

**ENERGY  
MARKETERS  
OF AMERICA** **EMAI**

**APMA**

**ARIZONA PETROLEUM MARKETERS ASSOCIATION**

**SQUIRE**   
**PATTON BOGGS**

**September 2022**

**Austin Harrison**

**Squire Patton Boggs**

**Government Affairs, Energy Marketers of  
America**

**REGIONS**

- Northeast
- Southeast
- North Central
- South Central
- West

**COMMITTEES**

- Motor Fuels
- Convenience Store
- Heating Fuels

**EXECUTIVE COMMITTEE DIVISIONS**

- Lubricants
- Brands
- Disaster Response

**ASSOCIATION EXECUTIVES CONFERENCE**

**TASK FORCES (UST)**

**ENERGY MARKETERS OF AMERICA**  
**EMAI**  
**BOARD OF DIRECTORS**

**EXECUTIVE COMMITTEE**

**EMA PRESIDENT**

**EMA STAFF**

**BOARD CHAIR APPOINTED**

- Budget
- Audit
- Investment & Reserves

# Capitol Hill Update

- 60 vote threshold for most Senate bills prevents Democrats from enacting many “pipe dreams,” such as packing the courts, **approving federal price gouging legislation** or ramming through energy elimination initiatives.
- The [Inflation Reduction Act of 2022 \(IRA\)](#) invests \$370 billion into clean energy incentives. The bill does not include new taxes on small business and does not raise individual, corporate, estate, or capital gains taxes.
  - IRA included \$7,500 EV tax credit, but only if the vehicle meets certain domestic content restrictions and is under \$55,000 for sedans and \$80,000 for pickups and SUVs. Income ceilings - \$300,000 for joint filers and \$150,000 for individual filers. Prevents many models from being eligible.
  - Extends biodiesel tax credit through 2024 then moves to clean fuels production tax credit.
  - IRA does include favorable tax credit treatment for sustainable aviation fuel (SAF) which EMA argued against.
  - IRS agent boost in IRA isn't the end of the world since it's already short staffed and retirements looming.

# **NEW GREEN DEAL COMPLIANT CARS HIT THE SHOWROOM!**



*Patriotic & Proud*

# Congressional To-Dos for the Remainder of the 117<sup>th</sup>

## ➤ Top Priorities:

- **Government Funding:** a “Continuing Resolution” will be needed to temporarily fund the government after September 30. After that, Congress will need to enact a comprehensive full year agreement. **Will this include the permitting reform provision promised to Senator Manchin?**
  - As part of his support for a climate bill, Manchin was promised a permitting reform provision. However, some progressives and conservatives are opposed. Manchin has threatened to shut down the government without this provision.
- **National Defense Authorization Act**
- **Water Resources and Development Reauthorization**

## ➤ Looking Ahead:

- House and Senate return on September 12
- August passage of Inflation Reduction Act accomplishes most of Biden’s near-term policy goals
- Fiscal year expires September 30 – Continuing Resolution must pass beforehand
- November Midterms

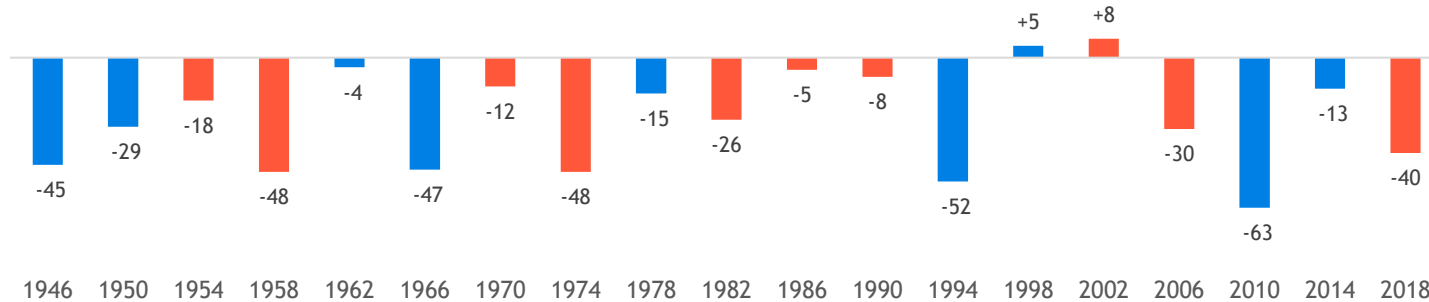


# Historically, the president's party loses seats in midterm elections

## President's party gain/loss of seats in House

MIDTERM ELECTIONS, 1946-2018

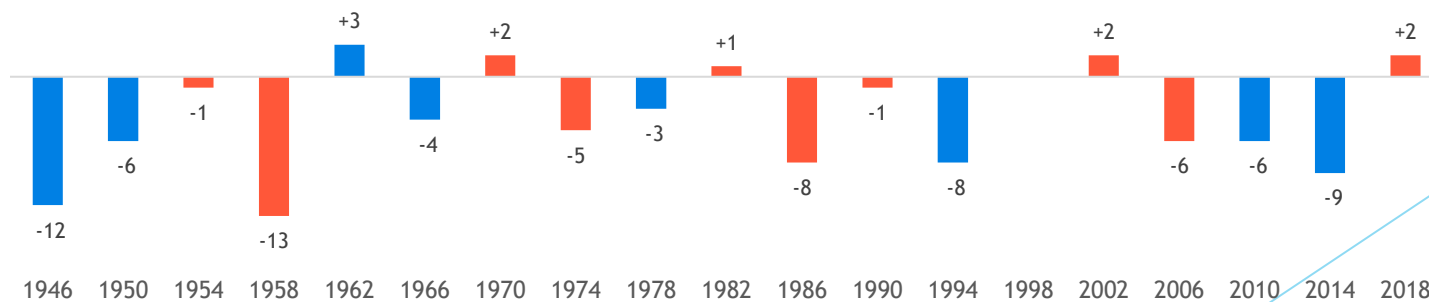
■ Democrats ■ Republicans



## President's party gain/loss of seats in Senate

MIDTERM ELECTIONS, 1946-2018

■ Democrats ■ Republicans



# The last four presidents have lost Senate and House majorities; seven of those eight chambers were lost in midterm elections



**President  
Bill Clinton (D)**

Republican gains in the  
1994 midterms:

**52 seats** in the House  
**8 seats** in the Senate



**President  
George W. Bush (R)**

Democratic gains in the  
2006 midterms:

**30 seats** in the House  
**6 seats** in the Senate



**President  
Barack Obama (D)**

Republican gains in the  
2010 midterms:

**63 seats** in the House  
**6 seats** in the Senate

Republican gains in the  
2014 midterms:

**13 seats** in the House  
**9 seats** in the Senate



**President  
Donald Trump (R)**

Democratic gains in the  
2018 midterms:

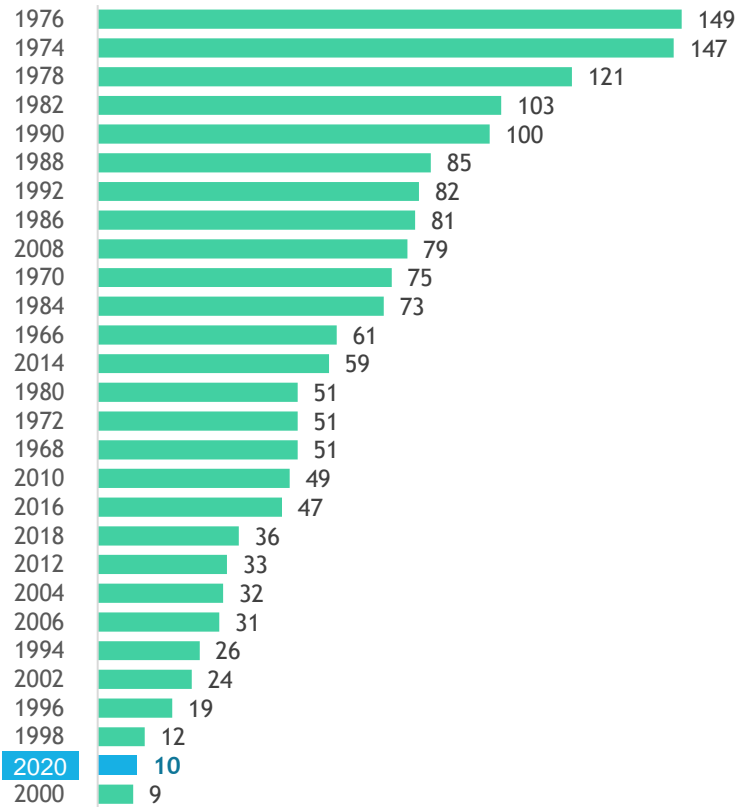
**40 seats** in the House  
**-2 seats** in the Senate

Note: Trump's Senate  
loss in 2016 was the only  
loss of a chamber in the  
past four presidencies to  
not occur during a  
midterm.

# Democrats have unusually narrow majorities in both chambers of Congress

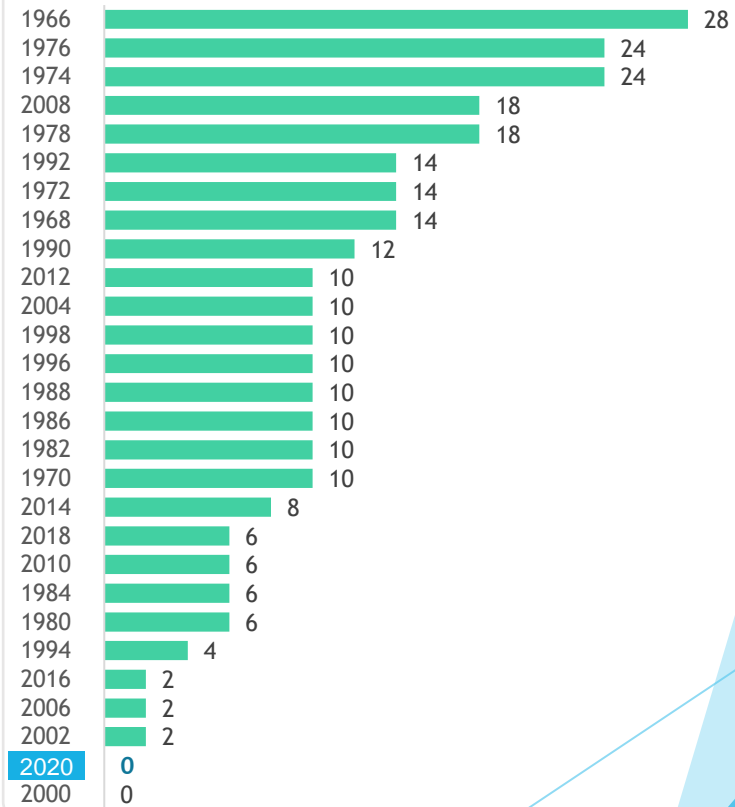
**Size of the House majority over time**

90<sup>TH</sup>-117<sup>TH</sup> CONGRESS



**Size of the Senate majority over time**

90<sup>TH</sup>-117<sup>TH</sup> CONGRESS



Figures represent the size of the House and Senate majorities at the start of each Congress.

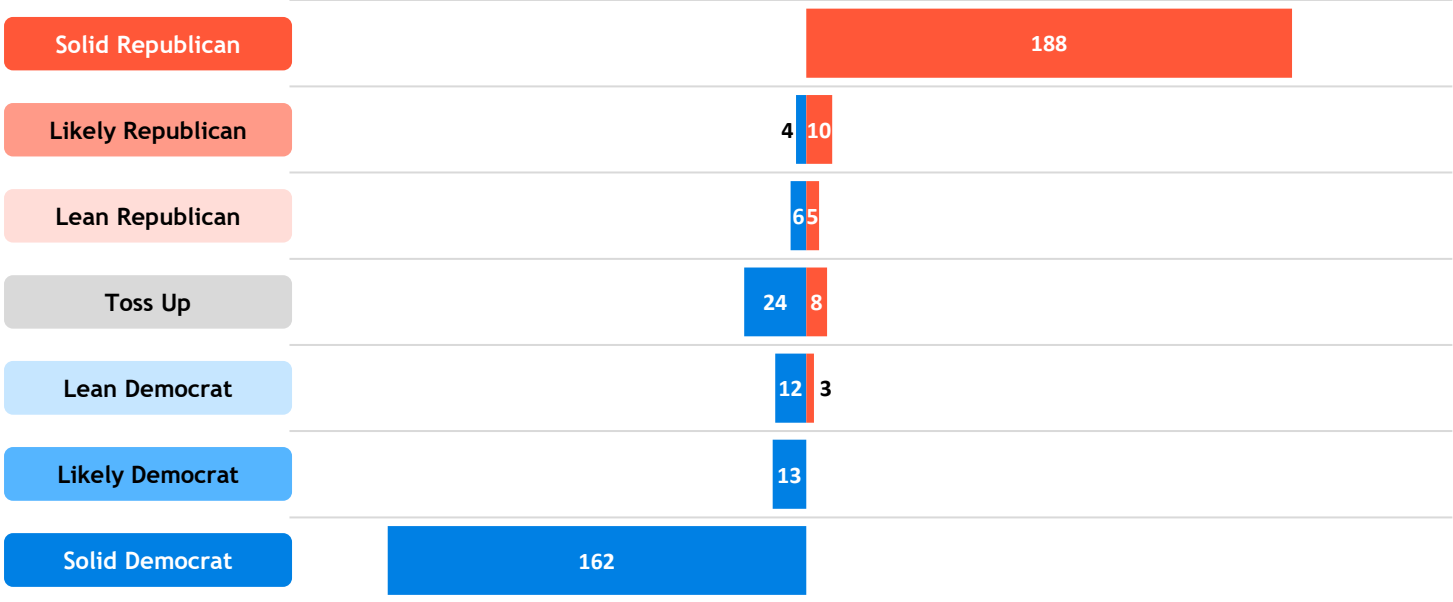
SOURCE Senate.gov, History.House.gov.



# Cook Political Report 2022 House race ratings

Note: In new districts with no incumbent, the Cook Political Report’s policy is to list the “incumbent party” according to the new district’s estimated PVI score.

As of June 29, 2022, ratings have been released for all 435 House districts.



# Hotline's Senate power rankings: Top 10 seats most likely to flip

Green picture border indicates an incumbent; gray picture border indicates a challenger



**1. Pennsylvania (Open) (R)**  
Incumbent: ~~Sen. Pat Toomey (R)~~  
Democratic Candidate: John Fetterman (D)



**2. Nevada (D)**  
Incumbent: Sen. Catherine Cortez Masto (D)  
Challenger: Adam Laxalt (R)



**3. Georgia (D)**  
Incumbent: Sen. Raphael Warnock  
Challenger: Herschel Walker (R)



**4. Arizona (D)**  
Incumbent: Sen. Mark Kelly (D)  
Challenger: Blake Masters (R)



**5. Wisconsin (R)**  
Incumbent: Sen. Ron Johnson (R)  
Primary Date: August 9



**6. New Hampshire (D)**  
Incumbent: Sen. Maggie Hassan (D)  
Primary Date: September 13



**7. North Carolina (Open) (R)**  
Incumbent: ~~Sen. Richard Burr (R)~~  
Democratic Candidate: Cheri Beasley (D)



**8. Ohio (Open) (R)**  
Incumbent: ~~Sen. Rob Portman (R)~~  
Democratic Candidate:  
Rep. Tim Ryan (D-OH-13)



**9. Colorado (D)**  
Incumbent: Sen. Michael Bennet (D)  
Power Ranking status: ▲



**10. Florida (R)**  
Incumbent: Sen. Marco Rubio (R)  
Power Ranking status: ▼

SOURCE National Journal Hotline

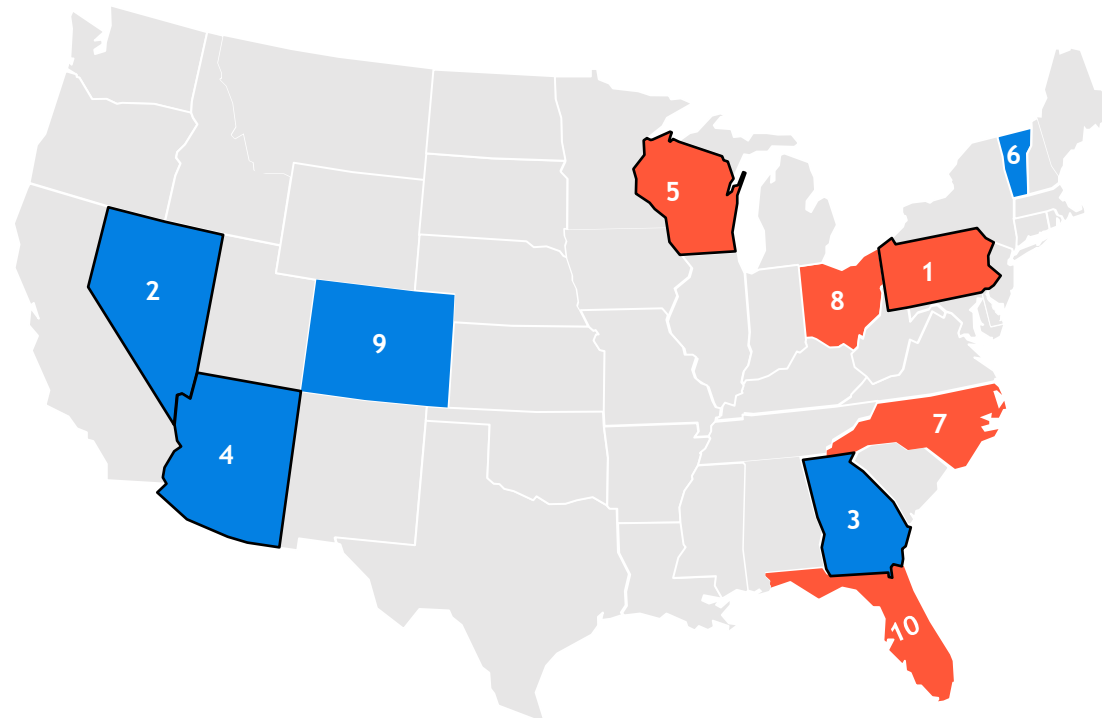
\*power ranking status refers to a state's ranking relative to the last Hotline power ranking update

\*\*Strikethrough indicates incumbents retiring from public office, double strikethrough indicates incumbents running for other offices

# The top ten states most likely to flip are split across party control

## Hotline's Senate Power Rankings

■ Democratic-held states ■ Republican-held states  
*Border indicates top five states most likely to flip*



# 2022 Senate race spotlight: Arizona

COOK POLITICAL REPORT  
RACE RATING:



▲  
Toss Up



**Incumbent: Mark Kelly (D)**  
First elected in 2020  
Former astronaut  
Running for reelection

## Election dates

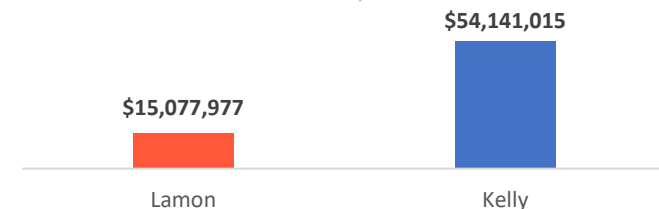
Filing deadline - April 4, 2022  
Primary election - August 2, 2022  
General election – November 8, 2022

## Polling

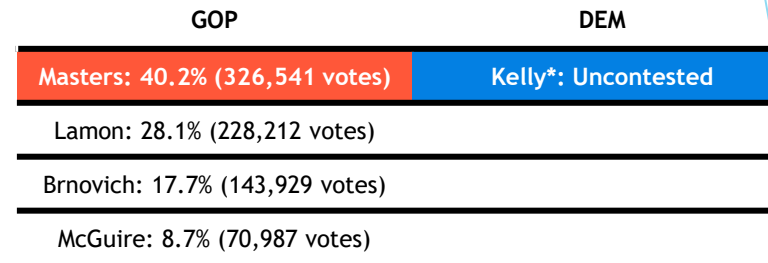
Pollster	Date	Sample size	Dem. candidate	GOP candidate
Change Research	June 24-27	705 LV	Kelly: 48%	Masters: 39%

## Campaign finance

TOTAL RECEIPTS AS OF JULY 13, 2022



## 2022 primary results



\*Incumbent

## Key factors



### 1. Incumbency

- Sen. Kelly was elected in a special election in 2020, defeating Sen. Martha McSally by roughly two and a half points
- One advantage for the incumbent Senator is financial resources; Kelly began 2022 with over \$18 million cash on hand

### 2. State of the GOP

- No fewer than eight candidates vied for the Republican nomination, with Trump endorsed candidate Blake Masters eventually prevailing over the crowded field
- Masters is now tasked with appealing to a broad Republican base energized by his characterization of Kelly as a “radical”

### 3. Republican environment

- While Sen. Kelly beat the President’s margin in 2020, should Biden’s approval ratings remain low closer to election day, it could improve Republican chances

# CDL Driver Shortage

- ▶ 67 Congressional Members wrote to the Department of Transportation “to consider modifying the hazardous materials training and testing requirements to focus on HAZMAT specific education.”
- ▶ The letter also encourages the Department to consider streamlining the TSA Security Threat enrollment process that would allow CDL Drivers to enroll in more than one program - Transportation Worker Identification Credential (“TWIC”), HAZMAT, and TSA Pre Check. **Sec. Buttigieg referenced the letter during Congressional testimony and committed to working on the issue.**
- ▶ **EMA recently sent comments to DOT in support of oral fluid testing because it is inexpensive and administered by a simple oral swab.** Specimens can detect drug use over the preceding 24 hours which is uniquely suited for reasonable suspicion and post-accident testing. Introduction of oral fluid testing keeps unsafe drivers off the road, provide employers with flexibility in test method selection, lower test costs and reduces the ability of employees to subvert testing.
- ▶ **Cosponsor H.R. 6571, TSA Security Threat Assessment Application Modernization Act** (sponsored by Rep. Adam Smith, D-WA), to require the TSA to standardize the enrollment process for CDL drivers applying for multiple TSA security Threat Assessment credentials, including the Transportation Worker Identification Credential, Hazardous Materials Endorsement, and TSA PreCheck programs.

# Swipe Fee Legislation

- ▶ Senate Majority Whip Dick Durbin (D-IL) and Senator Roger Marshall (R-KS) introduced “The Credit Card Competition Act,” (S.4674), bipartisan legislation which would ensure retailer choice in payment routing by requiring at least two unaffiliated processors on credit cards, the same process that is used for debit card transactions.
- ▶ Swipe fees remain the second highest operating cost for convenience stores which costs the industry \$138 billion annually.
- ▶ There are nearly a dozen of independent networks that are equipped to route transactions, but a handful of dominant networks -- chiefly VISA and Mastercard -- have prevented them from competing in the credit card space, thus limiting the choice of network.
- ▶ Allowing retailers greater choice for transaction handling would reduce costs and pass savings onto the consumer. Introducing routing competition could save businesses and consumers upwards of \$11 billion annually according to payments consulting firm CMSPI.
- ▶ EMA currently working House Rs to be a lead cosponsor along with Rep. Peter Welch (D-VT).



# WHAT HAS EMA DONE FOR MARKETERS LATELY?

- **Increased the daily maximum air mile radius and on duty time allowed short-haul drivers** (Savings: \$9,800 per marketer per year)
- **EMA's low liquid level integrity test** as an alternative method for containment sump testing (Savings: \$14,330 per UST sump every 3 years)
- **Reduced EPA's UST inspection and testing compliance costs with alternative procedures** (Savings: \$7,855 per station per year)
- **Defeated a wetlines purging retrofit** and side underride rails mandates for transport vehicles. (Savings: \$8,400 per transport)
- **Defeated a 10-micron filter mandate** (\$200 million in savings)
- **Defeated electronic HOS logging device mandate for short-haul drivers** (Savings: \$8,547 per marketer per year)
- **Exempted cargo tank vehicles parked overnight at bulk facilities from sized secondary containment requirements** SPCC Parked truck rule. (Savings: \$25,000 - \$40,000 per Cargo tank parking area depending on size)
- **Defeated proposed increase in annual HAZMAT registration fee** (Savings: \$1,200, per marketer - per year)
- **Filed a brief in the Visa and Mastercard swipe fee litigation now pending in US District Court in New York.** The purpose of the brief is to oppose any settlement of the case that shuts out branded marketers from filing claims against the \$6.24 billion settlement fund.
- **Defeated a potential tobacco/nicotine tax in BBB** which would have negatively impacted small business marketers.
- **Ensured passage of the Durbin amendment** which capped interchange fees on debit cards. (EMA had it's Day on the Hill the day of the Durbin amendment vote – May 13, 2010) (Over \$6 billion in savings)

## EMA PAC (personal funds only)

- **Use this QR Code to contribute!**
- The password is your state name.



# Bipartisan Infrastructure Law -- BIL

- **(BIL) provides \$7.5 billion in grant funding for states to partner with the private sector to build out EV charging, in which \$2.5 billion is set aside for alternative fuel corridors for EV charging, hydrogen, natural gas and propane infrastructure. EMA urged for small business set aside (500 employees or less) to get access to funds.**
- States must install EV chargers every 50 miles along Alternative Fuel Corridors and must be located no more than one mile off the corridors, mostly interstates.
- The chargers must have at least 600 kilowatts of total capacity, with ports for at least four cars that can simultaneously deliver at least 150 kilowatts each. The chargers also need to be accessible to the general public or to fleet operators from more than one company.
- As of August 1st, all 50 states have submitted their EV Infrastructure Deployment Plan for the implementation of EV charging infrastructure to USDOT for approval (anticipated by September 30th).
- Key Points:
  - 1.) Retail gasoline and truck stop facilities are strategically and conveniently located on Alternative Fuel Corridors as well as most federal and state highways;
  - 2.) Grants should provide set asides for small business energy marketers;
  - 3.) EV charging stations should not be located within the interstate right of way (ROW), including rest areas and
  - 4.) Utilities that choose to install EV chargers should not be allowed to support the installation, operation and maintenance of EV chargers through utility rates.

# EMA Challenges the EPA LDV Standards

- ▶ **EMA recently challenged the EPA** over its final rule that increases the stringency of CO2 emissions for model year 2023-2026 light duty vehicle (LDV) by significant percentages.
- ▶ The Biden EPA is ostensibly using EPA's tailpipe emissions standards to phase out internal-combustion engine vehicles in exchange for electric vehicles.
- ▶ EPA estimates that its rule for the four model years will reduce fuel demand by 361 billion gallons.
- ▶ A key issue in the challenge is the **“major questions doctrine,”** which holds that courts should not defer to agencies on questions of “vast economic or political significance” unless Congress has provided explicit authority to the agencies.
- ▶ The CPA required sweeping changes in the way the Nation's power plants generate electricity, from coal-fired plants to natural gas and renewables, like wind and solar. The CPA represented a major expansion of EPA's regulatory authority, which the Supreme Court described as “unprecedented” and “unlawful.”
- ▶ Another key issue is EPA's failure to consider the emissions that are emitted in the making and disposing of batteries, as well as emissions from generating electricity for charging them.

# Bulk Plant Vapor Recovery Survey

- ▶ EPA is proposing to require vapor balance balancing equipment installed at bulk plant facilities with gasoline design capacity throughput of 4,000 gallons or more per day.
- ▶ The vapor balancing equipment would be required for tanks, loading racks and cargo tank vehicles loading and unloading at these facilities.
- ▶ The EPA currently defines a bulk gasoline plant as any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank, and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities and/or ultimate purchasers with a gasoline throughput of less than 20,000 gallons per day.
- ▶ EMA believes these proposed rules could have a significant regulatory and cost impact on bulk plant operators.
- ▶ Please complete the EMA survey that was sent last week.
- ▶ Key question is how many bulk plants and loading racks have vapor recovery.

# Federal Price Gouging Legislation

- ▶ **Background:** Seventy percent of Americans support the ban on Russian oil imports regardless of the rising fuel costs. However, some Americans are falsely directing blame to gas station owners/heating fuel dealers for increased prices.
- ▶ Retailers post their prices on big signs where a one-penny difference can determine where customers choose to fill up.
- ▶ There are many factors that determine gasoline prices, including the cost of crude oil, inflation, supply chain disruptions, transportation costs, speculation in the commodities futures market, **credit card interchange fees**, boutique fuel costs, federal/state taxes, trucker costs and global uncertainty due to Russia's invasion of Ukraine.
- ▶ Legislation is dead.

## FDA Proposed Ban on Menthol and Flavor Cigars

- **Proposed ban would lead to illicit sales and the government losing tax revenue. States and Federal governments could lose more than \$6 billion even though** cigarette smoking rate for youth is at historic lows.
- Given the magnitude of the proposed rule, small business retailers would likely be forced out of business due to the loss of operating capital necessary to pay for their next load of fuel. This would leave wholesale energy marketers with a substantial account receivables amount which would likely put both the wholesaler and retailer out of business and lead to higher prices at the gas pump due to consolidation.



# Industry Standards Organizations covered by EMA

- ▶ National Conference on Weights & Measures – Handbook 44 Specifications, Tolerances for Weighing and Measuring Devices: Fuel Dispensers
- ▶ ASTM E50 Committee on Environmental Assessment and Risk & Corrective Action - Storage Tanks
- ▶ ASTM D02 Committee on Petroleum Products & Liquid Fuels- Petroleum and Petroleum Additive Standards
- ▶ PEI RP-1200 - Overfill, Release Detection & Release Prevention Equipment Testing Committee
- ▶ PEI RP-900 - UST Inspection & Maintenance Committee
- ▶ National Fire Protection Association – NFPA 30: Flammable and Combustible Liquids Code, NFPA 30A Code for Motor Fuel Dispensing Facilities
- ▶ Underwriters Laboratories (UL) – Flammable and Combustible Fluids Equipment Certification
- ▶ **U.S. REGULATORY AGENCIES**
- ▶ EPA Office of Underground Storage Tanks
- ▶ EPA Office of Transportation and Air Quality – Mobile Source Emissions
- ▶ EPA Office of Emergency Management – Above Ground Tank SPCC Planning
- ▶ Treasury Department – Office of Chief Counsel, Passthrough and Special Industries – Motor Fuel Excise Taxes, Refunds and Credits
- ▶ DOT - Federal Motor Carrier Safety Administration: CDL and Commercial Motor Vehicle Regulation and Emergency Waivers
- ▶ DOT – Pipeline and Hazardous Material Safety Administration: Transportation of Hazardous Materials, Hazardous Material Endorsements and Cargo Tank Specifications, Special Permits
- ▶ Transportation Security Administration – Driver Security Background Check
- ▶ Small Business Administration – Small Business Regulatory Advocate, Small Business Size Codes
- ▶ OSHA – Workplace Safety Regulations for Petroleum Facilities, Loading Racks and C-stores
- ▶ Federal Trade Commission – Octane Rating, Dispenser Labelling

ENERGY  
MARKETERS  
OF AMERICA

# EMA

## MEMBER SERVICES

worldpay  
from FIS

EMA has updated its contract with Worldpay from FIS to bring energy marketers the lowest possible transaction cost in the industry. Participants in this program enjoy reduced fees as a result of processing efficiencies. With no hidden fees, percentage rates or complicated statements, the program offers EMA members a **flat \$0.029 cent transaction fee** after interchange on all card payments.

Worldpay from FIS provides leading payments processing services across multiple industry verticals. Utilizing traditional point-of-sale technologies to mobile devices, customers can accept payments anytime, anywhere. From transaction capturing and processing to merchant acquiring, Worldpay from FIS provides insightful expertise, seamless delivery and valued relationships.

With eight successful years of partnership, this renewed contract demonstrates continued forward momentum for our support of the energy industry. Worldpay is committed to providing energy merchants with the best solutions from card processing to PCI compliance and will continue to offer the tools they need to solve their biggest payment challenges in the years to come.

*I encourage each association to contact our EMA New Account Sales Representative, Erick Wilde, to discuss the overall benefits of the program and endorsing Worldpay.*



Rob Underwood, EMA President



## EMA | WORLDPAY PARTNERSHIP HIGHLIGHTS

- WorldPay **exclusive discounted processing rates** and pass-through interchange services to EMA and SPIRIT® members will not raise fees for the life of the agreements.
- **Tier pricing** was negotiated that triggers lower transaction fees for combined EMA and SPIRIT® total locations. Meaning, once the combined reaches 700, the \$0.029 transaction fee is reduced to \$0.025 for new members signing up for the program and available to existing members when their contract comes up for renewal.
- Worldpay will provide dedicated phone lines and staff appropriately to provide **customer service during normal business hours**. After hour calls will be returned the following day. A log will be maintained by Worldpay to document all calls, leads and the phone line the call came in on.
- Worldpay will pay **residuals** to EMA.
- **EMA splits Worldpay residuals with any EMA State Association that endorses Worldpay as their exclusive payments provider.**

*EMA New Account Sales Representative*  
**Erick Wilde: 813-600-0447**

# Worldpay Member Services Summary

- ▶ EMA's Member Service program with WorldPay is a great benefit to Marketers and the State Association.
- ▶ It is a very competitive rate at \$0.029 per transaction.
- ▶ As a bonus when the State Association endorses the program, they enjoy a rebate on that residual.
- ▶ For example, a Unit doing an average of 18,000 transactions a month (approximately \$100K gallons in fuel and \$100K in store sales) the State would receive \$108.00 a month/\$1,296 per year.
- ▶ Times that by 40 units and the State receives \$4,320.00 a month, \$51,840.00 per year.



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MEMBER  
SERVICES



PATRIOT  
CAPITAL  
CORPORATION

**P**atriot Capital is the industry leader for equipment financing. We specialize in delivering fast and affordable business equipment financing solutions for the convenience store and commercial petroleum industry and have been since October of 2000.

Our partnership is designed to help EMA members and their dealer networks achieve EMV compliance to avoid chargebacks and fines. This also gives EMA members the opportunity to improve their sites thus increasing foot traffic and sales.

The EMA partnership ensures that capital is available, competitively priced, and easy to access for EMA marketers and their dealers.

Additionally, with **any equipment upgrades that are financed through Patriot Capital for EMA members or their dealers, a donation will be made by Patriot Capital to EMA and the member's respective state association.**



## THE TYPES OF EQUIPMENT YOU CAN FINANCE THROUGH PATRIOT CAPITAL:

- EMV upgrades
- POS systems, & card lock systems, card readers
- Canopies
- LED lighting: canopy and in-store
- Beer caves, racks, shelving
- Fuel hauling trucks and trailers
- Signage including imaging, and price signs
- UST's and AST's, piping, sub pumps
- EV charging stations
- Car washes
- Virtually any equipment inside the store

***To ensure your equipment upgrade yields a donation from Patriot Capital to EMA and your state association, please visit: [www.patriotcapitalcorp.com/ema](http://www.patriotcapitalcorp.com/ema)***

***To speak to a Patriot Capital representative please call 404-255-1770***



ENERGY  
MARKETERS  
OF AMERICA

EMA

MEMBER  
SERVICES

NATIONAL  
FLEXIBLE  
AFFORDABLE



The Spirit® Brand is a national gas station and C-store identity designed to serve the needs of independent petroleum marketers that have access to unbranded fuel.

Spirit®'s sleek, modern, red-white-and-blue image can be used for new sites being built as well as for rebranding existing sites. The Spirit® Brand's design team, along with approved vendors, can supply you with the appropriate coatings, signs, and canopy graphics that best fit your site.

Highly affordable, Spirit® combines low branding costs with a wide array of optional business solutions that help keep expenses to a minimum.

Plus, minimal requirements and multiple supply options give licensees more flexibility to run their business their way.

Above all, Spirit® is an appealing National Brand that gives the customer confidence of receiving high-quality service, while fueling brand loyalty from coast to coast.

In short, Spirit® brand licensees enjoy the dedication and support of a team of professionals committed to helping them succeed. Plus, since Spirit® is owned by the Energy Marketers of America, all profits are shared among EMA's member state associations, further benefitting licensees.



## EMA | SPIRIT® HIGHLIGHTS

- **Low branding fees** and an experienced design team willing to work with existing infrastructure to reduce branding costs
- **A dedicated team of professionals** ready to go above and beyond to help licensees run their business their way
- An **appealing, professionally designed, patriotic image** that inspires customer loyalty
- Use **Spirit®'s Test-Drive** to show dealers what their station will look like rebranded with the Spirit® design
- **Full line of canopy and dispenser graphics, signs, and coatings**, with approved vendors that know how our brand image is put together
- **Brand recognition** with a growing network of dealers flying the Spirit® flag from coast to coast
- **Credit-card processing** with one of the most competitive rates in the industry
- A sharp, eye-catching C-Store Brand
- **Minimal requirements** to keep the licensee in the driver's seat
- **Developed by EMA!**

*Ground up or rebrand, Spirit®'s patriotic image is a nationwide success story for retail fuel and convenience store sites of every size. If you need an appealing, low-cost, professional-looking site, and have an existing or potential unbranded fuel supply, then the Spirit® Brand could be the perfect fit for you.*

To learn more, visit [spiritpetroleum.com](http://spiritpetroleum.com) or contact **Gerry Ramm at 509-203-7357** or [gramm@spiritpetroleum.com](mailto:gramm@spiritpetroleum.com)