

THE  
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**Beltway Buzz, June 21, 2019**

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Friday, June 21, 2019

**Board Rules on Union Access.**

Late last week, the National Labor Relations Board issued a decision involving the balancing of employees' statutory right to organize with employers' private property rights. In the case, the Board overruled previous decisions that required employers to permit nonemployee union organizers onto portions of their property open to the public—such as cafeterias and restaurants—as long as they weren't disruptive. The Board ruled that this standard went too far and that "an employer does not have a duty to allow the use of its facility by nonemployees for promotional or organizational activity." Thus, an employer may prohibit union activity by nonemployees in public spaces as long as the employer does not discriminate against nonemployee union officials by allowing other forms of solicitation on the premises. The decision likely forecasts where the Board may be heading in its review of a decision involving [access to employer email systems](#) for organizing purposes, as well as its proposed rule on union access.

**USCIS Update.**

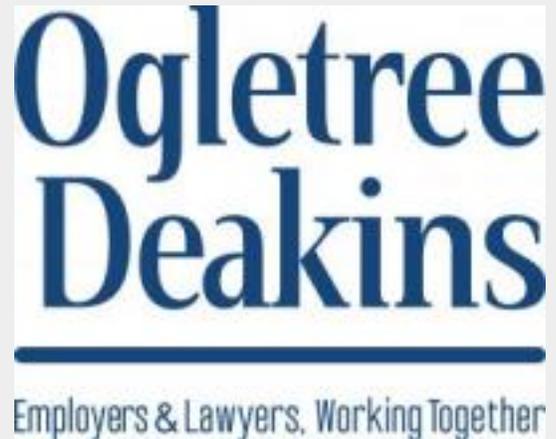
Federal lawmakers must be reading the *Buzz*, because at least some of them are echoing our recent discussions regarding Ken Cuccinelli's appointment as acting director of United States Citizenship and Immigration Services (USCIS) under the Federal Vacancies Reform Act of 1998 (FVRA). Indeed, earlier this week, the chairmen of the U.S. House Committee on Oversight and Reform, Committee on the Judiciary, and Committee on Homeland Security [sent a letter](#) to Acting Homeland Security Secretary Kevin McAleenan expressing their "deep concern" over Cuccinelli's appointment and whether it was done appropriately under the FVRA. The letter further demands a "detailed explanation of the legal basis for his appointment, as well as the documents . . . relating to his appointment." We'll be watching this situation closely, but suffice it to say, this letter and scrutiny from the oversight committees will continue to create further uncertainty for employers that deal with USCIS.

**HRAs Comin' Your Way.**

On June 13, 2019, the U.S. Department of Health and Human Services, Department of Labor, and Department of the Treasury issued a [final regulation](#) that will expand the use of health reimbursement arrangements (HRAs). Starting January 1, 2020, employers can use individual coverage HRAs to provide their workers with tax-preferred funds to pay for health insurance coverage purchased in the individual market.

**Diversity in the Boardroom.**

On June 20, 2019, the House Committee on Financial Services held a hearing entitled Diversity in the Boardroom: Examining Proposals to Increase the Diversity of America's Boards. Among the legislation considered was the [Improving Corporate Governance Through Diversity Act of 2019](#), which would require public companies to disclose the racial, gender, ethnic, and veteran composition of their boards of directors and executive officers. The bill would also require employers to disclose whether they have "adopted any policy, plan, or strategy to



Article By  
[James J. Plunkett](#)  
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)  
[Our Insights](#) [Labor & Employment](#)  
[Health Law & Managed Care](#)  
[Immigration](#)  
[All Federal](#)

promote racial, ethnic, and gender diversity” within its executive ranks. While neither the bill nor its Senate companion enjoys bipartisan support, they are both supported by the [U.S. Chamber of Commerce](#).

## **Vote Early, Vote Often.**

While this is a common trope referring to corruption at the ballot box, it is also an accurate—but positive—description of Senator Susan Collins’s (R-ME) time as senator. From the time she took office in 1997 until today, the senator from the Pine Tree State has not missed a single roll call vote. On June 18, 2019, Senator Collins cast her 7,000th consecutive roll call vote, having successfully navigated [plane travel, funerals, and even a broken ankle, to keep her streak alive](#). Collins trails only Senator Chuck Grassley (R-IA), whose active streak is currently at 8,446, and [Senator William Proxmire \(D-WI\)](#), who voted in 10,252 consecutive roll call votes between April 1966 and October 1988.

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