



August 24, 2023

Ms. Lisa J. Stevenson
Acting General Counsel
Office of the General Counsel
FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, D.C. 20463

Email: EnfComplaint@fec.gov

COMPLAINT BEFORE THE FEDERAL ELECTION COMMISSION

RE: The Conduct of Presidential Debates by the Republican National Committee in Violation of the Federal Election Campaign Act and Regulations Promulgated by the Federal Elections Committee by arbitrarily excluding Larry Elder from August 23, 2023, Debate.

INTRODUCTION

Over 25 years ago the FEC adopted regulations to ensure organizations staging debates did not favor one candidate over another by choosing participants. By choosing or excluding participants based on subjective criteria or favoritism a debating hosting organization has made an illegal in-kind contribution to candidates it allows to participate. 60 Fed Reg 64262. Federal Courts have sustained these regulations on several occasions, including upholding the Commission on Presidential Debates. The legal issue at hand here is once an organization establishes debate criteria, it must stick with those standards and apply them evenly. If they don't, they are making an in-kind contribution to the candidates they allow into the debate. Specifically, FEC regulations warn organizations that want to stage debates must use "pre-established objective criteria to determine which candidates may participate in a debate." 11 CFR 110.13, 114.4(f). This can include the use of "polling thresholds" to determine viable candidates. Again, the purpose of these regulations is to remove subjectivity from the debate staging process to ensure some candidates are not receiving a benefit over another. If the debate staging organization follows its own rules, any expenses it incurs are exempt from the definition of "contribution" or "expenditure."

Pursuant to 52 U.S.C. § 30109, Larry Elder for President, Inc. submits this complaint to the Federal Election Commission (the "Commission") requesting an investigation and, if needed, take appropriate enforcement actions for violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by the Republican National Committee ("RNC"). With the rumored goal of limiting the participants in the August 23, 2023, Republican presidential primary debate (the "Debate"), the RNC seized control over one of the most significant



opportunities available to presidential primary candidates. In doing so, the RNC solicited corporate contributions in violation of the Act's rules. In effect, the RNC itself staged the debate and therefore has made excessive contributions to the participating candidates. Additional 2024 presidential primary debates are approaching; thus, the Commission must quickly address these violations to prevent the RNC from further manipulation of the primary process and the public's ability to obtain comprehensive information about their choices for the Republican nomination for president. If these violations are not quickly addressed, it is obvious the RNC will engage in this conduct in the immediate future.

STATEMENT OF FACTS

On August 23, 2023, the first debate among candidates for the 2024 Republican presidential nomination was held. Though FOX was billed as the Debate's host, the RNC controlled the debate. The Debate was announced, not by FOX, but by the RNC on April 12, 2023, following speculation about which network the RNC would "give" the first debate. On June 2, 2023, the RNC announced its criteria to participate in the Debate, which required candidates to:

(1) Demonstrate their status as a candidate for the Republican nomination for president, including their eligibility to run for president and proof of active filing as a candidate for the Republican nomination with the Commission.

(2) Poll at least 1% in three "national polls" OR 1% in two national polls and 1% in one early state poll from two separate early primary or caucus states (Iowa, New Hampshire, Nevada, or South Carolina)

(3) Raise funds from a minimum of 40,000 unique donors, with at least 200 donors per state or territory in 20+ states or territories; and

(4) Sign a pledge agreeing to abide by RNC party rules, including a pledge not to participate in unsanctioned debates, a pledge agreeing to support the eventual nominee, and an agreement to participate in data-sharing with the RNC.

Specifically, with respect to the polling criteria, the RNC specified that a poll would be recognized if it:

- (a) Surveyed "at least 800 registered likely Republican voters" through a mix of live calls, integrated voice response, online panels, and/or text message.
- (b) Did not overly weight responses of any individual cohort beyond the margin of the error of the poll.
- (c) Asked the question on presidential preference prior to any question which may allow potential bias.
- (d) Was not conducted by a polling company affiliated with a candidate or candidate committee

ELDER²⁴

To participate in the Debate, a candidate was required to demonstrate satisfaction of all four criteria no later than 48 hours prior to the Debate on August 23, 2023. On August 21, 2023, the RNC announced that eight candidates for the Republican nomination had qualified for the Debate. These candidates included Doug Burgum, Chris Christie, Ron DeSantis, Nikki Haley, Asa Hutchinson, Mike Pence, Vivek Ramaswamy, and Tim Scott. Among the qualified candidates excluded from the Debate was Larry Elder, who demonstrated his satisfaction of the Debate participation criteria as follows:

- Prior to the August 21, 2023, 9 p.m. EST deadline for qualification for the first Republican National Committee debate, Larry Elder’s campaign submitted a strong, in-depth qualification package to David Bossie, director of debates for the RNC.
- Larry Elder’s qualification package included proof of:
 - EXCEEDING the RNC’s requirement of at least 40,000 individual donors.
 - EXCEEDING the RNC’s requirement of 200 donors in 20 states (Elder nearly doubled that, with 200 donors in at least 37 states).
 - MEETING the RNC’s polling requirement of at least 1% in select polls and providing the detailed cross tabs of such polls.
 - SIGNING the “Beat Biden” loyalty pledge to support the ultimate GOP nominee.
 - AGREEING to allow the RNC to view our Win Red fundraising totals, which exceed their requirements.
 - Other pertinent required information to participate in the debate
- Only *after* receiving our completed qualification package, did the RNC inform us that they were not accepting Rasmussen Polls as qualifying toward the debate.
 - The reason, as stated by the RNC, is that Rasmussen Polls have ties to former President Donald Trump — an individual who is not even participating in the upcoming debate. Larry Elder has no knowledge about whether Donald Trump has ever worked with Rasmussen previously.
 - In fact, Rasmussen Polls is a reputable, nationally recognized firm and one of only THREE polling firms who accurately predicted the outcome of the 2016 Presidential Election (along with the Trafalgar Group.)
- The RNC also stated that other candidates previously had trouble with submitting a Rasmussen Poll as a qualifying poll, including Vivek Ramaswamy and at least one other candidate.
 - Had the RNC notified the other campaigns that this was a problem, the Elder campaign could have tried to identify other qualifying polls. Yet, we were not given the opportunity even though the RNC clearly was aware of their poll problem.
- This isn’t the first time the RNC has been challenged regarding their polls.
 - Nearly two months ago on July 1, 2023, POLITICO published an article titled, “The RNC’s debate plans have a major, largely unnoticed problem,” which stated that only TWO of the 70 polls over a period of seven weeks were expected to count as qualifying toward the debate. To our knowledge, the RNC did nothing to inform



the candidates of this critical structural issue with their polling requirement, nor did they explicitly at any time rule out Rasmussen as a “disqualifying” poll.

- <https://www.politico.com/news/2023/07/01/rnc-debate-poll-problem-00104502#:~:text=You%20have%20to%20hit%20certain,aren't%20enough%20polls%20conducted%3F&text=Even%20if%20you're%20the,1%20percent%20in%20a%20poll.>
- In addition, it became clear during the final few days of qualifying for the Debate that Larry Elder was NOT EVEN LISTED as a candidate option in many of the RNC’s “qualifying” polls. How can a GOP poll be considered a qualifying poll for all candidates if not all candidates are listed in the poll? This factor alone should be disqualifying, and the poorly designed poll requirement by the RNC should be lifted.

LEGAL BACKGROUND

The Act prohibits corporations from making contributions to federal candidates, and limits national party committees to contributions of no more than \$5,000 per election to any federal candidate. Party committees may not solicit, receive, or direct contributions from prohibited sources, such as corporations, or contributions more than the Act’s contribution limits. “Contributions” include anything of value provided for the purpose of influencing a federal candidate’s election and include communications made in coordination with a federal candidate. Commission regulations regard debate participation as “something of value”, and thus a contribution to the participants, but offer a safe harbor for certain organizations to sponsor debates that comply with specific staging requirements. The Commission regulations state that media organizations, including cable television providers, may stage candidate debates without contributing to the participants, provided that the debate structure does not promote or advance one candidate over another, and the staging organization uses “pre-established objective criteria” to determine which candidates may participate.

ALLEGED VIOLATIONS

Based on the foregoing, the RNC attempted to circumvent the Act and Commission regulations to pick Debate participants for their own ends. Additionally, the RNC failed to follow its own debate guidelines selectively enforcing and defining how these rules were applied. The RNC made no attempt to hide the fact that participant qualification was their sole purview. The RNC set the participation criteria, entirely directed the qualification process, and ultimately put its Chairwoman on the phone to deliver the news that it was denying Elder the opportunity to participate.

Instead, of ensuring adherence to preestablished objective criteria, the RNC read new terms into the criteria, adding a post-hoc definition of “national poll” to mean a poll of “every single state.” This, even though the RNC did state, with meticulous specificity that unique donors had to come from 20 states or territories. Moreover, as the RNC applied its criteria, it to shift its



interpretations to reject each new demonstration Elder put forward that he had in fact qualified, thus favoring the other eight participating candidates over Elder. In effect the RNC constantly moved the “goal posts” on certain candidates. As a result, the RNC failed to comply with their own debate requirements. The Act, Commission regulations and guidance materials offer no safe harbor to party committees to host a debate without resulting in a contribution to the participants. So, if the costs to stage the debate exceeded permissible limits when allocated among the eight participants, the RNC made excessive contributions to the participating candidates.

In short, the RNC have openly flouted the rules Congress and the Commission set up to ensure the public has access to information about the candidates seeking their votes. The RNC applied subjectivity in applying so-called objective criteria which violates the commission regulations. The RNC staged a debate that resulted in contributions to every single participant it favored over Elder.

CONCLUSION

Based on the above, the RNC made excessive contributions to the participating candidates by itself staging the debate, violating 52 USC section 30116. Additionally, it failed to follow its own debate rules therefore violating the Federal Elections Commissions regulations on Presidential Debates. Therefore, this would violate federal law prohibiting excessive in-kind contributions and we request the FEC investigate whether the RNC made an illegal in-kind contribution to the candidates they arbitrarily allowed to participate in the debate. Ultimately, if the RNC is found to have violated federal law we request the FEC to hold the RNC accountable.

Respectfully submitted,

Larry Elder

Subscribed and sworn to me before this ___ day of August, 2023.

Notary Public

EXHIBIT 1



The Lesson of Trafalgar:

Superior strategy, innovative tactics, and bold leadership can prevail even over larger numbers and greater resources.

Republican Presidential Primary Survey

August 2023

info@trf-grp.com

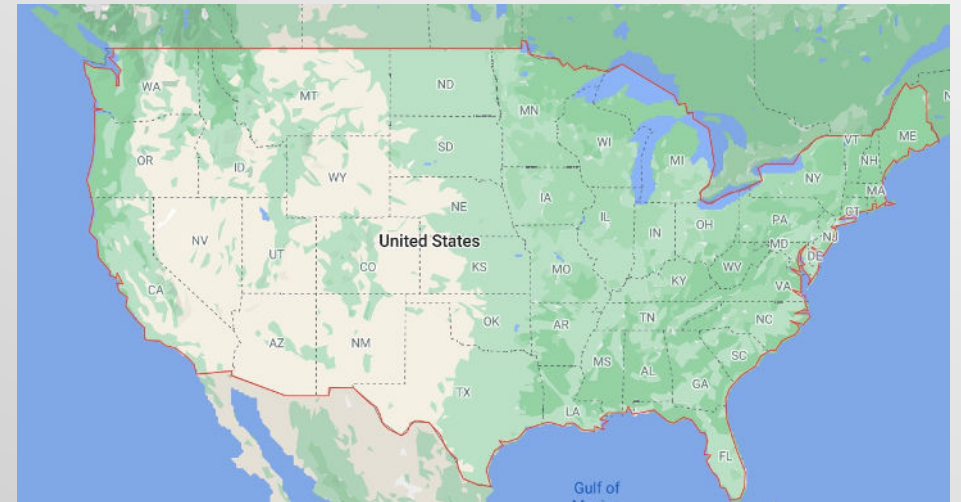
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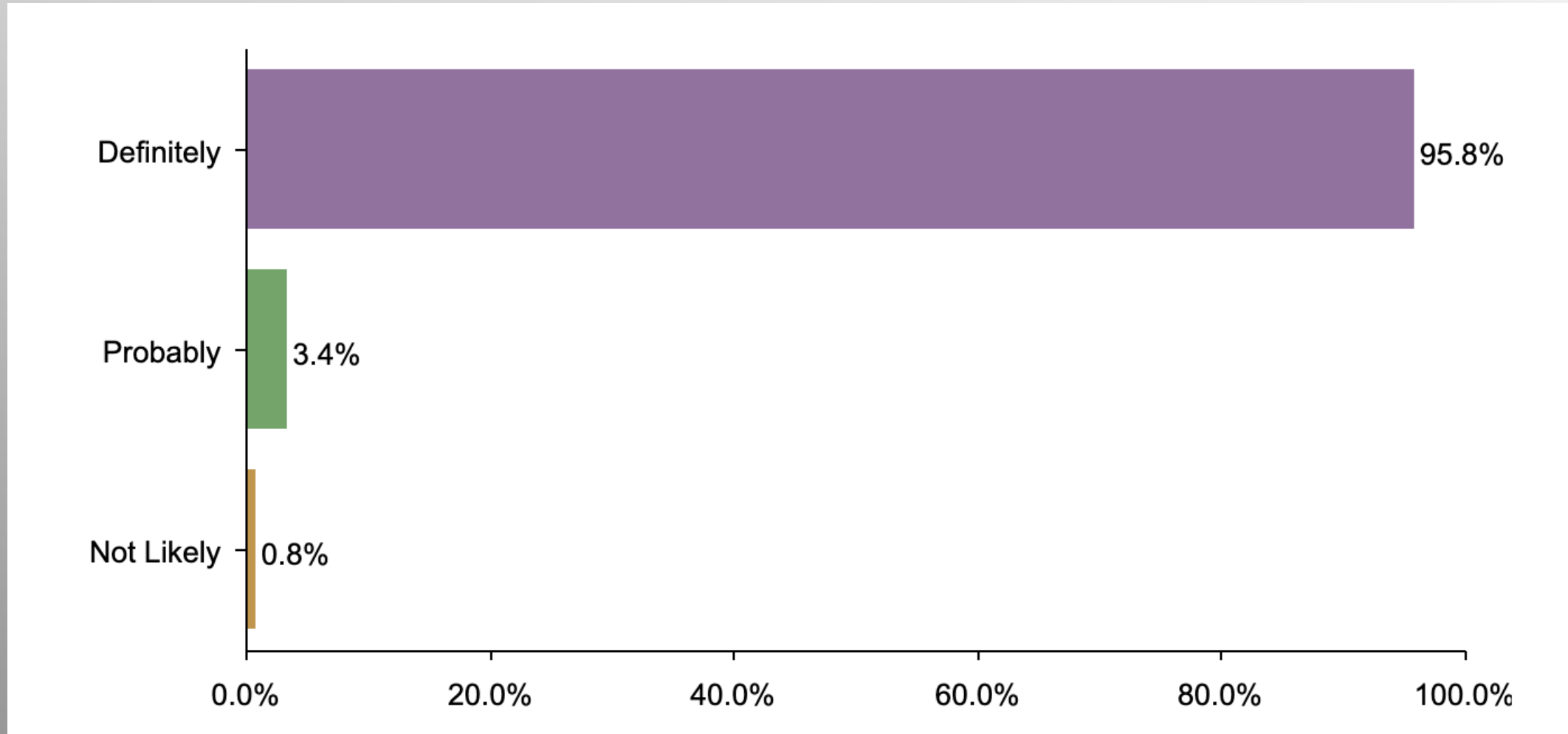
Nationwide Survey

- **Conducted 08/14/23 - 08/16/23**
- **1082 Likely GOP Presidential Primary Voters**
- **Response Rate: 1.5%**
- **Margin of Error: 2.9%**
- **Confidence: 95%**
- **Response Distribution: 50%**
- **Methodology: TheTrafalgarGroup.org/Polling-Methodology**



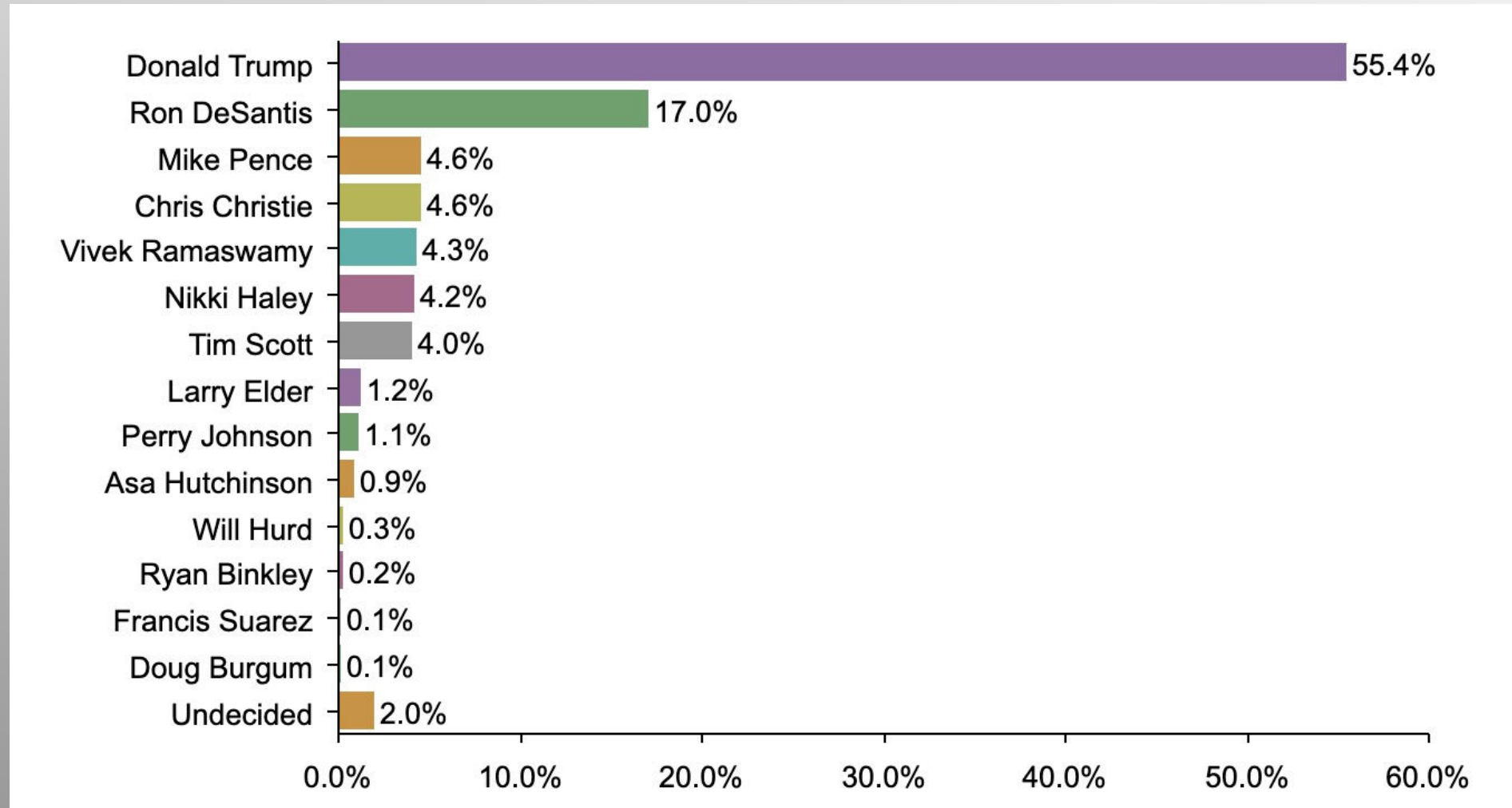
GOP Pres Primary Voting Likelihood

Do you plan to vote in the 2024 Republican Presidential Primary? (Note: Starting list only comprised of likely GOP Presidential Primary voters)

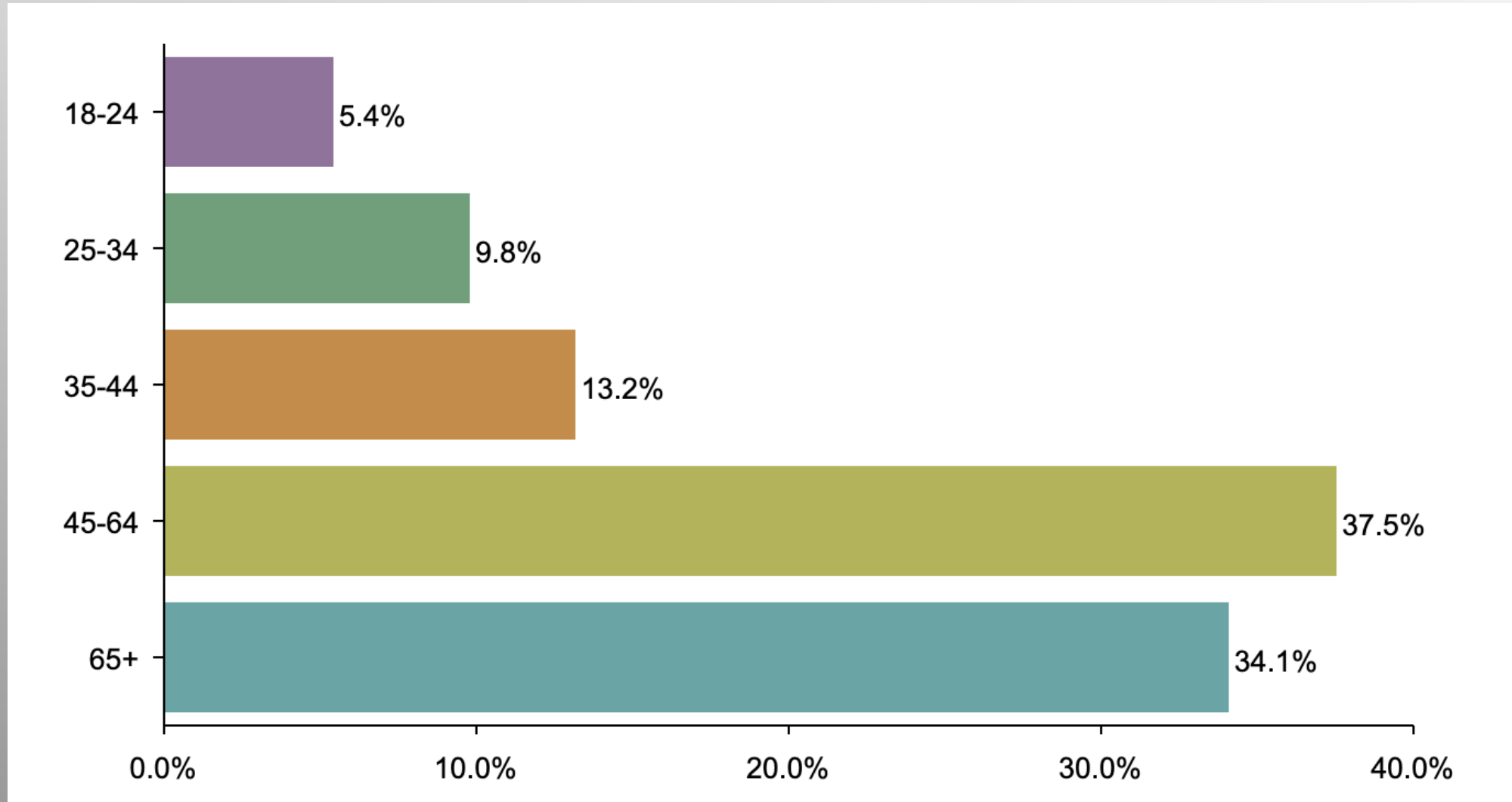


GOP Pres Primary Ballot

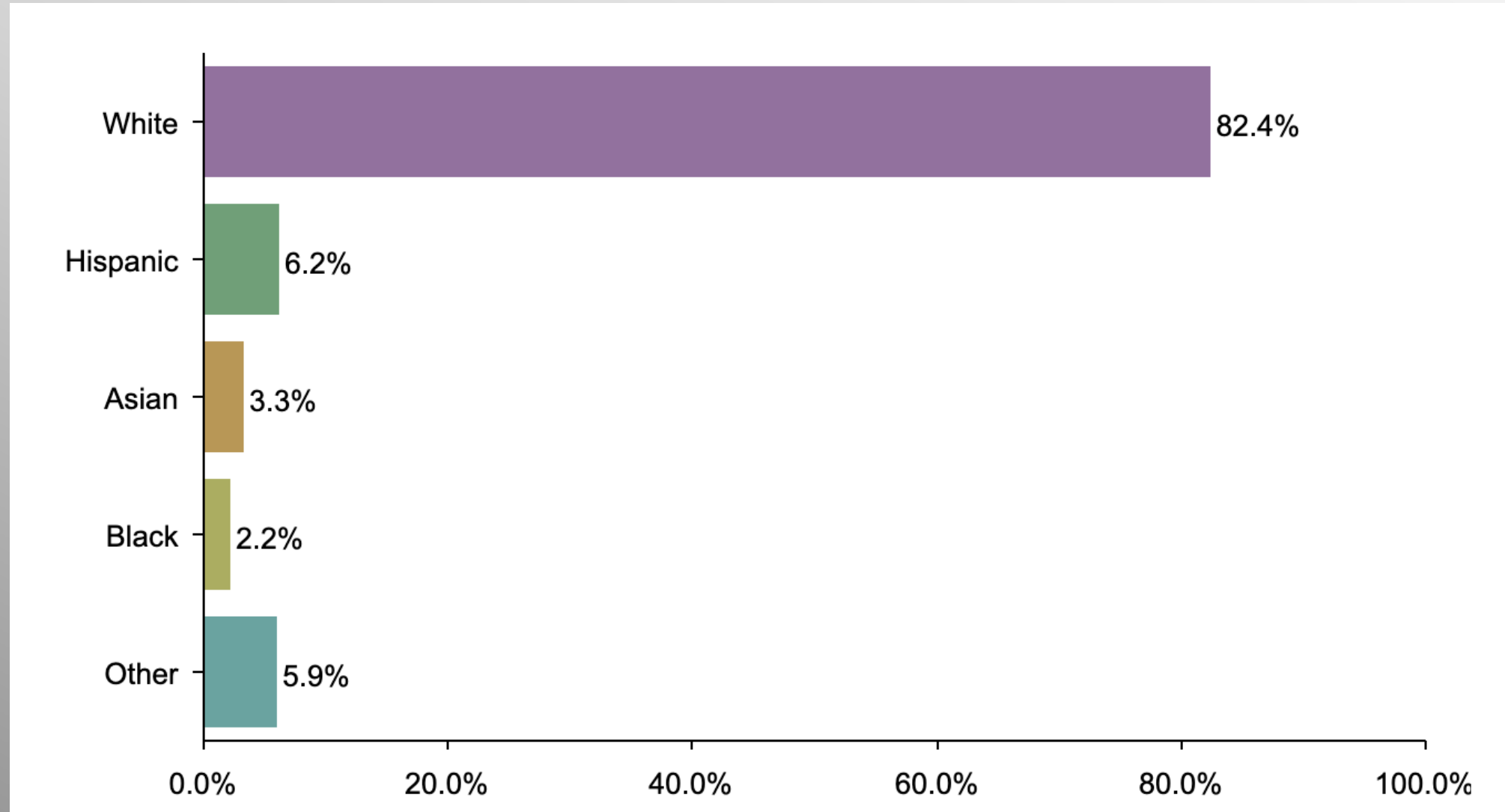
If the 2024 Republican Presidential Primary were tomorrow, who would you most likely support?



Age Participation



Ethnicity Participation



Gender Participation

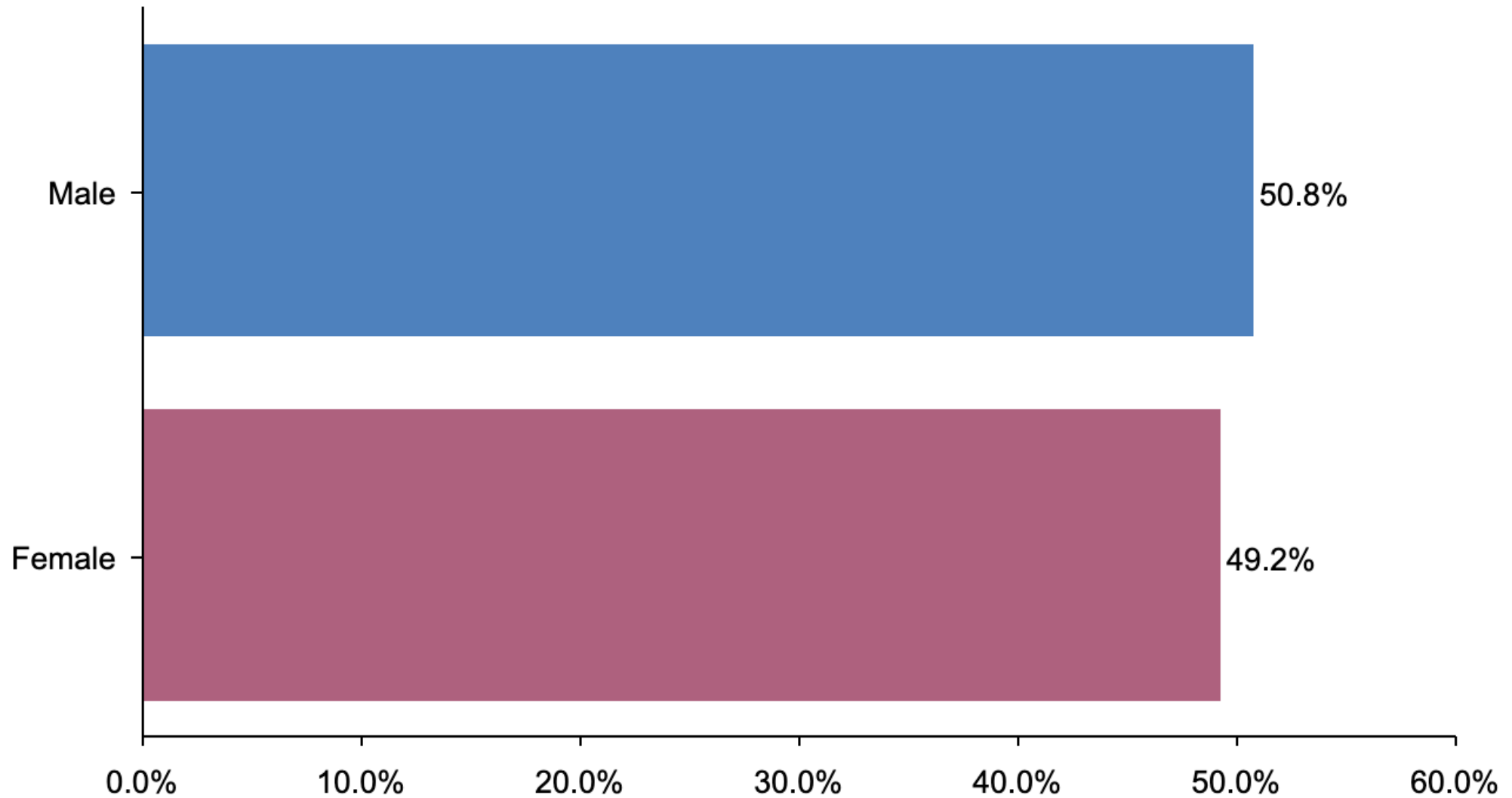


EXHIBIT 2



IF IT'S IN THE NEWS, IT'S IN OUR POLLS. PUBLIC OPINION POLLING SINCE 2003.

POLITICS

Trump Maintains Strong GOP Primary Lead

Monday, August 21, 2023



Former President Donald Trump, who plans to skip this week's televised debate among Republican 2024 presidential candidates, remains the overwhelming favorite with GOP primary voters.

A new national telephone and online survey by Rasmussen Reports and [Enforce the Law PAC](#) finds that 49% of Likely Republican primary voters would vote for Trump if the primary were held today, while 11% would vote for businessman Vivek Ramaswamy and 10% would vote for Florida Gov. Ron DeSantis. Former New Jersey Gov. Chris Christie gets seven percent (7%), followed by South Carolina Sen. Tim Scott (4%), former Vice President Mike Pence (3%), former United Nations Ambassador Nikki Haley (3%), former Arkansas Gov. Asa Hutchinson (1%) and conservative radio host Larry Elder (1%). A number of other Republican 2024 hopefuls – including North Dakota Gov. Doug Burgum, former Texas Rep. Will Hurd, Miami Mayor Francis Suarez, Texas businessman Ryan Binkley and Michigan businessman Perry Johnson – registered less than one percent (1%) support in the poll. (To see survey question wording, [click here.](#))

(Want a [free daily e-mail update](#)? If it's in the news, it's in our polls). Rasmussen Reports updates are also available on [Twitter](#) or [Facebook](#).

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The survey of 818 Likely Republican Primary Voters was conducted on August 19-21, 2023 by Rasmussen Reports and Enforce the Law PAC. The margin of sampling error is +/- 3 percentage points with a 95% level of confidence. Field work for all Rasmussen Reports surveys is conducted by Pulse Opinion Research, LLC. See [methodology](#).

Trump cited his strong poll numbers Sunday in [declaring he would not participate](#) in the Milwaukee debate set for Wednesday.

[Last month's Rasmussen survey](#) found Trump favored by 57% of Likely Republican Voters, more than 40 points ahead of his nearest rival, DeSantis.

The latest Rasmussen/Enforce the Law PAC poll finds other evidence of strong GOP support for Trump. In the wake of recent criminal indictments for the former president, only 24% of Republican primary voters think Trump is guilty of committing crimes. Twenty-eight percent (28%) believe Trump did something wrong but not criminal, while 44% say Trump did nothing wrong.

Forty-four percent (44%) of likely GOP primary voters say that if a Republican candidate defended Trump, they would be more likely to support that candidate. Twenty-three percent (23%) would be less likely to support a candidate who supported Trump, while 29% say it would not make much difference.

Among other findings of the Rasmussen/Enforce the Law PAC survey of Likely Republican Primary Voters:

– Twenty-three percent (23%) say inflation is the most important issue when it comes to deciding who to support for the 2024 election, while government corruption is the most important issue for 20%. Seventeen percent (17%) say the border is the most important issue, and 13% say government spending and debt is most important.

crime, including 66% who think it's Very Likely.

- Seventy-four percent (74%) are concerned that George Soros has been involved in getting liberal prosecutors elected in the United States, including 63% who are Very Concerned.
- Eighty-three percent (83%) would support legislation that would allow the removal of prosecutors who refuse to follow the law, including 70% who would Strongly Support such legislation.
- Less than half (43%) support Congress continuing to provide U.S. taxpayer money to support the war in Ukraine, while 52% are opposed to continued support. Only 30% think it would be better for American interests: If Ukraine keeps fighting until the Russian invasion is completely defeated, while a majority (54%) think it would be better if Ukraine negotiates for peace with Russia. Sixteen percent (16%) are not sure.

“Republican voters are clearly concerned by big liberal donor George Soros’ project to buy prosecutors all over the country,” Eric Branstad of Enforce the Law PAC said of the survey results. “To date organizations funded by the massive progressive donor have successfully elected prosecutors in several of America’s biggest cities. This has caught the attention of Republican voters. Recently, they have seen crime rapidly rise in America’s largest cities like New York and Los Angeles as Soros-supported prosecutors have refused to enforce the law and have enacted liberal policies like early release and ‘no bail.’ Simultaneously they have aggressively pursued and prosecuted conservative Americans.”

Two-thirds of American voters think their [politicians are influenced by China](#), but aren’t sure which party is most under Beijing’s influence.

With former President Trump now [facing criminal indictments in four separate cases](#), voters are divided over where he’ll end up next year.

[Additional information](#) from this survey and a [full demographic breakdown](#) are available to the public as well as to [Platinum Members](#).

Please sign up for the Rasmussen Reports [daily e-mail update](#) (it's free) or follow us on [Facebook](#). Let us keep you up to date with the latest public opinion news.

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Related Articles



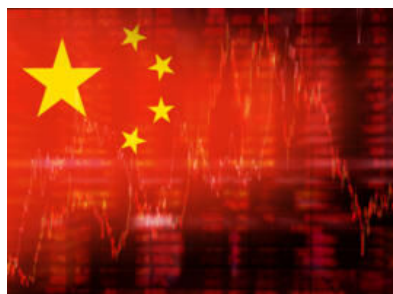
Politics

Daily Presidential Tracking Poll



Politics

32% Say U.S. Heading in Right Direction

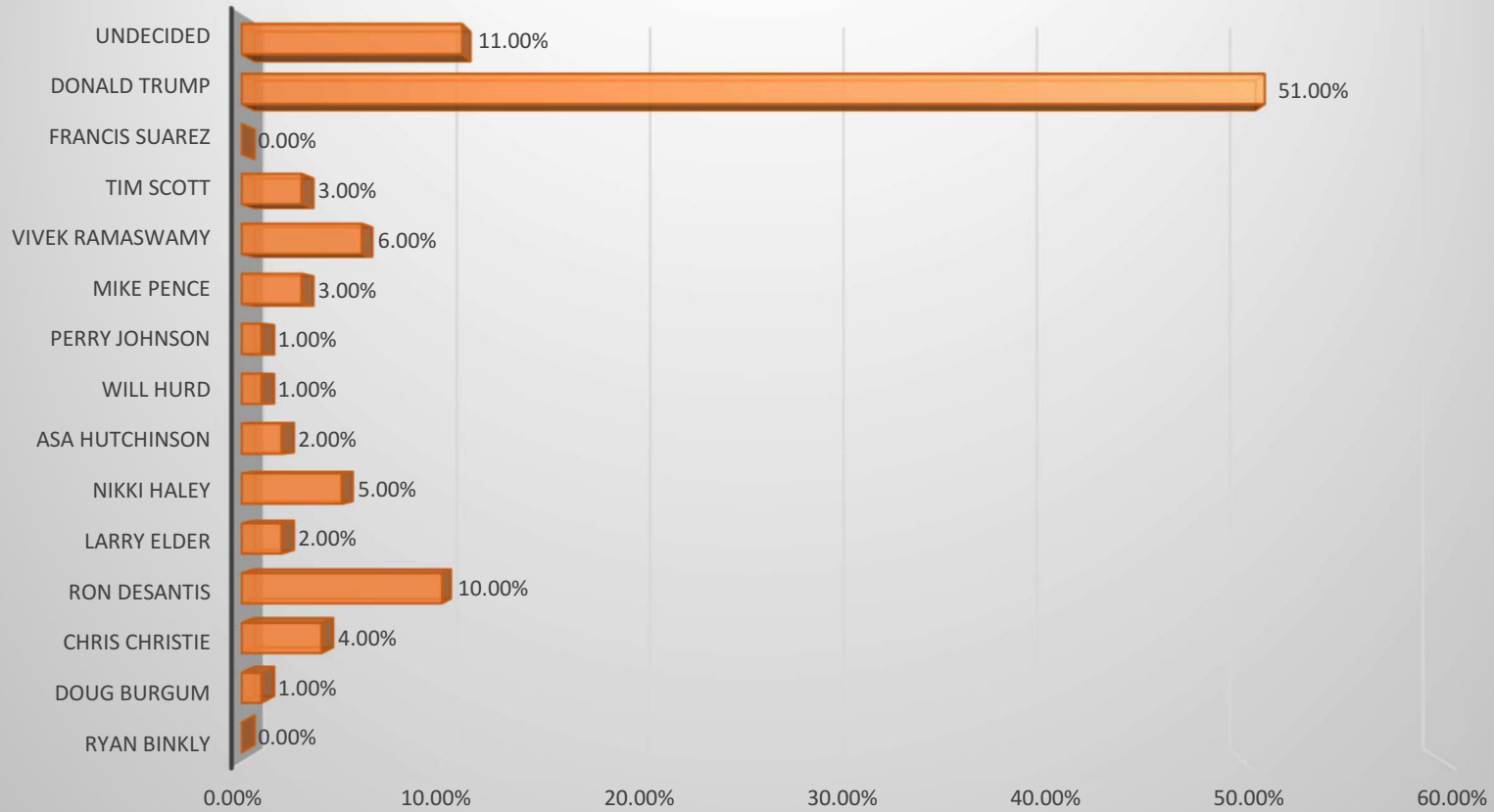


Politics

Does China Have Too Much Influence in D.C.?

EXHIBIT 3

INSIDERADVANTAGE PRESIDENTIAL REPUBLICAN NOMINATION 8/19-8/20 MOE +/- 3.6%



InsiderAdvantage
National Poll
750 Likely Republican Voters
August 19th - 20th • Margin of Error 3.6%

Please pick from the following list of candidates, your choice for the Republican nomination for President of The United States.

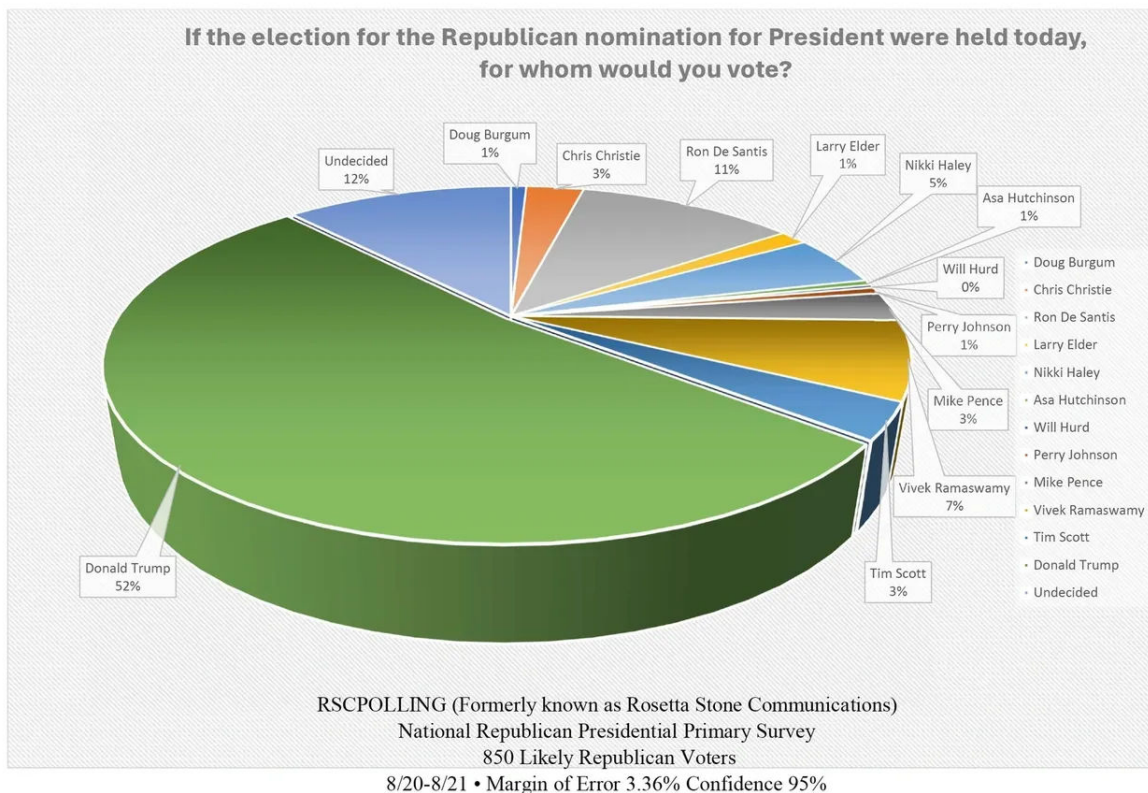
	<u>Total</u>	<u>Age</u>			<u>Gender</u>	
		<u>18-39</u>	<u>40-64</u>	<u>65 or over</u>	<u>Male</u>	<u>Female</u>
	<u>750</u>	<u>58</u>	<u>316</u>	<u>376</u>	<u>391</u>	<u>359</u>
Ryan Binkly	0.2	0.0	0.4	0.0	0.3	0.0
Doug Burgum	1.2	0.0	1.3	1.4	1.4	1.1
Chris Christie	4.2	0.0	4.3	4.7	8.0	0.0
Ron Desantis	9.7	4.9	11.7	8.7	9.8	9.8
Larry Elder	1.6	4.9	1.3	1.1	0.7	2.3
Nikki Haley	4.8	0.0	3.9	6.2	4.9	4.9
Asa Hutchinson	1.5	0.0	0.9	2.2	1.7	1.5
Will Hurd	1.1	0.0	1.3	1.1	1.0	0.8
Perry Johnson	0.6	0.0	0.0	1.1	0.0	1.1
Mike Pence	3.3	4.9	3.9	2.2	2.4	4.2
Vivek Ramaswamy	6.3	19.5	5.6	5.1	10.1	1.9
Tim Scott	3.3	0.0	3.5	3.6	1.7	4.9
Francis Suarez	0.1	0.0	0.0	0.4	0.0	0.4
Donald Trump	50.6	48.8	55.4	47.1	48.7	52.7
No Opinion	11.5	17.0	6.5	15.1	9.3	14.4

	<u>Race</u>		
	<u>White</u>	<u>African American</u>	<u>Another Race</u>
	<u>686</u>	<u>22</u>	42.0
Ryan Binkly	0.2	0.0	0.0
Doug Burgum	1.2	0.0	0.0
Chris Christie	4.0	0.0	9.4
Ron Desantis	9.5	7.1	15.6
Larry Elder	1.8	0.0	0.0
Nikki Haley	5.2	0.0	0.0
Asa Hutchinson	1.6	0.0	0.0
Will Hurd	1.0	0.0	0.0
Perry Johnson	0.6	0.0	0.0
Mike Pence	2.4	7.1	15.6
Vivek Ramaswamy	6.4	7.1	6.3
Tim Scott	3.6	0.0	0.0
Francis Suarez	0.0	0.0	3.1
Donald Trump	51.5	50.0	37.5
No Opinion	11.0	28.7	12.5

EXHIBIT 4

RSC POLLING





If the election for the Republican nomination for President were held today - for whom would you vote?

	Total	Gender		Race		
		Male	Female	White	African American	Another Race
	850	444	406	778	25	47
Doug Burgum	0.8	0.9	0.7	0.9	0.0	0.0
Chris Christie	3.0	5.6	0.0	2.9	0.0	6.4
Ron De Santis	11.3	12.2	10.4	11.2	8.3	14.9
Larry Elder	1.4	0.9	2.0	1.5	0.0	0.0
Nikki Haley	4.8	5.2	4.4	5.3	0.0	0.0
Asa Hutchinson	0.5	0.7	0.2	0.6	0.0	0.0
Will Hurd	0.3	0.5	0.0	0.3	0.0	0.0
Perry Johnson	0.6	0.0	1.2	0.6	0.0	0.0
Mike Pence	2.7	2.3	3.2	1.9	4.2	12.8
Vivek Ramaswamy	7.2	11.0	3.0	7.1	8.3	8.5
Tim Scott	3.3	1.6	5.2	3.6	0.0	0.0
Donald Trump	52.3	50.7	54.4	52.8	54.2	42.6
Undecided	11.8	8.4	15.3	11.3	25.0	14.8

	Age		
	18-39	40-64	65 or over
	65	360	425
Doug Burgum	0.0	0.8	0.9
Chris Christie	0.0	3.0	3.5
Ron De Santis	6.3	13.9	9.9
Larry Elder	3.1	1.4	0.9
Nikki Haley	0.0	3.9	6.4
Asa Hutchinson	0.0	0.3	0.7
Will Hurd	0.0	0.3	0.2
Perry Johnson	0.0	0.0	1.2
Mike Pence	4.7	3.3	1.9
Vivek Ramaswamy	18.8	6.6	5.9
Tim Scott	0.0	3.3	3.8
Donald Trump	50.0	55.7	49.9
No Opinion	17.1	7.5	14.8



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EXHIBIT 5



← **Post**

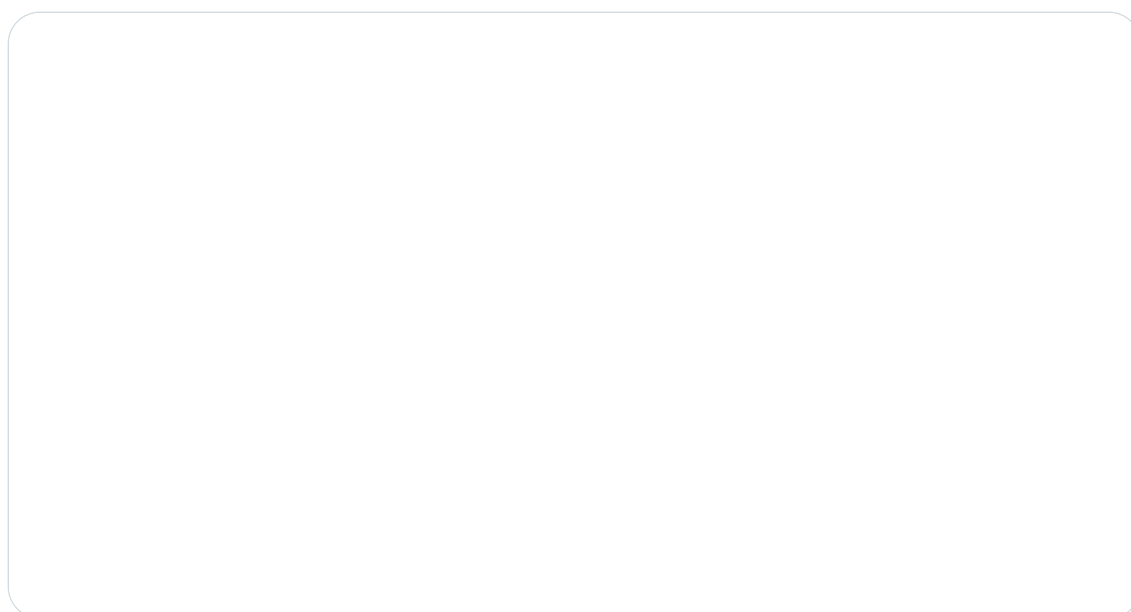
Rasmussen Reports

@Rasmussen_Poll



NOTE: We have not run a poll suggested by or paid for by President Trump or any of his surrogates - but we'd be pleased to do so - see below.

We will run a poll for ANY politician, party or U.S based political group under the rules long published here- rasmussenreports.com/public_content...



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thenationalpulse.com/2023/08/22/exc...

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