

We're now four months out from election day. This is not looking like a good electoral cycle for the Democrats, given inflation, the continuing effects of COVID, the economic impact of the war in Ukraine, and other woes. Democrats do have a fair chance of holding control of the Senate however, depending on how they run individual races and whether there's any improvement in public opinion on Biden. The impact of the Supreme Court's abortion ruling on the election also remains to be seen.

The outcome is important in terms of environmental law. It now seems quite likely the GOP will take control of the House, preventing the Democrats from passing new legislation. Even if that happens, control of the Senate would remain relevant to environmental policy for several reasons. The first is appointments. As Obama learned in his second term, Mitch McConnell is not about to give a Democratic president much space to appoint agency officials and lower court judges, let alone Supreme Court Justices. That would augur poorly for staffing environmental agencies like EPA and for shifting the lower courts in a more regulation-friendly direction. Second, given that it looks unlikely Democrats will hold the House, committee hearings in a Democratic Senate might be the only forum in which scientists and environmental advocates would be allowed to speak. And finally, GOP control of both Houses raises the chances of their being able to throw the electoral count their way if they don't like the presidential election results. Republican presidencies since 1992 have tended not to be good news for environmental protection. Of course, depending on their own politics, readers might agree about the environmental stakes in the election but disagree about which side to favor.

To see where things stand, I took a look at two well-regarded political forecasts. There are four states that both of them rate as toss-ups: Arizona, Georgia, Nevada, and Pennsylvania. The Democrats need to win at least three of the four. If these truly are toss-ups, that works out to be just under a one out of three chance of holding the Senate. That's an uphill battle but a potentially winnable one--it's a bit better than the odds Nate Silver [gave](#) Trump on the eve of the 2016 election.

There are three other states that can also be considered in play at this point. One forecaster rates Wisconsin as a toss-up, the other as leaning Republican. The odds probably favor the Republicans there, but not by much. A win there would give Democrats more leeway on how many of the toss-up states they need to win. On the other hand, New Hampshire is a state that the Republicans may have a shot at. Both forecasters list it as leaning Democratic. A Republican win there, on top of carrying the toss-up states, would give Republicans a more comfortable Senate margin. On the other side, both forecasters list North Carolina as leaning Republican, meaning that a shift in the political winds might actually allow Democrats to add to their existing Senate margin. In practical terms, that would mean that

they would be able to scrape by on nominations with support from Sinema or Manchin, but they would no longer need both.

Given how close so many states are at this point, even a small shift in the national political winds could make a big difference in terms of control of the Senate. Moreover, there is no guarantee that the forecasters are right: Most prognostications suggested that Democrats would do better in the 2020 Senate races than they actually did. Depending on how tight the key races are, we may not know who controls the Senate until recounts, runoffs, or possible litigation are over.