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# PrestigePEO

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October 7, 2020

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COVID 4.0  
&  
Washington, D.C. Insights

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# Today's Presenters



Jason Flinn

Today's Moderator,  
Director of  
PrestigePEO Client  
Services



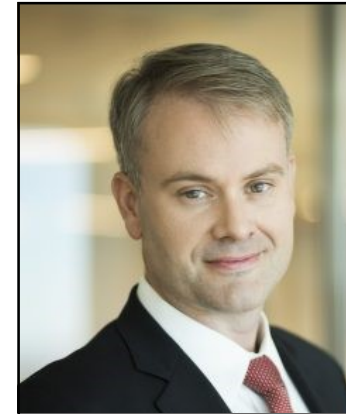
Andrew Lubash

Founder and  
Principal of  
PrestigePEO



Seth Perretta

Principal  
Groom Law Group



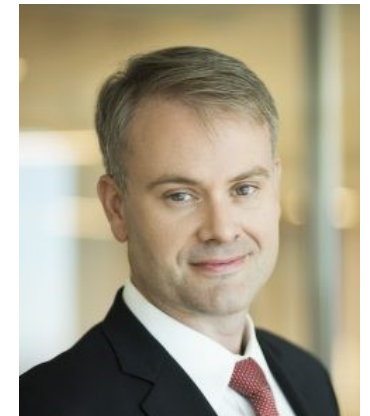
Ryan Temme

Principal  
Groom Law Group

## Groom Law Group

### Seth Perretta and Ryan Temme

- Seth Perretta and Ryan Temme are Principals at Groom Law Group, a Washington, DC law firm that focuses exclusively on employee benefit matters.
- Seth interfaces regularly with federal agency regulators and advises clients on legislative and regulatory developments.
- Ryan brings a deep technical knowledge of the laws that govern employer-sponsored health and welfare arrangements and health insurance coverage, with broad administrative and legislative experience.



# Today's Agenda



## Updates from Groom Law Group

- Update on COVID 4.0 Negotiations/Stimulus
- ACA Supreme Court Review (and ACB Nomination)
- Presidential Election
- Congressional Races
- Candidates' Health and Tax Positions

### Webinar Forum

- ❖ All participants are muted.
- ❖ Please type questions in the side navigation panel and we will try to address most questions during today's session.
- ❖ Today's presentation will be posted online at [prestigepeo.com/blogs/](https://prestigepeo.com/blogs/)

# Update on COVID 4.0 Negotiations

# COVID Relief 4.0 State of Play

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- Although House Speaker Nancy Pelosi (D-CA) and Treasury Secretary Steven Mnuchin are still reportedly attempting to reach a deal on another COVID relief package, the prospect of passage is currently low. The House Democrats' proposal is a \$2.2 trillion package, whereas the Administration is calling for a bill "in the neighborhood" of \$1.5 trillion
- The need for action has grown more urgent as the payroll support provided to U.S. airlines earlier this year expired on October 1, possibly sending tens of thousands of additional Americans to the unemployment rolls
- On October 1 the House passed a \$2.2 trillion COVID relief bill in an attempt to pressure a bipartisan deal prior to the election. No Republicans voted in favor. 20 Democrats voted in opposition, urging Speaker Pelosi to come to a compromise with the GOP
- October 2 was the last day the House is scheduled to be in Washington before the election

# COVID 4.0 State of Play: House-Passed HEROES Act

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## ➤ Notable provisions:

- ✓ Stimulus: another round of \$1,200 direct payments to individuals, plus \$500 per dependent
- ✓ Unemployment Insurance: \$600 per week on top of the state unemployment benefit
- ✓ Paycheck Protection Program (“PPP”):
  - Allows second loans to small businesses with fewer than 200 employees that have experienced a 25% reduction in quarterly revenue year-over-year due to the pandemic
  - Excludes publicly traded firms for eligibility for second loans
  - Limits businesses with multiple physical locations
  - Streamlines forgiveness of PPP loans that fall under \$150,000
  - Clarifies that expenses paid or incurred with forgiven PPP proceeds are eligible for deductions



# COVID 4.0 State of Play: House-Passed HEROES Act

## ➤ Notable Provisions (cont'd)

- ✓ Paid Sick Leave: extends credits for paid sick and family leave and increases the limits on credits for paid family leave
- ✓ Employer Immunity Shield: **not** included
- ✓ Payroll Tax Credits and Employee Retention Tax Credits:
  - Increases the applicable percentage of qualified wages reimbursed through the employee retention and rehiring credit from 50% to 80%
  - Modifies the gross receipts requirement to allow a partial credit, phased in for a decline in gross receipts between 10% and 50% compared to the same calendar quarter of the previous year
  - Increases the limit on wages taken into account per employee from \$10,000 for the year to \$15,000 per quarter (limited to \$45,000 for the calendar year)
  - Replaces the 100-employee delineation for determining the relevant qualified wage base with a definition of large employer. A large employer is an employer with greater than 1,500 full time employees and gross receipts of greater than \$41,500,000 in 2019
  - Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with recent revisions to IRS guidance on this issue

# COVID 4.0: Trump Administration's Response to the House Bill

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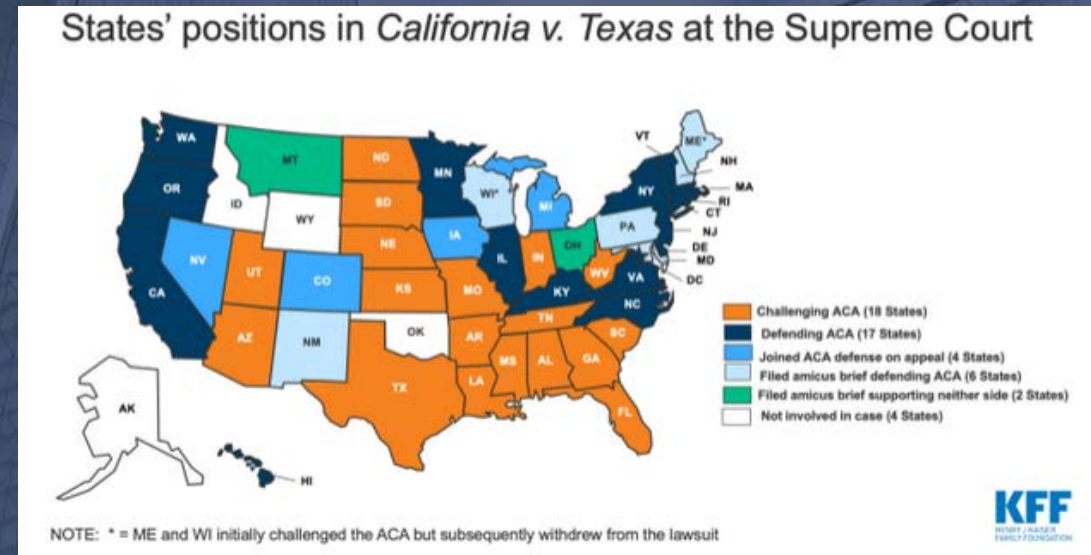
- The Administration has signaled that it does not support the House Democrats' bill, but rather favors some version of the House Problem Solvers Caucus proposal:
  - ✓ Total: \$2 trillion (though Secretary Mnuchin recently called for a \$1.5 trillion package)
  - ✓ Stimulus: Another round of \$1,200 stimulus checks to individuals, plus \$500 per dependent
  - ✓ Unemployment: \$450 benefit on top of state unemployment insurance
  - ✓ Liability shield: included
  - ✓ PPP:
    - \$240 billion for PPP (calls for but does not provide specifics on: second loan, flexible use, full transparency, simplified forgiveness, and prioritizing distressed businesses)
    - \$145 billion remaining from PPP to be re-appropriated
    - \$95 billion in new money
    - \$50 billion for Targeted Employee Retention Tax Credit (ERTC)
    - Rectify Main Street Lending Program

# ACA Supreme Court Review

# Supreme Court Update: ACA Implications

## *California v. Texas*

- *California v. Texas* challenges the constitutionality of the ACA:
  - Congress removed the ACA penalty for being uninsured in 2017
  - *California v. Texas* argues that without the penalty the ACA's mandate can no longer be upheld as a tax (per the 2012 SCOTUS holding) and the law should be overturned
- Oral argument at the Supreme Court November 10
  - By custom, if a new justice is not seated before oral argument the justice will not vote
- Vote Count:
  - The 2012 ACA challenge (*NFIB v. Sebelius*) mostly broke along party lines, with Chief Justice John Roberts as the deciding vote upholding the law. His opinion stated that Congress does not have the authority to issue an individual mandate, but the ACA can validly be considered a tax on going without insurance
  - Judge Barret has not ruled on any cases in the 7<sup>th</sup> Circuit that would shed light on how she might vote, but she has criticized the Supreme Court's decision to uphold the ACA in her academic writings

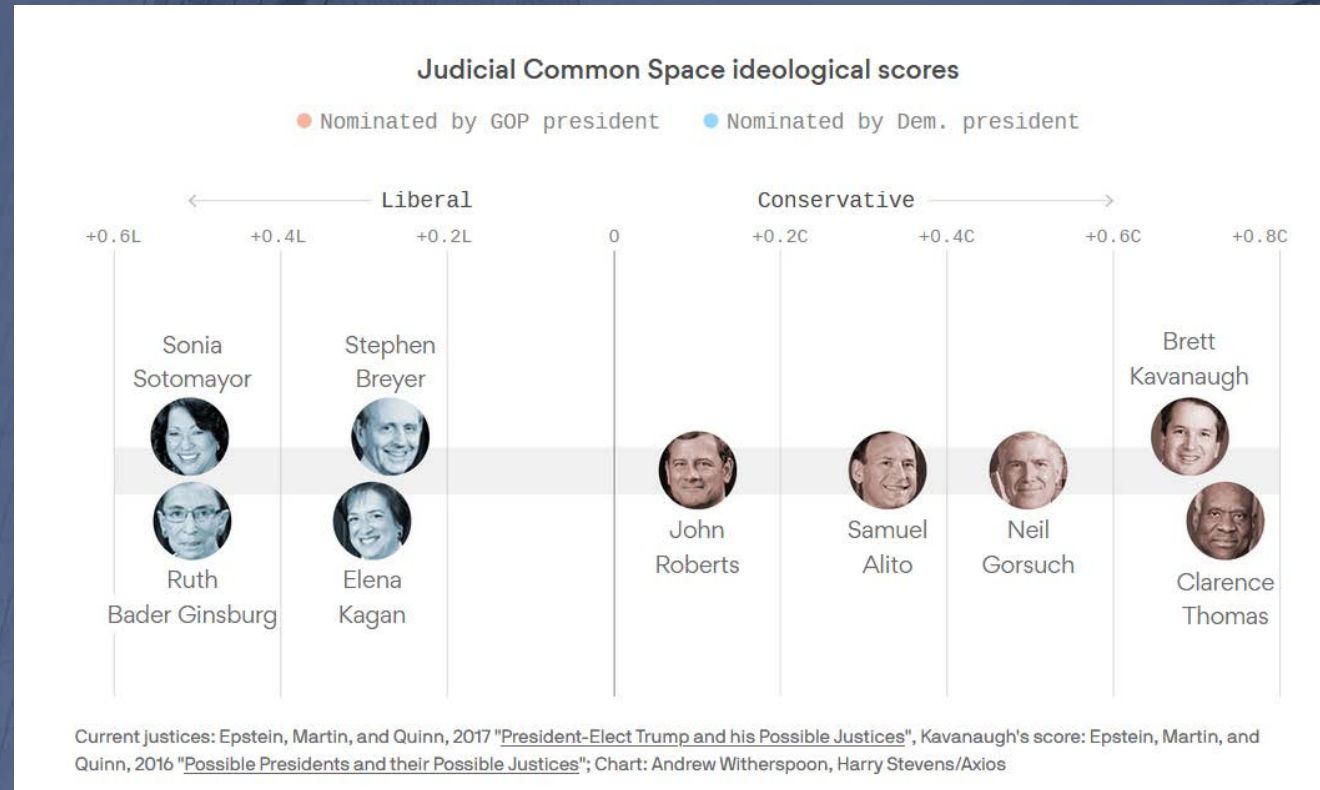


Source: Kaiser Family Foundation, "Explaining *California v. Texas*: A Guide to the Case Challenging the ACA", September 1, 2021 [www.kff.org/health-reform/issue-brief/explaining-california-v-texas-a-guide-to-the-case-challenging-the-aca0](https://www.kff.org/health-reform/issue-brief/explaining-california-v-texas-a-guide-to-the-case-challenging-the-aca/), available at: <https://>

# Supreme Court Update: Judge Amy Coney Barrett



- Currently serving on the Seventh Circuit Court of Appeals
- Clerked for D.C. Circuit Judge and for Supreme Court Justice Antonin Scalia
- Worked for more than 15 years in academia- including at Notre Dame Law School



Source: Axios, "The Political Leanings of the Supreme Court Justices", June 1, 2019, available at: <https://www.axios.com/supreme-court-justices-ideology-52ed3cad-fcff-4467-a336-8bec2e6e36d4.html>

# Supreme Court Update: Timeline

- Proposed timeline prior to Trump's COVID diagnosis:
  - Senate Judiciary Hearings: October 12
  - Senate Judiciary Vote: October 22
  - Floor vote to be determined
  - Election: November 3
- Only two Republicans are calling for delaying the vote until after the election:
  - Sen. Susan Collins (Maine)
  - Sen. Lisa Murkowski (Alaska)



Source: National Public Radio, "How Amy Coney Barrett's Confirmation would Compare to Past Supreme Court Picks", October 1, 2020, available at: <https://www.npr.org/sections/supreme-court-nomination/2020/10/01/916644231/how-a-barrett-confirmation-would-compare-to-past-supreme-court-timelines>

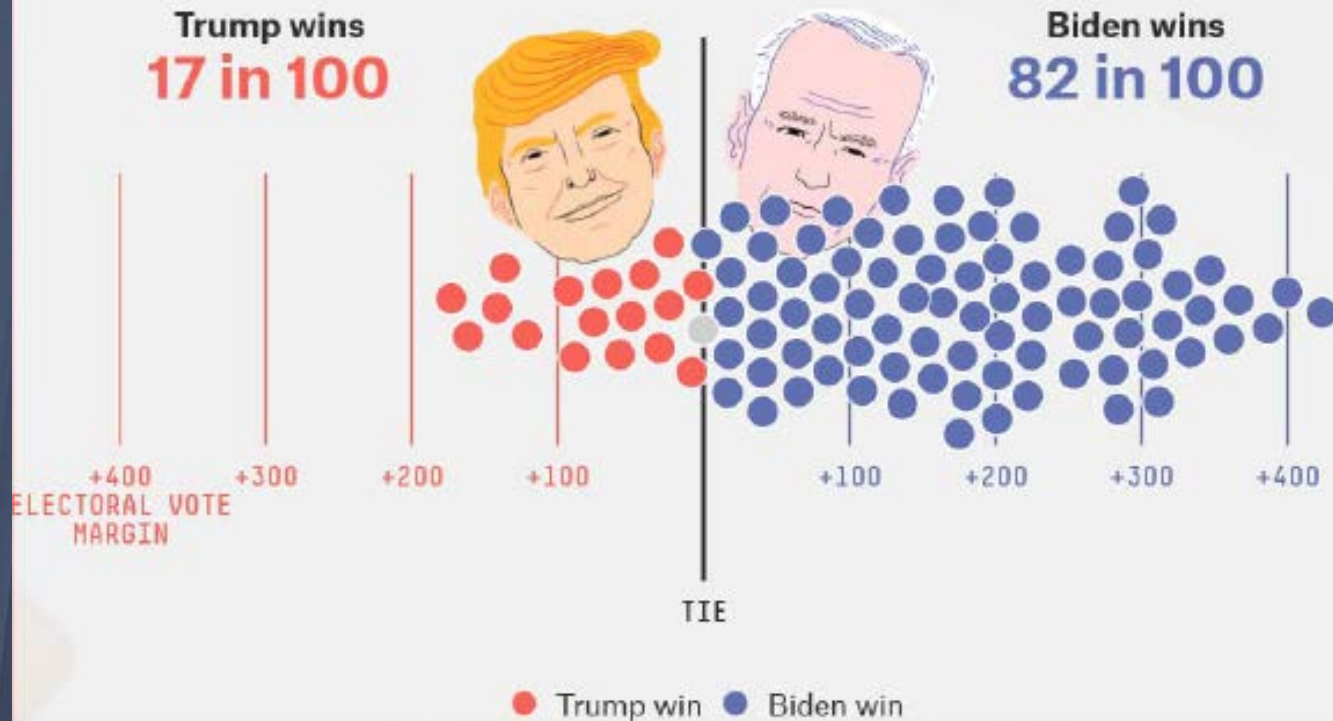
# Presidential Election

# Presidential Race

Source: [www.fivethirtyeight.com](http://www.fivethirtyeight.com); available at: <https://projects.fivethirtyeight.com/2020-election-forecast/senate/>

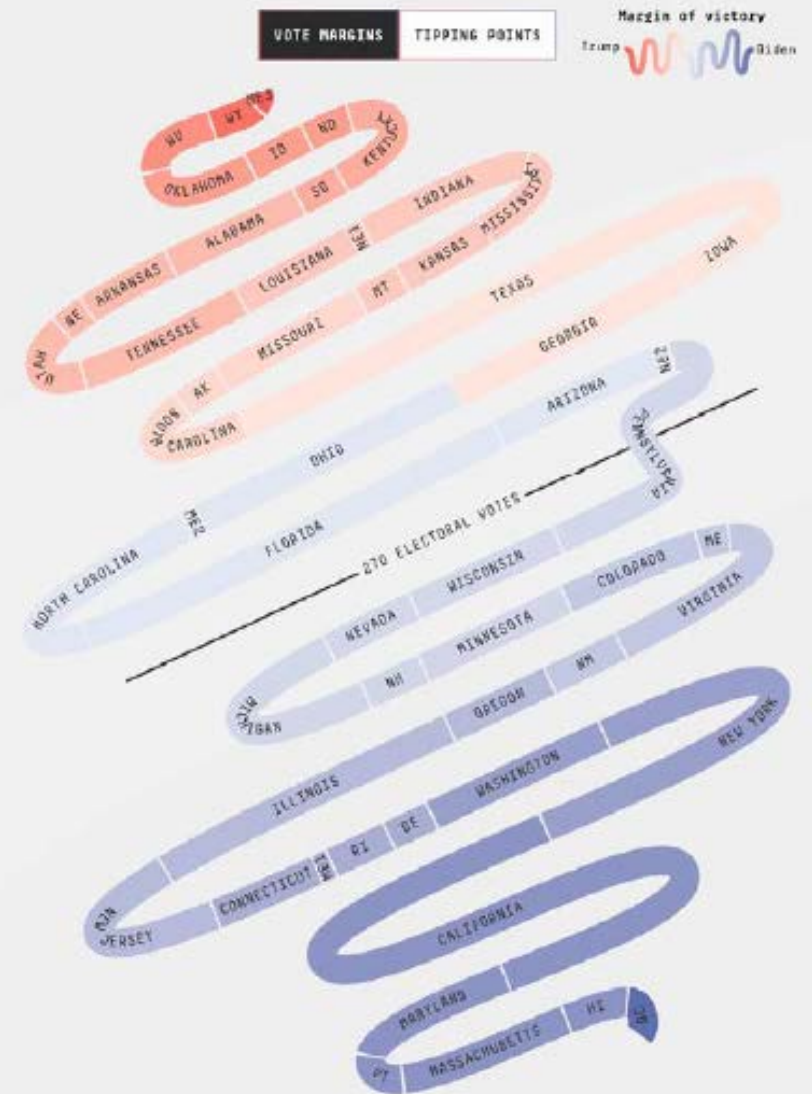
## Biden is *favored* to win the election

We simulate the election 40,000 times to see who wins most often. The sample of 100 outcomes below gives you a good idea of the range of scenarios our model thinks is possible.



## The winding path to victory

States that are forecasted to vote for one candidate by a big margin are at the ends of the path, while tighter races are in the middle. Bigger segments mean more Electoral College votes. Trace the path from either end to see which state could put one candidate over the top.



Maine and Nebraska's congressional districts are shown separately because those states split their Electoral College votes, allotting some to the statewide winner and some to the winner of each district.



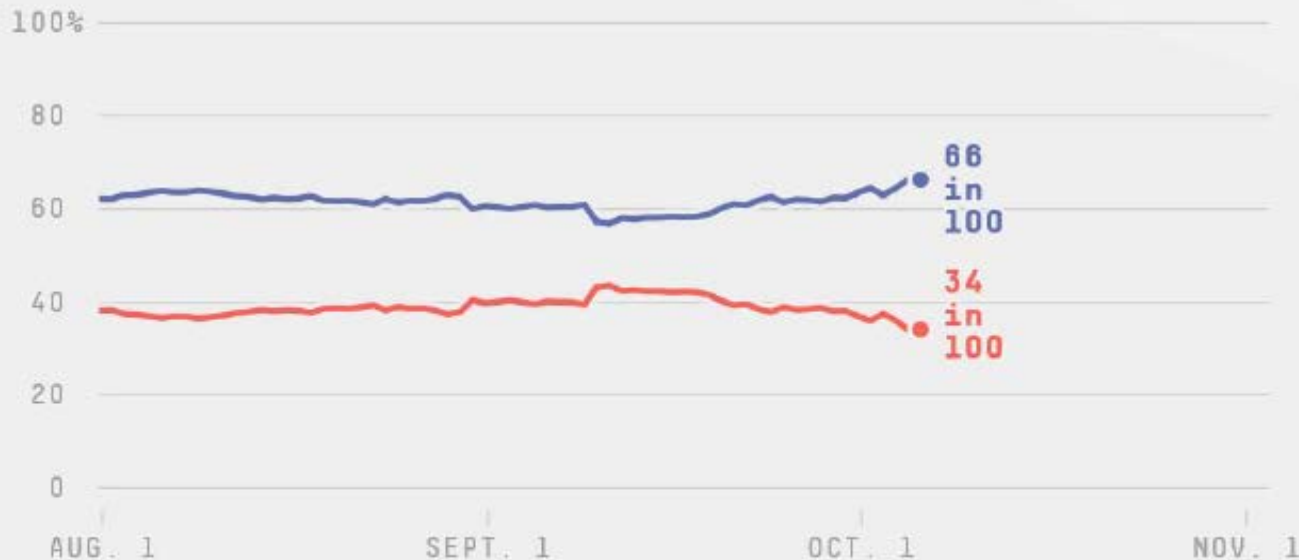
# Congressional Races

# U.S. Congress – Contest for Control

## How the Senate forecast has changed

See how each party's forecasted seat total and chances of controlling the Senate have changed over time. The forecast updates at least once a day and whenever we get a new poll.

### Chances of controlling the Senate



## Forecasting each Senate seat

Each party's chances of winning the Senate seats that are up for election



**Current Senate** 23 Republican seats, 12 Democratic seats up for election



**Forecasted Senate**



Counts of Democratic seats include two independent senators who caucus with the Democrats. Forecasts do not add to 100 in some races due to rounding.

# Candidate's Health and Tax Positions

# Election Impact on Taxes: Candidate Positions



Tax Issue	Trump	Biden
Carried Interest	No specific proposals to change the tax treatment of carried interest. Likely to continue current treatment as long-term capital gain if held for at least three years	Tax as ordinary income
Corporate Tax	No specific proposal	Raise to 28%, from 21%
Individual Income Tax	No specific proposal, but FY 2019, 2020, and 2021 budget blueprints assume permanent extension of current law. Top rate of 37% through 2025	Restore top rate to 39.6% for those earning more than \$400,000

# Electoral Impact on Health: Candidate Positions



Health Issue	Trump	Biden
Medicare	<ul style="list-style-type: none"> <li>• Does not support Medicare for all.</li> <li>• Allow Medicare to pay for telehealth.</li> <li>• Expand supplemental benefits in privately run Medicare Advantage programs</li> </ul>	<ul style="list-style-type: none"> <li>• Does not support Medicare for all</li> <li>• Lower eligibility age from 64 to 60</li> <li>• Add hearing, vision, and dental benefits to Medicare</li> </ul>
ACA	<ul style="list-style-type: none"> <li>• Supports repeal of the ACA and the <i>Texas v. California</i> court challenge</li> <li>• Allow employers to use health reimbursement arrangements to reimburse employees who buy coverage on ACA exchanges</li> <li>• Extend the coverage period of non-ACA short-term health plans to up to three years</li> <li>• Allow associations to provide group health coverage for multiple employers</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain and expand coverage under the ACA.</li> <li>• Retain employer mandate.</li> <li>• Allow workers to obtain coverage on exchange even if employer offers ACA compliant coverage.</li> <li>• Create a Medicare-like public option plan that is available broadly. Would cover those with low incomes in states that did not expand Medicaid.</li> <li>• Increase federal support to Medicaid</li> </ul>
Prescription Drug Prices	<ul style="list-style-type: none"> <li>• Limit prices for certain physician-administered drugs to those charged in other countries</li> <li>• Allow consumers to purchase drugs internationally</li> <li>• Prohibit rebates to pharmacy benefit managers in Medicare</li> <li>• Requiring disclosure of list prices in advertising</li> </ul>	<ul style="list-style-type: none"> <li>• Give federal government authority to negotiate drug prices for Medicare.</li> <li>• Allow consumers to purchase drugs internationally.</li> <li>• Limit launch prices for drugs that face no competition.</li> <li>• Limiting price increases for all brand, biotech, and abusively priced generic drugs to inflation</li> </ul>

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# Client Communications

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## Prestige Communications

Today's presentation will be posted on PrestigePEO.com under

- [The Prestige Perspective](https://prestigepeo.com/blogs)  
[prestigepeo.com/blogs](https://prestigepeo.com/blogs)

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