

Immigration Policy: Washington Update

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1/14/20

1

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Overview

- 2019 in Review -- H.R. 5038, Farm Workforce Modernization Act
- The year ahead – Legislative, Administrative
- 2020 Election Outlook and Implications

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What I'm NOT Planning to Cover...

- Impeachment
- Iran
- Iraq



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What's in a Number? (33)

- *33 is a number with special significance. In the field of Numerology, thirty-three symbolizes a Master Teacher.*
- Religion: in English version of Book of Genesis, God is mentioned 33 times. Jesus was believed to be 33 when he died
- In nature, the animal kingdom is divided into 33 phyla. The human spine has 33 vertebrae. The sun rises at the exact same spot on the horizon once every 33 years
- ***It's been 33 years since the House of Representatives passed a bill that seeks to address Agriculture's unique labor challenges***

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H.R.5038 - Political Context

- House must move first. Democrats control House
- House leadership would not advance a bill unless (1) bipartisan, (2) supported by farm worker advocates
- Much common ground on "current workforce" solutions
- More controversy on "guest workers" and their treatment
- Flash points: **caps**, wages, enforcement rights
- Take-home messages:
 - Any compromise is, well, a compromise
 - Perfect is enemy of good
 - No UFW "bottom line" in House
 - Unlike past agreements, we are not fully bound to "the deal"
 - Key areas for improvement as process advances

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H.R.5038, Farm Workforce Modernization Act



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H.R.5038, Farm Worker Modernization Act

- Three-pronged approach
 - Current workforce stabilization, incentives
 - H-2A changes (mostly improvements)
 - E-Verify, phased in for Agriculture specifically
- Passed House December 11, 260 – 165
 - 34 R's joined all but 4 D's
 - The view from the "peanut" Gallery
- Anatomy of a Victory: champions, old fashioned grassroots, grasstops

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9

Title I – Three Options for Legal Status

- Option: Transition to H-2A
- Option: Become Certified Agricultural Worker (CAW), and renew that status
- Option: Certified Agricultural Worker (CAW), and earn/pursue eventual right to apply for legal permanent residency (green card)

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10

Certified Agricultural Worker (CAW)

- Past Ag work, good behavior to qualify
- CAW status provides:
 - Agricultural work authorization for 5 ½ years
 - Protection of immediate family
 - Right to work, travel
 - "U.S. domestic worker" labor protections
- Renewable in 120 day period at end of 5 years
 - Must have worked 100+ days in Ag each year as CAW
 - Not otherwise ineligible
- *NOTE: current H-2A employers shielded from displacement of experienced H-2A's by CAW worker referrals*

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11

Optional Adjustment of Status for Experienced Ag Workers

- Future work requirement
 - 4 years, for workers who demonstrated 10+ years prior work in Ag
 - 8 years, for workers who met minimum threshold to qualify but worked <10 years prior to enactment
- Background check
- Penalty - \$1000

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12

Title II – Modernizing H-2A

- Temporary/Seasonal H-2A **remains uncapped**
- Streamlined electronic platform
- Retains/codifies many elements of current program
- Several cost, flexibility improvements
 - Underlying 3 year visa – saves 2 years of visa petition costs
 - Job registry posting only. No advertising
 - Active recruitment ends when workers depart for job
 - 50% rule: longer of 30 days or 1/3 of contract
 - “Staggered entry” up to 120 days under single filing

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Required Wage

- Employers must offer higher of four wages
- One-year AEWR freeze
- 2021-2029, AEWRs may not increase more than 3.25% (potentially 4.25% in high minimum wage states) or fall more than -1.5%.
- Once job posted, “promised wage” is exactly that; does not need to be increased if AEWR goes up
- Disaggregation by occupational classification; worker must be paid highest applicable (borrowed from Trump admin regulatory proposal...point of concern for many of us)
- Post-2029, AEWR replaced by new wage rate based on joint USDA/DOL study and rulemaking

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Housing

- Maintains requirement for employer to provide housing
- Authorizes funding/incentives for employer-provided housing and to encourage construction/rehabilitation of farm worker housing

15

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Non-Seasonal/Temp. Needs (“Year-round Jobs”)

- Expands H-2A to year-round positions/3 year admission
- 20,000 visa cap/year for first 3 years (60,000 total)
 - Half are restricted to dairy industry
- For next 7 years, USDA and DOL jointly determine. Increase cannot exceed 12.5% over prior year, nor fall below 20,000
- After year 10, USDA and DOL (with DHS) jointly determine if a cap needed, and if so, methodology
- Emergency provisions

16

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Portable Agricultural Visa Pilot Program

- 6-year pilot program authorizes portable H-2A visas for up to 10,000 workers
- Period of admission up to 3 years; 60 day grace period between jobs to secure new employment
- Employers must register with DHS, may employ these workers “at will”

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17

Enforcement

- Strengthens oversight and enforcement of abuses in foreign labor recruitment undertaken by entities outside the United States

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Primary Concerns with H-2A Provisions

- Disaggregation (too many classifications?! Highest applicable wage...)
- Lack of clarity regarding primary vs. limited or ancillary tasks
- Application of Migrant & Seasonal Ag Worker Protection Act
 - Concern is expansion of “private right of action”
 - Mediation prior to right of action
 - Mixed views based on degree of exposure
- Other...e.g., “corresponding employment”

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Permanent Residency / Employer Sponsorship

- This is “legal immigration” option, distinct from the earned legalization and H-2A reforms
- Adds 40,000 new visas to employment-based category for “unskilled” labor. Agriculture has first preference
- Employer sponsorship; H-2A visa holders eligible to self-petition after working 10 years/100 days per year

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Title III – Electronic Verification

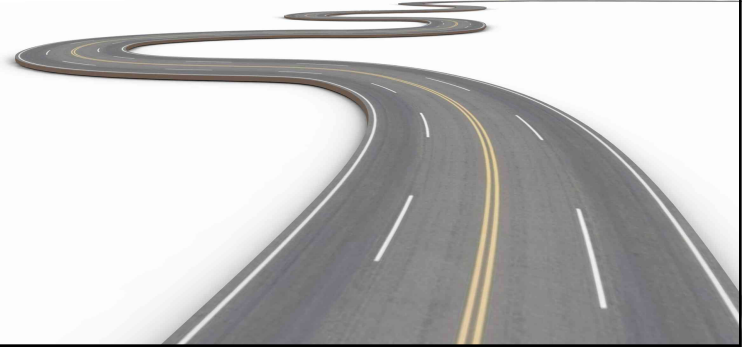
- Makes various E-Verify improvements to address concerns, limitations such as fraud vulnerability
- Phases in E-Verify for agricultural employers, large to smaller, beginning 6 months after closing of CAW application period
- New hires only; no reverification requirement for current workforce

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The Road Ahead



22

Senate Process

- “Own bill” or House bill?
- Bipartisan working group
 - Tillis (R-NC) & Feinstein (D-CA), and....?
- Timelines and considerations
 - Impeachment / Senate trial
 - Primaries
 - Supreme Court
 - Election
- Past as prologue?

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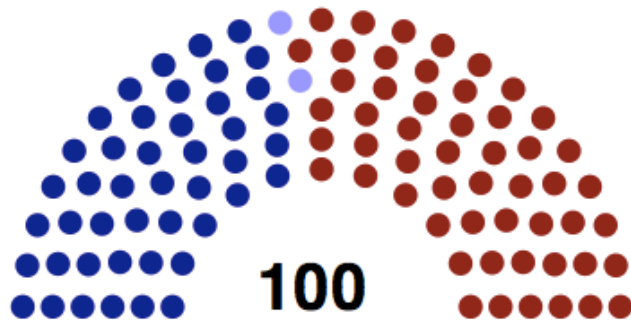
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24

U.S. Senate



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2020 Election - Senate

- 22 Republicans
- Most Vulnerable:



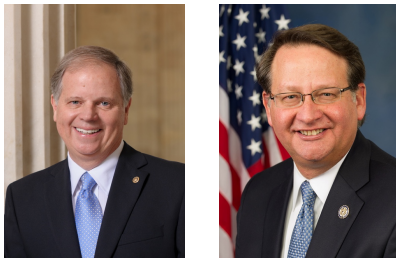
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2020 Election - Senate

- 12 Democrats
- Most Vulnerable:



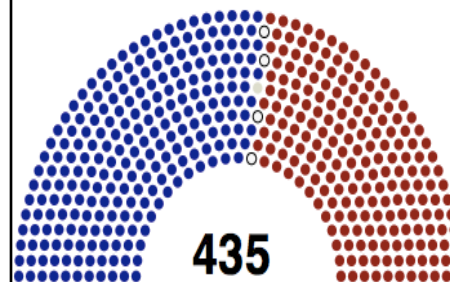
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U.S. House of Representatives



Political groups	Majority (232)
	■ Democratic (232)
	Minority (198)
	■ Republican (198)
	Other (1)
	■ Independent (1)
Vacant (4)	■ Vacant (4)
	■ Vacant (4)

Image Credits: Wikipedia

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28

House and 2020 Election

- House Retirements as of now:
 - Republicans – 26
 - Democrats – 9

- House “Consensus” Forecast:

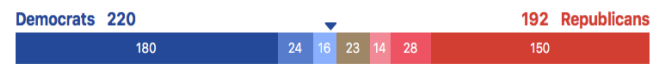


Image Credit: 270towin.com

29

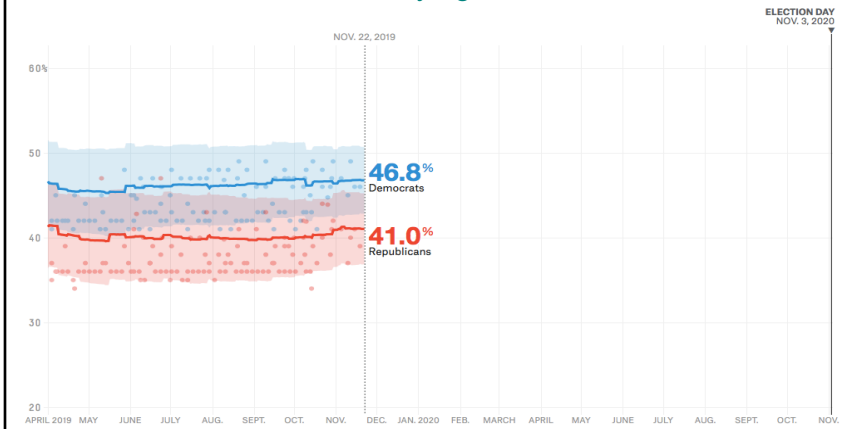
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The Race for Congress (Generic Ballot)

Credit: FiveThirtyEight.com

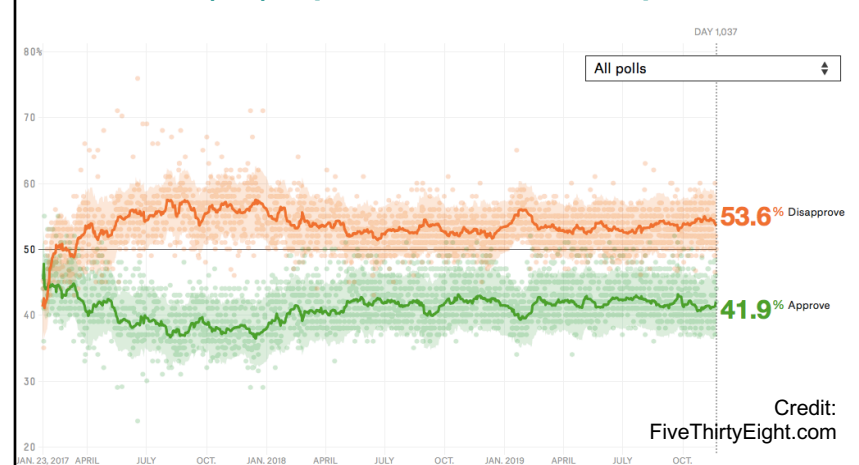


30



31

How (Un)Popular is Donald Trump?



Credit: FiveThirtyEight.com

32



33



34

- **H-2A AEWRs**
 - 2020 average increase 5.6%
 - Setting aside the freeze, most states saw increases greater than the H.R.5038 caps
 - IL/IN/OH took biggest hit, 9.5%
 - New York: \$14.29, 7.8% increase
- **Enforcement**
 - SSA No-Match
 - I-9 Audits, Raids

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New H-2A Regulations?

- Changes could come out by Spring
- Will they get it right?

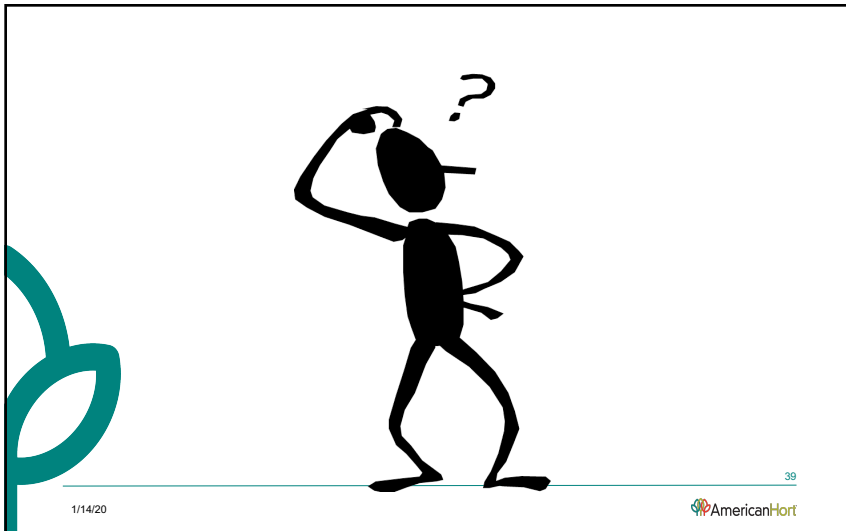
36



37



38



39