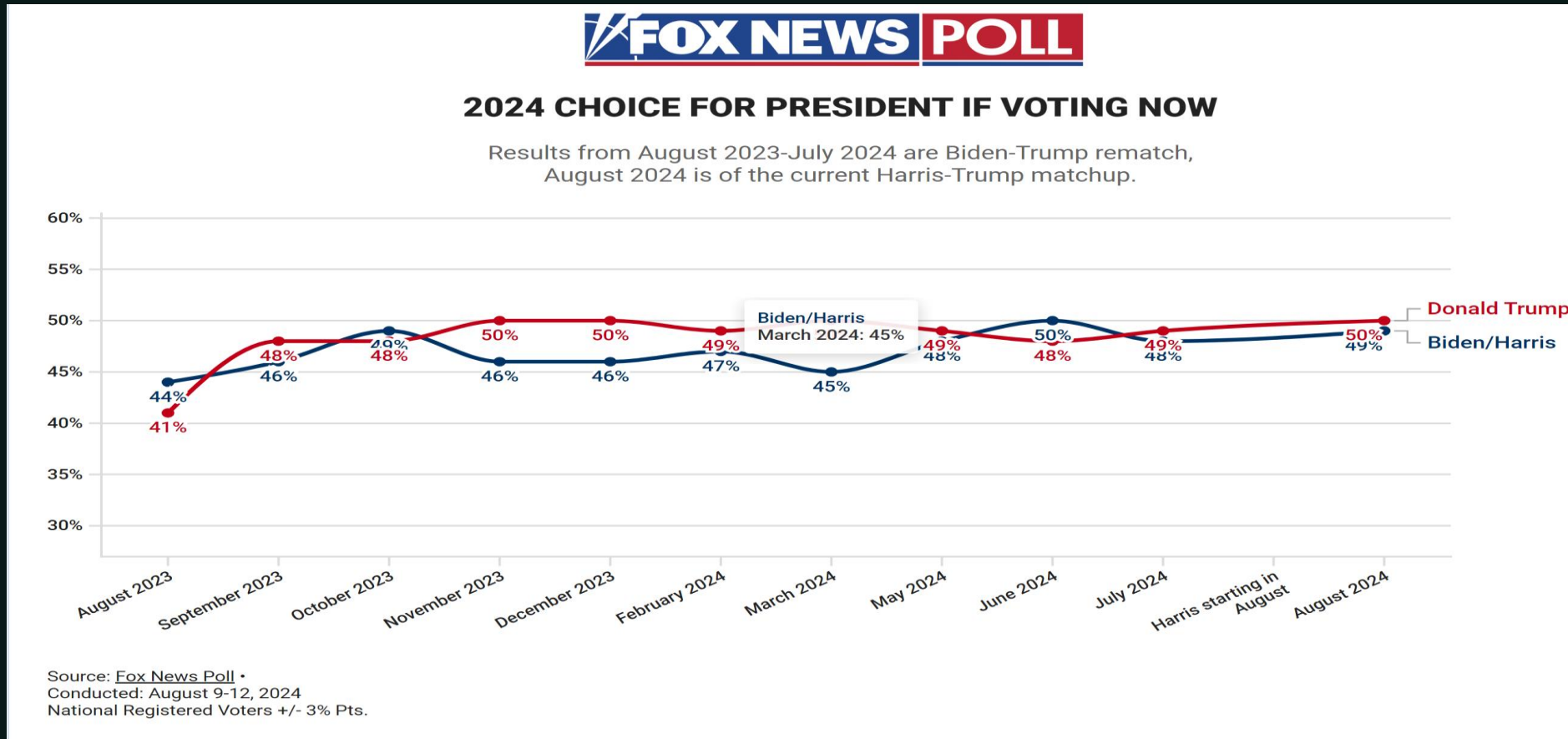


National Poll Average August 15, 2024

National polling average



National Poll—August 9-12, 2024

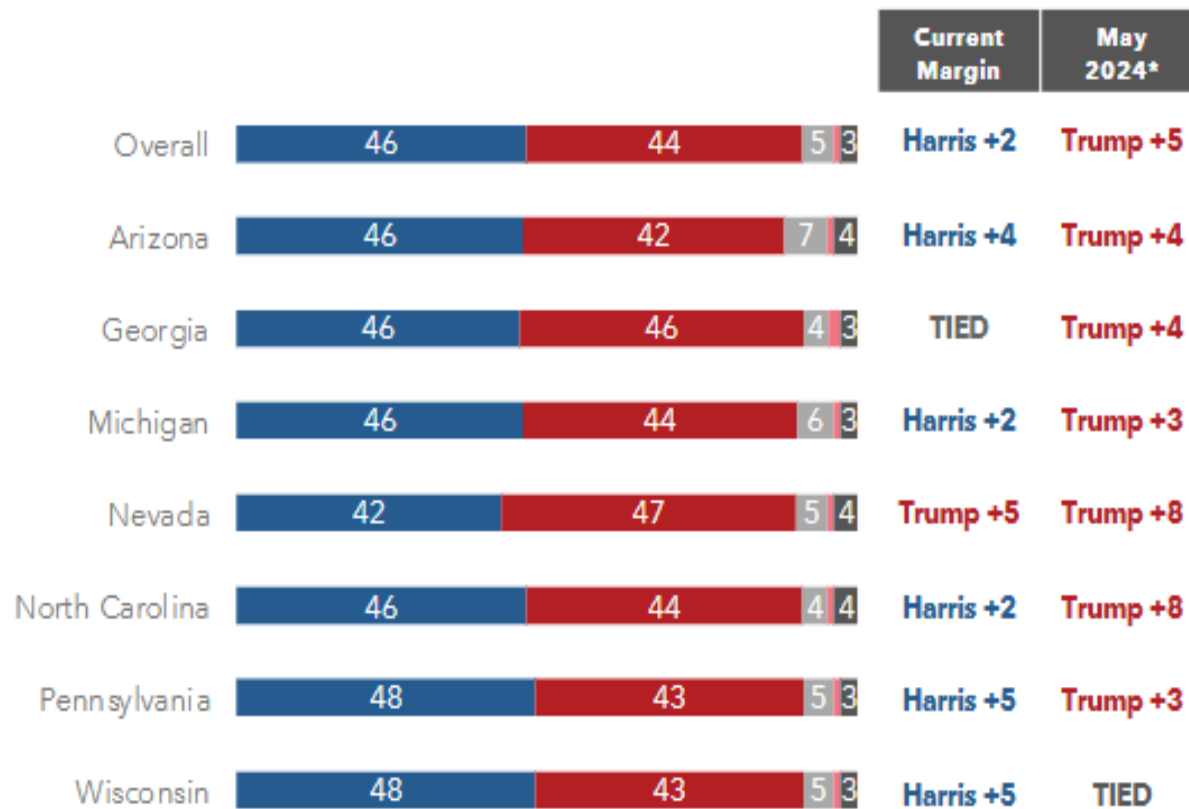


The Harris Impact

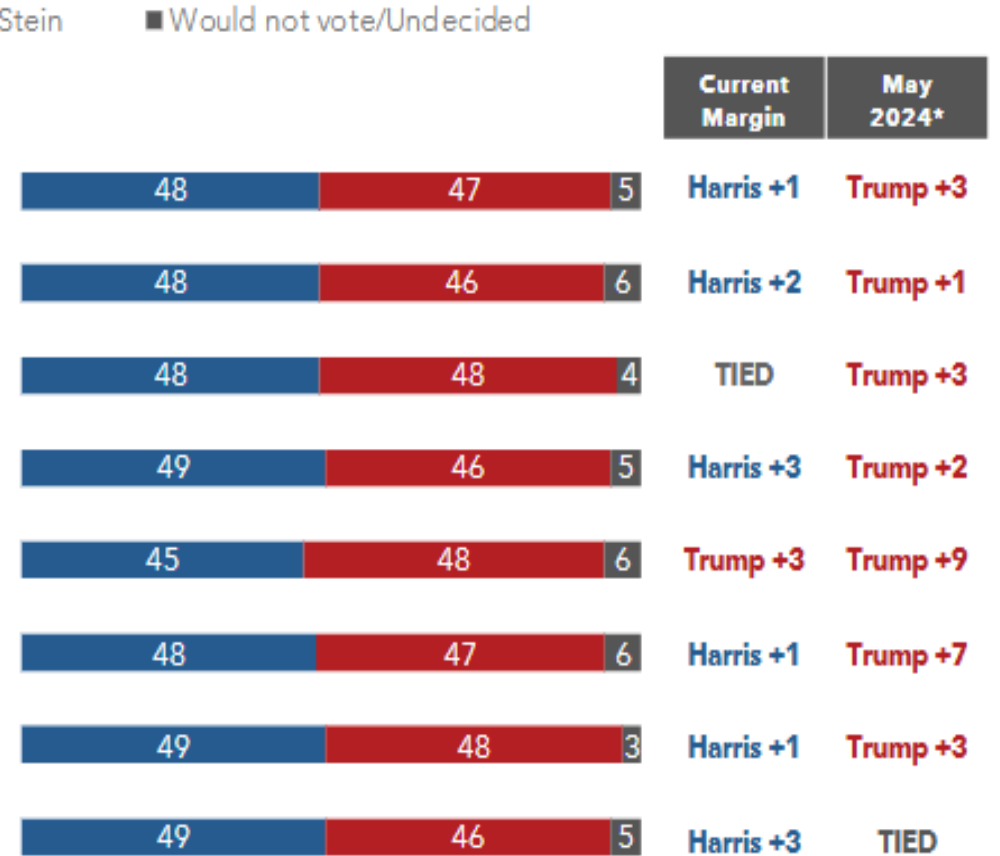
Presidential horseraces, including leaners

Horserace including 3rd party candidates

■ Harris ■ Trump ■ RFK Jr. ■ West/Stein ■ Would not vote/Undecided



Harris vs. Trump head-to-head



77 Electoral Votes Currently In A Toss Up

RATINGS SUMMARY

SOLID DEMOCRAT



SOLID REPUBLICAN

■ **Solid:** These races are not considered competitive and are not likely to become closely contested.

■ **Likely:** These races are not considered competitive at this point but have the potential to become engaged.

■ **Lean:** These races are considered competitive races, but one party has an advantage.

■ **Toss Up:** These races are the most competitive; either party has a good chance of winning.

Shifting Sands—Senate Democrat seats in play

SOLID D	LIKELY D	LEAN D	TOSS UP	LEAN R	LIKELY R	SOLID R
CA-OPEN CT-Murphy DE-OPEN HI-Hirono MA-Warren ME-King (I) MN-Klobuchar NJ-OPEN NM-Heinrich NY-Gillibrand RI-Whitehouse VA-Kaine VT-Sanders (I) WA-Cantwell	MD-OPEN	AZ-OPEN (I) NV-Rosen PA-Casey Jr. WI-Baldwin	MI-OPEN MT-Tester OH-Brown			WV-OPEN (I)

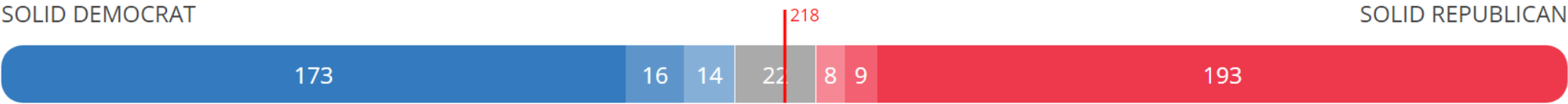
Senate 51 Democrats (or I) and 49 Republicans

Seats in Play in November

- Arizona—Gallego (D) v Lake (R): Leans D (currently held by Sinema I)
- Maryland—Alsobrooks (D) v Hogan (R): Leans D (Currently held by Cardin D)
- Michigan—Slotkin (D) v Rogers (R): Toss up (Currently held by Stabenow D)
- Montana—Tester (incumbent) (D) v Sheehy (R): Toss up
- Nevada—Rosen (incumbent) (D) v Brown (R): Leans D
- Ohio—Brown (incumbent) (D) v Moreno (R): Toss up
- Pennsylvania—Casey (incumbent) (D) v McCormick (R): Leans D
- West Virginia—Elliott (D) v Justice (R): Solid R (Currently held by Manchin D)
- Wisconsin—Baldwin (incumbent) (D) v ??? Aug. 13 primary: Leans D

House of Representatives

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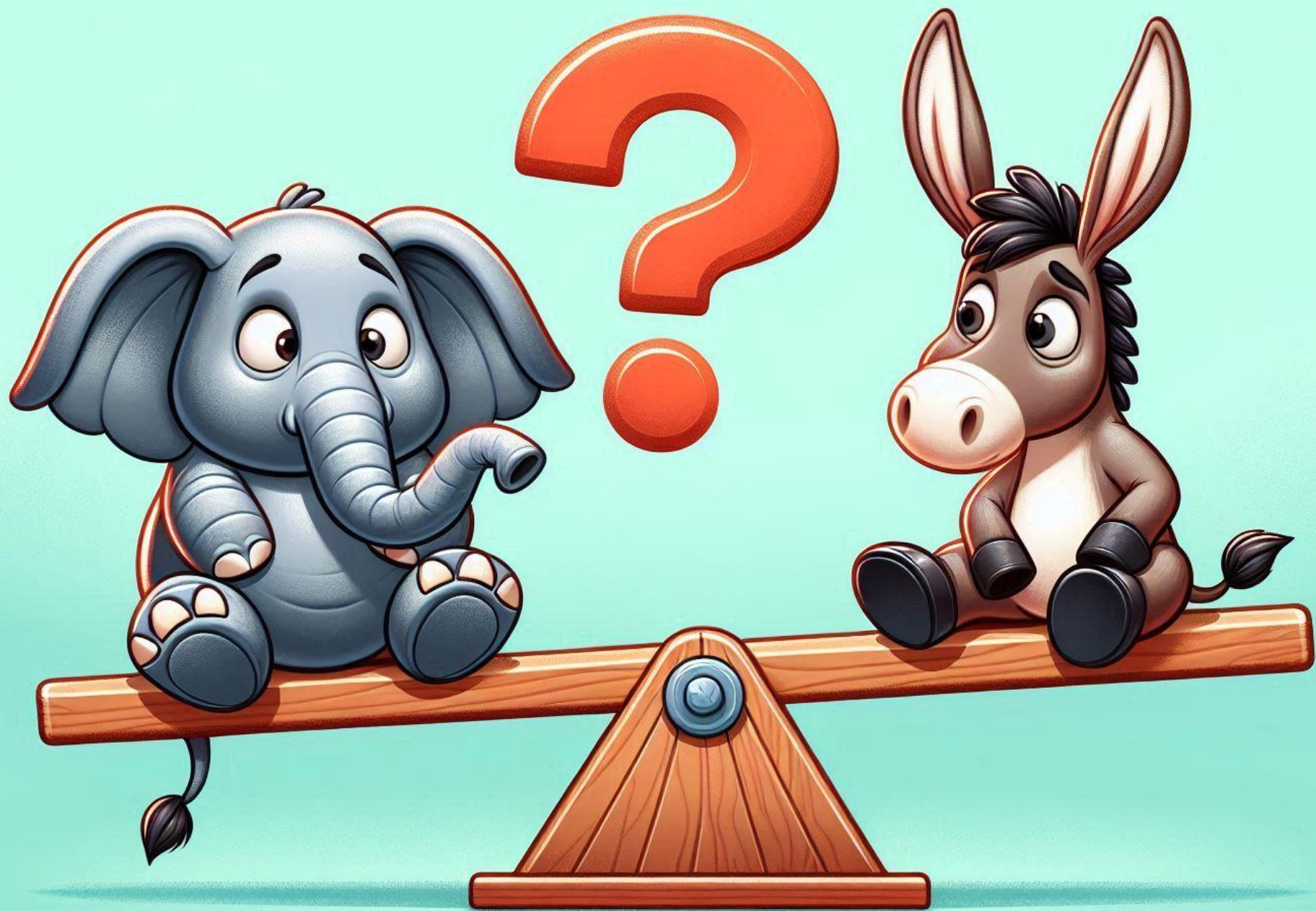
House Toss Ups

Republican likely to lose
AL-02 and NY-22



ITALICIZED
DENOTES
FRESHMAN

11 Dem • 0 Rep 0 Ind	0 Dem • 11 Rep 0 Ind
<i>CO-08 Caraveo</i>	AZ-01 Schweikert
ME-02 Golden	<i>AZ-06 Ciscomani</i>
MI-07 OPEN (Slotkin)	<i>CA-13 Duarte</i>
MI-08 OPEN (Kildee)	CA-22 Valadao
<i>NC-01 Davis</i>	CA-27 Garcia
<i>NM-02 Vasquez</i>	CA-41 Calvert
OH-09 Kaptur	<i>NJ-07 Kean Jr.</i>
<i>OH-13 Sykes</i>	<i>NY-04 D'Esposito</i>
PA-07 Wild	<i>NY-17 Lawler</i>
PA-08 Cartwright	<i>NY-19 Molinaro</i>
<i>WA-03 Perez</i>	<i>OR-05 Chavez-DeRemer</i>



Thank you

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