

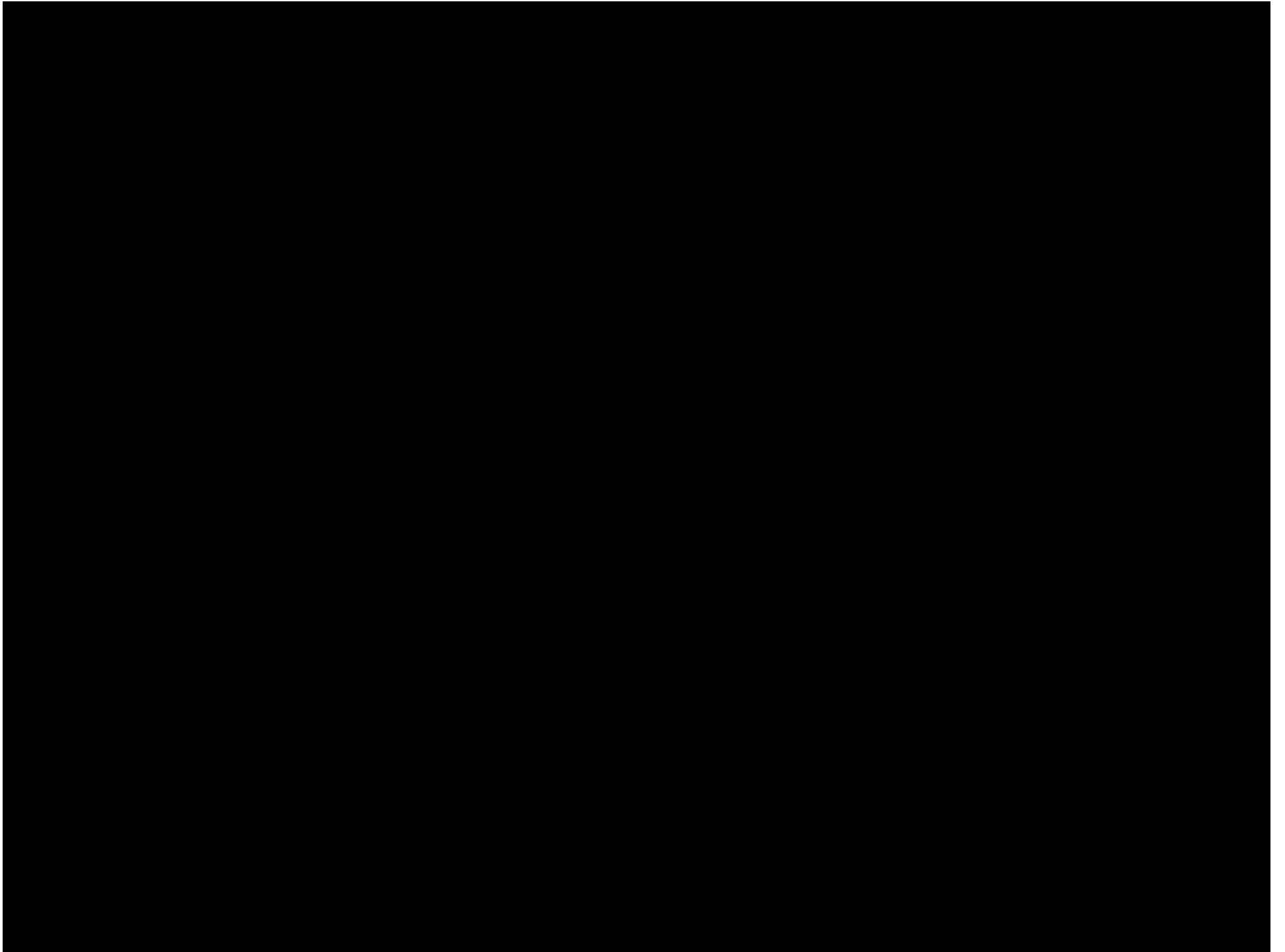
Corporate Governance Seminar

**How To Deal Successfully With Government And Affect
Public Policy In Today's Legal and Business
Environment**

Sponsored by:

**MEYER, SUOZZI,
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COUNSELORS AT LAW



Government Representation in Albany, NY

October 6, 2010

Meyer Suozzi English & Klein, P.C.

- Albany, NY
- Garden City, NY
- Melville, NY
- New York, NY
- Washington, DC

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HOW A BILL BECOMES LAW...



...NEW YORK STATE EDITION



INTRODUCTION



- When a member of the Senate or Assembly introduces a bill it is assigned a bill number.
- Each bill is referred to a Standing Committee with jurisdiction over the subject matter of the bill.

COMMITTEE PROCESS



- Each Standing Committee is comprised of members of each political party with interest or expertise in the subject matter of the Committee.
- Committees meet on a regular basis to discuss and vote on bills. The Committee will vote to send the bill to the floor for a vote, amend the bill, or reject the bill.

TO THE FLOOR!



- Once a bill is reported out of committee it is sent to be placed on the calendar.
- A bill must “age” for 3 days before it can be voted on.
- The Governor may send a “Message of Necessity” that each chamber may accept if the bill needs to be voted on without waiting 3 days.
- Each Chamber must pass the same version of a bill in order for the bill to be sent to the Governor and potentially become a law.

DECISION BY THE GOVERNOR



- The Governor has 10 days (not including Sundays) to sign or veto a bill that has been delivered. If no action is taken in 10 days the bill automatically becomes law.
- A signed bill becomes law and receives a chapter number.
- A vetoed bill is returned to the house that first passed it. It may become law if 2/3rds of each house vote to override the veto.

NEW SENATE RULES



- Openness: recording of committee meetings, hearings, and session with live webcast, posting of agendas and votes on website.
- 8 year term limits for leaders.
- Motion for Committee Consideration: once bill referred to committee can make motion and bill must be considered within 45 days.
- Petition for consideration: 38 signatures of Senators gets bill to floor for vote.

WHEN IS SESSION?



- Legislative Session is scheduled January through June. Session will continue as long as needed. The number of days a week that session is held will depend on the time of year.
- A special session may be called during the Fall to address budget concerns or legislation that cannot wait until January.
- Tuesday is lobby day.

NEW YORK STATE BUDGET



- New York State's fiscal year begins April 1.
- Deadline for legislature to pass budget is midnight March 31...it is infrequently met.
- Planning for the budget begins in the Fall with fiscal forecasts.

NEW YORK STATE BUDGET



- Governor's Proposed Budget submitted mid-January.
- Legislative review and hearings take place.
- During March and until the budget is passed the focus is on the budget (negotiations, hearings, etc.) and few other bills receive consideration.

NEW YORK STATE LOBBYING ACT



- Regulates lobbying in New York State.
- Requires registration of lobbyists, bimonthly lobby reporting by lobbyists, and semi-annual reports by clients.
- Defines powers of Commission on Public Integrity.

WHAT IS A LOBBYIST?



- A lobbyist is anyone who is “employed or designated” by a client to “attempt to influence” the:
 - Passage or defeat of any law in the legislature
 - Adoption, issuance, rescission, modification or terms of gubernatorial executive order
 - Adoption or rejections of any rule or regulation having the force & effect of law by a state agency
 - Outcome of any rate making proceeding by a state agency
 - Any determination by a public official related to government procurement

PROCUREMENT LOBBYING



The term “**governmental procurement**” shall mean:

- (i) the preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract,
- (ii) solicitation for a procurement contract,
- (iii) evaluation of a procurement contract,
- (iv) award, approval, denial or disapproval of a procurement contract, or
- (v) approval or denial of an assignment, amendment...renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer

RESTRICTED PERIOD

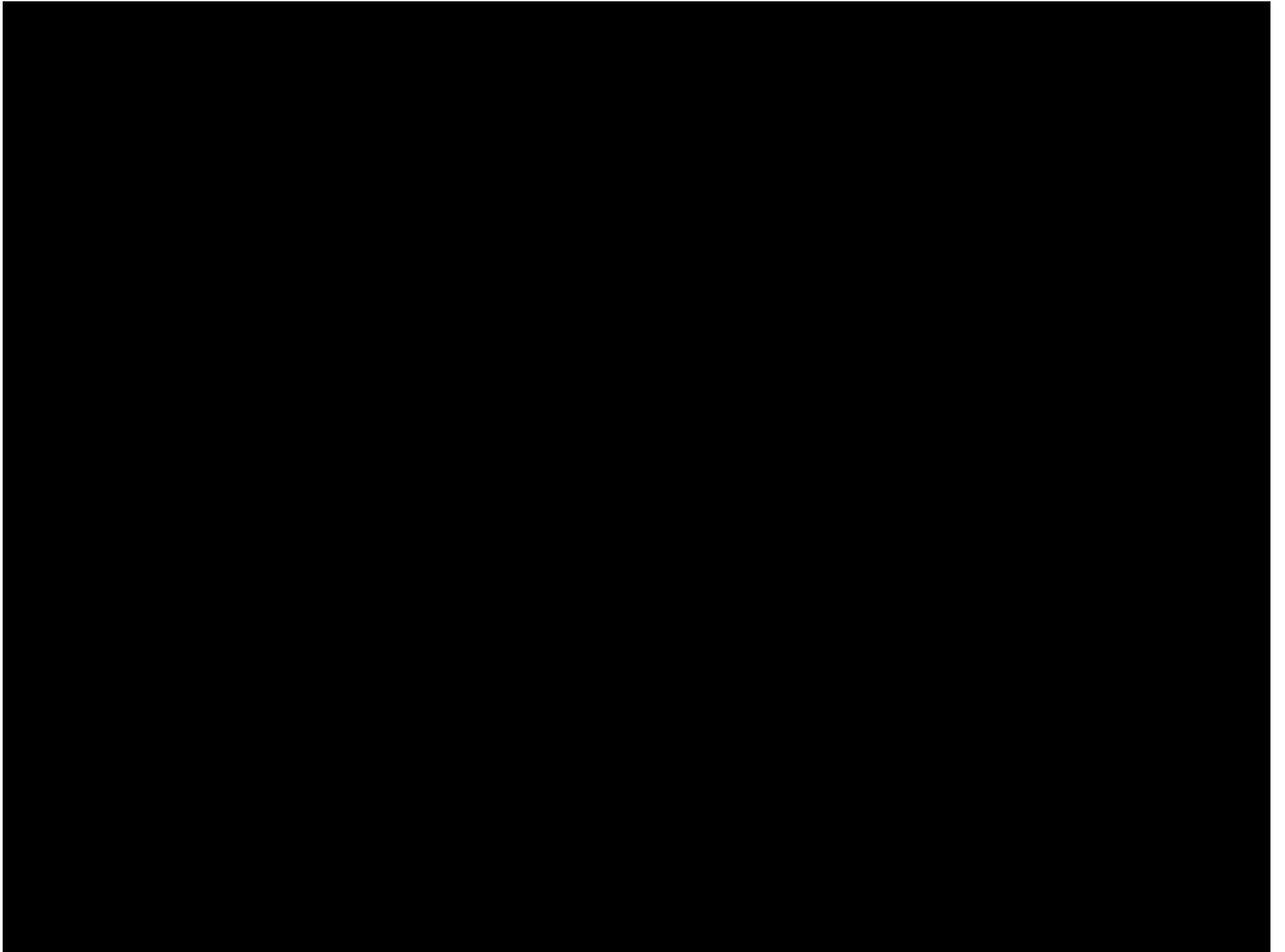


- From the initial request for an offer to the approval by the state entity.
- During this period you may ONLY contact the person designated by the request.
- You may NOT contact:
 - Anyone else in the requesting state entity
 - Anyone in any other state entity
- Exceptions: complaints regarding improper conduct, contact with member of legislature.
- See Legislative Law, Art. 1-A Section 1-n.

GIFT BAN



- Gifts to public officials or employees are prohibited.
- A gift is “anything of more than nominal value. “Nominal value” is not defined.
- The Commission on Public Integrity has punished organizations holding legislative receptions & breakfasts under this ban.



Government Representation in Washington, DC

THE U. S. CONGRESS & FEDERAL ADMINISTRATION

October 6, 2010

Meyer Suozzi English & Klein, P.C.

- Albany, NY
- Garden City, NY
- Melville, NY
- New York, NY
- Washington, DC

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TO DISCUSS:



- I. ACCOMPLISHING GOALS IN
WASHINGTON, DC – CONSIDERATIONS

- II. CITIZENS UNITED V. FEDERAL ELECTION
COMMISSION, UNITED STATES SUPREME COURT
(1.21.2010)

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

- 
- A. Defining with precision the outcome sought
 - B. Hire lobbyists who have experience with the issues and, of particular importance, who have relations with key legislators and members of Administration

- Role of Lobbyist:
 - Understanding of the process
 - Help client define goals in context of the Federal Legislative and Administration processes
 - Identify key decision makers and others who will influence decision process
 - Bring his/her personal relationships to bear

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

C. Which branch will be involved?

- **Congress and Administration** is complex, often overlapping, and influence each other
- ❖ **Administration:**
 - *Which Departments and Agencies?*
 - The White House:
 - » Office of Domestic Policy
 - » Office of Health Care Policy
 - » Economic Policy Council

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

C. Which branch will be involved? *(cont'd.)*

❖ **Congress:**

- 100 Senators
- 435 Members of Congress

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

C. Which branch will be involved? *(cont'd.)*

❖ Congress:

➤ Which Committees have jurisdiction of client's issue:

- » 15 Standing Committees Senate, not including Budget, Rules, Ethics, Intelligence, Appropriations
- » 16 Standing Committees of House, not including Budget, Administration, Rules, Official Conduct, Intelligence, Appropriations
- » Most Committees have several Subcommittees each with Chair and Ranking Member
- » Senate and House Appropriations Committees:
 - 12 Subcommittees each and each with Chair and Ranking Member


I. ACCOMPLISHING GOALS IN WASHINGTON, DC

C. Which branch will be involved? *(cont'd.)*

❖ **Appropriations process:**

- Earmarks
 - » Champion critical to success
 - » Goal to get into Member's top 4 or 5 priorities
- Expect to require more than one year to accomplish goals
- Remind client that he/she/it is not first in line
- Currently earmarks are the subject of much criticism and under very close scrutiny
- But the new Republican Pledge for America does not refer to banning earmarks

I. ACCOMPLISHING GOALS IN WASHINGTON, DC



D. Define key decision makers and others who will be influential regarding the client's issue:

- Congressional Committee Chairs and Ranking Members
- Other relevant Members and staff
- Key Administration officials and staff

E. Identify and develop one or more Congressional champions

F. Assess history of the issue at the federal level

G. Bipartisan if at all possible

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

H. Try to avoid subjecting issue to filibuster which needs 60 votes to cut off by way of cloture motion

- The huge health care bill was only passed by use of reconciliation which requires only 51 votes
 - But reconciliation is highly technical and not applicable to every situation

I. Assess client's political and other assets:

- Previous contacts with Congress & Administration in the context of goals to be achieved

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

I. Assess client's political and other assets: *(cont'd.)*

- Potential assets:
 - » Board members
 - » Employees
 - » Others in the same sector
 - » All politics is local. Thus the importance of identifying and mobilizing local officials, fundraisers, local groups, and others who have relations with key decision makers in Washington and who support the client's goals
- Political contributions:
 - » Current program
 - » If none, should one be established?
 - » Contribution limits and requirements to register and file periodic reports with Federal Election Commission

I. ACCOMPLISHING GOALS IN WASHINGTON, DC


J. Go it alone, or join, or form a coalition:

- Form or join a coalition composed of others in the industry or sector even though they may be competitors on other issues

K. Where possible get client aligned with prevailing attitudes of Congressional majority and Administration:

- Examples of Health Care Reform
 - » PhRMA
 - » Doctors


I. ACCOMPLISHING GOALS IN WASHINGTON, DC



L. Prepare plain English materials explaining the details of what is sought:

- Of critical importance is full understanding of client's issue and how it intersects with:
 - » Current law and policy
 - » Needs and imperatives of key decision makers
- Congressional committee staffs are very expert and play critical roles

I. ACCOMPLISHING GOALS IN WASHINGTON, DC



L. Prepare plain English materials explaining the details of what is sought: *(cont'd.)*

- Congressional staffs key to decision making process of Member
 - » Nice to meet with the Member, but more often than not, it will be staff recommendation that will carry the day with Member

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

L. Prepare plain English materials explaining the details of what is sought: *(cont'd.)*


- Assume you will get only one shot at Member/staff:
 - » Thus be prepared to make your case understandable and persuasive
 - » Avoid jargon - *Senator Conrad*
 - » Don't begin in the middle of the story, as most clients do
 - » Don't assume the Member/Staff know much, if anything, about your issue
 - » They are very hard pressed for time

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

- M. Understand how client's issues impact each relevant key Member of Congress
- N. Client's issues can become hostage to bigger issues

- **Example: Senate tax extenders bill**
 - » Attempt to get a completely non-controversial, budget neutral amendment to the health reform legislation needed to be made before the beginning of the fiscal year 1 October 2010 – amendment X

I. ACCOMPLISHING GOALS IN WASHINGTON, DC



N. Client's issues can become hostage to bigger issues *(cont'd.)*

- House adopted amendment X in its version of the tax extenders bill
- Senate Democratic leaders agree amendment X should be made
- Proposed amendment X included in Senate version of tax extenders bill
- Administration agrees amendment X should be made

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

N. Client's issues can become hostage to bigger issues *(cont'd.)*

- Unity within the affected sector for amendment X
- Key Republican Senate leaders agree not object if amendment X is made by hot lining a stand alone bill – in effect unanimous consent likely could be had
- But key member in both Senate and House want to build as broad support as possible for passage of Senate tax extenders bill and thus are against pulling amendment X out of tax extenders bill


O. Site visits by Members & Administration officials

I. ACCOMPLISHING GOALS IN WASHINGTON, DC

P. Grass roots/grass tops activities:

- All politics is local
- Lyndon Johnson: *“In order to be a statesman, you need to be elected.”*
- Meet with and educate editors and reporters of local media
- Seek editorials and letters to editor
- Identify and mobilize local influencers such as local public officials and contributors, business, civic, religious and other leaders
- Phone calls
- Mail


II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

- 
- A. In January 2010, in a 5 to 4 decision, the US Supreme Court ruled that the limits imposed by federal law on corporate participation in federal elections violated the First Amendment and held that corporations may use corporate treasury funds


The “non-activist” Court struck down federal law enacted over 100 years ago banning use of corporate treasury funds for political purposes

- Expressly advocate the election or defeat of a federal candidate, as long as the communication is made independent of the candidate’s campaign
- Make such communications within 30 days of a primary election and 60 days of a general election

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

- 
- B. At issue was whether Citizens United, a non-profit corporation, could use its treasury monies to promote a 90 minute film highly critical of then presidential candidate Hillary Clinton and run ads based on the film during the 30-day period preceding the 2008 presidential primaries

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)



C. Concerned that showing or otherwise using the film might be prohibited by federal law, Citizens United brought an action in the US District Court for the District of Columbia seeking declaratory and injunctive relief against the Federal Election Commission


- The District Court denied Citizens United motion for a preliminary injunction and then granted the FEC's motion for summary judgment
- Citizens United appealed

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

D. Prior to this decision corporations (and unions) could not use treasury funds to:

- Expressly advocate the election or defeat of a federal candidate at any time
 - » These kinds of communications are called express advocacy communications
- Conduct electioneering communication within 30 days of a primary election or within 60 days of a general election


II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)



D. Prior to this decision corporations (and unions) could not use treasury funds to: *(cont'd.)*

- » Electioneering communications, often called “issue ads or issue communications” referred to a federal candidate, but do not expressly advocate the election or defeat of the candidate
- » The 2002 McCain-Feingold law banned the broadcast, cable or satellite transmission of “electioneering communications” paid for by corporations or labor unions from their general (treasury) funds during the 30 days before a federal primary and during the 60 days before a general election involving federal candidates

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)



E. The decision applies to for-profit corporations as well

- The decision will not extend to foreign corporations or other foreign entities

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

F. Although unions were not mentioned, the decision will apply to them as well

G. The Court did not disturb other limits and requirements of the current law such as:


- Ban on direct corporate and union contributions, using treasury monies, to candidates and political committees
 - Corporate and union political action committees (PACs) may contribute directly to candidates

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

G. The Court did not disturb other limits and requirements of the current law such as: *(cont'd.)*

- Corporate and union expenditures coordinated with a candidate or political committee will still be treated as in-kind contributions and, therefore, prohibited
- Disclaimer and disclosure requirements will apply to incorporated entities for electioneering communication and independent expenditures

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)



H. The Citizens United decision gives corporate interests and their lobbyists a powerful weapon by now being able to run ads and other communications against a Member of Congress if he/she does not vote as the corporation wishes

- According to Ben Ginsburg, a prominent Republican campaign lawyer:
 - » The Citizens United decision “will put on steroids the trend that outside groups are increasingly dominating campaigns...Candidates lose control of their message. Some of these guys lose control of their whole personalities...Parties will sort of shrink in the relative importance of things,...and outside groups will take over more of the functions – advertising support, get out the vote – that parties do now.” The New York Times, 1.22.2010.

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

I. Senator Schumer (D-NY) and Congressman Van Hollen (D-MD) legislative proposal:

- On 4.29.10 they released a legislative proposal in response to the Citizens United case
- Called “Democracy Is Strengthened By Casting Light On Spending In Elections” Act or The DISCLOSE Act, the proposal will prohibit government contractors, and certain other corporations which benefit from government resources, from making campaign related expenditures, including independent expenditures and electioneering communications
- It also includes strict disclosure requirements
 - *See attached Memorandum from Lyn Utrecht, et al, to Interested Parties, dated 4.29.10, re Legislation in Response to Citizens United Decision.*

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

I. Senator Schumer (D-NY) and Congressman Van Hollen (D-MD) legislative proposal *(cont'd)*:

- The Schumer/Van Hollen proposal failed to pass congress this session
- The Citizens United decision already is altering the electoral landscape
- The Washington Post of 9 September 2010 reports that:
 - » “A new political weapon known as the ‘super PAC’ [officially known as ‘independent expenditure – only committees’] has emerged in recent weeks, allowing independent groups to both raise and spend money at a pace that threatens to eclipse the effort of political parties.”
 - There are no limits on the amount of money a super PAC may raise or spend.

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

I. Senator Schumer (D-NY) and Congressman Van Hollen (D-MD) legislative proposal *(cont'd)*:

- “The [super PAC] committees spent \$4 million [for TV ads] in the last week alone and are registering at the rate of nearly one per day.” Id.
- “[Non-party] [g]roups favoring GOP candidates have outspent Democrat supporters by more than 3 to 1....” Id.
- The New York Times of 9 September 2010 reports that “[o]utside groups supporting Republican candidates in House and Senate races across the country have been swamping their Democratic-leaning counterparts”

II. CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, UNITED STATES SUPREME COURT (1.21.2010)

I. Senator Schumer (D-NY) and Congressman Van Hollen (D-MD) legislative proposal *(cont'd)*:

- According to the Times,: “In senate races, Republican-leaning groups outspent Democratic-leaning ones on television \$10.9 million to \$1.3 million from Aug.1 to Sept. 8.....”
 - » In the House, Republican-leaning groups outspent Democratic-leanings one, \$3.1 million to \$1.5 million .” Id.
 - » TV spending by candidates the candidates themselves were fairly even during the period with Republicans in the Senate pouring out about \$19.6 million compared with \$17.3 million by Democrats....” Id.
- A 501c4 advocacy entity which receives contributions from corporate treasury funds does not have to disclose the source of contributions
 - » “American Crossroads [a Republican leaning super PAC] says it has raised about \$32 million divided evenly between its super PAC and nonprofit arms.” He Washington Post, 9.28.10

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Thank you



