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The Energy Industry after the Election: What to Expect in 2021 and Beyond

December 1, 2020

Before We Begin...

All participant lines have been set to mute for quality purposes.

Please submit questions to questions@blankrome.com

**Our presentation will begin at 12:00pm Eastern
Thank you.**

Disclaimer: The purpose of this update is to identify select developments that may be of interest to readers. The information contained herein is abridged and summarized from various sources, the accuracy and completeness of which cannot be assured. This update is not and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

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CLE Credit (Speaker Introduction Slide)

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Introduction



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The 117th Congress and Energy Outlook



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Who is in the Running for Biden's Cabinet?

- **Agriculture:** Heidi Heitkamp, Tom Vilsack or Marcia Fudge
- **Attorney General:** Lisa Monaco, Devall Patrick, Xavier Becerra, or Sally Yates
- **Commerce:** Andrew Yang
- **Defense:** Michele Flournoy, Lloyd Austin III, and Jeh Johnson
- **Education:** Randi Weingarten
- **Energy:** Ernest Moniz Jr. or Arun Majumdar
- **EPA:** Jay Inslee, Mary D. Nichols
- **HHS:** Xavier Becerra
- **HUD:** Keisha Lance Bottoms, Rep Karen Bass or Pete Buttigieg
- **Interior:** Deb Haaland, Steve Bullock, Tom Udall, or Michael Connor
- **Labor:** Andy Levin or Sara Nelson
- **Transportation:** Rahm Emanuel or Eric Garcetti
- **VA:** Patrick Murphy, Jason Kander, or Pete Buttigieg
- **U.S. Trade Representative:** Katherine Tai or Jimmy Gomez

Biden Approach to Clean Energy

- Divided government is possible
- The Biden agenda will focus on climate change
 - Example: Rejoining the Paris Climate Accords
- Appointments matter
 - President-elect Biden will soon name his Cabinet, including Secretaries of Energy and the Interior.
- Executive Orders
 - A lot can be accomplished with EO's - but will require cooperation with Congress to pass major legislation.
- Infrastructure
 - Popular support can be used to jumpstart goal of net-zero emissions by 2050 if it includes funding for EV's and other green manufacturing jobs.

Biden Approach to Clean Energy

- The Biden energy agenda is forecast to cost \$2T and create millions of new green jobs.
- Tax credits for wind, solar and energy storage will also require Congressional action as will serious reductions in GHG emissions for all sectors of the economy
 - including transportation and maritime.
- President-elect Biden will have to learn the lessons from ARRA and find ways to expedite permitting for projects like offshore wind and solar while retaining NEPA principles for environmental justice
- The states and public can play a major role in urging new climate friendly policies



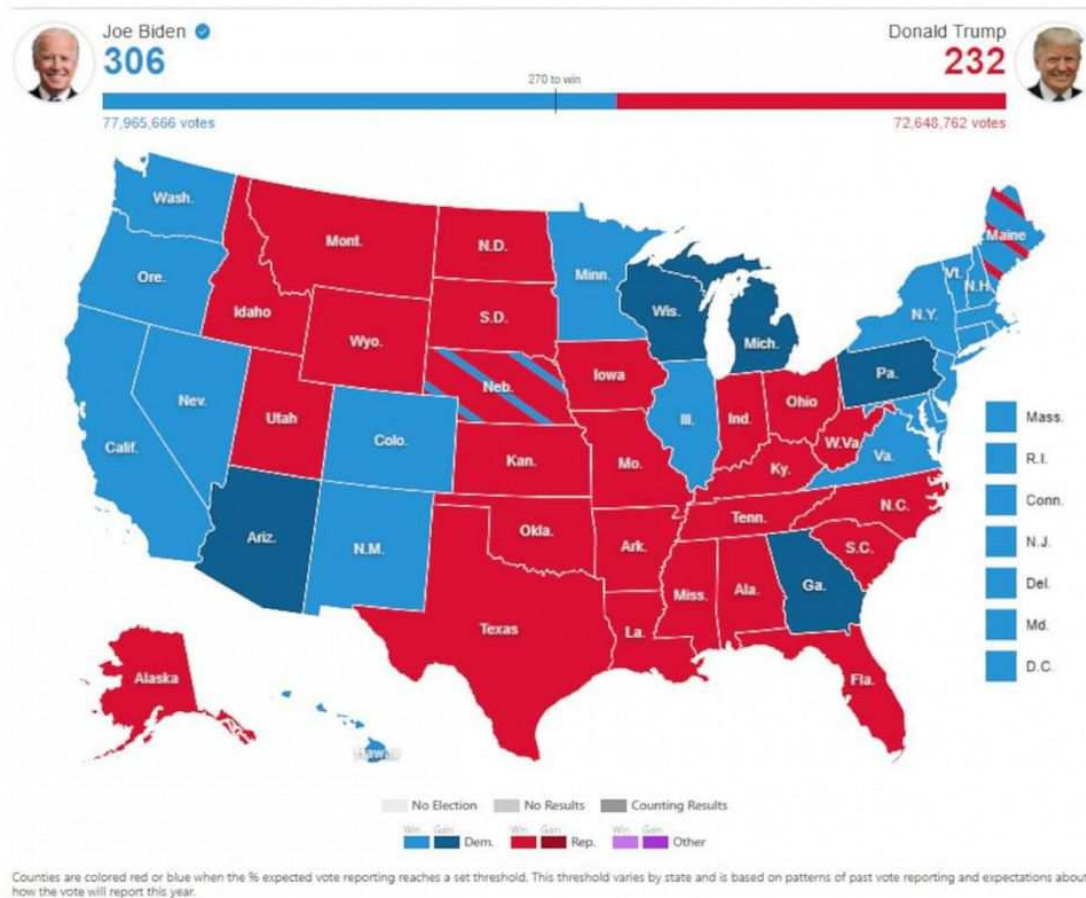
Presidential Election Overview

- The presidential race was called in favor of Joe Biden by major news networks on November 7.
- President-elect Biden and his running mate, Senator Kamala Harris, are projected to secure 306 Electoral College votes, the same number President Trump won in 2016.
- President Donald Trump has yet to officially concede having raised concerns of voting irregularities, but he has now officially initiated the “transition process.”
- The Trump Campaign continues an uphill legal challenge in multiple states though BRGR expects those to wind down soon and have no impact on the final election outcome.
- Electoral College electors will cast their votes on Dec 14 and Congress will certify the results on Jan 6.



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Biden Path to Victory



- Biden’s win was largely due to his ability to secure key voting blocks in suburban and urban areas while capitalizing on shifting demographics with seniors and college educated women in certain states. The election was decided in battleground states where results were critically close.
 - Biden won Michigan, Wisconsin, Arizona, Nevada, Pennsylvania and Georgia—votes are still being certified in some of these states.
 - Biden was able to rebuild the “Blue Wall” in the Midwest and pull an upset in Georgia.
 - Trump won Texas, Florida and North Carolina despite democratic efforts to flip those states.

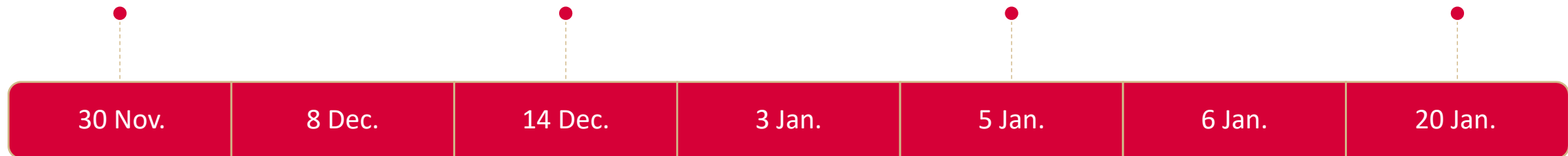
Important Dates

Week of November 30: House Democratic Caucus elections for committee chairs (contested)

Electoral College delegations meet and vote

Georgia Senate runoff

Inauguration

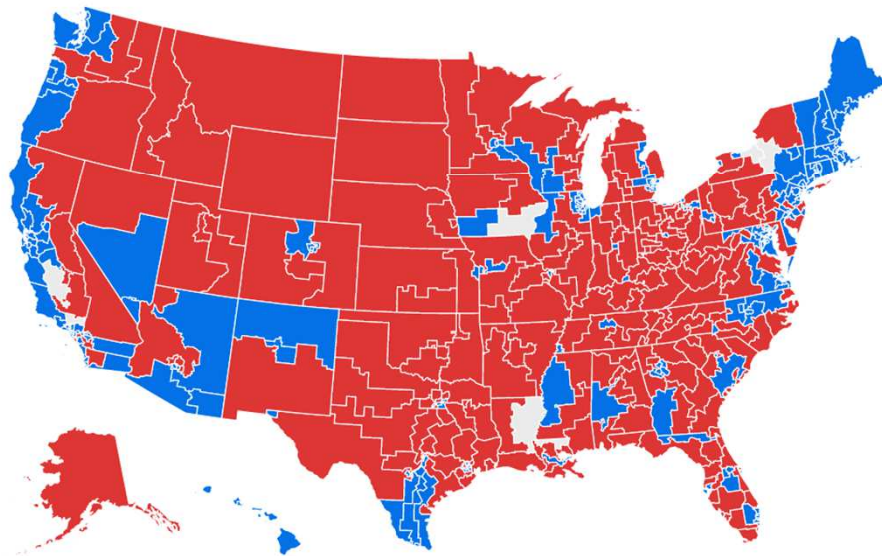
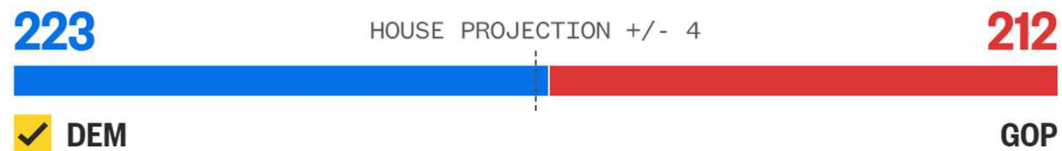


States' Safe Harbor deadline to settle election disputes

117th Congress sworn-in
**January 3 is a Sunday, so Congress likely to pass resolution moving date to January 4 or 5*

Joint Session of Congress to count electoral votes, declare official results

2020 House Election Results



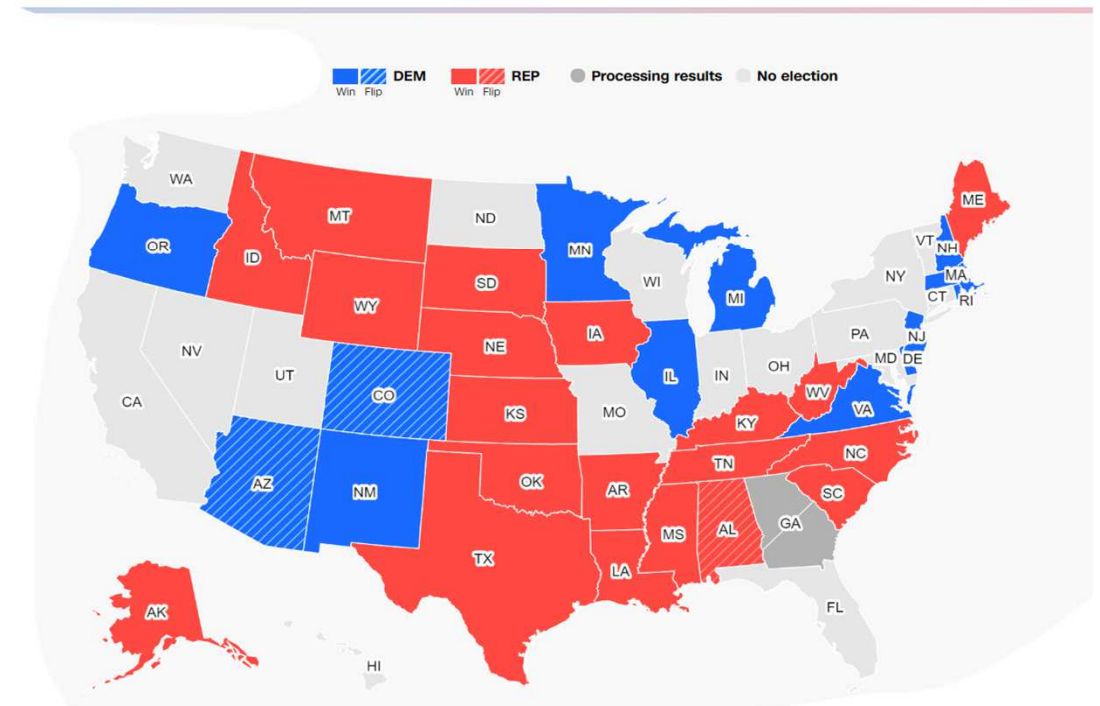
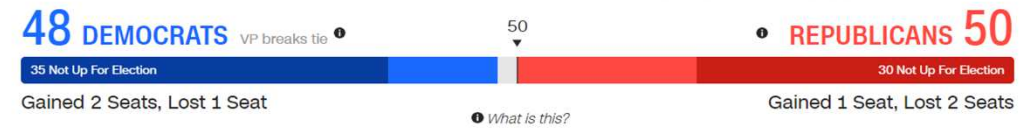
- Democrats failed to expand their majority in the House and missed opportunities to pick up seats in states such as Florida and Texas; Republicans protected incumbents and added seats.
- Based on the current results, the Democrats will retain control of the House but only by a slim margin, 5 or 6 seats.
- Expect a more moderate and centrist House with less far-left or far-right policy proposals advancing, due to the small size of the Democratic majority.
- The real potential for a return of “Earmarks” could add to circumstances for bipartisan cooperation on major legislation.

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2020 Senate Election Results

Key Senate Race Outcomes—No Blue Wave

- **Alabama:** Tuberville (R) defeated Jones (D - Incumbent)
- **Alaska:** Sullivan (R) defeated Gross (I, D nominee)
- **Arizona:** Kelly (D) defeated McSally (R - Incumbent)
- **Colorado:** Hickenlooper (D) defeated Gardner (R – Incumbent)
- **Maine:** Collins (R) defeated Gideon (D)
- **Montana:** Daines (R-Incumbent) defeated Bullock (D)
- **North Carolina:** Tillis (R - Incumbent) defeated Cunningham (D)
- **Iowa:** Ernst (R - Incumbent) defeated Greenfield (D)
- **Kansas:** Marshall (R) defeated Bollier (D) (open seat)





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Importance of the Georgia Elections

- Currently, Republicans have a 53-47 advantage in the Senate during the lame duck session and will control the Senate 50-48 when Congress is sworn in on January 3.
- Control for the 117th Senate hinges on January 5 runoffs for two Georgia seats. Republican incumbents are narrowly favored in both.
- If Republicans win one of the Georgia races, then Mitch McConnell (R-KY) would remain Majority Leader and would have the power to moderate President Joe Biden's legislative agenda.
- Democrats would have to win both races for Vice President Kamala Harris to break a 50-50 tie in their favor. In this scenario, Democrats would have full control of government, albeit by the slimmest of margins, as they will also control the House by only a handful of seats.
- Georgia will have runoff elections on January 5 for both Senate seats:
 - Incumbent Senator David Perdue (R) will face Jon Ossoff (D) in the runoff.
 - Incumbent Senator Kelly Loeffler (R) will face Raphael Warnock (D) in the runoff.

Georgia Election Results

Georgia Senate Race

Candidates	Vote %	Vote count
 David Perdue Republican Party	49.7%	2,458,576
 Jon Ossoff Democratic Party	48%	2,371,988

Georgia Special Election

Candidates	Vote %	Vote count
 Raphael Warnock Democratic Party	32.9%	1,615,370
 Kelly Loeffler Republican Party	25.9%	1,271,106
 Doug Collins Republican Party	19.9%	978,894

House - Party Leadership for the 117th Congress

Democratic Leadership

- **Speaker of the House:** Nancy Pelosi (D-CA)
- **Majority Leader:** Steny Hoyer (D-MD)
- **Majority Whip:** Jim Clyburn (D-SC)
- **Assistant Speaker:** Katherine Clark (D-MA)
- **Caucus Chair:** Hakeem Jefferies (D-NY)
- **Caucus Vice Chair:** Pete Aguilar (D-CA)

Republican Leadership

- **Republican Leader:** Kevin McCarthy (R-CA)
- **Republican Whip:** Steve Scalise (R-LA)
- **Republican Conference Chair:** Liz Cheney (R-WY)
- **Republican Policy Committee:** Gary Palmer (R-AL)
- **Conference Vice Chair:** Mike Johnson (R-LA)
- **Conference Secretary:** Richard Hudson (R-NC)

House Committee's of Note Anticipated Leadership

- **Appropriations:** * Democratic Chair – Kaptur (OH), DeLauro (CT), Wasserman Shultz (FL) | Republican Ranking Member – Granger (TX)
- **Education & Workforce:** Democratic Chair – Scott (VA) | Republican Ranking Member – Foxx (NC)
- **Energy & Commerce:** Democratic Chair – Pallone (NJ) | Republican Ranking Member – Burgess (TX), Latta (OH), CMR (WA)
- **Natural Resources:** Democratic Chair – Grijalva (AZ) | * Republican Ranking Member – Westerman (AR)
- **Transportation & Infrastructure:** Democratic Chair – DeFazio (OR) | Republican Ranking Member – Graves (MO)
- **Ways & Means:** Democratic Chair – Neal (MA) | Republican Ranking Member – Brady (TX)

Senate - Anticipated Party Leadership for the 117th Congress

Republican Leadership

- **Republican Majority Leader:** Mitch McConnell (KY)
- **Republican Whip:** John Thune (SD)
- **Conference Chair:** John Barrasso (WY)
- **Policy Committee Chair:** Roy Blunt (MO)
- **NRSC:** Rick Scott(FL)

Democratic Leadership

- **Democratic Leader:** Chuck Schumer (NY)
- **Democratic Whip:** Dick Durbin (IL)
- **Assistant Democratic Leader:** Patty Murray (WA)
- **Policy Chair:** Debbie Stabenow (MI)
- **DSCC:** Jacky Rosen(NV) / Ben Ray Lujan (NM)

Senate Committee's of Note Anticipated Leadership

- **Appropriations:** Republican Chair Richard Shelby (AL) | Democratic Ranking Member Patrick Leahy (VT)
- **Commerce, Science, Transportation:** Republican Chair Roger Wicker (MS) | Democratic Ranking Member Maria Cantwell (WA)
- **Energy & Natural Resources:** *Republican Chair John Barrasso (WY) | Democratic Ranking Member Joe Manchin (WV)
- **Environment & Public Works:** *Republican Chair Shelly Moore Capito (WV) | Democratic Ranking Member Tom Carper (DE)
- **Finance:** * Republican Chair Mike Crapo (ID) | Democratic Ranking Member Ron Wyden (OR)

Remaining Legislative Priorities for the 116th Congress

- **FY21 Appropriations “Omnibus” or “Mini-bus” bills for Government Funding:** Current “continuing resolution” (CR) expires Dec 11 - A number of expiring tax, healthcare, and CARES Act programs could hitch a ride on FY ‘21 Appropriations package.
- **COVID Relief Package:** Cases are spiking nationwide and economic distress may drive an agreement in the 116th though both sides are still divided on the size and scope of this package and its price tag.
- **FY21 Defense Authorization Bill:** Negotiations with the top 4 are winding up on this year’s National Defense Authorization Act (NDAA), the bill appears to be on track for passage during the Lame Duck.
- **Water Resources Development Act (WRDA):** This biannual bill authorizes Corps of Engineers Projects and Congress is expected to push for its completion in the Lame Duck.
- **Natural Resources/Energy:** As with past Lame Duck sessions, Congress is expected to try to pass various packages of “non-controversial” public lands and natural resources bills. An energy bill could be passed in the final weeks of the 116th Congress. These bills will have to pass via expedited floor procedures such as “Suspensions” (House) and Unanimous Consent (“UC”).

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The Energy Priorities of the Next Presidential Administration



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Environmental Policy and Regulatory Priorities of the Biden Administration

- Climate Change
 - Clean Power Plan/Affordable Clean Energy Rule
 - National Environmental Policy Act (“NEPA”) Review
 - Methane Emissions
- Waters of the United States (“WOTUS”) Rule
- Other issues
 - Motor vehicle fuel efficiency standards
 - Energy development on public lands
 - Renewable energy development
 - Environmental justice
 - Environmental enforcement

The CPP vs. the ACE rule

CPP	ACE
Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Fed. Reg. Vol. 80, no. 205 (Oct. 23, 2015)	Rule signed on June 16, 2019 (40 CFR Part 60)
GOAL: Reduce U.S. power plant emissions by 32% from 2005 levels.	CLAIM: The ACE, when combined with historical emissions reduction trends, will reduce GHG emissions by 35% from 2005 levels by 2030.
Provided State-Based budgets; PA required to reduce CO2 emissions from electricity generation by about 33%	States have three (3) years to submit implementation plans that incorporate “best systems of reductions”; EPA has 12 months to review
Considers “inside the fence” and “outside the fence” actions	Focuses on “inside the fence only” (i.e., improving the heat-rate efficiency of coal-fired facilities)
Stayed 2016; Repealed 2017 (E.O. 13783)	Opposed by some states, utilities, and interest groups; litigation underway

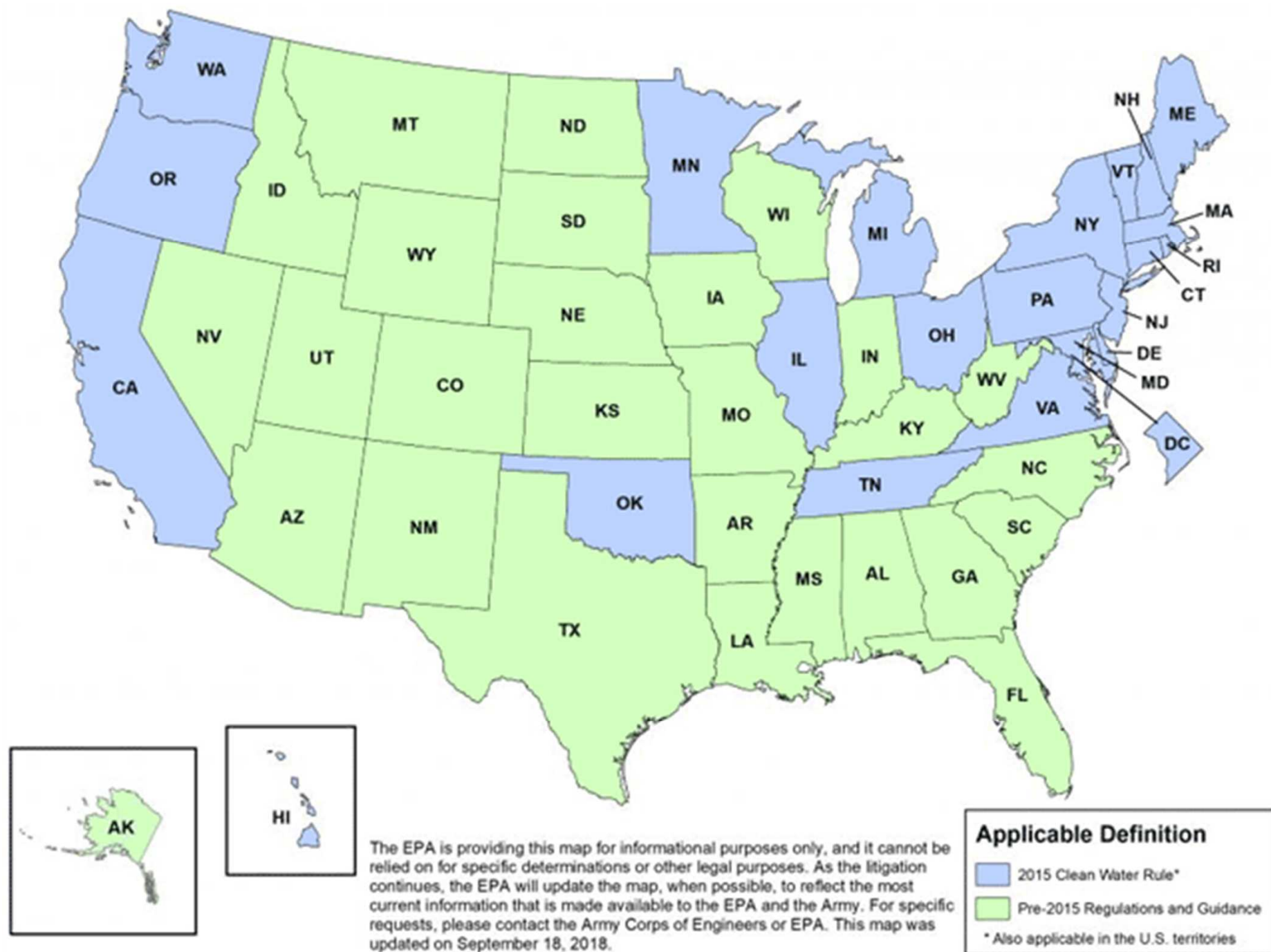
Waters of the United States (“WOTUS”)

- Clean Water Act jurisdiction extends to “navigable waterways,” defined as Waters of the United States (“WOTUS”)
- *Rapanos v. United States*, 547 U.S. 715 (2006): 4-1-4 plurality decision

Scalia: Relatively permanent, standing or continuously flowing bodies of water (narrow)

Kennedy: Waterbody is jurisdictional if it has a “significant nexus” to a traditionally navigable waterway (broad)

- Courts have followed both rules
- 2015 Clean Water Rule: Gave form to the “significant nexus” test
- Litigation ensued, staying the application in 27 states, while it remained effective in 22 states



Potential Developments in Energy Law and Policy: 2021 and Beyond

Natural Gas

- Enforcement
- New Facility Construction
 - GHG Emissions & FERC Certificate Policy
- LNG Export Policy
- Non-FERC Permitting
 - National Water Permits/ACOE
 - A “new” new federalism? CWA Waivers

Electricity

- Renewable Resource Integration
- PURPA
- Utility Returns on Equity

Oil & Petrochemicals

- Post-construction permit revocations?

Transactions and Energy Development: Impact of the Election on the Markets



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