



Legislative / Regulatory / Political Update

By Michael T. Oscar

**Director of Government Relations
American Subcontractors Association**

American Subcontractors Association

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116th Congress

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The image is a screenshot of a news broadcast graphic. On the left side, there is a vertical strip showing a close-up of the US Capitol dome. The main background is a light blue gradient. At the top right, there is a 'LIVE' indicator. The title '116th CONGRESS' is centered at the top. Below the title is a list of five bullet points. At the bottom right, there is a 'WASHINGTON JOURNAL C-SPAN' logo. At the bottom center, the text 'Politico & Rutgers Eagleton Institute' is visible.

LIVE

116th CONGRESS

- ▶ House: 235 Democrats, 199 Republicans, 1 undecided seat
- ▶ Senate: 47 Democrats, 53 Republicans
- ▶ Average age: 58.5 years old
- ▶ 24% female (102 House, 25 Senate)
- ▶ 21% minorities

WASHINGTON JOURNAL
C-SPAN

Politico & Rutgers Eagleton Institute

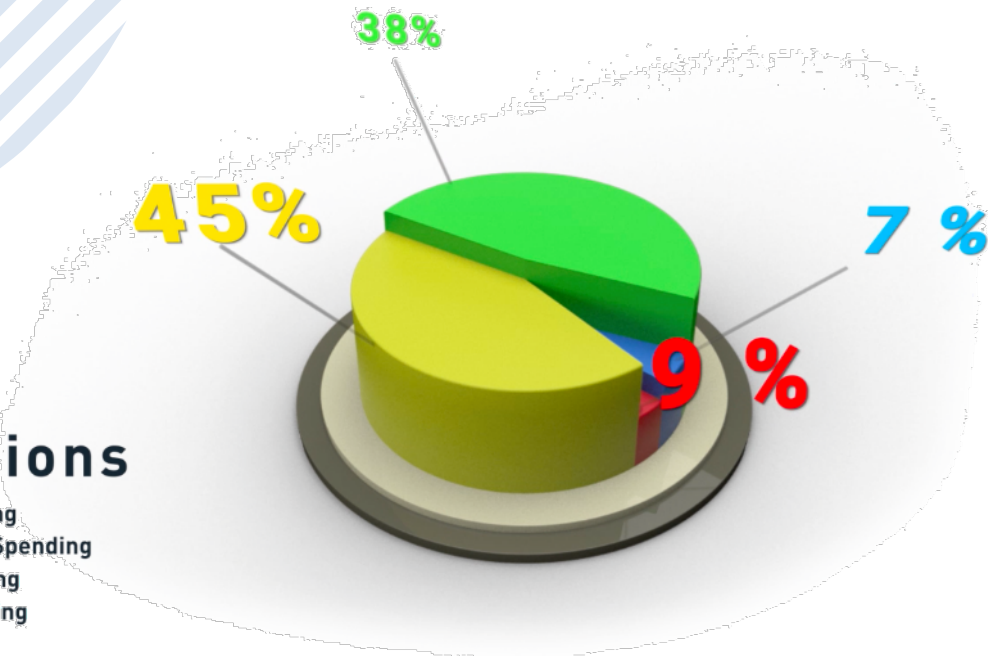
116th Congress Demographics



THE 116TH CONGRESS: MOST PARTISAN IN HISTORY

2018 Elections

- Republican Party Spending
- Conservative Non-Party Spending
- Democratic Party Spending
- Liberal Non-Party Spending



U.S. House of Representatives

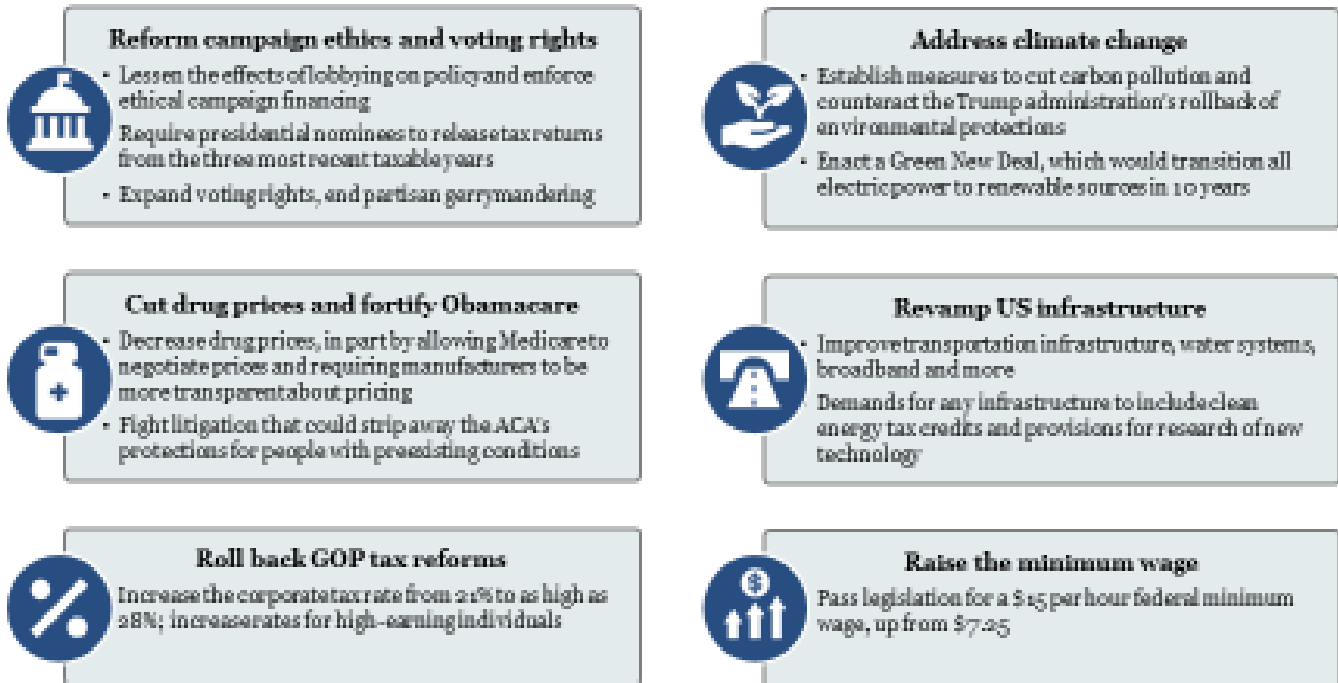


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Of House Democrats' plans, the most likely to gain GOP support are improving infrastructure and cutting drug prices

Democrats' legislative priorities for the 116th Congress



Sources: Paul M. Kravack, "House Democrats' budget to assume corporate tax increase," Roll Call, Jan. 7, 2018; Lauren Fox and Clara Form, "House Democrats' priorities in new Congress: Trump tax returns and ending corruption," CNBC, Nov. 30, 2017; Jacob Franklin, "Money Policy and House Democrats: The second - because the policies they plan to pursue," CNBC, Jan. 3, 2017.

File last updated on January 11, 2019



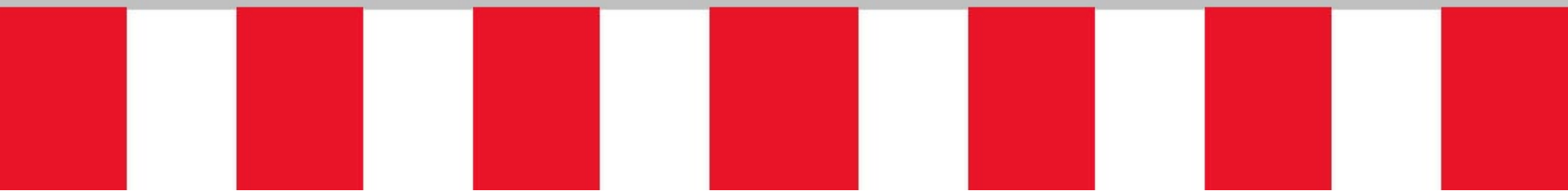
Revitalizing the Federal Courts

- In 2013, former Democratic Majority Leader Reid ended the filibuster on judicial nomination votes.
- **Supreme Court Justices:** Neil Gorsuch and Brett Kavanaugh
- Senate confirmed 187 federal judges to the federal bench in the last three years.
- Including 50 judges to the federal circuit court of appeals
 - In 2017, when President Trump took office, Democratic appointees made up the majority on nine of the 13 circuit courts.
 - In 2020, President Trump's appointments flipped three circuit courts:
 - 2nd (NY, VT, CT)
 - 3rd (DE, NJ, PA)
 - 11th (FL, GA, AL)
 - In total, seven circuits have Republican majority appointees.





ELECTION
2020



Impeachment



COVID-19

CORONAVIRUS
ROCKED
THE
VOTING
PROCESS.



Congressional Comings & Goings

Senate

House

Resigned

- Johnny Isakson (R-Ga.) resigned Dec. 31, 2019; Kelly Loeffler (R) appointed until special election

Not seeking re-election

- Lamar Alexander (R-Tenn.)
- Mike Enzi (R-Wyo.)
- Pat Roberts (R-Kan.)
- Tom Udall (D-N.M.)

Resignations, deaths & special elections

- CA-25 – Katie Hill (D) resigned Nov. 3, 2019; Mike Garcia (R) elected May 12, 2020
- CA-50 – Duncan Hunter (R) resigned Jan. 13, 2020; no special election
- MD-07 – Elijah Cummings (D) died Oct. 17, 2019; Kweisi Mfume (D) elected April 28, 2020
- NC-03 – Walter Jones (R) died Feb. 10, 2019; Greg Murphy (R) elected Sept. 10, 2019
- NC-09 – Dan Bishop (R) elected Sept. 10, 2019 after seat wasn't filled in 2018 election
- NC-11 – Mark Meadows (R) resigned March 30, 2020; no special election scheduled
- NY-27 – Chris Collins (R) resigned Sept. 30, 2019; special election June 23
- PA-12 – Tom Marino (R) resigned Jan. 23, 2019; Fred Keller (R) elected May 21, 2019
- TX-04 – John Ratcliffe (R) resigned May 22, 2020; no special election scheduled
- WI-07 – Sean Duffy resigned Sept. 23, 2019; Tom Tiffany (R) elected May 12, 2020

Defeated in primary

- IA-04 – Steve King (R)
- IL-03 – Dan Lipinski (D)

Not seeking re-election

- | | | |
|------------------------------|------------------------------|---------------------------------|
| • AL-02 – Martha Roby (R) | • IN-01 – Pete Visclosky (D) | • OR-02 – Greg Walden (R) |
| • CA-53 – Susan Davis (D) | • IN-05 – Susan Brooks (R) | • TN-01 – Phil Roe (R) |
| • FL-03 – Ted Yoho (R) | • LA-05 – Ralph Abraham (R) | • TX-11 – Michael Conaway (R) |
| • FL-19 – Francis Rooney (R) | • MI-10 – Paul Mitchell (R) | • TX-13 – Mac Thornberry (R) |
| • GA-07 – Rob Woodall (R) | • NC-02 – George Holding (R) | • TX-17 – Bill Flores (R) |
| • GA-14 – Tom Graves (R) | • NC-06 – Mark Walker (R) | • TX-22 – Pete Olson (R) |
| • HI-02 – Tulsi Gabbard (D) | • NY-02 – Peter King (R) | • TX-23 – Will Hurd (R) |
| • IA-02 – Dave Loebsack (D) | • NY-15 – José Serrano (D) | • TX-24 – Kenny Marchant (R) |
| • IL-15 – John Shimkus (R) | • NY-17 – Nita Lowey (D) | • WI-05 – Jim Sensenbrenner (R) |

Seeking other office

- AL-01 – Bradley Byrne (R), Senate (lost in primary)
- CA-08 – Paul Cook (R), elected in March to San Bernardino County Board of Supervisors
- **GA-09 – Doug Collins (R), Senate**
- KS-01 – Roger Marshall (R), Senate
- MA-04 – Joe Kennedy (D), Senate
- MT-AL – Greg Gianforte (R), governor
- NM-03 – Ben Ray Luján (D), Senate
- UT-01 – Rob Bishop (R), lieutenant governor
- WA-10 – Denny Heck (D), lieutenant governor

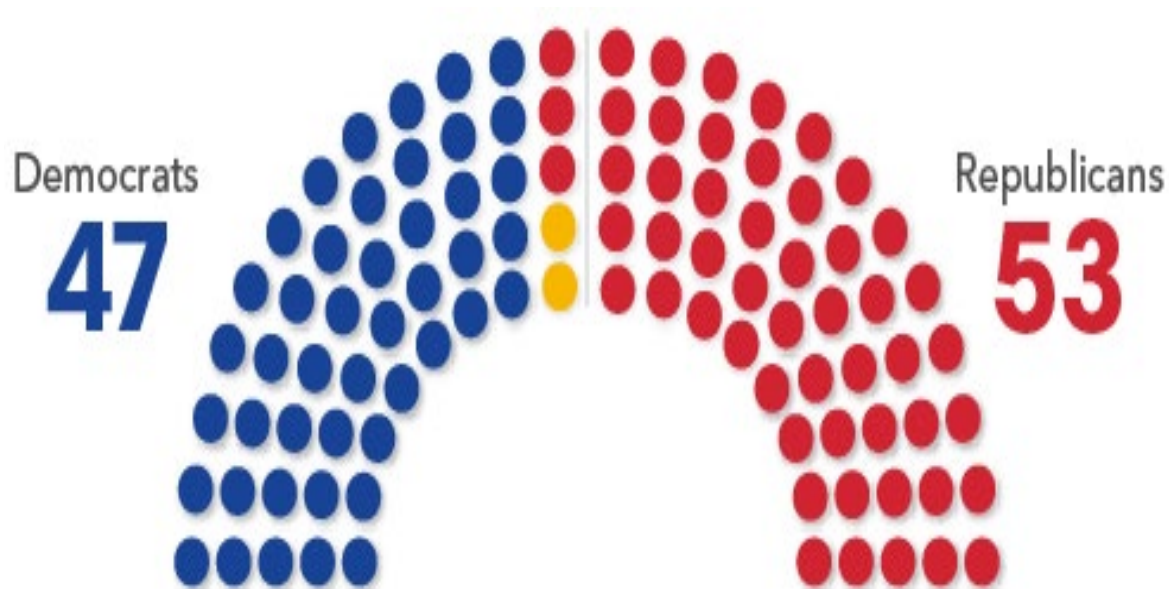
Party switches

- NJ-02 – Jeff Van Drew switched from the Democratic to Republican party Jan. 7

Senate Balance of Power

Trump's re-election outlook and each party's ability to field strong candidates are key

- If Democrats net four seats they would take control of the Senate; netting three seats would result in a tie and the majority would be decided by the vice president's party



Senate Balance of Power

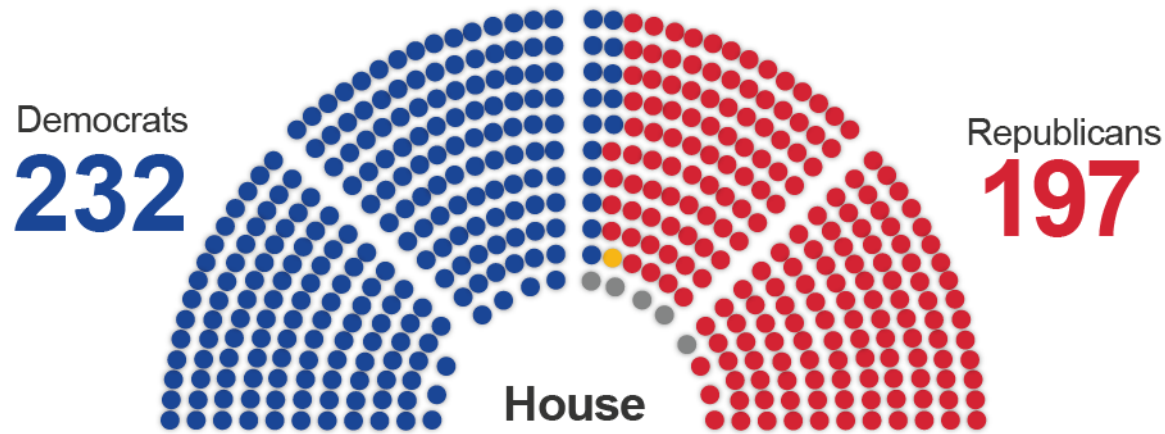
Source: Bloomberg Government

Note: Yellow reflects independents who caucus with Democrats

Big Picture on 2020 House Races

All 435 House seats are up in 2020

- Democrats are defending their majority after a net gain of 40 seats in 2018 election
- Republicans would need to net around 18 seats to flip the chamber
- Some of the most closely watched races will be districts won by the other party's 2016 presidential candidate



● Independent

● The five vacancies are in CA-25, due to the resignation of Katie Hill (D); CA-50, due to the resignation of Duncan Hunter (R); MD-07, due to the death of Elijah Cummings (D); NY-27, due to the resignation of Chris Collins (R); and WI-07, due to the resignation of Sean Duffy (R).

Bloomberg Government

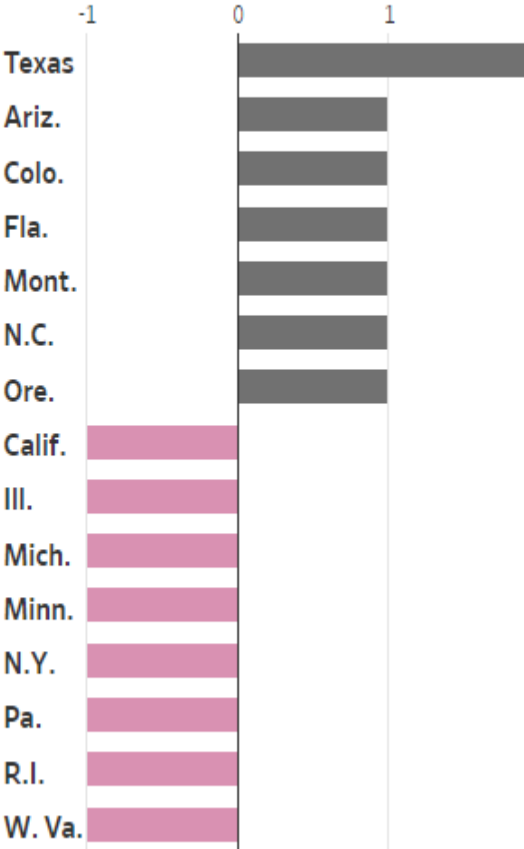
Several Incumbents Facing High-Profile Primaries

- **Progressive Democrats are aiming to repeat Alexandria Ocasio-Cortez's upset win by mounting liberal primary bids to oust long-time incumbents**
 - New York (June 23): Foreign Affairs Committee Chairman **Eliot Engel**, Judiciary Committee Chairman **Jerry Nadler**, Oversight and Reform Committee Chairwoman **Carolyn Maloney**, and **Yvette Clarke**
 - Massachusetts (Sept. 1): Ways and Means Committee Chairman **Richard Neal**
 - Ocasio-Cortez opposed by Michelle Caruso-Cabrera, a former broadcast journalist with donors including Goldman Sachs CEO David Solomon
 - Rep. David Scott (D-Ga.) was unexpectedly pulled into an Aug. 11 runoff in the safely Democratic 13th District near Atlanta
- **Several Republicans facing challenges, too:**
 - Kentucky's **Thomas Massie**, a libertarian-leaning maverick who irked Trump and colleagues by seeking a roll-call vote on a coronavirus relief package in March, is opposed (June 23) by Todd McMurtry, a lawyer
 - With the encouragement of some Kansas Republican officials, state Treasurer Jake LaTurner is opposing (Aug. 4) first-term Rep. **Steve Watkins** in the primary in the Topeka-area 2nd District

Population Shift Helps South and Southwest

Seat Shuffle

If House seats were allotted using the 2019 population estimates, Texas would gain two seats.

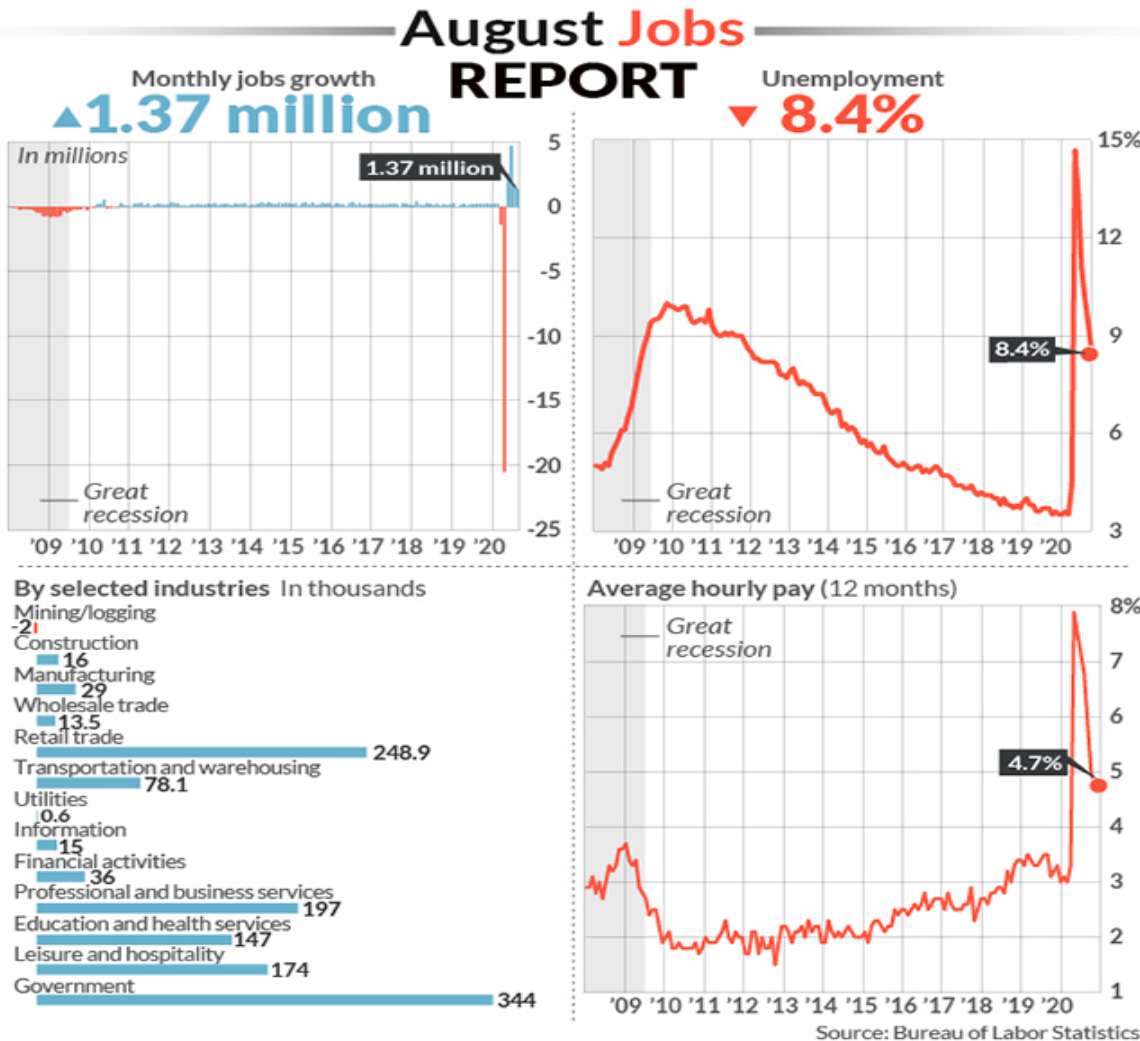


Source: WSJ analysis of Census data

- New state census totals show population continuing to shift from the North and Midwest to the South and Southwest
- The results of the 2020 census will determine the new distribution of House seats and Electoral College votes by December 2020. The first elections likely to be affected by the seat changes will be in 2021. Most states will redraw congressional and legislative districts in time for 2022 votes.
- The latest data reflect sweeping changes across the U.S. since the start of the decade:
 - Americans are getting older and having fewer babies;
 - Immigration is slowing, and the rate at which people move between states is at its lowest level in decades; and
 - Those who do uproot are often leaving the Northeast and Midwest for warmer places in the Sunbelt and pockets of the West because of their favorable weather, strong job growth, cheaper housing and, in some cases, lower taxes.



The 2020 August Job Report



- The unemployment rate dropped to 8.4 percent in August, the Labor Department reported on Friday, September 4, 2020, marking the fourth month of declines even as the pace of job growth is slowing.
- The August rate is down from its April peak of 14.7 percent, but still remains far above the 3.5 percent recorded in February, before coronavirus shutdowns took hold.

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August: Construction Hiring Surge



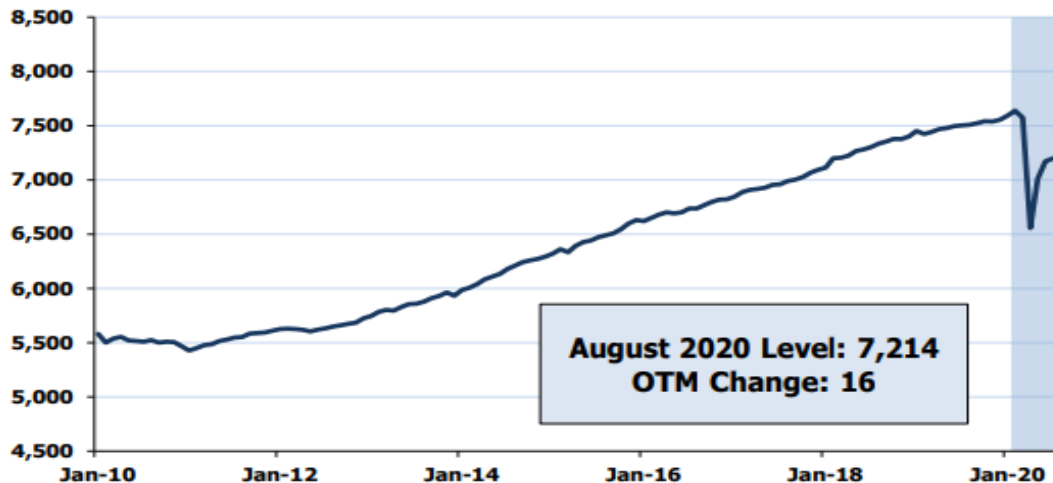
Release Date: September 4, 2020

CES Highlights

Construction

Employment in construction January 2010–August 2020

Seasonally adjusted, in thousands



Bureau of Labor Statistics, Current Employment Statistics survey, September 04, 2020.
Shaded area represents recession as denoted by the National Bureau of Economic Research.
Most recent 2 months of data are preliminary.
* denotes significance.

Construction employment changed little in August (+16,000). Construction of buildings added 13,000 jobs and residential specialty trade contractors added 25,000, offsetting a decline of 16,000 in nonresidential specialty trade contractors. Employment in construction was 425,000 lower than its February peak.

[Construction spending, building permits, and new homes sold](#) in July and [lower mortgage rates](#) in August point toward strength in construction, although heavy precipitation in the eastern half of the United States may have hindered job growth in August.

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ASA Task Force on Government Advocacy

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COVID-19

- ASA sent a letter to congressional leadership requesting the expansion of “second draw” Paycheck Protection Program (PPP) loans for small businesses. The current draft of the next round of recovery legislation would require that small businesses applying for a second PPP loan to have suffered a 50 percent decline in revenue. Our letter requests that the 50 percent requirement be lowered so that additional small businesses that were adversely impacted by the pandemic are eligible for a second PPP loan and loan forgiveness.
- ASA joined the Small Business Legislative Council (SBLC) in a letter to Congressional Leadership conveying business-focused proposals to be included in the latest COVID-19 relief package:
 - Establish carefully crafted liability shields for re-opening businesses
 - Expand the Paycheck Protection Program to allow small 501(c)(6) organizations to obtain PPP loans and provide automatic loan forgiveness for loans under a certain threshold
 - Restore the business deductions eliminated by the Tax Cuts and Jobs Act, including the deductibility of business meals, entertainment expenses and parking
 - Make permanent and expand the 199A deduction established by the Tax Cuts and Jobs Act by significantly increasing the threshold level and eliminating the limitations applicable to specialized service businesses
 - Provide tax incentives for small businesses to offset the cost of deep cleaning their facilities and providing PPE to their employees
 - Increase infrastructure funding
 - Eliminate the cap on the State and Local Tax (SALT) deduction in order to boost small businesses in the real estate, construction and mortgage banking areas that are located in the areas most affected by the cap
 - Exempt non-public businesses with below a certain number (such as 100) of shareholders, members or partners or with annual gross receipts below a certain threshold (such \$10,000,000 indexed) from Internal Revenue Code Section 409A
 - Simplify the 401(k) discrimination tests and make them easier to pass without having to adopt the safe harbor and eliminate the obsolete and complicated top heavy rules to make it easier for small businesses to administer their own plans and reduce fees to professional advisors
 - Relax the rules dealing with mortgage interest by allowing interest to be deducted over the \$750,000 mortgage balance and increase the mortgage limit from \$1 million to \$1.5 million

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COVID-19

- ASA sent a letter to congressional leadership expressing strong support of the bipartisan Small Business Expense Protection Act (S. 3612/H.R. 6821), which would ensure that small businesses can deduct eligible expenses paid with a forgiven Paycheck Protection Program (PPP) loan from their taxes.
- ASA sent an opposition letter to Congress about IRS's PPP latest notice clarifying that any business expenses, which are normally tax deductible, but which are forgiven as part of a PPP loan become non-deductible.
- ASA sent a letter to President Trump to extend the Paycheck Protection Program (PPP).
- ASA sent a letter to the President Trump requesting increased federal infrastructure funding.
- ASA sent a letter to the Attorney General recommending the Department of Justice temporarily suspend operations by the Federal Prison Industries.
- ASA sent letter seeking OSHA guidance on the reportability of COVID-19 cases and recommending an approach to social distancing and face coverings in construction.
- ASA sent a letter urging Congress to allocate additional funds to the PPP program and EIDL Program along with extending eligibility to 501©6 organizations.
- ASA sent a letter to Congressional Leadership on the need for emergency action regarding the acceptance of electronic bonds.
- ASA sent a letter encouraging the issuance of exemptions for operations and maintenance of essential infrastructure during COVID-19.
- ASA issued a Gubernatorial Statement on keeping the construction industry an essential service.

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COVID-19

- **ASA Member Resources**
 - COVID-19 Resource Guide
 - ASA Employer Guide
 - ASA Attorneys Council Legal Guidance
 - ASA Guide to the Families First Coronavirus Response Act Leave Provisions
 - ASA CARES Act Summary
 - ASA CARES Act SBA Loan Program Summary
 - CISC COVID-19 Exposure Prevention Preparedness, and Response Plan (English and Spanish)
- **Other COVID-19 Resources**
 - ConsensusDocs COVID-19 Contract and Construction Law Resource Center
- **Grassroots**
 - ASA, along with the Transportation Construction Coalition (TCC), launched an advertising and grassroots campaign designed to encourage Congress to make new infrastructure investments as the major catalyst for economic recovery in the wake of COVID-19.
- **Amicus Brief**
 - On June 11, 2020, the Washington, D.C. Circuit Court denied the AFL-CIO's OSHA petition and determined "OSHA's decision not to issue an ETS is entitled to considerable deference." The court further found that, ***"in light of the unprecedented nature of the COVID-19 pandemic, as well as the regulatory tools that the OSHA has at its disposal to ensure that employers are maintaining hazard-free work environments, OSHA reasonably determined that an ETS is not necessary at this time."***
 - On May 30, 2020, ASA filed an amicus brief in opposition to the AFLCIO's Petition compelling OSHA to issue an emergency temporary standard for infectious diseases ("ETS"), to protect employees from COVID-19.
- **Webinars**
 - March 19, 2020 – Practical Considerations for Subcontractors Dealing with COVID-19
 - April 2, 2020 – Mandatory Paid Sick Leave and FMLA Expansion – How the FFCRA Impacts the Construction Industry
 - May 28, 2020 (details forthcoming) - ASA Attorney's Council (AC) Panel on COVID-19 issues including:
 - Force majeure clauses
 - Project owner time extenders
 - Delay penalties
 - Worker safety and PPE
 - Damage liquidation
 - Reimbursement for site materials transportation and storage

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2019 Legislative Accomplishments

- **S. 1434:** Banning reverse auction in construction services unanimously passed in the Senate 100-0.
- **Cadillac Tax:** President Trump signed the law for the full repeal of the 40% excise tax on high-cost health plans (the "Cadillac Tax").
- **529 Apprenticeship Savings Accounts:** Setting Every Community Up for Retirement Enhancement (SECURE Act), which takes effect on January 1, 2020:
 - expands 529 education savings accounts to cover registered apprenticeships; homeschooling; up to \$10,000 of qualified student loan repayments (including for siblings); and private elementary, secondary, or religious schools.

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2019 Legislative Accomplishments

2020 National Defense Authorization Act (NDAA)

- ASA supported the following NDAA provisions included in the Act:
 - Sec. 806 - Standardizing data collection and reporting on use of source selection procedures by federal agencies
 - Sec. 873 - Accelerated payments applicable to contracts with certain small business concerns under the Prompt Payment Act
 - Sec. 872 - Reauthorization and improvement of Department of Defense Mentor-Protege Program
 - Sec. 874 - Postaward explanations for unsuccessful offerors for certain contracts

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2020 Legislative Priorities

- H.R. 2344: Change Orders
- S. 1434 / H.R. 5644: Reverse Auction
- H.R. 6359: P3 Bonding Requirements on Transportation Projects
- H.R. 5329: Freedom from Government Competition Act
- H.R. 5247: SUBS Act – Bid Listing
- S.4203: The American Infrastructure Bonds Act of 2020
- H.R. 6776: JOBS Credit Act
- Congressional Caucus (Construction Procurement Caucus) Introduced on March 5, 2020: ASA Founding Member

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ASA LEGISLATIVE FLY IN

October 29-30, 2019

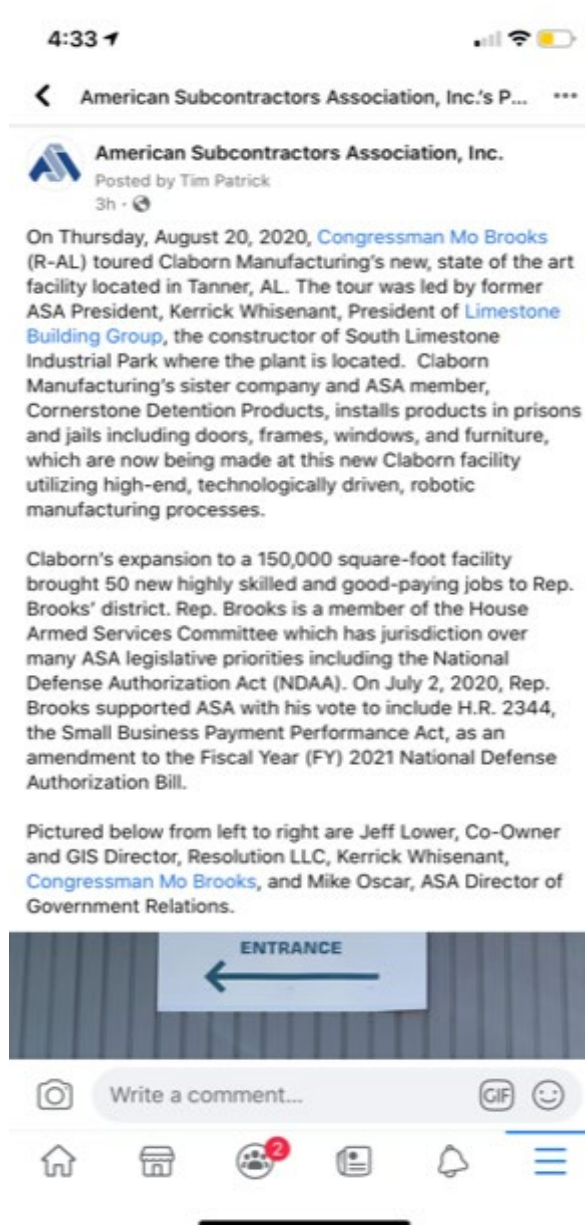




**2021 Legislative Fly-In
June 15-17, 2021**

ASA Member, Kerrick Whisenant, hosts Rep. Brooks (R-AL) on August 20, 2020 to discuss the unfair competition practices on the construction by the Federal Prison Industries.

NOTE: Over 2,000 ASA Members viewed these posts.





Regulatory Update

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Regulatory Update – Payment Bond Thresholds

- Federal Acquisition Regulation (FAR) Payment Bond Increases
- On August 31, 2020, ASA, along with the Construction Industry Procurement Coalition (CIPC), submitted comments against the increase of payment bond threshold from \$35, 000.00 to \$40,000.00. Initially, we were asked by the surety folks to lead this effort against the Federal Acquisition Regulation (FAR)'s payment bond increases; however, we strategically decided that it would be best to lead this effort under the CIPC umbrella.

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Regulatory Update

- ASA is a member of **the Construction Industry Safety Coalition (CISC)**
- **Reporting Rule:** The Occupational Safety and Health Administration has dropped a requirement that employers with at least 250 workers must electronically submit annual injury and illness reports.
- **Joint Employer:** The Obama Administration Department of Labor found that most independent contractors were actually employees, making the company responsible. That guidance has been rescinded, putting the burden back on the individual.
- **Beryllium:** New OSHA standards to protect workers from cancer and chronic beryllium disease are now partially under review for the construction and maritime industries. The levels are not under review, but related activities are, such as medical monitoring and workplace exposure measurements.
- **Silica:** OSHA submitted a proposal to revise its silica rule's list of acceptable practices for limiting workers' exposure to the dust.

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Subcontractor Legal Defense Fund

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SLDF MISSION

ASA underwrites the legal costs of filing "friend-of-the-court" briefs to inform the Court regarding the broader impact of relevant construction industry cases throughout the country. We have won dozens of these cases since 1997, vindicating subcontractor rights today and into the future.

SINCE 1997





FIGHTING FOR THE RIGHTS OF
THE CONSTRUCTION
SUBCONTRACTOR
COMMUNITY NATIONWIDE

Each year, courts across the country hand down hundreds of decisions on federal and state laws, as well as court-made or "case" law, that apply to your subcontractor businesses. Many of the decisions impacting subcontractors interpret the contract provisions of subcontract agreements—provisions like pay-if-paid, hold harmless, duty-to-defend, and no-damages-for-delay. Some of these decisions are precedent-setting and carry significance for subcontractors across state lines.





SLDF PROCESS



CONTACT US.

We are always on the look out for new and precedent-setting cases to take up on your behalf.



APPLICATION FORM.

ASA has a formal review process to ensure the best use of our SLDF resources for each case.



AMICUS BRIEF.

Selected cases are voted on by our SLDF advisory board and ASA Executive Committee for "friend of the Court" briefs on behalf of subcontractors.



**SLDF FUNDS
FY2010:
\$243,333**

**FUNDS DEPLETED AS
DONATIONS SLOWED AND
SLDF TOOK ON OVER**



**40 new
cases**

**THROUGHOUT THE
NEXT NINE YEARS**

**SLDF FUNDS AT
CLOSE OF
FY2019:
\$5,466**

SUB Excel

2020 Fundraising Efforts

AS A RESULT OF THE GENEROUS CONTRIBUTIONS OF OUR PARTICIPATING MEMBERS AT SUBEXCEL IN LAS VEGAS THIS YEAR, WE WERE ABLE TO RAISE OVER

\$20,000

OUR ASA MEMBER ATTORNEYS TAUGHT US HOW TO SAVE ON SLDF LEGAL WORK AT CAPPED RATES IN ORDER TO SAVE OUR MEMBERS

THIS RESULTS IN THE GREAT VALUE FOR OUR INVESTMENT IN EACH CASE



ASA State Advocacy Program

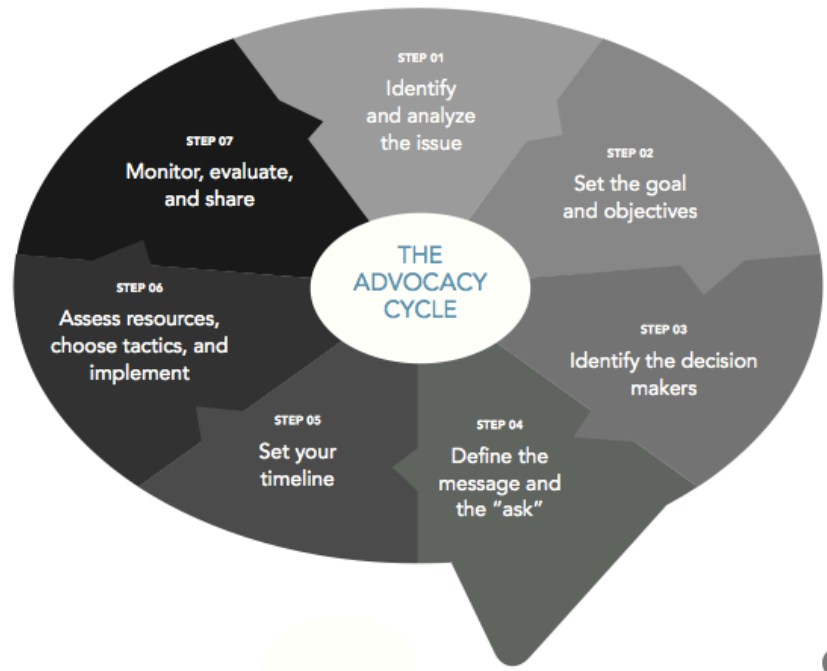
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ADVOCACY CYCLE

Grassroots Involvement/Advocacy Cycle



T



Ask your Legislators to Support HB 271/ SB 324

ASA Tennessee needs your help to educate your state legislators on the importance of House Bill 271/ Senate Bill 324, legislation that would ensure you are paid for the work you do while also allowing you the ability to suspend work should a general contractor fail to abide by the contract. Specifically, HB 271/SB 324 would:

- ban pay-if-paid clauses in contracts;
- gives subcontractors lien rights equal to that of general contractors;
- speeds up the process for contractor and subcontractors to get retainage; and
- allows general contractors and subcontractors the ability to stop work.

As a subcontractor, HB 271/SB 324 would protect your small business and employees from going unpaid by providing the necessary tools to guarantee project owners and general contractors are held to their contractual commitments.

Your assistance in reaching out to the members of the House and Senate Commerce Committees is critical to it becoming a reality.



Review Your Message

- House Commerce Committee
- Senate Commerce Committee

Subject

Support HB 271/SB 324

Message Body

I write today to respectfully request that you support House Bill 271.

HB 271 would ensure construction subcontractors are paid for their work while also granting them the ability to stop work if they do not get paid

Enter Your Info

Your Information

Prefix * First Name * Last Name *

Email *

Home Information

Street Address *

ZIP Code * Enter Zip for City and State

Send me email alerts

Remember me

Send Message

Powered by  voter voice
A FiscalNote Company

Voter Voice



Voter Voice State Chapter Activity

ASA Chapter	Date	Legislative Topic	Position	# of ASA Participants	Bill Status
ASA of Tennessee	2/20/19	Retainage; Stop Work; Ban pay-if-paid clauses	Support	45	Pending
ASA of Oklahoma	3/11/19	Retainage; Construction procurement	Support	20	Enacted May 15, 2019
ASA of Texas	3/15/19	Bans local employment ordinances	Support	13	Pending
ASA of Metro Washington	4/2/19	Retainage	Support	9	Enacted April 30, 2019
ASA of Texas	4/22/19	Construction Defect Litigation; Right-to-Repair; Attorney fee loophole	Support	74	Construction Defect and Right-to-Repair legislation enacted June 14, 2019
ASA of Texas	4/26/2019	Uniform statewide employment regulations	Support	29	Pending
ASA of Central PA	2/4/2020	Bonding Requirements	Oppose	2	Pending
			Total:	192	

*ASA of Texas includes ASA of North Texas, San Antonio and Houston

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Keeping Construction An Essential Service COVID-19

- On Saturday, March 21, 2020, ASA National launched an association-wide Voter Voice campaign distributing the ASA Gubernatorial Statement on the construction industry as an essential service to our nation's governors.
- 1,399 ASA members nation-wide sent our Gubernatorial Statement to 38 governor's.
- 65 ASA members in Florida contacted Governor DeSantis (R)

**Voter
Voice**





**Thank You
Comments / Questions?**

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THE MAN IN THE ARENA

“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.”

Theodore Roosevelt

