

Memorandum

NOW Government Relations

To: National NOW Board Members
From: Jan Erickson, Director, Government Relations
Dates: Nov. 10 and Dec. 14, 2020

TOP ISSUES –

Biden and Harris elected – Much to our Relief -- And Delight

Congratulations to us – for all the effort that NOW's grassroots made to help elect **Vice President Joseph R. Biden** and **Sen. Kamala Harris**. And a special thanks to everyone who contributed financially to our endorsed candidates. That we had such an orderly, free and fair election when the stakes were so high and when the Republicans made so many efforts to suppress the Democratic vote is wonderful. The Democrats' strong showing assured a seven million vote advantage over **Donald Trump** and a total of 306 electoral votes in support of the Biden-Harris ticket.

Senator Kamala Harris, a Black and Indian-American woman, who served as California's Attorney General before being elected to the U.S. Senate, to the second highest office in the land and an historic first. Feminists everywhere rejoiced in this win.

Massive Voter Turnout Breaks Records

The latest reported final vote tally in the presidential race is 74,111,419 (46.96 percent) for Donald Trump and 81,009,468 for Vice President Joseph R. Biden (51.32 percent). Not to be overlooked are the numerous remarkable facts: the highest absolute turnout number of voters of any democracy (aside from India): 158,540,854 voters; 100 million of those were cast by early and mail-in ballot voters. It was the highest turnout at 66.2 percent of eligible voters since 1900. President-elect Biden collected more votes than any presidential candidates in history and with the fewest counties, just 16.7 percent. These counties are mostly urban and suburban, high-population centers.

In addition, the Democratic ticket gained victories in Michigan, Wisconsin and Pennsylvania – the three states that gave Trump his electoral college victory in 2018, plus flipping traditionally red states of Arizona and Georgia. Dems will hold 48 Senate seats and will maintain the Democrats' House majority – though by a smaller margin at 222. Democrats fell short of overturning a number of Republican Senate incumbents in Maine, Kansas, Iowa, Montana, Kentucky and North Carolina, but picked up seats in Arizona with **Mark Kelly** and Colorado with **John Hickenlooper**.

Critical Georgia Run-Off Elections to Determine Senate Control

Still to be determined: control of the Senate depending upon the outcome of the January 5th run-off election in Georgia for two seats, a race between **Rev. Raphael Warnock** (D) and **Sen. Kelly Loeffler** (R) and for the other seat, **Sen. David Perdue** (R) and **Jon Ossoff** (D). Money and an all-out effort to register and get people to the polls are pouring into Georgia. Fair Fight founder Stacy Abrams' organization has registered more than 800,000 Georgians and requested mail-in ballots for these voters. So, keep your fingers crossed.

Currently, the Senate split is 46 plus two Independents who caucus with the Democrats to 50 Republican senators. If Democrats win both Senate seats in Georgia (Warnock and Ossoff), it would be an even split between the parties, giving control to the Democrats because of the tie-breaking responsibilities of soon-to-be Vice President Kamala Harris.

The outcome is critically important because under Republican Senate control, it is impossible to pass almost any legislation that originates in the House. The days of bipartisan co-operation and a concern by Republicans for competent and responsible governing is long gone.

Republican Efforts to Overturn A Valid Election; Trump's Future Plans

Nearly three-dozen lawsuits brought by Republicans in swing states have so far failed in court or are still pending. Most offered little to no evidence of voting irregularities. This includes the latest effort to get the **Supreme Court** to re-consider voting procedures in Pennsylvania, Wisconsin, Michigan and Georgia which the Court refused to take up due to lack of standing by the State of Texas. Seventeen states signed on to the lawsuit and so did 126 Republican members of Congress. These actions were described by several commentators as bearing on sedition.

With Donald Trump continuing to assert that he won the election and that the Democrats stole it his supporters are continuing to demonstrate on his behalf. It is very disturbing that about thirty percent of public doubt the validity of the vote. His loyal supporters continue to believe everything he says and to send money to overturn the election. The total for this apparent scam is in excess of \$200 million; these monies can be used for virtually any purpose and, undoubtedly, Trump will pocket most of it. An extensive investigation into Trump's financial records by *The New York Times* recently disclosed that he owes \$421 million dollar. Over the years, Trump has actually lost more money than he has made, the *Times* concluded.

Donald Trump could carry out a long-term effort to undermine President Biden's authority – something that we should all be concerned about. There are rumors that Trump will get his own cable television channel and continue to energize his supporters. Trump has indicated that he may run for president again in 2024, although a pending investigation into possible violations of New York state tax laws and a possible federal action concerning Trump's involvement with hush money payments to women who claim to have had extramarital affairs with him may complicate his future. There is considerable debate as to whether Trump can pardon himself and whether he can

pardon himself for any future crimes he may be accused of and whether he can do the same for his children or others in his orbit. One theory circulating is that Trump will resign just before January 20th when President-elect Biden is to be sworn in, allowing Vice President Mike Pence who is then sworn in as president to then pardon him – much like President Gerald Ford did for Richard Nixon.

Donald Trump's Destructive Legacy Remains

The capture of the White House by Democrats from an autocratic, incompetent and malevolent president in Donald Trump is an action whose importance cannot be overstated. Our democracy has been placed in serious jeopardy by this careless autocrat. Trump has carried out a destructive campaign of reversing thousands of policies that protect the environment and worker safety, protection from discrimination in health care services, protection from sexual harassment and assault in schools by decimating Title IX, plus expanding the global gag rule and adopting a new domestic gag rule prohibiting discussion of abortion, appointing more than 220 anti-abortion rights judges including three Supreme Court justices, cutting food stamps, requiring low-income beneficiaries of government aid to work regardless of their ability to do so, supporting efforts by conservative states to kill the Affordable Care Act, greatly expanding religious/conscience exemptions, attempting to eliminate the civil service merit system and many, many more harmful actions too numerous to list here.

Incoming leadership will have a giant task on their hands to restore these critical protections, in addition to carrying out the Biden-Harris agenda.

Lack of Competent response to COVID-19

This is not to forget to mention Donald Trump's callous disregard and utter incompetence in responding to the COVID-19 pandemic. With deaths due to the coronavirus now standing at almost 300,000, infections at more than 16 million and gaining by hundreds of thousands of new infections every day, it is one of the worst tragedies in American history. And it did not need to happen.

President-elect Biden has promised to bring COVID-19 under control by assuring that the new vaccines are readily available, plus assuring more help to health care providers and returning to science-based policies. Today is the first day that the **Pfizer/BioNTech** vaccine is being distributed. It was approved as safe and effective by the **Food and Drug Administration** (FDA) on Friday under an emergency use authorization. The similar **Moderna** vaccine will be reviewed by the FDA this week. There are some concerns about whether the U.S. will have sufficient quantities of vaccines as the Trump administration did not follow up on an offer from Pfizer for an additional large quantity of vaccine doses. Further, certain components needed in the manufacture of these vaccines are in short supply due to the fact that they are also needed in coronavirus testing. Stay tuned.

Electors to Cast Votes Representing Election Outcomes

As of Monday, Dec. 14, 538 Electors of the Electoral College were to meet (perhaps virtually) in each state and cast their votes for president. The 2020 election outcome produced 306 electoral votes for Vice President Biden and 232 for Donald Trump. There

have been reports of Trump fans potentially attempting to unseat certain electors in order to switch votes from Biden to Trump. A July decision by the Supreme Court found that punishment of so-called “faithless electors” whose votes do not represent the outcome of their state’s election is constitutional. The new Congress will then count these votes on January 6th after they have been sworn in.

EQUAL RIGHTS AMENDMENT CASE - Good news, hopefully!

We may have a ruling soon from the **U.S. District Court for the District of the District of Columbia** on the Equal Rights Amendment. The **Democratic state attorneys general from Nevada, Illinois and Virginia** asked the court in mid-August to declare that the ERA is valid and part of the U.S. Constitution. They asked the court to order the Archivist to publish the ERA as part of the Constitution and to declare that his failure to do so violates federal law. The trio made a request in a motion for summary judgement in a lawsuit they filed on January 30 against the Archivist of the United States.

The A.G.s further assert that the 1982 extended deadline is not binding as it is in the preamble of the amendment, not in the text of the amendment, itself. Their motion further said that the ERA “has satisfied the constitutional requirements to be added to the United States Constitution, and the Archivist has nondiscretionary duty under federal law to publish and certify the Equal Rights Amendment as valid.”

Five states which intervened in the lawsuit also submitted their motion for summary judgement. Those states are **Alabama, Louisiana, South Dakota, Nebraska, And Tennessee** – two of that group had not ratified the ERA; three report having rescinded their previous vote to ratify. Their filings challenge the ERA on whether the amendment is still valid given the expired deadline and whether the rescissions are to be recognized as valid actions. Recent actions involve the state plaintiffs (VA, IL, NV) filing their opposition to the intervenors motion, and they also filed a cross motion for summary judgement basically taking the position that **the court can decide the entire case as a matter of law.**

We should note that the Archivist, David S. Ferriero, stated in a 2012 letter to **Rep. Carolyn Maloney** (D-NY) that states may not rescind ratification votes: Article V of the Constitution makes no provision for rescission.

Now that the motion to dismiss is fully briefed, the Archivist has moved to stay consideration and briefing on the motions for summary judgment until the motion to dismiss is resolved. The three State Plaintiffs have opposed the motion for a stay and are asking for all the motions to be considered together. The court will resolve that issue soon. Best guess is that **the court will deny the motion for stay and set all the motions for hearing together at some point later this fall.**

A ruling could be issued in a matter of a few months. In the meantime, if anyone would like to review the [lawsuit](#) click on this link. It's a great read, and you should note especially the discussion about time limits on ratification and whether rescission is valid.

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A second lawsuit filed in **U.S. District Court in Boston**, in January by **Equal Means Equal**, another mandamus, was dismissed by the court stating that the plaintiffs (a woman and two students) did not have standing, In early September Equal Means Equal and two other plaintiffs filed an appeal to the U.S. Supreme Court, arguing that as women denied equality under law they have the right to sue to force the government to add the Equal Rights Amendment to the Constitution of the United States. The appeal reiterated the points in the lawsuit originally filed in January in U.S. District Court in Boston, detailing how congressionally imposed deadlines for states to ratify the ERA are unconstitutional, and calling on the court to compel the Archivist of the United States to officially record ERA as the 28th amendment to the Constitution.

LEGISLATION

NO COVID-19 Relief Package Yet – Millions on the Brink

Though negotiations have intensified as of Dec. 14, legislation that would provide desperately needed relief to the unemployed, families, businesses, state and local governments and health care facilities remains pending. A package costing about \$916 billion is under consideration, with support from members on both sides of the aisle, though it does not answer all of the most critical needs being faced millions. **Senate Majority Leader Mitch McConnell** (R-Ky.) has been merciless in holding out for corporate interest in demanding immunity from lawsuits for companies that did little or nothing to protect their employees from the virus. Not only would they be protected, but a President Biden would be prevented from any future effort to hold companies accountable.

What is really needed is the \$3 trillion Heroes Act which the House passed last Spring. This legislation expands the Child Tax Credit and creates a new Young Child Tax Credit, sets a new national standard for paid sick days and paid family and medical leave, increases monthly Supplemental Nutritional Assistance Program (SNAP) benefits by 15% and makes important investments and policy changes to protect critical services for survivors of domestic violence.

It provides nearly \$1 trillion for states, cities and tribal governments to avert layoffs of public sector workers like first responders, health workers, and teachers who have been left out of previous measures, and \$200 billion to ensure that essential workers who have risked their lives during the pandemic receive hazard pay.

The bill also extends unemployment benefits, sets a second round of direct payments to individuals, and protects the tens of millions of Americans who are losing employer-provided health insurance with COBRA subsidies and a special enrollment period in health exchanges for the uninsured. It also includes an important non-discrimination clause, prohibiting the denial of benefits based on factors including gender identity and immigration status.

If no bill is passed before Congress departs Washington for the holidays, millions will lose unemployment assistance, could face eviction from their homes, see the pause on student loan payments expire and aid to businesses that help keep people on the payroll end. Additionally, many food pantries are running low on supplies, yet the demand keeps increasing, Many state and local governments are struggling because of reduced revenue due to the pandemic, business closures, and the deep economic recession the country is experiencing.

President-elect Biden has promised to provide a comprehensive COVID-19 relief package, but much depends on whether the Democrats win the two Georgia run-off elections or if we lose, Mitch McConnell continuing as Senate Majority Leader gives in (not likely). And, the Dems could always concede to let companies off the hook and continue to endanger their own employees.

(Action is also needed by Congress to pass legislation that would protect survivors of sexual and domestic violence during the COVID-19 pandemic, More information can be found on the website of the National Task Force to End Sexual and Domestic Violence, [Action Alerts and News — NTF \(4vawa.org\)](https://www.4vawa.org/))

Bills Passed by the House, but Receive No Action in the Senate

Here is a list of NOW's priority legislation passed by the House which have not yet been taken up by the Senate. At the end of the 116th Congress this month, all bills will die and the process will have to begin again in 2021. More information about all legislation can be found at **congress.gov** - a very user-friendly website that tracks legislation, votes and contains links to the Congressional Record.

H.R. 1585 - Violence Against Women Reauthorization Act of 2019, Passed House on April 4, 2019 (Sen. Dianne Feinstein has a companion measure which is also stalled in the Senate.)

H.R. 36 - Combatting Sexual Harassment in Science Act of 2019, passed House on July 23, 2019

H.R. 507- Put Trafficking Victims First Act of 2019, passed House on February 7, 2019

H.R. 5 - Equality Act, passed House on May 17, 2019

H.R. 7 - Paycheck Fairness Act, passed House on March 27, 2019

H.R. 1423 - FAIR Act – Forced Arbitration Injustice Repeal Act, passed House on September 20, 2019

H.R. 2694 – Pregnant Workers Fairness Act, passed House on September 17, 2020

H.R. 6 – American Dream and Promise Act of 2019, passed House on June 4, 2020

H.R. 3525 – U.S. Border Patrol Medical Screening Act, passed House on September 26, 2019

H.R. 3239 – Humanitarian Standards Act for Individuals in Customs and Border Protection Custody, passed House on July 24, 2019

H.R. 840 – Veterans’ Access to Child Care Act, passed House on February 9, 2019

H.R. 2574 – Equity and Inclusion Enforcement Act, passed House on September 16, 2020

H.R. 1980 – Smithsonian Women’s History Museum Act, passed House on February 11, 2020 (374-37)

The only bill related to our core issues we can find that passed both the House and Senate and was signed into law is:

S. 227/H.R. 2733 - Savanna’s Act – Passed both Senate and House, became law on October 10, 2020, P.L. 116-65 This bill directs the Department of Justice (DOJ) to review, revise, and develop law enforcement and justice protocols to address missing or murdered Native Americans.

In addition, there are 30 pieces of legislation addressing racial justice that have been introduced, but few have been taken up. The **George Floyd Justice in Policing Act** (H.R. 7120) passed the House on June 25th (236-181), but the Senate has yet to schedule a vote on the bill.

A summary of several of the more important bills racial justice bills appears here, <https://now.org/issue-advisory-despite-house-action-senate-republicans-refuse-to-consider-racial-justice-legislation/>

A related report, [NOW's Long History of Working for Racial Justice and Equity | National Organization for Women](#)