

Cozen Currents: The Case for a Landslide

The Cozen Lens

- With the polls showing the presidential race deadlocked and few voters remaining undecided, the two candidates are leaning on their respective strength on top issues in their closing arguments to try to maximize turnout.
- With a new administration on the horizon, continuing high polarization for the foreseeable future will ensure that the role of state attorneys general remains prominent regardless of the election outcome.
- Voters in four-fifths of the states have the chance to weigh in on ballot measures on topics including abortion, cannabis reform, the minimum wage, and electoral systems this year.

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State of the Race

The National State of the Race. Vice President Harris leads former President Trump by 1.5 points in 538's national polling *average*, down from her high water mark of 3.7 points on August 23.

- While Harris has led in national polling averages since August, recent high quality surveys suggest that her lead has all but evaporated. The New York Times and Siena Research's final national *poll* of the cycle found Harris and Trump tied at 48 percent among likely voters. Other recent surveys have found a similar result: an Emerson College *poll* published on October 26 had the race tied at 49 percent while a CNN *poll* published on October 25 had it tied at 47 percent.
- Although the topline numbers have fluctuated, the top issues for voters have remained the same all cycle. Twenty-seven percent of respondents listed the economy as their most important issue in the latest NYT/Siena *survey* while 15 percent listed immigration and another 15 percent listed abortion. Voters said that they trust Trump to manage both the economy and immigration over Harris by six and 11 points, respectively, while they trust Harris over Trump on the issue of abortion by 15 points. Only 28 percent of voters said the country is headed in the right direction, an indication that the national environment favors Trump.
- Unlike in 2016, the final polls this year are showing that there are few to no undecided voters remaining. When added up, Harris and Trump's national vote share in the 538 average totals 94.5 percent, suggesting only 5.5 percent of voters are either undecided or backing a third-party candidate. The high number of decided voters reduces the likelihood of a 2016 repeat where large numbers of undecided voters *broke* toward Trump on Election Day.

The State of the Swing States. While the national environment is noteworthy, it's the seven swing states that will determine the next president.

- Polling averages from the New York Times and 538 show Harris and Trump within a point of each other in Michigan, Wisconsin, Pennsylvania, and Nevada, while Trump leads Harris by about a point in North Carolina and by two points or less in Georgia and



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Arizona. All seven states are considered “Toss Ups” by prominent election forecasters such as the Cook Political Report. The tied nature of the race in the swing states suggests that neither candidate heads into Election Day with a significant edge, but even a modest polling error in either candidate’s favor could result in a sweep of the swing states and an Electoral College landslide.

- Similar to President Biden in 2020, Harris’ most likely path to victory runs through the Rust Belt, while Trump’s slight edge in the Sun Belt gives him a path to victory if only one or two of the Rust Belt states fall into his corner. Given the narrow margins and the overlap between the two candidates’ paths to victory, the swing state with the most electoral votes, Pennsylvania, will be the most important to watch on Election Day. According to Nate Silver’s election forecast, there’s a 32 percent chance Pennsylvania is the tipping point state in this year’s election.

The Coalitions Behind the Candidates. Although polls suggest that the race is as close or closer than 2020, the makeup of each candidate’s coalition has changed significantly from four years earlier.

- Polls all cycle have shown Trump running ahead of his 2020 numbers among Black and Hispanic voters. According to two NYT/Siena Research oversamples of Black and Hispanic voters from earlier this month, Harris leads Trump 78 to 15 percent among Black voters and 56 to 37 percent among Hispanic voters. Harris’ lead among voters within each group is lower than Biden’s 2020 results, a potential positive for Trump in the more diverse swing states of Nevada, Arizona, Georgia, and North Carolina. On the other hand, recent surveys suggest Harris is poised to outperform Biden’s 2020 margin among white, college-educated voters, a potential boon for her in the less diverse states of Michigan, Wisconsin, and Pennsylvania.

- In a related change, after narrowing slightly last cycle, polls suggest the gender gap could widen to historic levels this year. Per recent polling, Harris could top Biden’s 15-point win among women in 2020 while Trump holds a slightly smaller, but still significant lead among men relative to 2020.

The Role of State AGs Under the Next Administration

The Role of the AG. In these times of high polarization and political deadlock, the state attorney general (AG) has stepped in to fill the void at the federal level.

- The AG’s growing role can be traced back to the tobacco litigation of the 1990s. In 1998, 46 states entered into the Master Settlement Agreement with the four largest tobacco companies after filing suit over the health care costs that resulted from smoking. This set a template for litigation continuing to this day.

- At the state level, while a governor’s agenda depends on the cooperation of the state legislature, an AG has the power to unilaterally shape behavior through his or her litigation and investigation authority. With deadlock at the federal level increasing the prominence of the courts, state AGs have the power to get the ball rolling in the judicial branch. In a sign of the growing recognition of the importance of this position, several members of the House have left Congress to become AGs of their respective states.

- One of the biggest trends have been multistate lawsuits challenging or defending actions of the federal government. Democratic AGs launched 135 suits against the Trump administration, up from 62 across both of President Obama’s two terms.

Driving Policy Change. State AGs are leaving a big impact on tech, healthcare, antitrust, and culture war issues.

- While proposals stall in Congress, the states have been taking Big Tech firms to court over privacy and mental health. This month, 14 AGs sued TikTok over concerns about children’s mental health. Texas won a \$1.4 billion settlement from Meta for

violating state biometric data collection laws. Forty-two AGs sued Facebook and Instagram over addictive features and set the policy discussion by demanding a warning label for social media apps.

- In a redux of the tobacco litigation of the 90's, a bipartisan group of attorneys general won a \$26 billion settlement against Johnson & Johnson and three pharma distributors for their role in propagating the opioid epidemic. Other big waves in the healthcare space include taking on pharmacy benefit managers (PBMs) and health systems.
- Scrutiny of these sectors trickles down into traditional legal purviews like antitrust and mergers. On Big Tech, states are joining together to sue Apple, Alphabet, Meta, and Amazon for attempted monopolization. On healthcare, that looks like California's litigation against PBMs and insulin manufacturers or a six-state coalition that aimed to block Amgen's \$28 billion acquisition of Horizon Therapeutics (they came to a settlement). Other examples include attempting to block Kroger's \$42 billion merger with supermarket chain Albertson's.
- Both parties have partisan pet issues they like to pursue. For Democrats, that's New York suing the world's largest meat company for greenwashing or California coming after oil giants for deceiving consumers about climate change; for Republicans, that's challenging the Biden administration's actions on immigration and the border and on culture war issues like LGBTQ rights or the use of ESG in investing. Expect state-led litigation to be at the forefront of opposition to the next president's policies, regardless of who that turns out to be.

State Ballot Measures to Watch

Abortion and the 2024 Elections. Ten states have initiatives relating to abortion on their ballots this year, raising questions about whether this could give Democratic candidates a boost.

- Abortion will be on the ballot in two presidential battlegrounds, Arizona and Nevada, and states with competitive US Senate or House races, including Colorado, Florida, Maryland, Montana, Nebraska, and New York.
- Some recent polling has found that abortion ranked as all voters' second most important issue, after the economy, and that 39 percent of women under 30 years old rank abortion as their top issue, above inflation, a positive sign for Democrats if the ballot measures energize their base.
- The potential electoral impact of the ballot measures is debatable though. There's no guarantee that voters backing them will also pull the lever for Democrats. Pro-abortion rights voters could split their tickets, voting to protect access to abortion and for Republicans. These ballot measures are polling ahead of Vice President Harris and Democratic Senate candidates in Arizona, Nevada, and Florida.

Cannabis Legalization and the Minimum Wage. Ballot measures can allow individuals and groups to advance policies with populist appeal that may not be as feasible to pass in the state legislature.

- Most Democratic-controlled states have already legalized recreational use of cannabis, leaving ballot measures as the most likely path forward where it remains illegal and Republican legislative majorities have not moved to decriminalize. The biggest state with legal cannabis on the ballot this year is Florida. Polling has found 66 percent of voters in favor of the measure, above the 60-percent threshold needed for passage. Nebraska, North Dakota, and South Dakota will also vote on cannabis legalization next week.
- South Dakota provides an indicator of the evolution of public perceptions of legalizing the drug. A ballot measure to legalize recreational use passed in 2020 but was

later overturned in court. A re-do failed to pass in 2022. Passage in 2024 would be a sign of the popularity of legal cannabis even in deep-red states, while failure would suggest that the cannabis reform movement hasn't advanced as far with conservatives.

- The federal minimum wage has remained at \$7.25 since 2009, opening the way for states to take the lead on this issue. Voters in Alaska, California, and Missouri will consider ballot measures to raise the minimum wage for all workers. A ballot measure in Massachusetts would boost it for tipped workers, while one in Arizona would allow restaurants to pay tipped workers a lower base wage. Alaska and Nebraska ballot measures would establish paid sick leave programs. The Bay State ballot also includes a ballot measure to allow rideshare drivers to unionize.

New Voting Rules. Questions that would change rules for voting and electoral systems are also on the ballot.

- Eight states and DC will have ballot measures relating to ranked-choice voting (RCV) and/or all-party primaries, continuing a growing trend of states adopting alternative electoral systems. Voters in Colorado, Idaho, and Nevada will have the opportunity to adopt top-four or top-five primaries and RCV, while adoption of RCV alone is on the ballot in DC and Oregon. Ballot measures in Alaska and Missouri would discard and ban RCV, respectively. Ballot measures on all-party primaries and requiring electoral reforms that could result in RCV are also on the ballot in Arizona and Montana.

RCV and all-party primaries are thought to encourage the election of more moderate candidates who appeal to a broader range of voters. RCV is currently practiced statewide in Alaska and Maine and has resulted in the elections of Senator Lisa Murkowski (R-AK) and Reps. Mary Peltola (D-AK) and Jared Golden (D-ME).
