

Cozen Currents: When Getting Rusty is a Good Thing

The Cozen Lens

- As much as the whole country can't help but tune in to former President Trump's guilty verdict, the fact is that the political ramifications only matter insofar as they may swing three states.
- The Biden administration issued its final rule on worker classification earlier this year, but the policy debate over the gig economy continues on the state and local levels and in the courts.
- With an expiration of last year's one-year extension of the farm bill looming on September 30, Congress is putting some work into passing a long-term bill, but getting there may take until 2025.

--

Presidency Will Be Won Through Microtargeting

President Trump is a Convicted Felon. Former President Trump has been convicted by a jury of his peers. He is after all a New Yorker. The impact of the verdict on the election remains to be seen, and sentencing and endless appeals are forthcoming. The verdict emboldens both his adversaries and supporters – each see what they want to see.

- While the former president's conviction is important and historic, the fact remains that the presidential election will be decided by just six or seven of the 50 states.
- The Senate will be decided by simultaneous elections in five of these presidential swing states plus two more where President Biden doesn't have much of a chance of winning: Montana and Ohio. The number of competitive House seats is additionally at its lowest mark in decades.
- While national events carry national ramifications, when it comes to control of the federal government their impact is limited.

The Blue Wall. Even as the outcome to the November elections hinges on a handful of states, even within this small bunch, some of the battlegrounds are more important than others.

- Michigan. Pennsylvania. Wisconsin. Arizona. Nevada. Georgia. Be prepared to hear these over and over again. In particular, pay attention to the first three — they're most likely to determine the outcome.
- The first reason the "Blue Wall" states matter more is due to simple electoral math. If Biden carries those three Upper Midwestern states, he sits at a nice 269 votes in the Electoral College, just one shy of victory, and winning Nebraska's Second Congressional District would put him over the top to an even 270, making him the winner. By contrast, winning the less populous Arizona, Nevada, and Georgia would only put him at 258, requiring Biden to still win . . . Michigan or Pennsylvania.
- The second reason is that those are the easiest for Biden to reach. While he currently trails Trump in every swing state, he trails by less in the Rust Belt. These states have voted more reliably for Democrats in the past. While it's theoretically possible that Biden could reach elsewhere, such as North Carolina, to pull off an unlikely victory without the Blue Wall, because political outcomes are correlated, the fact is that if Biden's having such a bad night he needs other states to win, he's even less likely to find his salvation somewhere else.

The Eye of the Storm in the Eye of the Needle. With political importance increasingly limited to a smaller set of states and districts, their idiosyncratic qualities almost become more important



Howard Schweitzer

CEO, Cozen
O'Connor
Public
Strategies

hschweitzer@cozen.com
Phone: (202) 912-4855
Fax: (202) 640-5932

Related Practice Areas

- 2024 Elections
- Government Relations - Cozen O'Connor Public Strategies

than markers for the country as a whole.

- National polling on consumer confidence is in the process of becoming a weaker political proxy — how voters in Alabama feel about Biden or adults in Delaware feel about the economy won't have much of an impact on the Senate or White House (though of course, voters around the country have an important voice in their local and state governments, and a few happen to be in significant federal House districts). 2016 is a perfect example of these factors: Trump lost the national popular vote and one overlooked reason for his surprise triumph in the Upper Midwest that year was a regional recession impacting manufacturing.
- This same logic trickles down into the demographic groups each party is targeting. The automotive industry is disproportionately important to the Rust Belt; the prevalence of this sector also makes these states among the most unionized. Hardly surprising, then, that the crux of Biden's economic, environmental, and industrial policy focuses on electric vehicles, and both candidates have been so eager to win over workers with their vision of the future of cars.
- Turnout, or at least turnout of the right voters, is another key Democratic concern in this area. College towns like Madison, WI may have grown sharply in population in recent years but actually getting young people, who are not only the historically least likely to vote but among whom the Biden administration is performing the worst, to show up to the polls is a critical focus, as is increasing declining turnout in the Black-predominant neighborhoods of Philadelphia, PA and Detroit, MI. Likewise, in an election in which both candidates are so historically unpopular that their best pitch is to convince voters that the other candidate is the worse choice, turning off voters to your challenger is equally important, if not more so, than turning out your supporters.

The Regulatory War Over the Gig Economy

The Federal Level. President Biden's appointees have been busy enacting more worker-friendly rules for the gig economy.

- Earlier this year, the Department of Labor (DOL) finalized a rule to determine worker classification, replacing a more employer-friendly Trump-era rule on the subject. The new rule is likely to tighten companies' ability to classify workers as independent contractors. The finalization date of this rule shields it from the Congressional Review Act but the rule is the subject of several legal challenges.
- Biden's National Labor Relations Board (NLRB) appointees have also set a precedent on worker classification to make it easier for workers to organize. In last year's *Atlanta Opera* case, the NLRB overturned a Trump-era ruling and reaffirmed a more worker-friendly Obama-era decision. This case could be overturned by a Trump-appointed NLRB, continuing the ping pong between Democratic and Republican administrations.
- The Federal Trade Commission (FTC) has indicated an interest in the gig economy as well. Earlier this year, FTC Commissioner Alvaro Bedoya (D) said that misclassifying workers as independent contractors instead of employees could violate federal competition law. Under a second Biden term, the FTC could potentially become more involved on gig economy issues.

The Local Level. Municipalities have emerged at the frontlines of the battle over gig economy regulation.

- Earlier this year, the Minneapolis, MN city council passed a minimum wage law for rideshare drivers. This sparked a policy debate on the state level, and the Minnesota legislature ultimately passed a bill to override the Minneapolis measure with a lower statewide rideshare minimum wage. This pattern could continue to play out in Democratic-controlled cities that offer large markets for rideshare services.
- A lot of attention has focused on rideshare drivers, but New York City is emerging as a leader in regulating food delivery drivers as well. Last year, the city council passed a minimum wage law for these workers to mandate pay of at least \$19.96 per hour. During the Covid-19 pandemic, the city enacted a cap on the fees that food delivery companies can charge restaurants, which is currently the subject of a legal challenge from gig firms. The city council

has considered changes to the fee cap but has not updated the law as of yet. The Big Apple provides a potential model for other cities and states in regulating app-based food delivery gig work.

The State Level. The DOL may have checked worker classification off its to-do list, but states continue to be active on the issue.

- On the state level, the battle over labor rules in the gig economy is playing out largely in urban blue states where there are sizable numbers of lawmakers disposed to crack down on gig firms. By contrast, in red states, elected Republicans are largely unified behind a pro-business stance and the labor movement does not generally have enough political strength to pose a risk to gig firms' business model. A 2022 Washington state law that classifies rideshare drivers as independent contractors entitled to certain benefits provides a template for a middle ground.
- Later this year, Massachusetts voters may weigh in on the issue. There are active campaigns to put competing referenda related to gig workers on the ballot in the Bay State. One would allow rideshare drivers to organize and the other would codify them in state law as independent contractors (who cannot unionize) with certain benefits. The Massachusetts Supreme Judicial Court heard oral arguments in legal challenges to both ballot measures last month.
- The status of gig economy rules in some of the biggest states may be determined by the courts. Litigation on regulating the gig economy in Massachusetts and California remains pending. The California Supreme Court last month heard oral arguments in a case challenging Prop 22, passed by voters in 2020 to exempt app-based rideshare and delivery drivers from worker classification rules. A Massachusetts lawsuit alleging that Uber and Lyft improperly classified drivers as independent contractors went to trial last month.

Sowing the Seeds of the Farm Bill

A Long Row to Hoe. Despite advancing to the House floor last month after clearing the House Agriculture Committee in a primarily party-line vote, there is a long road ahead for the farm bill.

- Particularly notable in the House markup was the lack of Democratic support for the measure, with only four of twenty-five committee Democrats voting in support of the bill. The lack of support comes even from frontline members representing more rural districts debating whether to buck their leadership to take a vote that would play well on the campaign trail. This group of lawmakers ended up holding the line, raising concerns about how passable the GOP proposal was and highlighting some of the funding gaps.
- Congressional Democrats have been consolidating behind Senate Agriculture, Nutrition, and Forestry Committee Chair Debbie Stabenow's (D-MI) farm bill framework. Stabenow has argued that it is the only proposal that Congress can pass, given the need for bipartisan support in the Senate. Still, she has yet to release legislative text or schedule a markup in the upper chamber.
- The lack of progress in the Senate has increased the chances of at least a short-term extension before the September 30 deadline to pass a new bill, likely as part of the continuing resolution. However, lawmakers have not committed to how long the punt will be. They could opt for a full-year extension, forcing the next Congress to pass the measure, or they could choose a shorter extension that gives them an opportunity to agree on a bill that can pass during the lame duck session. Stabenow's retirement at the end of this Congress may play a role in her overall desire to pass a long-term bill before departing Congress,

Food Fight. The farm bill is not just about agriculture-related provisions; its breadth is much wider, and one of the most contentious provisions is the Supplemental Nutrition Assistance Program (SNAP).

- The fight over SNAP in the current farm bill debate has centered on House Republicans' proposed changes. These reforms would limit future updates to the Thrifty Food Plan, which is used to calculate SNAP benefits. This change would effectively freeze existing benefits and restrict future cuts or increases.

- Democrats have decried the reform as a cut in benefits, but the critical upside from the change for Republicans is the estimated \$27 billion in savings it is projected to provide. The GOP is then looking to use this money to fund other priorities in the farm bill, some of which have bipartisan appeal; however, Democrats are reluctant to see any change to the current SNAP structure, even though the provision would protect the expanded benefits President Biden established.

Hands Off the IRA. Another hotly contested part of the farm bill debate is how to handle the additional funds provided by the Inflation Reduction Act (IRA) for climate-smart agriculture projects.

- Both parties want to lift the funding time limits; however, the argument is over whether to lift some of the climate guardrails from the IRA. The current regulatory definition of climate-smart agriculture is relatively broad. However, Republicans are still looking to reduce these limits further and open the funds to more uses, some of which go beyond climate-smart agriculture.
 - For Democrats, protecting the current funding rules is seen as an important part of securing the IRA's legacy and ensuring that Republicans do not dismantle their landmark climate legislation. This is a red line that will likely be difficult for the GOP to cross while still maintaining enough Democratic support to pass the measure, but a Republican sweep this November could force some concessions from the Democrats.
-