



2022 MID-TERM ELECTIONS: WHAT THEY MEAN FOR EMPLOYERS



ANNUAL MEMBERSHIP MEETING

NOVEMBER 10, 2022 - 12:00 - 1:00PM

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Webinar Procedures



All lines will be muted



Please submit all questions using the “Q&A” dialog box



Email Diane Engel at dengel@nebgh.org with any issues during this webinar



The recording and a PDF of the slides will be shared



Q&A

You have no question.

What h

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alight

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Financials

| | 2021 | 2020 |
|---|------------------|------------------|
| Support & Revenue | | |
| Member Dues | 866,944 | 807,967 |
| Program Fees and Contributions | 638,336 | 857,238 |
| Conferences | 519,163 | 413,780 |
| Interest Income | 12,400 | 7,809 |
| Total Support and Revenue | 2,036,843 | 2,086,794 |
| Expenses | | |
| Program Services | 1,704,110 | 1,691,433 |
| Mgmt & General Exp | 376,110 | 360,443 |
| Fundraising Exp | 20,922 | 32,974 |
| Total Expenses | 2,101,142 | 2,084,850 |
| Change in net assets before gain on forgiveness of debt and unrealized gain/(loss) on investments | (64,299) | 1,944 |
| Gain on forgiveness of debt - Paycheck Protection Program | 171,312 | 160,992 |
| Net Unrealized gains/(losses) on investments | 25,502 | n/a |
| Increase in net assets without donor restrictions | 132,515 | 162,936 |
| Net Assets - Unrestricted Beg. Of Year | 1,279,874 | 1,116,938 |
| Net Assets - Unrestricted End of Year | 1,412,389 | 1,279,874 |

Board of Directors



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12.06.2022



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President & CEO,
Hospital for Special
Surgery



Mark Lutes
Chair, Board of
Directors/Member of
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& Green



Russell Glass
CEO
Headspace Health



Chris Kim
Global Head of
Employee Experience,
Benefits & Wellness,
KKR



Shelley Sinclair
Associate Director, Total
Rewards – Health
Benefits Strategy, EY

Thank you!



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2022 MID-TERM ELECTIONS: WHAT THEY MEAN FOR EMPLOYERS

ANNUAL MEMBERSHIP MEETING



Gretchen Harders

Member of the Firm, *Epstein Becker Green*



Philo D. Hall

Member of the Firm, *Epstein Becker Green*

2022 Mid-Term Elections:

**What Could They Mean for the Future of
Employee Benefits?**

November 10, 2022

Epstein Becker Green

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Gretchen Harders

Epstein Becker Green
Member of the Firm
gharders@ebglaw.com



Philo D. Hall

Epstein Becker Green
Member of the Firm
phall@ebglaw.com

2022 Results for Congress and State Offices

House of Representatives – Setup to the 2022 Election

HISTORY AND TRENDS FAVOR REPUBLICAN TAKEOVER

Factors Against Dems Maintaining House

- Holding slimmest Congressional majority in history
- 70% of federal elections in last 32 yrs saw change in party control for House, Senate and/or WH
- Voters historically disfavor 1-party control of gov't
- Low Biden approval rating
- Dems defending dozens of districts won by Trump

Range of Midterm Impacts on Incumbent Majority Party

- Losses of +40 seats – Wave Election (*e.g.* 1994, 2010, 2018)
- Losses of 30-40 seats (above avg.)
- Losses of 20-30 seats (avg. Midterm losses)
- Losses of -20 seats (subpar night for Rs)

House of Representatives - Results

MAY TAKE WEEK OR MORE TO DETERMINE PARTY CONTROL

2020 Results

222 DEMOCRATS ✓

218 for Control of House

REPUBLICANS **213**

Gained 3 Seats, Lost 14 Seats

Gained 15 Seats, Lost 3 Seats

Chamber currently split 220-212. 3 vacancies

2022 Results (as of 9am, Nov. 10)

191
Democrats

218 for Control of House

209
Republicans

4 Pickups

16 Pickups

* 35 races yet to call

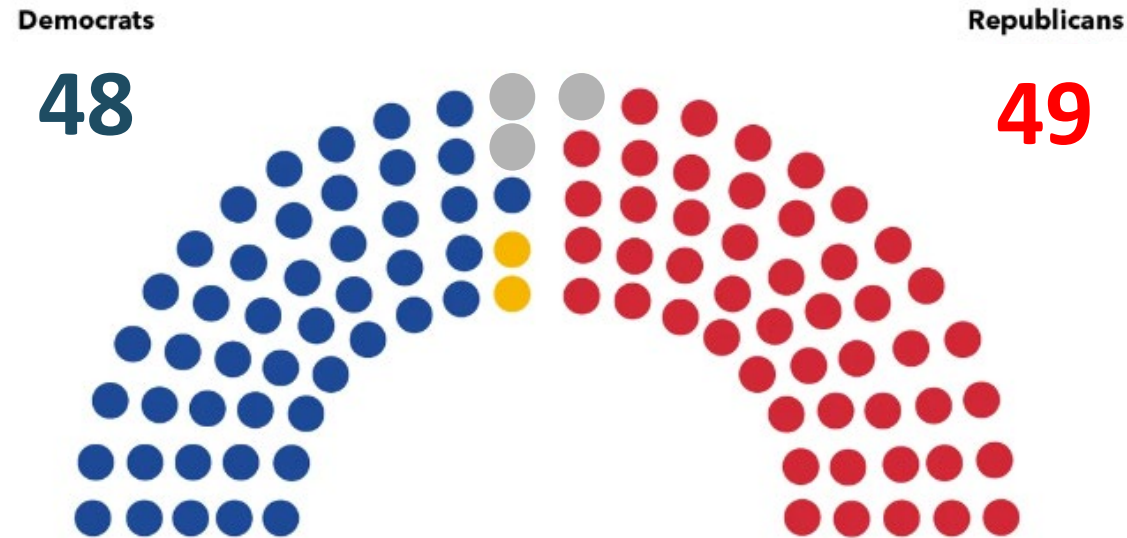
* 29 competitive races yet to call

* 10 of 20 Toss-up races called (8D, 2R)

* Narrowly divided House is vulnerable to change of control in 2024

Senate Control Likely Hangs on Georgia Runoff Election in Dec.

REPUBLICANS NEED 51 FOR MAJORITY – DEMOCRATS NEED ONLY 50



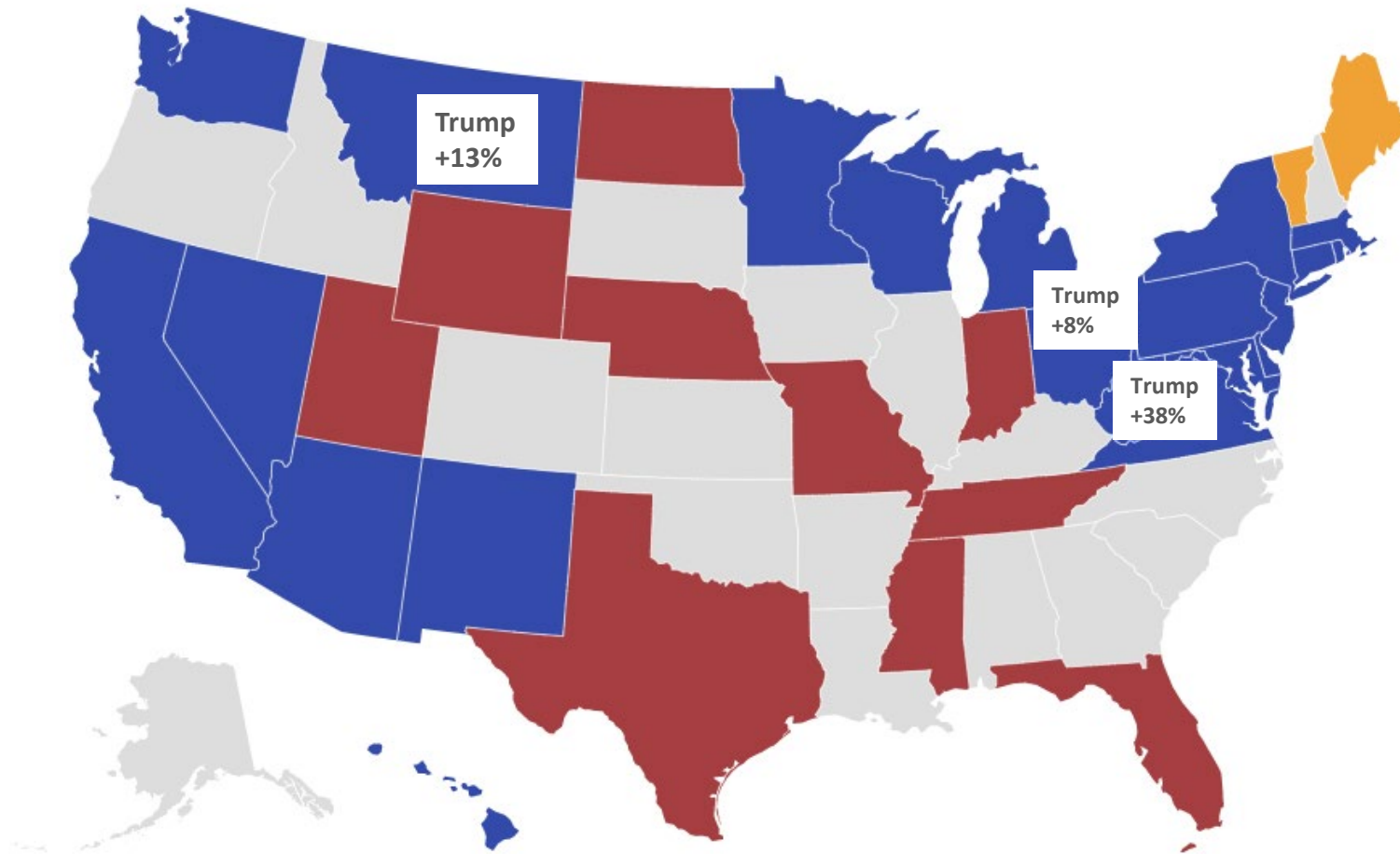
Undecided Races

- AZ (*leaning Dem*)
- NV (*leaning Rep*)
- GA (*no candidate exceeded 50%, so runoff election set for Dec. 6*)

- Only one Democratic pick-up so far: Pennsylvania
- Only one incumbent at-risk of losing: Cortez Masto (D-NV)
- Republican Senator from Alaska likely to be decided by rank-choice voting tabulation

2024 Senate Map Favors Republicans

DEMS DEFENDING MORE SEATS IN “RED” AND “PURPLE” STATES



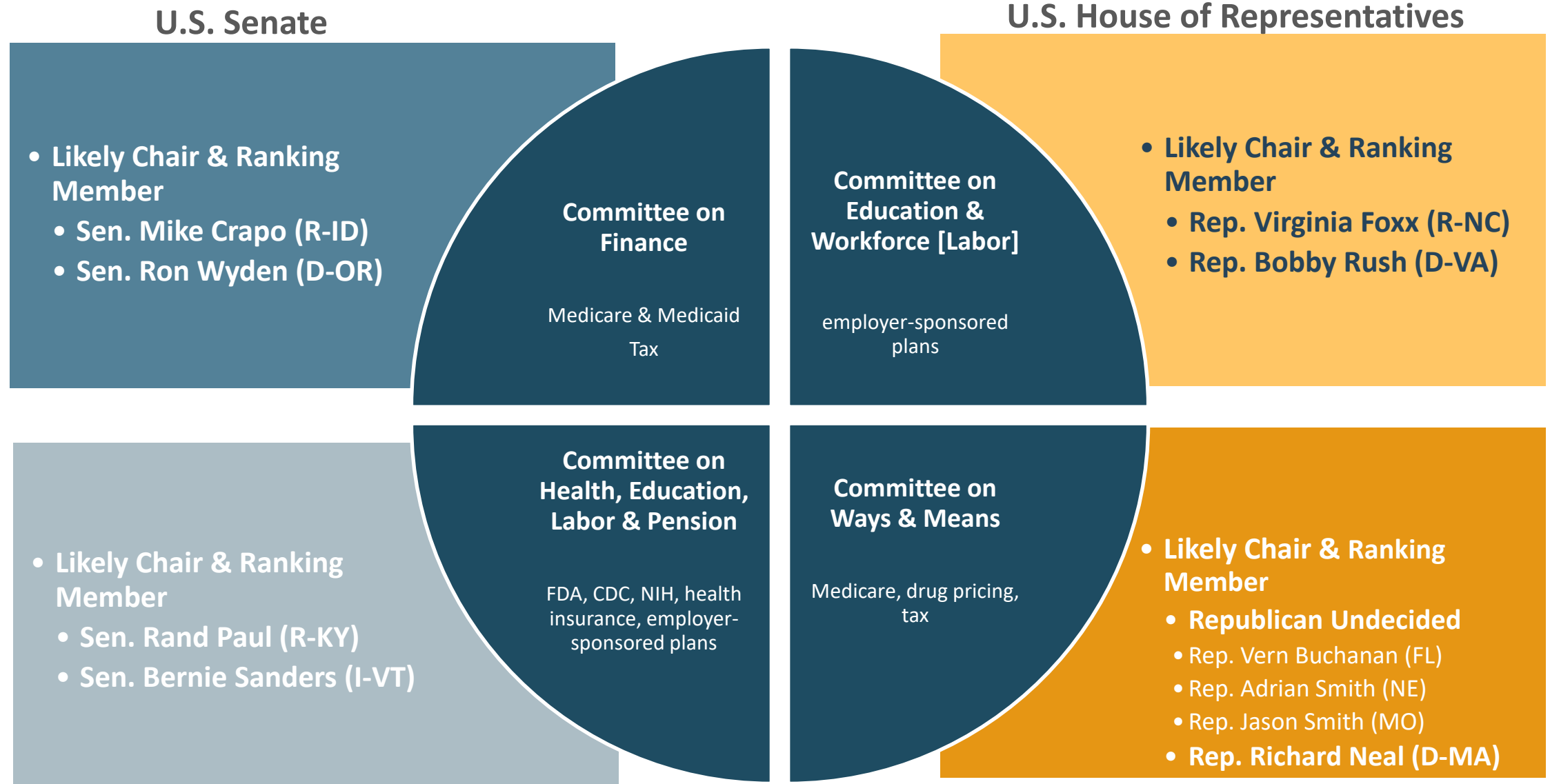
■ Biden Approval Rating Low in Democratic Senate States

- AZ (-20%)
- PA (-19%)
- WI (-18%)
- NV (-16%)
- MN (-13%)

Source: Morning Consult Political Intelligence

Leadership of Congress's Four Key Benefits Committees

PARTY CONTROL UNDETERMINED



Regardless of Party Control, Major Legislation Unlikely 2023-2024

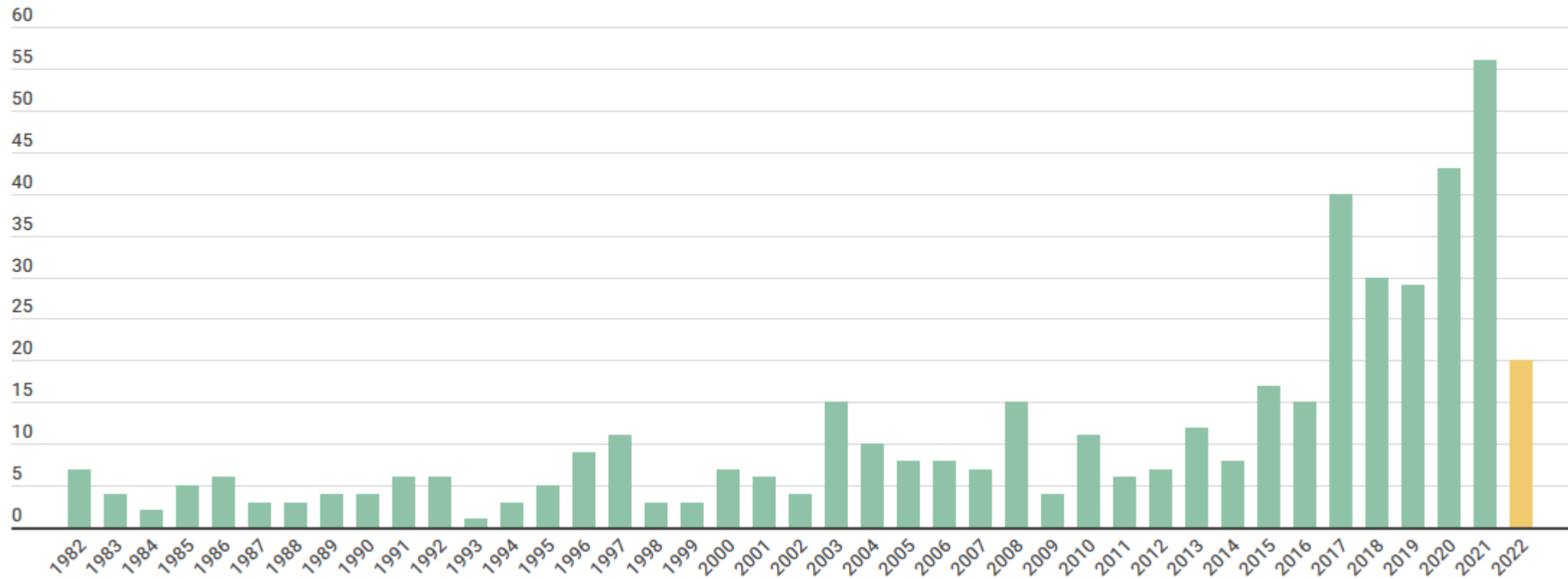
NARROW WINDOW FOR NON-PARTISAN, INNOVATIVE BILLS

- **Republican control of House and/or Senate:** no agreement with WH on priorities; fractious House caucus makes bipartisan deals difficult
- **Democratic control of House and/or Senate:** slim majority & many vulnerable Dem seats in 2024 mean little appetite for sweeping, partisan legislation
- **Instead:**
 - Congress will pass partisan, controversial “message” bills with no path to enactment. Meant to contrast parties heading into 2024
 - Republicans will conduct aggressive oversight of Biden implementation of Rx drug price “negotiation” but will not attempt to repeal
 - High-stakes, brinkmanship at last-minute for necessary bills: debt ceiling; annual budget; etc.
 - Opportunity for non-partisan major initiatives to pass as a part of end-of-year budget bills (*examples: No Surprises Act, Medicare Physician Payment Reform*)

Larger Role for Federal Administrative Action and State Opposition

PUSHING LIMIT OF FED. REGULATORY AUTHORITY – GROWTH OF COORDINATED STATE AG LITIGATION

Number of Multistate Lawsuits vs. Federal Defendants, by Year



Changes in State Houses

MORE PARTY CONSOLIDATION IN STATES MAKES POST-DOBBS ACTION MORE LIKELY

States with Newly Unified Party Control of Governor & Legislature in 2023

- **Maryland** (*new Gov.*)
- **Massachusetts** (*new Gov.*)
- **Michigan** (*likely shift in Legislature*)

Undecided State Races

- **Arizona Governor**
- **Nevada Governor**
- **Oregon Governor** (*likely D*)

States with Continued Unified Party Control of Governor & Legislature

| Republican | | Democrat | |
|-------------|----------------|-------------|--------------|
| Alabama | New Hampshire | California | New York |
| Arkansas | North Dakota | Colorado | Oregon |
| Florida | Ohio | Connecticut | Rhode Island |
| Georgia | Oklahoma | Delaware | Washington |
| Indiana | South Carolina | Hawaii | |
| Idaho | South Dakota | Illinois | |
| Iowa | Texas | Maine | |
| Mississippi | Utah | Nevada | |
| Missouri | Washington | New Jersey | |
| Montana | Wyoming | New Mexico | |
| Nebraska | | | |

Key Issues For Employers

What Employers Should be Aware of
Following Mid-Term Election

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Reproductive Health Services

Dobbs v. Jackson Women's Health Organization



Background:

- *Dobbs* examined a Mississippi law providing that, except in a medical emergency or a case of severe fetal abnormality, an abortion could not be performed if the gestational age of the fetus was greater than 15 weeks
- The law was a direct challenge to U.S. Supreme Court precedent confirming a constitutional right to an abortion



Holding: The U.S. Constitution does not confer a right to abortion

- The authority to regulate abortion was returned to the elected representatives of the states
- *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* were overruled

Reproductive Health Ballot Initiatives



State Initiatives

- Kansas voters previously rejected a constitutional amendment that would have removed the right to an abortion
- Five more states had ballot initiatives this November:
 - California Proposition 1: Would amend State Constitution to prohibit the state from denying or interfering with an individuals “reproductive freedom,” including abortion
 - Michigan Proposition 3: Would amend the State Constitution to establish a broad individual right to “reproductive freedom,” including abortion
 - Vermont Article 22: Would amend the State Constitution to establish a broad individual right to “personal reproductive autonomy”
 - Montana Legislative Referendum 131: Would require medical care for all infants born alive and to classify them as “a legal person”
 - Kentucky Constitutional Amendment 2: Would amend the State Constitution to declare that nothing in it protects a right to abortion or requires government funding for abortion

Election Results

- **CA Prop 1: Yes (65%)**
- **Mich. Prop 3: Yes (56%)**
- **VT Article 22: Yes (77%)**
- **MT Ref. 131: No (52%)**
- **KY Amdmt 2: No (52%)**

State Laws and Legal Challenges



24 states have already drastically increased restrictions

- Indiana and West Virginia recently enacted new restrictive laws that allow abortions only in cases of rape, incest, lethal fetal abnormality, and when necessary to prevent serious health risks or death
- Many state laws are being actively challenged
 - Judges in several states, including Georgia, Idaho, Louisiana, and North Carolina, have ruled to permit enforcement of strict abortion bans
 - In contrast, laws in states including Arizona, Indiana, Ohio, Michigan, South Carolina and Wyoming have been stayed by injunctions
 - Arizona's Abortion law was initially permitted on September 23 until the state court of appeals temporarily overrode a prior ruling on October 7 and delayed enforcement pending further proceedings
 - Arizona's attorney general has agreed to not enforce the near-total ban until at least the start of 2023

What Does This Mean for Employers?



Many large companies have publicly announced plans to continue offering reproductive health services for employees

- Notably, this has included offering to pay for or reimburse the costs of abortions and abortion-related services, such as travel and lodging

The IRC provides tax benefits for certain Qualified Medical Expenses (QMEs)

- Providing for services generally:
 - Should constitute QMEs, whether medically necessary or elective
- Travel expenses:
 - Should constitute QMEs, as long as travel is primarily for and essential to medical care
- Lodging and meal expenses:
 - Should constitute QMEs for inpatient lodging and meals as long as the principal reason for being there is to receive medical care
 - Should constitute QMEs for lodging and meals incurred not at a hospital or facility if:
 - (1) the lodging is primarily for and essential to medical care; (2) the care is provided by a doctor in a licensed hospital, medical facility, or a licensed hospital's equivalent; (3) the lodging is not extravagant under the circumstances; and (4) there is no significant element of personal pleasure in the travel

Additional considerations exist when traveling with a companion or with a child who is seeking medical care

Potential blowback from employees with conscientious objections to abortion

Possible ERISA Preemption Protections



Which employers could be protected?

- Fully insured group health plans are subject to state laws regulating insurance
- Self-funded group health plans are protected by ERISA's preemption provisions



ERISA preemption: Section 514

- Known as one of the broadest preemption clauses ever enacted
- ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." This includes:
 - State statutes, regulations, common law, as well as laws from state administrative agencies



Exceptions to ERISA preemption:

- State laws regulating insurance, banking, and securities (fully insured group health plans)
- State criminal laws of general application
 - Criminal laws not directed at employee benefit plans

EEOC Claims Related to Abortion-Related Travel Benefits

POST-DOBBS COMPLIANCE CHALLENGES FOR EMPLOYERS

Employers have received EEOC Commissioner charges alleging that a policy of providing abortion-related travel expenses discriminates against employees for the following reasons:

Violation of the *Americans with Disabilities Act* by not providing travel benefits for employees with disabilities (including pregnancy) who wish to travel for disability related treatments

Violation of the Pregnancy Non-Discrimination Act and Title VII by providing travel benefits for abortion, but not providing similar benefits to pregnant employees who wish to travel for non-abortion pregnancy-related treatments

Former EEOC Commission General Counsel Letter

UNSOLICITED GUSTAFSON LETTER TO EMPLOYERS ALLEGING LIKELY DISCRIMINATION

Gustafson sent multiple letters to various employers offering travel reimbursement for abortion-related services making similar claims to EEOC claims stated above, including:

■ Pregnancy Discrimination

- Claiming that such benefits discriminate against those who wish to access healthcare to help them “conceive a child, maintain a pregnancy, or care for the health of their unborn children”

■ Disability Discrimination

- Claiming that such benefits could constitute a failure to provide “equivalent benefits for employees with physical or mental disabilities who have other healthcare needs”

■ Religious Discrimination

- Claiming that such benefits could constitute illegal incentivization or pressure for employees to choose abortion

SHARON FAST GUSTAFSON
ATTORNEY AT LAW, PLC
2601 Oberlin Rd, Ste 100-AJB
Raleigh, NC 27608

October 11, 2022

Dear [REDACTED]:

I write this letter as a recent General Counsel of the Equal Employment Opportunity Commission (EEOC) with 31 years of experience practicing primarily employment law.

Employment lawyers have recently learned that [REDACTED] is considering a travel fringe benefit that it may provide to employees who travel to terminate pregnancies. We understand that you have not announced this healthcare travel benefit as extending to employees who wish to travel for other healthcare reasons.

Pregnancy and Childbirth Discrimination

[REDACTED] may violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* (1964), if it provides such benefits for employees, spouses, or dependents, while not providing equivalent benefits for those who wish to access healthcare that will help them conceive a child, maintain a pregnancy, or care for the health of their unborn children. Pursuant to Title VII, affected employees may commence lawsuits seeking the value of the denied benefits, emotional distress damages, punitive damages, and costs and attorney's fees.

EEOC Commissioners may bring Commissioner charges alleging pattern-or-practice discrimination against employers that provide abortion travel benefits because the EEOC's Pregnancy Discrimination Guidance makes clear that an employer may not lawfully withhold from a pregnant employee or dependent an insured fringe benefit based on her decision not to have an abortion. To provide a cash travel benefit only for abortion is to encourage employees to have abortions, and such encouragement has been found to be evidence supporting a class claim of pregnancy discrimination.

The EEOC has been clear that “an employer [that] decides to cover the costs of abortion, ... must do so in the same manner and to the same degree as it covers other medical conditions” and that “[p]regnancy-related expenses should be reimbursed in the same manner as are expenses incurred for other medical conditions.” See 29 CFR 1604.10(a) Pregnancy Discrimination Guidance and 29 C.F.R. pt. 1604.100. *Quinn v. [REDACTED]*, 37 F.3d 1020 (4th Cir. 1994).

EEOC Response to Gustafson Letter

OFFICIAL REJECTIONS AT EARLIEST OPPORTUNITY

- The Littler Workplace Policy Institute sent a letter to the EEOC on October 21, 2022, requesting an investigation of Gustafson's letters
 - Littler claims that Gustafson is using her former position with the EEOC to intimidate employers who offer such services in an effort to further her own practice and mislead employers who legally provide medical benefits for employees that may not have proper access in their own states

- EEOC Commissioner Janet Dhillon:
 - **"The EEOC's enforcement priority areas are established by the Agency's current Commissioners, not a former General Counsel."**

- EEOC Commissioner Keith E. Sonderling:
 - **"Congress gave only current Senate-confirmed commissioners, no one else, the power to file commissioners charges. The public must understand that no one—including the current general counsel, prior general counsels, or former commissioners—have that power."**

EEOC Response to Gustafson Letter

OFFICAL REJECTIONS AT EARLIEST OPPORTUNITY

- On October 28, 2022, EEOC Legal Counsel Carol R. Miaskoff officially responded to the Littler Letter:
 - “Ms. Gustafson is not an employee of the EEOC, and she lacks authority to speak on behalf of the agency. Accordingly, her letter should be understood to represent her own views, not those of the Commission.”
 - Any charge of discrimination will be evaluated based on individual facts and circumstances



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C. 20507

Office of
Legal Counsel

October 28, 2022

Michael J. Lotito
Shareholder and Co-Chair of Littler Workplace Policy Institute
Littler Mendelson, P.C.
333 Bush Street
34th Floor
San Francisco, California 94104

Delivered via email: milotito@littler.com

Dear Mr. Lotito:

Thank you for your letter of October 21, 2022, regarding correspondence sent by the former General Counsel of the Equal Employment Opportunity Commission (EEOC), Sharon Gustafson. In your letter, you stated that Ms. Gustafson's correspondence was sent directly to employers represented by your firm.

You also indicated that Ms. Gustafson's correspondence has caused your clients significant confusion and concern because they understood the letter to suggest that Ms. Gustafson has some measure of legal authority and that her views may reflect the EEOC's position and intent.

Ms. Gustafson is not an employee of the EEOC, and she lacks authority to speak on behalf of the agency. Accordingly, her letter should be understood to represent her own views, not those of the Commission.

Potential Legal Battlegrounds Post *Dobbs*

United States v. Windsor (2013)

■ Background:

- The Defense of Marriage Act, enacted in 1996, stated that “marriage” and “spouse” referred to legal unions between a man and a woman

■ Holding:

- Section 3 of DOMA is unconstitutional and that the federal government cannot discriminate against married lesbian and gay couples for the purposes of determining federal benefits and protections
- States have the authority to define marital relationships and that DOMA goes against legislative and historical precedent by undermining that authority
- DOMA denies same-sex couples the rights that come from federal recognition of marriage and that the purpose and effect of DOMA is to impose a "disadvantage, a separate status, and so a stigma" on same-sex couples in violation of the Fifth Amendment's guarantee of equal protection

■ Potential of Revisit:

- A major impact that could arise if *Windsor* is challenged, and overturned, could be a change in how family members are defined for health coverage purposes

Potential Legal Battlegrounds Post *Dobbs*

OTHER SUBSTANTIVE DUE PROCESS CASES IMPLICATED BY *DOBBS*

- Although *Dobbs* states that its reasoning is strictly limited to the questions presented, and distinguished abortion from other rights derived from substantive due process, Justice Thomas' concurrence enumerates other substantive due process decisions he has long believed should be reconsidered:
 - ***Griswold v. Connecticut* (1965)**
 - A right to privacy can be inferred from several amendments in the Bill of Rights, and this right prevents states from making the use of contraception by married couples illegal
 - Subsequently attributed to substantive due process (see *Obergefell & Glucksburg*)
 - *Eisenstadt v. Baird* (1971) extended the right to unmarried couples
 - ***Lawrence v. Texas* (2003)**
 - Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause
 - ***Obergefell v. Hodges* (2015)**
 - The Due Process Clause guarantees the right to marry as one of the fundamental liberties it protects, and that analysis applies to same-sex couples in the same manner as it does to opposite-sex couples

Note: Concurrences of Justice Kavanaugh and Chief Justice Roberts indicate that they would not challenge those decisions

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Inflation Reduction Act & Prescription Drug Prices

The Inflation Reduction Act

Critical Changes to Prescription Drug Pricing and Other Health Care Updates

On August 16, 2022, President Biden signed the “Inflation Reduction Act of 2022” (IRA) into law

The IRA resulted from negotiations over certain provisions of the “Build Back Better Act” introduced to advance President Biden’s 2021 “Build Back Better Plan”

The Congressional Budget Office (CBO) score estimates that the IRA’s healthcare provisions will result in \$53.6 billion in new spending from 2022-2026 and \$70.5 billion in savings over the next 10 years

Overview of IRA Healthcare Provisions

- **Permits CMS to “Negotiate” Prices Medicare Pays for Rx Drugs**
- **Caps Part D Out-of-Pocket Spending**
- **Redesigns Part D Catastrophic Benefits**
- **Caps Insulin Copayments**
- **Eliminates Cost-Sharing for Part D Vaccines**
- **Increases Part B Reimbursement for Biosimilars**
- **Further Delays the Trump Rx Drug Rebate Rule Until 2032**
- **Penalizes Drug Manufacturers for Price Increases that Outpace Inflation**
- **Extends Enhanced ACA Marketplace Subsidies through 2025**

Pressure will be on Congress to find more health care savings/reductions in 2025 in order to again extend enhanced ACA Subsidies into 2026 and beyond

Downstream Impact on Commercial Rx Prices Unknown

Will Medicare Price Become New Commercial Floor? Will Manuf's Increase Commercial Introduction Price?

| Medicare Drug Pricing "Negotiation" & Inflation Cap | | Effective Date | Estimated Savings to Fed (By Fiscal Year, Billions of Dollars) | |
|---|---|--|---|-----------|
| | | | 2022-2026 | 2022-2031 |
| Permits CMS to Set Maximum Fair Price for Part B & D Drug Prices | <ul style="list-style-type: none"> Complex, large new federal program with many issues yet to resolve through regulation Permits CMS to set a "maximum fair price" (MFP) for the 10 top-spend outpatient drugs in 2026; annually increases the number of new drugs subject to a MFP; expands to physician-administered drugs in 2028 Sets the upper limit in the MFP negotiations as the lower of: <ul style="list-style-type: none"> the drug's enrollment-weighted negotiated price (net of all price concessions) for a Part D drug the average sales price (ASP) for a Part B drug, or a specified percentage of the drug's non-federal average manufacturer price (AMP) Penalizes drug manufacturers that do not provide accurate information on pricing Creates certain exceptions for orphan drugs but permits negotiations for certain single source drugs | 2026 for Part D 2028 for Part B | \$ 3.7 | \$ 98.5 |
| Penalizes Drug Manufacturers for Price Increases that Outpace Inflation | <ul style="list-style-type: none"> Requires drug manufacturers to pay a rebate when price increases for certain Medicare drugs outpace inflation using an inflation-adjusted "benchmark price" (the ASP for Part B & the AMP for Part D) from a base period Manufacturers who fail to pay the rebate must pay a penalty of at least 125% of the original rebate amount | Jan. 2023 (HHS can defer for 2 years) | \$ 33.2 | \$ 32.8 |

Prescription Drug Pricing

IMPACT OF ELECTION ON IRA PRIVISIONS

- With split control and/or narrow majorities, no path or appetite for legislative changes to IRA
- Expect intense oversight hearings into the administration's implementation of IRA
 - Will IRA rules be applied fairly and transparently?
 - Adverse impacts on innovation or access?
 - Will IRA rules favor manufacturers over federal savings targets?
- Congress will evaluate whether IRA Maximum Fair Price should be expanded in 2025 to generate more savings
- Era of sweeping legislation passing on narrowest of partisan margins is over for now
 - Congress expected to pass fewer bills (if House and Senate are controlled by different parties, expect MANY bills to be passed that will never be considered by the other chamber)
 - However, look to end-of-the-year omnibus appropriation bills for Congress to pass more modest, non-partisan legislation (examples)

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Environmental, Social, and Corporate Governance (ESG)

ESG Impacts of Proposed Democratic Rules

PRUDENCE & LOYALTY IN SELECTING PLAN INVESTMENTS AND EXERCISING SHAREHOLDER RIGHTS

■ Background

- Proposed rule has been submitted to the White House's regulatory office for review
- The Rule would clarify ERISA's fiduciary duties of prudence and loyalty when selecting investments and investment courses of actions, including:
 - Selecting qualified default investment alternatives
 - Exercising shareholder rights
 - Such as proxy voting and use of voting policies and guidelines

■ Proposed Rule

- Would allow retirement plan managers to also consider environmental, social, and corporate governance factors when making investment decisions

■ Former Trump-era Rule

- Plan fiduciaries were limited to considering monetary investment factors when making investment decisions

Competing ESG Directives

COMPANIES ATTEMPTING TO NAVIGATE THROUGH MIXED SIGNALS

Democratic Directives

- Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights
- New York City Comptroller announced the city was re-assessing its business with BlackRock because it was not doing enough to push ESG goals with other corporations

Republican Directives

- States like Texas and Florida have passed directives removing ESG considerations from investment decisions, requiring economic factors to drive investment decisions
- Coalition of 19 state AGs sent a letter to BlackRock stating it was placing ESG politics over economic returns, Texas included BlackRock on its list of Companies that Boycott Energy Companies; Louisiana and Missouri pulled a combined \$1.3 billion from BlackRock in October, citing its adherence to ESG principles

- **Congress is narrowly divided, but state governments are increasingly driven overwhelmingly by one party with fewer moderating perspectives**
- **Employers must carefully monitor shifting pro/anti-ESG considerations in states in which they do business**

Top Priorities for Department of Labor's Employee Benefits Security Administration (EBSA)

Top Priorities for DOL EBSA

MIDTERM RESULTS UNLIKELY TO HAVE IMPACT ON FEDERAL ENFORCEMENT ACTIVITY

■ EBSA Leadership

- DOL Assistant Secretary/EBSA Head Lisa Gomez confirmed September 29, 2022
- EBSA current priorities likely to continue

■ Mental Health Parity

- The Department of Labor's Employee Benefits Security Administration (EBSA) has made mental health parity audits a top priority
- The Consolidated Appropriations Act contains a new obligation to comply with non-quantitative treatment limitations of the Mental Health Parity and Addiction Equity Act of 2008

Top Priorities for DOL EBSA

MIDTERM RESULTS UNLIKELY TO HAVE IMPACT ON FEDERAL ENFORCEMENT ACTIVITY

■ Other Health Plan Enforcement

- No Surprises Act
- Emergency services
- Service provider self-dealing (disclosures of indirect compensation by service providers; hidden and excessive fees)
- MEWAs

■ Privacy and Cybersecurity

- September 20, 2022 American Benefits Counsel letter to EBSA expressed concern over the agency's use of subpoenas to collect participants' personally identifiable information (PII) during investigations regarding potential service provider cybersecurity breaches
- November 1, 2022 EBSA response to the ABC confirming its broad subpoena authority under ERISA and the importance that PII can have in investigations



Questions?

Thank you!