



Government Relations: Election Year Considerations for In-House Counsel

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The Interregnum: Anticipated Legislative & Regulatory Action/Inaction

- “in·ter·reg·num”/ ,in(t)ər' regnəm/ noun, a period when normal government is suspended, especially between successive reigns or regimes; an interval or pause between two periods of office.
 - Experience tells us Congressional staff will move to administration and executive branch staff will leave government.
 - Congress will vote during the “lame duck” session.
- This presents opportunities as well as risks.
 - Uniquely divided government
 - Unknown what Trump’s supporters in Congress will do if he loses or wins.

Control Scenarios: What to Expect

- Congress & White House controlled by same party.
- Congress & White House controlled by opposite parties.
- One chamber of Congress & White House controlled same party.
 - House same party as White House / Senate Opposite
 - All spending bills originate in the House
 - Senate same party as White House / House Opposite.
 - Shutdown, impeachment, etc.
- Unknown how Congress would work should post-election violence erupt.





Control Scenarios: What to Expect (Cont'd.)

- Trump: increase in tariffs, leading U.S. dollar to dollar bull market.
 - 2016 post election US equity market rallied, anticipating lower taxes and higher earnings.
 - Investors usually see “unified government” and anticipate clear policies.
 - Corporate tax cut currently promised could send up prices on S&P 500.
 - Intent to replace Fed Chair Powell - steepening of U.S. yield curve.
- Avid use of Congressional Review Act

Control Scenarios: What to Expect (Cont'd.)

- Biden: Focus on increasing participation in workforce and affording cost of living and locking in environmental reforms/actions from first term.
 - Paid leave and lowering housing cost;
 - Conflict with Congress which will be debating revenue and spending;
 - Trump tax cuts expire at the end of 2025;
 - Climate and conservation.



Agency Updates: DoD & Homeland

- Cyber & Artificial Intelligence.
 - Particular attention on Chinese attacks on critical infrastructure.
 - DHS/CISA becoming more aggressive in cyber regulation.
 - Businesses need to accept cybersecurity as an ordinary cost of doing business.
- Recruitment & Retention.
- Transition to the unmanned.
- Maintaining Industrial Base.
- Hypersonics.



Agency Updates: Energy & EPA

- Biden: lock in major climate and conservation actions that may be challenged by SCOTUS
- Trump: reverse Biden's environmental regulations.
- Policy differences are as, if not more, pronounced in energy / environment area than any other issue area.
 - greenhouse gas emissions from power sector
 - cars and trucks and from oil and gas production
 - Inflation Reduction Act — record clean energy investments.
- Regulated industries like utilities would have to adapt to reversals.

Big Ticket Issues and Events

- Energy: 2022 Inflation Reduction Act, (“IRA”)
 - IRA’s tax credits for clean energy could change valuations for renewables;
 - Wind and solar farms, electric vehicles and carbon capture initiatives;
 - Tens of billions for loans, grants related to emissions reductions and climate resiliency.
- Defense/Homeland: Costs of replenishing stocks and hardening defenses, including cyber...Issues of Ukraine and Gaza remain
- Farm Bill
 - Some progress this year, though passage elusive in 2024.
 - Republicans would focus on conservation/SNAP.

Political Activity On Rise In Election Year

- Proliferation of political advertisements and news coverage stokes political participation.
 - Solicitations more frequent.
- Text and other technology used to solicit add to sense of urgency and ease of contributing.
- “Meet the Candidate” events - ‘equal opportunity’ basis to each candidate.
- Nominating/Political Conventions – Officials running for reelection also have gift limits.

Election Year Compliance Concerns

- Corporate Prohibition: Federal and many state laws prohibit corporate contributions to candidates.
 - Contributions generally include anything of value like a third party paying for communications that support or oppose candidates or political parties.
- “Coordinated” communications are made, “in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or their agents or a political party committee or its agents.



Election Year Compliance Concerns (Cont'd)

- “Electioneering” communications are broadcast, cable or satellite communications (paid for by someone other than the federal candidate), that refer to a clearly identified federal candidate and are targeted to their electorate; and they are prohibited if they air within 30 days of the candidate’s primary election or 60 days of their general.
 - This prohibition is effective even if the ad is devoid of any discussion of the election and is not intended to influence voters’ views of the candidate.

Election Year Compliance Concerns (Cont'd)

- Pay to Play Laws
 - Varies By State – 30+ laws/rules across more than 25 States
 - Effectively Bans/Limits political contributions
 - Disclosure requirements
- Importance of Pre-Clearing – **PENALTIES!**
 - Contract Voided/Bid Disqualified



Conclusion: What To Tell The Boss!

- Control of the House, Senate or White House may take several weeks or months to determine.
 - Real crisis will more likely come from civil unrest.
 - Foreign Interests/extremists will use demonstrations as an opportunity for violence and destruction - stoke discord among many in our country.
- Other than government buildings, the most frequent targets are commercial stores and other corporate offices.



Conclusion: What To Tell The Boss! (Cont'd.)

- Support civil rights of your employees, including the right to vote.
 - Encourage voting in a non-partisan way (GOTV).
 - Protect your organization from prohibited use of its resources in connection with any campaign or political party.
- Apply lessons learned from crises we have endured
 - Pandemic; January 6th.
- Policies and procedures should protect our employees and business.

Conclusion: What To Tell The Boss! (Cont'd.)

- Dust off your crisis management procedures to make sure they apply to the scenarios discussed.
- Create or update your crisis management plan for election day and the lead up and aftermath.
 - Example: Contractor in middle of negotiating an extension/modification might push to get it signed before election to avoid delays that are inevitable in transition.
- Make sure you have the right outside help in place.

Thank You!



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