

Understanding Who (Might) Have Lost and Won: The 2020 Election Results Directly Impact How We Respond to COVID-19

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Our efforts to keep you knowledgeable about legal issues related to the pandemic has become one of our most important services to our

clients.

COVID-19 challenges all of us. Our businesses, our families, and our personal health are being tested like never before in our lifetimes. COVID-19 brings instability and anxiety. The 2020 elections also bring high drama and change. They have been like none before during our lifetimes.

The results of our state and federal elections especially will impact how we face COVID-19 precautions and recovery. The lame-duck Congressional session that will occur in December will be followed by legislative terms in January full of new faces, new priorities, and new pandemic stresses (and hopefully new opportunities to defeat COVID-19). However, before we get to COVID-19 relief legislation and health policy, we have an election to get through.

We say "get through" because the remarkable 2020 election season is not over as of this writing (November 5). Every state still has ballots to count. Recounts will be called by losing candidates. In North Carolina, we have 117,000 absentee by-mail ballots to count. Those 117,000 can very well change election outcomes. Even with nearly six million North Carolinians voting, many statewide races are closer than 117,000 votes. This means that the election season is still with us, and at least some race results will change in the next week. But our analysis here should help you prepare for what will be a very challenging 2021.

We hope that 2021 goes well, but hope is not good planning. If Ward and Smith's lobbying and government relations team can help you better understand the dramatically changing political landscape, please do not

hesitate to call on us.

With North Carolina polls closed and only 117,000 of the requested absentee ballots outstanding as of Wednesday morning, most of our state's election results are in, and from a state legislative perspective, the political dynamics remain largely unchanged. North Carolina set an all-time voter turnout record with 74.5% of the state's registered voters casting ballots either by mail or in person this cycle. Even before Election Day, 62.2% of the state's registered voters had already cast ballots this year either by early vote or absentee ballot. By comparison, overall voter turnout in the 2016 election was 69% and in the 2014 and 2018 mid-term elections was 44% and 53%, respectively.

As all major polls predicted, Governor Roy Cooper secured his second term by a significant margin against Republican challenger Dan Forest. Governor Cooper won by 5 points with a 51%/46% lead or 240,524 votes statewide at the time of this writing, which is a hefty margin but not the 9-11 percentage point landslide that the polls forecast. In other words, Dan Forest performed better than predicted while still falling short of the votes needed to unseat Governor Cooper. Forest conceded the race at 11 pm on Election night.

On Tuesday, all 170 North Carolina House and Senate seats were up for grabs as they are every two years. An estimated \$6.9 million was spent in broadcast advertising on North Carolina Senate races, and \$2.4 million was spent on North Carolina House contests, with most of that concentrated around a small number of competitive races, typically in suburban battlegrounds. If the remaining absentee ballots do not alter current outcomes, the Republicans will have retained control of both chambers of the General Assembly. Republicans lost net one seat in the Senate, bringing the Senate Republican majority to 28 Republicans versus 22 Democrats. Republicans gained a net of four seats in the House, bringing the totals there to 69 Republicans and 51 Democrats. This Republican net gain in the House is arguably the biggest surprise of Election Day in North Carolina as virtually all political strategists expected the Republican majority in the House to shrink or even be lost altogether. The 2021-2022 biennium of the General Assembly will be the sixth consecutive biennium with Republicans in control of both chambers.

Assuming the current numbers hold – and we expect they will – neither of the Republican majorities rise to the threshold of veto-proof Super Majorities. Although Democrats were able to flip a handful of key seats in both chambers, they also surprisingly lost a few of their existing seats (mostly held by single-term incumbents) and did not achieve the "blue wave" in North Carolina that many strategists from both sides of the aisle were anticipating. House Minority Leader Darren Jackson attributed these outcomes to President Trump's ability to drive record numbers of Republican voters to the polls. Undoubtedly the President's many visits to our battleground state during the final weeks of his campaign energized the Republican base statewide. The continuation of Republican majorities in both chambers is particularly significant in the upcoming biennium because the next class of the General Assembly will use the 2020 census data to draw North Carolina's state and federal district maps for the next decade.

	2019-2020 North Carolina General Assembly		2021-2022 North Asse
	Republicans	Democrats	Republicans
NC Senate	29	21	28
NC House	65	55	69

The North Carolina General Assembly has seen record turnover in several recent elections, but that is not the

story of the 2020 election. The political dynamics of our state Legislative and Executive Branches remain largely unchanged in the next biennium as our Executive Branch remains under Democrat control, and the North Carolina House and Senate will continue to be steered by the same Republican leaders. We expect House Speaker Tim Moore to be reelected to preside over the House and have similar confidence that current Senate President Pro Tempore Phil Berger will be elected to that role again by his peers in the next biennium. Given the unchanged political dynamics, it is unclear whether lawmakers will even attempt to pass a state budget in 2021 after several failed attempts at compromise in recent years with the same faces around the table. We expect the first official 2020-2021 revenue forecast from the General Assembly in the coming weeks, and our sources indicate that it will project a roughly \$2 billion revenue shortfall.

Turning to Council of State races, Republican Mark Robinson won the Lieutenant Governor's race with 52% of the vote to Democrat Yvonne Lewis Holley's 48% and will become the state's first African American Lieutenant Governor. In the weeks leading up to Election Day, many forecasters predicted that the largely ceremonial role may have the unique opportunity to serve as a tie-breaking vote over the Senate in the next biennium if the Election produced a 25 Republican/25 Democrat Senate, but with Republicans holding their majority in the chamber it appears that Robinson will not have that level of influence. In North Carolina, the Lieutenant Governor only casts votes in the Senate during a tie.

Incumbent Attorney General Josh Stein appears to have been reelected to his second term by a narrow margin over Republican challenger Jim O'Neill. At the time of this writing, with all precincts reporting and only absentee ballots outstanding, Attorney General Stein is leading by about 10,000 votes. Republican Incumbent Commissioner of Agriculture Steve Troxler won reelection handily with a 54% to 46% lead over Democrat challenger Jenna Wadsworth. Troxler has held the office since 2005.

In the judicial races, key positions on the North Carolina Court of Appeals and Supreme court were up for election. Unlike 2016 and 2018, the Republicans swept every contested race for the state's appellate courts. Of note: Chief Justice Cheri Beasley (the state's first Black female chief justice) lost to fellow justice Paul Newby by only 3,742 votes out of 5,337,804 casts. That is a remarkably slim margin of victory. It is so small that Justice Beasley may call for a recount if the to-be-counted mailed ballots do not change the result. It is a testament to how evenly divided North Carolina voters are when it comes to party and gender. Phil Berger, Jr. (the son of the Republican leader in N.C. Senate) won a seat on the Supreme Court. Republicans now have a majority in the court of appeals and a much closer balance on the supreme court, with 3 Republicans and 4 Democrats. We always expect our state's judges to act impartially and follow the law, and that is true for these new winners. However, the partisan nature of judicial elections in North Carolina certainly makes these seats much more politically volatile.

The election tested our democracy and our processes, but with record voter turnout, it also showed us that North Carolinians genuinely cared about the election. As the final absentee ballots are received and counted over the coming days, we will let you know of any material changes to the projected outcomes described above.

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