



U.S. CHAMBER OF COMMERCE

U.S. Chamber Policy Accomplishments for 2010

ANTITRUST

FTC Authority

- Prevented the inclusion of provisions in the Financial Regulatory Reform bill that would have dramatically expanded the power of the Federal Trade Commission (FTC) over the business community. These provisions would have increased the FTC's antitrust and consumer protection enforcement authority and the liability for companies.

U.S. Horizontal Merger Guidelines

- Successfully advocated for a number of modifications important to the business community with respect to the manner in which the Department of Justice and the FTC review mergers.

CAMPAIGN FINANCE, ELECTIONS, & GRASSROOTS ADVOCACY

DISCLOSE Act

- Successfully opposed the campaign finance bill filed by Sen. Schumer, which would have dramatically restricted free speech protections embodied in the First Amendment, particularly those of the business community to participate in the political process.

Elections

- Launched the largest voter education effort in the Chamber's nearly 100-year history to ensure that voters were informed of candidates' positions on issues important to the business community. 236 of 276 Chamber-endorsed candidates won election, an 86% success rate.

Grassroots

- *Friends of the U.S. Chamber* and the *U.S. Chamber Small Business Nation* serve as online forums to reach both business members and business-minded individuals across the country for support on key issues. Through advanced technologies and a database of 5.5 million contacts, both networks play a key role in the U.S. Chamber's political and legislative efforts. In the 111th Congress, constituents sent more than 2 million letters to Capitol Hill advocating for pro-business legislation.

CAPITAL MARKETS, CORPORATE GOVERNANCE, AND SECURITIES REGULATION

Dodd-Frank Wall Street Reform and Consumer Protection Act

Consumer Financial Protection Bureau (CFPB)

- Secured an amendment in Title V to exempt certain small businesses from the jurisdiction of the CFPB.
- Helped secure language to provide limited federal preemption of state laws applicable to federally chartered financial institutions.
- Worked with Reps. Bachus and Biggert to send a letter to the inspectors general of Treasury and the Federal Reserve asking them to investigate the process of setting up the CFPB.

Systemic Risk and Resolution Authority

- Secured removal of the (\$50 billion-\$150 billion) pre-paid fund and narrowed the impact of systemic risk regulation and resolution authority on non-financial companies that had nothing to do with the financial crisis.

Angel Investing

- Successfully opposed an effort that would have given state regulators authority to regulate angel investing, critical to business start-ups.

National Financial Markets

- Successfully supported an amendment to preserve the Federal Reserve authority over smaller banks, while successfully opposed another amendment that would have created state-based regulation of credit card rates.

Derivatives

- Secured the framework for an exemption from mandatory clearing and exchange trading for end users of derivatives.
- Successfully advocated for a letter from Sens. Lincoln and Dodd to Chairmen Frank and Peterson to provide clarification of legislative intent with regard to the margin and capital sections of Title VII of the Dodd-Frank Act. The letter clarified that it is not Congress' intent for the implementing regulatory agencies to impose a margin requirement on end users.

Corporate Governance and Executive Compensation

- Successfully secured provisions lengthening the consideration of say-on-pay advisory votes from an annual vote up to once every three years. Fought to provide the SEC with the authority to exempt small and midsize companies from potential proxy access rules.
- Successfully narrowed the scope of provisions to prevent financial regulators from regulating certain forms of compensation for all employees throughout the financial services sector.

Shareholder Access Rule

- Delayed the implementation of proxy access rules for an entire proxy season due to the Chamber's pending lawsuit filed against the SEC. Final ruling is expected in spring 2011.

Levin Bill S. 569/Disclosure of all Beneficial Owners of Non-Public Companies

- Blocked a mark-up of the Levin bill that would have created overly broad and burdensome reporting requirements preventing investments in small companies. Worked with Sens. Carper and Ensign to develop a compromise that gives law enforcement tools to combat money laundering without being burdensome on small businesses.

FAS 5/Loss Contingencies Accounting Standard

- Secured a vote by the Financial Accounting Standards Board (FASB) to delay the issuance of final rules implementing proposed changes to FAS 5.

Executive Compensation

- Successfully fought legislation, including the Webb-Boxer Amendments, to abrogate contracts and tax bonuses of employees of all TARP firms.

Shareholder Bill of Rights

- Secured a delay on the vote of the Shareholder Bill of Rights, a bill that seeks to mandate several corporate governance requirements, including proxy access, say-on-pay, majority voting, separation of chairman and CEO, and non-staggered boards. Prevented mandated leadership structures and risk committees of the Shareholder Bill of Rights from being included in the Dodd-Frank bill.

EDUCATION AND WORKFORCE DEVELOPMENT

America COMPETES Act

- Secured enactment of legislation that would provide additional support to recruit and train K-12 math and science teachers. The bill also increases support for STEM (science, technology, engineering, and math) students at the postsecondary level.

Higher Education Act

- Delayed inclusion of highly restrictive and negative rules in proposed regulations applicable to "gainful employment" and the conditions under which those private sector programs remain eligible for Title IV, Higher Education Act funds.

ENERGY AND THE ENVIRONMENT

Air Quality Regulation

- Persuaded EPA to redraft and postpone issuance of its Boiler MACT rule governing industrial boiler emissions of hazardous air pollutants. EPA admitted the draft rule was “simply too tight to be able to be achievable.”
- Persuaded EPA to postpone issuance of, and potentially redraft, its reconsideration of National Ambient Air Quality Standards for Ground-Level Ozone.

Chemical Regulation

- Prevented legislation that would have massively burdened industry and consumers and impaired innovation, without materially improving consumer safety.
- Worked to stop EPA from improperly expanding Toxic Substances Control Act (TSCA) inventory requirements.

Coal Combustion Products

- Led industry effort to stop EPA from changing two decades of policy and improperly designating coal combustion products a hazardous waste.

Energy Deployment

- Successfully persuaded the Department of the Interior to approve the Cape Wind energy project, the nation’s first offshore wind farm.
- Prevented the imposition of punitive taxes on oil and gas production, which, if passed, could have made it economically nonviable for firms to lease or explore for energy resources.
- Convinced the Department of Energy to make much-needed updates to the list of categorical exclusions it uses for National Environmental Policy Act compliance.

Greenhouse Gas Regulation

- Persuaded EPA to radically change its proposed “tailoring rule” for using the Clean Air Act to regulate greenhouse gas emissions, protecting millions of small businesses from being ensnared in the act’s permitting program over the next six years.
- Persuaded EPA to alter its interpretation of the Johnson Memorandum that provided EPA’s understanding of when greenhouse gases become subject to regulation under the Clean Air Act. The Chamber argued that, for purposes of the automobile tailpipe greenhouse gas (GHG) rule, the date of regulation was the date the regulations imposed a duty on the regulated entity--in the case of the automakers, January 2, 2011, the first day of model year 2012.

Gulf Energy Exploration Moratorium

- Successfully urged the U.S. Court of Appeals for the Fifth Circuit to uphold a federal judge’s decision to halt the six-month moratorium on offshore exploration in the Gulf of Mexico. The Chamber assembled a coalition of roughly 29 Gulf Coast chambers of commerce and industry groups to join in its brief and generated more than 3,000 letters urging the administration to lift the moratorium.

Oil Spill Legislation

- Persuaded the Senate not to move forward with prescriptive legislation before the causes of the Gulf of Mexico well blowout and any associated failures that led to the catastrophe have been conclusively determined.

Rare Earth Element Crisis

- Persuaded the Department of Energy to consider how to use its loan guarantee program to promote the development of a domestic rare earth metals and oxides value chain. Rare earths are critical components of products associated with the clean energy, defense, transportation, communications, fuels, and other sectors of the economy. Presently, the United States is almost completely dependent on China for these critically needed mineral resources.

HEALTH CARE

Regulatory Achievements

- **Adult Child Clarification**
The Chamber filed comments in response to the Interim Final Rule implementing the requirement that plans offering dependent coverage must continue to offer such coverage to adult children up to age 26 years. Subsequently, the departments issued sub-regulatory guidance revising the definition of adult children to whom this coverage must be offered. This sub-regulatory clarification reflects changes that the Chamber pressed for in its comment letter.
- **Grandfathered Plan Status Clarification**
The Chamber filed comments in response to the Interim Final Rule implementing the Grandfathered Plan provision which stipulated changes that would cause a plan to lose grandfathered plan status. Subsequently, the departments issued an Amended Interim Final Rule adopting the Chamber's recommendations that fully insured plans be permitted to change carriers without losing grandfathered plan status.
- **Rescissions**
The Chamber filed comments in response to the Interim Final Rule implementing the Prohibition of Pre-existing Condition Exclusions, of Annual and Lifetime Limits, of Rescissions, and Requirement of Patient Protections. These comments highlighted the difficulty employers may have due to systems constraints and notification difficulties. Sub-regulatory guidance issued by the departments incorporated the comments and acknowledged that, in some instances, retroactive elimination of coverage due to a delay in administrative record keeping is not a rescission.
- **Internal Claims and Appeals and External Review**
The Chamber filed comments in response to the Interim Final Rule implementing the Internal Claims and Appeals and External Review Process requirements. These comments articulated concern that the Chamber voiced with the promulgating

departments as to the impossible compliance timeline. Subsequently, sub-regulatory guidance was issued announcing an enforcement grace period for compliance with certain new provisions.

- **Annual and Lifetime Limits and Medical Loss Ratio (MLR)**

The Chamber submitted two comment letters in response to two different rulemaking notices on these issues. One comment letter was submitted in response to Interim Final Rule implementing Annual and Lifetime Limit Prohibitions. Another comment letter was submitted in response to Request for Information on Medical Loss Ratio.

The Chamber met with the regulatory agencies promulgating rules on these provisions to discuss the significant disruption that would result if these insurance requirements were applied to limited benefit (mini-med) plans. As a result, the Department of Health and Human Services' Office of Consumer Information and Insurance Oversight established a waiver process to exempt plans with low annual limits from the requirement, when the imposition of the restricted annual limits would cause a plan's premiums to significantly increase or cause a significant decrease in access to benefits. The interim final regulations implementing the MLR requirements applied a numerical adjustment to the MLR calculation for those plans to address the unusual expense and premium structures of limited benefit plans so that the plans can more easily pass the MLR percentage test.

Health Care Reform

- Chamber advocacy was critical in eliminating some of the worst pieces of the legislation, including the government-run public option, a massive Medicare expansion, a mandate that would have penalized employers by up to 8% of their payrolls, a proposal to re-import price-controlled drugs from Canada, and a tax on self-insured health plans.
- Was instrumental in modifying a number of provisions to make them more favorable, including cutting the medical device tax in half, exempting some small businesses from an employer mandate, improving the Cadillac tax exemption, decreasing the Medicaid expansion, slightly improving the small business tax credit, and allowing employers to impose eligibility waiting periods of 90 days (rather than 30 days) before offering employees health insurance.
- Some positive provisions were included at the urging of the Chamber, including expanding the ability of employers to vary health insurance premiums based on participation in wellness programs, implementing data aggregation to help with quality programs, allowing limited purchasing of health insurance across state lines, and creating a concept of "national plans" available nationwide.

Biologics

- The Patient Protection and Affordable Care Act (PPACA) established a pathway for the Food and Drug Administration's (FDA's) approval of biosimilar products that balanced the rights of innovator companies and generic manufacturers.

Comparative Effectiveness

- The PPACA established the Patient Centered Outcomes Research Institute to conduct research on the most effective and cost-effective treatments. However, the institute and the Department of Health and Human Services are prohibited from mandating coverage or reimbursement policies based on the research.

Limited Benefit Plans

- Chamber advocacy with the regulatory agencies resulted in a limited allowance for the continuation of limited benefit (mini-med) plans that the PPACA could have been interpreted to outlaw.

IMMIGRATION AND TRAVEL

Travel Promotion Act

- Successfully passed the Travel Promotion Act (TPA), which will help increase overseas travel to the United States by creating a public-private Corporation for Travel Promotion. According to the U.S. Travel Association, TPA will create 40,000 U.S. jobs. According to the Congressional Budget Office, TPA will cut the federal deficit by \$425 million over 10 years.

Funding for 9/11 First Responders

- Chamber advocacy was integral in ensuring that the immigration fees used to offset the cost of health care for 9/11 first responders was of minimal impact on the business community. Successfully advocated for eliminating the use of the \$10 per visa waiver entrant mandated by TPA for these health care costs. TPA established that each visa waiver visitor to the United States using the Electronic System for Travel Authorization (ESTA) pay a \$10 fee to go toward facilitating the travel and tourism industry. Also advocated for eliminating the proposed seven-year expansion of fee increases on H-1B and L-1 visas as a pay-for. The final bill included only a one-year extension of these additional filing fees.

Technology Transfer Certification for Visa Processing

- Advocated successfully for a delay in the new technology transfer certification that had been added to the nonimmigrant visa petition form. U.S. Citizenship and Immigration Services (USCIS) had failed to provide any meaningful instructions on how to complete the certification, and the Department of Commerce had not yet prepared an employer FAQ on the subject, so the Chamber filed a request asking for a temporary delay in implementing the certification requirement, during which time, hopefully, USCIS and Commerce will issue guidance. USCIS issued a 60-day delay in the technology transfer certification, easing the burden on employers who sponsor non-citizens for either H, L, or O classification.

INTELLECTUAL PROPERTY (IP)

Strengthen the protection and enforcement of IP rights in the United States and abroad.

- Coordinated and rallied support for the introduction of S. 3804, the Combating Online Infringement and Counterfeits Act.
- Worked with Congress to secure funding for programs and personnel authorized by the PRO-IP Act, including \$8 million for new FBI agents, \$2 million for Department of Justice (DOJ) prosecutorial activities, and \$20 million for state and local IP enforcement grants.
- Rallied support for enforcement of IP rights on the Internet against rogue sites, including securing the publication of a list of the worst illegal sites from the Congressional International Anti-Piracy Caucus and having the Intellectual Property Enforcement Coordinator (IPEC) request that the United States Trade Representative include a rogue sites list as part of the Special 301 process.
- Secured the inclusion of Chamber IP priorities in the IPEC's National IP Strategy.
- Successfully advocated for the creation of a DOJ task force on intellectual property.

Promote and defend the current system of IP rights and norms in the United States, key countries, and multilateral fora.

- Worked with Congress to pass H.R. 1208, a resolution celebrating World IP Day that emphasizes the benefits of IP to our economy and the importance of strong IP rights to American competitiveness. This resolution was coupled with the release of a major study highlighting the importance of IP to jobs and economic development.

INTERNATIONAL TRADE AND INVESTMENT

Australia and U.K.: Defense Trade Cooperation Treaties

- Secured ratification of the U.S.-Australia and U.S.-U.K. Defense Trade Cooperation Treaties. The treaties will streamline licensing procedures for defense technology projects undertaken by the U.S. government in concert with two vital allies, thus facilitating more efficient collaboration and the export of U.S. products.

Brazil

- **Retaliation Averted in WTO Cotton Case:** Led a successful advocacy push for a settlement to avert Brazilian retaliation for U.S. noncompliance with a WTO ruling relating to U.S. cotton subsidies. Advocacy spearheaded by the Chamber's Brazil-U.S. Business Council generated critical support for an agreement that preserves nearly \$1 billion in U.S. exports threatened by Brazilian retaliatory tariffs and possible seizure of U.S. intellectual property.
- **Tax Information Exchange Agreement (TIEA):** The council helped secure approval by the Brazilian House of Representatives of the U.S.-Brazil TIEA, a

precursor to a bilateral treaty to avoid double taxation of income. Brazil is the largest economy in the world with which the United States lacks such a treaty.

- **Transfer Pricing:** As a result of council advocacy, the Brazilian government agreed to modify its transfer pricing rules to move Brazil closer to international best practices, with final approval expected within months.
- **Electronic Customs Processing for Express Deliveries:** Reached a long-sought goal when the Brazilian tax and customs authority launched its first paperless customs processing system for express deliveries, which will facilitate imports and benefit numerous U.S. businesses that export to Brazil.
- **Visas:** Brazil's Congress approved a bill supported by the council that extends the term of business and tourist visas from 5 years to 10 years and eliminates most fees.

Canada-U.S. Procurement Agreement

- Advocated successfully for an agreement to open procurement opportunities on both sides of the U.S.-Canada border as a partial solution to the commercial disruption and lost jobs resulting from Buy American rules in the 2009 Recovery Act.

China

- **Indigenous Innovation and Discriminatory Government Procurement:** Led international and domestic campaigns, including authorship of letters and research reports on China's indigenous innovation policy, which prompted a delay in implementing and ultimately removing language barring foreign businesses from China's government procurement market and forcing them to develop IP within or transfer sensitive technologies to China to compete.
- **Revisions to Discriminatory Equipment Catalogue:** Led an advocacy effort that helped the U.S. government secure a commitment by China at a Joint Commission on Commerce and Trade (JCCT) meeting to revise a December 2009 equipment catalogue issued by the Ministry of Industry and Information Technology that contained discriminatory provisions relating to government procurement, export subsidies, and import substitution.
- **Patents and Standards:** Helped secure a JCCT commitment that China would take into account the appropriate balance among the interests of patentees, standard users, and the public when developing rules on patent issues.
- **Rare Earths:** Led an international campaign in the run-up to the November G-20 Leaders Meeting that raised awareness of China's protectionist policies regarding rare earths, significantly boosting pressure on China to resume exports of rare earths to the United States, Japan, and other markets.
- **China's Currency:** Led advocacy efforts to increase multilateral pressure on China at the G-20 Leaders Meeting to adopt a market-determined exchange rate and revalue its currency. Simultaneously led a successful advocacy effort in Congress to forestall counterproductive currency legislation.

Export Control Modernization

- Supported the administration's substantial progress in modernizing U.S. export controls to boost U.S. economic competitiveness and national security. Drawing on recommendations submitted by the Chamber and its partners on the Coalition for Security and Competitiveness, the administration has largely completed the task of creating a single export control list that distinguishes in tiers between the most sensitive items and technologies and everything else.

EU-U.S. High-Level Regulatory Cooperation Forum

- Successfully pushed the forum to take on the challenges associated with the different approaches accepted by the U.S. and EU standard-setting systems as well as discussions on the use of ex-post assessment in regulation. As a result of this work, the EU is interested in exploring a more open and internationally sensitive process with regard to standards in the information and communications technologies (ICT) sector.

International Antitrust Policy

- **Due Process in Antitrust:** Successfully led the International Chamber of Commerce to draft best practices. Also launched within the Organization for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC) a series of discussions and program of work that focused on due process-related best practices in antitrust investigations around the world.
- **China and India Antitrust Training:** Served in the pivotal private sector role of a private-public partnership to deliver antitrust training to China's and India's competition authorities on a variety of crucial topics of interest to the U.S. business community, including the interface between IP and antitrust.

Haiti: Haiti Economic Lift Program (HELP) Act

- Helped secure congressional approval of bipartisan legislation to provide a long-term extension of trade preferences for Haiti in the wake of its devastating earthquake.

India

- **Customs Valuation:** The Chamber's U.S.-India Business Council successfully lobbied the Indian Finance Ministry to change the customs code to reflect modern modes of delivery for media and entertainment products, affording greater predictability and eliminating disputes and delays at ports.
- **Nuclear Fuel Reprocessing:** The council successfully advocated for a U.S.-Indian agreement to allow reprocessing of spent nuclear fuel outside the United States — a vital precursor to full implementation of the U.S.-India Civil Nuclear 123 Agreement.
- **Encryption Policy:** The council successfully advocated for development of an Indian national encryption and lawful intercept policy that follows international best practices and balances the needs of India's law enforcement and intelligence agencies with private industry.
- **Telecommunications Infrastructure Security:** The council helped shape new Indian policies on telecommunications infrastructure to address India's security

challenges while following international best practices. As a result of these efforts, the Indian Ministry of Home Affairs asked the council to provide a detailed analysis of the vulnerabilities of India's telecommunications network and develop a comprehensive review of mitigation strategies.

- **Export Controls:** Urged by the council, the United States removed the remaining Indian space and defense entities from the U.S. Commerce Department entity list. The United States agreed to realign India in its dual-use export control regulations to reflect India's status as a strategic partner. Also agreed to support India's full membership in the four multilateral export control regimes.
- **Exports and Jobs:** The council helped facilitate deals worth more than \$14.9 billion announced during the visit of President Obama to India, supporting more than 50,000 U.S. jobs.

Indonesia

- **Restrictions on Foreign Films:** Joined an advocacy effort that resulted in Indonesia delaying for at least two years a decree that required foreign movies to be duplicated in Indonesia.
- **Cabotage Law:** Helped secure a five-month delay in implementing a cabotage law requiring ships carrying goods in and out of the country and oil and gas exploration rigs to bear the Indonesian flag.

Iran: Comprehensive Iran Sanctions, Accountability and Divestment Act

- Advocated successfully for changes to draft legislation threatening to impose sanctions on U.S. business transactions wholly unrelated to Iran. Chamber advocacy resulted in final legislation that averts such collateral damage and protects major exporters' access to U.S. Export-Import Bank finance and guarantees.

Korea-U.S. Free Trade Agreement (KORUS)

- Led the business community's advocacy for the U.S. government to resolve ongoing issues relating to U.S.-Korea trade, securing an administration commitment to send KORUS to Congress for approval in 2011, with statements of bipartisan support.

Miscellaneous Tariff Bill

- Helped secure congressional approval of the U.S. Manufacturing Enhancement Act, suspending tariffs for more than 600 imported inputs and other goods not produced or otherwise available domestically. The measure enhances the competitiveness of U.S. manufacturers and other businesses.

New Zealand and Malta Tax Treaties

- Successfully advocated for Senate ratification of a protocol amending the U.S. income tax treaty with New Zealand as well as a new tax convention with Malta.

Pakistan: Withdrawal of Excise Duty on Beverage Concentrate

- Helped secure the withdrawal of an excise duty on beverage concentrate in the recent budget submission — an important win for the beverage industry in Pakistan.

Russia: Agreement for Peaceful Nuclear Cooperation

- Helped ensure approval of the U.S.-Russia Agreement for Peaceful Nuclear Cooperation (123 Agreement), opening up new commercial opportunities in Russia's civilian nuclear energy sector.

Thailand: Lifted Ruling Against Investment

- Advocacy resulted in a Thai court lifting a ruling that had blocked existing investment projects in the Map Ta Phut industrial park, helping a U.S. company produce chemicals in the region that are too expensive to ship.

LABOR

- Blocked consideration of organized labor's top legislative priority, the Employee Free Choice Act (EFCA), as well as any EFCA alternatives.
- Blocked Senate confirmation of Craig Becker to become a member of the National Labor Relations Board (NLRB). While the Chamber does not typically oppose nominations to the NLRB, Becker's prolific writings about labor law strongly suggested that his views were outside the mainstream. Although he was later given a recess appointment to NLRB, which did not require Senate confirmation, this appointment will not last beyond 2011 and is much shorter than the five-year term he was nominated to.
- Secured important clarifications and suggestions in response to Chamber comments regarding regulations implementing Executive Order 13201 (notice of labor rights).
- Led employer-community response that resulted in keeping a damaging Mining Safety and Health Administration (MSHA) and Occupational Safety and Health Administration (OSHA) reform bill, H.R. 5663, from being considered on the House floor.
- Defeated the Public Safety Employer-Employee Cooperation Act that would have forced states to implement laws providing for unionization of public safety officers.
- Defeated the Robert C. Byrd Mine Safety Protection Act, H.R. 6495, which was the MSHA component of H.R. 5663. Its most objectionable provisions would have subjected underground coal mining operations to the harshest set of penalties, including being shut down and having MSHA make day-to-day operational decisions based solely on unproven citations and allegations, thus depriving these companies of their legal due process rights.
- Obtained a 90-day extension by OSHA on the comment deadline regarding its proposed reinterpretation of feasible engineering and administrative controls under the noise reduction standard.

Equal Employment Opportunity

- Defeated the Paycheck Fairness Act (PFA). The Chamber supports the Equal Pay Act, but the PFA would significantly amend the law by, among other things, permitting unlimited punitive and compensatory damages, allowing easier class actions, and making it more difficult to justify legitimate pay disparities.

- In response to Chamber-led coalition comments, obtained improvements in regulations implementing the employment nondiscrimination provisions of the Genetic Information Nondiscrimination Act, including provisions creating less disruption to wellness programs.

LEGAL REFORM

False Claims Act Legislation

- Working with a robust multi-industry coalition, successfully prevented a broad expansion of the False Claims Act.

Class Action Reform

- Blocked attempts to exempt major cases involving state attorneys general from the requirements of the Class Action Fairness Act. Blocked attempts to lift the prohibitions on the federally funded Legal Services Corporation from pursuing class action litigation.

Maritime Related Damage Limitations

- Blocked attempts to expand the types of damages available in admiralty cases, including asbestos claims, under the Death on the High Seas Act and the Jones Act.

Securities Litigation Reform

- Successfully pushed back against and defeated efforts to expand liability in securities-related class actions, including efforts to undo the Supreme Court's 2008 *Stoneridge* decision as well as the Court's 2010 *Morrison* decision.

Arbitration

- Led a multi-industry coalition in defending against trial lawyer efforts to limit the availability of predispute mandatory arbitration clauses. Succeeded in preventing significant movement of the most egregious and expansive anti-arbitration bills, like the so-called Arbitration Fairness Act.

Preemption

- Formed and led a broad coalition of businesses and non-traditional allies, such as veterans and senior citizens, to oppose trial bar efforts to weaken the doctrine of federal preemption. Have been successful in throwing multiple roadblocks in the way of the Medical Device Safety Act, which would undo the Supreme Court's *Riegel v. Medtronic* decision and make medical device manufacturers liable in state-based tort lawsuits for products approved by the Food and Drug Administration. Succeeded in preventing anti-preemption language from being included in motor vehicle legislation.

Trial Lawyer Tax Breaks

- Exposed and publicized re-introduced legislation designed to provide the contingency fee trial bar with a targeted \$1.6 billion tax break. The Chamber's efforts have caused

the trial bar to shift its strategy in obtaining consideration of the legislation. Also publicized and so far blocked action by the Treasury Department to accomplish the same goal via administrative action.

Protective Orders Legislation

- Spearheaded a multi-industry coalition to oppose efforts by the plaintiffs' trial bar to restrict the use of protective orders and confidentiality agreements. The Sunshine in Litigation Act was introduced in both the House and Senate to help the trial bar accomplish its goals. Successfully held the line against significant consideration of this legislation on both sides of Capitol Hill.

Medicare Secondary Payer Liability

- Formed and led a broad-based coalition of businesses and trade associations that helped block expansion of liability under the preexisting federal Medicare Secondary Payer (MSP) statute. If enacted, this language would have brought about dramatic changes to how secondary liability is determined under Medicare – distorting and expanding MSP's long-standing purpose.

State Attorneys General (AG)

- Succeeded in convincing the National Association of Attorneys General to establish a task force to develop and publicize best practices for state AGs in their dealings with the media as well as how they participate in multi-state litigation and use outside contingency fee counsel.
- Advanced the Private Attorney Retention Sunshine Act (PARSA) in multiple states. This legislation is designed to limit, or at least publicize, a state AG's use of outside contingency counsel.

State Lawsuit Reforms

- Defeated the efforts of plaintiffs' lawyers in Washington state, Texas, and Florida to roll back asbestos litigation reforms. Notably, defeated legislation that would have weakened Texas' toughest in the nation causation standard for asbestos and silicosis claims and prevented enactment of *qui tam* or whistle-blower legislation.
- Succeeding in establishing a Joint Legislative Task Force in West Virginia to study Asbestos Bankruptcy Trust concerns.
- Worked with Florida AG McCollum to enact first-ever AG-sponsored legislation to promote transparency and limitations on AG use of contingency counsel litigation.

NATIONAL CHAMBER LITIGATION CENTER (NCLC)

- **Litigation Victories at Every Level of Judicial System:** NCLC defends the interests of business in important arbitration, class action, energy and the environment, immigration, labor and employment, punitive damages, and securities litigation. In 2010, NCLC participated in 107 business cases of national importance. Of the cases decided in 2010, NCLC prevailed in 49.

- **Supreme Court Victories:** NCLC represented business interests in a record 16 important Supreme Court cases during the term ending June 2010 and prevailed in 13. NCLC's recent Supreme Court victories include:
 - **Arbitration:** NCLC was successful in a trio of cases defending the viability of arbitration agreements as a fair and efficient alternative to expensive litigation.
 - **Capital Markets and Securities Litigation:** A unanimous Supreme Court thwarted an aggressive effort by the trial lawyers to expand the extraterritorial reach of U.S. securities laws.
 - **Environmental Litigation:** The Supreme Court struck a blow to environmentalists' efforts to use injunctions to achieve their regulatory objectives, effectively circumventing the legislative and executive branches.
 - **Federal Jurisdiction:** The Supreme Court overturned a controversial Ninth Circuit opinion that would have made it easier to bring massive class actions in plaintiff-friendly California courts.
 - **Free Speech:** The Court ruled that the First Amendment protects the rights of corporations, trade associations, labor unions, and other groups to use their own funds to run political ads for or against candidates for federal office anytime up to and including Election Day. The majority opinion cited NCLC's brief twice.
 - **Labor and Employment:** The Supreme Court made it easier for benefits administrators to do their jobs without fear that courts will second-guess their interpretations of what the plan provides. In a separate case, the Court required the National Labor Relations Board to decide unfair labor practices cases with at least three board members instead of just two.
 - **Over-criminalization and Abuse of Prosecutorial Discretion:** The Supreme Court eliminated a popular tool that overzealous federal prosecutors have abused to target private individuals in so called "honest services" fraud cases.
 - **Qui Tam Litigation:** Barred *qui tam* lawsuits based on information that could be obtained from state or local public records. (Unfortunately, Congress already passed legislation overturning this victory.)

NATIONAL SECURITY AND EMERGENCY PREPAREDNESS

Cyber Security Legislation

- Succeeded in amending S. 3480, the Protecting Cyberspace as a National Asset Act of 2010, to clarify the scope of the bill's regulatory framework to put a greater emphasis on risk management; require congressional approval for any extension of a presidentially declared cyber emergency beyond 120 days; and allow a business owner or operator to appeal the inclusion of a critical infrastructure system or asset under the bill's cyber security program.

Customs and Global Supply Chain Initiatives

- Spearheaded a coalition to oppose Custom and Border Protection’s attempt to change its regulatory interpretation of the Jones Act. Chamber efforts led to the retraction of that regulation.
- Successfully lobbied to hold back Capitol Hill efforts to mandate 100% screening of all cargo aircrafts.
- Successfully lobbied for the retraction of the “First Sale Rule” impacting customs duties rates.
- Blocked efforts by the Teamsters and Change to Win to modify federal trucking rules codified in the Federal Aviation Administration Authorization Act.
- Successfully pushed back the U.S. Department of Transportation’s efforts in the lithium battery regulation.
- Was instrumental in developing the White House’s Global Supply Chain Security Review.
- Spearheaded a successful industry response to blunt the Transportation Security Administration’s Large Aircraft Security Program regulation.

Chemical Security Legislation

- Blunted congressional efforts to mandate that chemical facilities assess or implement “inherently safer technologies” (ISTs) under the Department of Homeland Security-administered Chemical Facility Anti-Terrorism Standards program. The decision to use ISTs, which has significant safety, business process, and commercial implications, should be made by the owner or operator of a facility and not by government officials.

Emergency Preparedness and Response

- Successfully blocked three separate markups of S. 569, the Incorporation Transparency and Law Enforcement Act. Worked with the Department of Treasury and the Senate to develop viable alternatives that would successfully accomplish the mission of the legislation without the harmful side effects on businesses and first responders. The legislation would put U.S. businesses at a competitive disadvantage, while funding that effort from Federal Emergency Management Agency (FEMA) grant programs.
- Successfully worked with FEMA to give small businesses special considerations, such as allowing for continual improvement and self-certification, when implementing the Voluntary Private Sector Accreditation and Certification Preparedness (PS-Prep) program.

Office of the Director of National Intelligence (ODNI)

- Successfully placed Chamber members with the ODNI’s new Analyst-Private Sector Partners Pilot program. This initiative provides intelligence community officials and industry experts with a better understanding of potential security risks to the United States and its allies in areas of joint concern such as nuclear, financial services, transportation, biotechnology, and cyber security.

PENSIONS

FASB Reporting for Multiemployer Plans

- Successfully delayed implementation of a proposal that would have required a number of overly burdensome disclosures that would have had a negative financial impact on businesses that contribute to multiemployer plans. FASB is reconsidering the rule as drafted.

Roth Conversions

- Obtained legislation to allow for conversions into Roth 401(k) accounts where the employer plan voluntarily offers such accounts to create parity between Roth 401(k) accounts and Roth IRAs.

Limited Scope Audit

- Successfully opposed an ERISA Advisory Council recommendation to eliminate the limited scope audit as an option for plan sponsors.

Defined Benefit Plan Funding Relief

- Successfully obtained funding relief for single-employer and multiemployer defined benefit plans. The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 includes provisions which ensure that pension contributions are not out of proportion to those required before the market downturn.

Financial Regulatory Reform

- Successfully lobbied for several changes related to retirement plans in the Dodd-Frank Wall Street Reform and Consumer Protection Act:
 - Exemption of retirement plans from the jurisdiction of the Consumer Financial Protection Bureau (CFPB).
 - Removal of the fiduciary duty requirement from swap dealers who enter into a swap with a retirement plan. This conflicting fiduciary duty would have effectively precluded swap dealers from entering into swaps with plans.
 - Exemption of retirement plans from the definition of “major swap participant.” Entities that fall within this definition are required to maintain additional capital reserves in addition to other requirements.
 - Exemption of stable value funds from being regulated as “swaps.” The bill directs the SEC and the Commodity Futures Trading Commission to do a study to determine whether stable value funds are “swap” contracts and therefore subject to regulation under the legislation. Until the study is completed, the new rules for swaps will not apply to stable value funds.

4010 Filing Information

- Prevented changes to filing requirements under ERISA Section 4010 that would have repealed improvements made in the Pension Protection Act of 2006 (PPA). In the PPA, the business community successfully lobbied to change the filing from being required by any plan underfunded by more than \$50 million to being required only by plans that are less than 80% funded. Blocked legislation that would have changed the requirement threshold back to a dollar amount (\$75 million).

Plan Fee Disclosure

- Prevented onerous legislation related to the disclosure of fee information in retirement plans. Stopping this legislation enabled the Department of Labor to move forward with the regulatory process.

Investment Advice

- Prevented legislation that would have repealed improvements made to investment rules through the PPA.

PROCUREMENT

Buy American

- Successfully opposed the inclusion of new or additional Buy American mandates from becoming law in appropriation, authorization, and other funding bills.

High Road Initiative

- Prevented the issuance of a High Road proposal by the administration, which would have mandated certain labor, safety, and other factors to be used as an evaluation factor for federal contracts.

Insourcing

- Successfully urged Congress to weigh in with the executive branch that insourcing quotas are inappropriate and any insourcing should be undertaken in a strategic, cost-effective manner.
- Prevented the enactment of provisions that would have encouraged additional insourcing at federal agencies.

National Defense Authorization Act

- Modified a provision in the bill that would have allowed the Department of Defense to exclude a prime or subcontractor without informing the company and without appropriate levels of approval.
- Modified a provision to only extend the bid protest authority for task and delivery order contracts rather than make it permanent.
- Prevented the inclusion of language that would have mandated that cost and price be the predominate factors in evaluating competitive proposals without accounting for the best value in all contract awards.

REGULATORY AFFAIRS

Food Safety

- Played a key role on a coalition of agricultural and food industry companies and associations working on food safety issues, leading to enactment of a comprehensive, bipartisan food safety bill.

Permit Reform

- Led effort in Stimulus bill to ensure that agencies review the National Environmental Policy Act (NEPA) aspects of stimulus-related projects in an expeditious manner so that projects may be approved for construction. The administration used this provision more than 179,000 times to clear 96% of all stimulus projects for construction.

SMALL BUSINESS

Access to Capital

- Successfully acquired a permanent increase in the maximum loan size limits for the SBA 7(a) loans from \$2 million to \$5 million and for 504 loans from \$1.5 million to \$5.5 million.
- Successfully obtained a temporary increase from \$350,000 to \$1 million in the maximum working capital loan size for loans made by the SBA Express Loan Program until September 27, 2011.
- Successfully obtained changes that allow for certain small businesses to refinance their owner-occupied commercial real estate mortgages into the SBA 504 loan program until September 27, 2011.
- Successfully required SBA to establish a website that will allow prospective borrowers to compare rates and loan information from lenders participating in the SBA guaranteed lending programs.
- Successfully increased the government guarantee on 7(a) loan limits to 90%, while providing the elimination of borrower fees on 7(a) and 504 loans through December 31, 2010.

Regulatory Relief

- Successfully obtained a provision in the Regulatory Flexibility Act that requires federal agencies to expand their assessments of economic effects on small businesses of proposed regulations.
- Successfully obtained a provision that provides more independence for the Small Business Office of Advocacy by mandating a separate line item in the SBA's annual budget.

Tax

- Successfully obtained an extension of 50% bonus depreciation and small business expensing through 2012 and a 100% expensing allowance for property placed in service after September 8, 2010, through 2011.

- Successfully obtained a provision that will allow the self-employed to deduct health insurance premiums for themselves and their family members for the purposes of calculating their 2010 self-employment tax.
- Successfully obtained a provision that would increase the amount of start-up costs a business is allowed to deduct for 2010 from \$5,000 to \$10,000 subject to an increased phase-out from total start-up costs exceeding \$50,000 to \$60,000.
- Successfully obtained an increase in small business expensing for tax years 2010 and 2011 under IRC Section 179. Beginning in 2010, taxpayers were limited to writing off up to \$250,000 of capital expenditures subject to a phase-out once these expenditures exceed \$800,000. After 2010, the thresholds would have reverted to \$25,000 and \$200,000, respectively. The new provision increases the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011.
- Successfully removed cell phones as “listed” property under the tax code so that their costs can be deducted or depreciated like other business property, without onerous record-keeping requirements.
- Successfully extended Bonus Depreciation provision to tax year 2010 which permits businesses to immediately write off 50% of the cost of depreciable property placed in service in 2010.

Trade

- Successfully obtained a provision that improves the SBA’s trade and export finance programs and elevates the Office of International Trade within SBA.
- Successfully required SBA to provide more robust access to capital programs for small businesses engaged in exporting.
- Successfully required SBA to establish the State Export Promotion Grant Program (STEP), which would increase the number of small businesses that export by providing grants and counseling.

TAXES

Prevented tax increases on small businesses that create jobs and drive economic growth.

- Successfully secured extension through 2012 of the individual income tax relief provided in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.
- Successfully secured an extension of a higher alternative minimum tax (AMT) exemption and allowance of nonrefundable personal credits against the AMT for 2010 and 2011.

Secured extension of vital business tax provisions.

- Successfully secured an extension through 2011 of an array of provisions that have expired or are scheduled to expire at the end of 2010, including the research and experimentation (R&E) credit, the subpart F active financing exception, and

the look-through rule for payments between related controlled foreign corporations

Prevented a massive estate tax increase on family-owned businesses.

- Successfully got an estate tax for 2010 through 2012, with an exemption of \$5 million per person and rates up to 35% with an election out of the tax for 2010. While full repeal remains ideal, this represents a tax cut relative to the extension of 2009 law, which was the other option considered by Congress.

Prevented tax increases on businesses that use deductions for court settlements and other damages.

- Prevented Congress from using the denial of deduction for punitive damages revenue as a revenue raising proposal on a widely popular bill that extended the deadline to claim the homebuyers tax credit that was enacted into law (H.R. 5623).
- Organized companies and trades in a coalition, Coalition of Certainty in Settlements, to object to Congress using the denial of deduction for punitive damages as a pay-for to H.R. 5623 and prevented Congress from consenting to the bill prior to removing the punitive damages pay-for.

Prevented tax increases that would damage our international competitiveness and stunt job growth.

- Blocked efforts to defer deduction of interest expense related to deferred income.
- Prevented efforts to change the foreign tax credit on a pooling basis.
- Stopped a new tax on returns associated with transfers of intangibles offshore.
- Prevented the limited shifting of income through intangible property transfers.

Prevented tax increases on the recovering real estate industry and other types of investment partnerships.

- Blocked repeated efforts to increase the carried interest tax rate on real estate and other investment partnerships. Stopped efforts to change partnership tax laws without considering the economy and unintended impacts to other types of partnerships, such as wireless companies often formed in C-corporations.

Prevented payroll tax increases on small business services.

- Prevented attempts by Congress to impose payroll taxes on S corporations and other small businesses and ultimately helped eliminate this tax increase completely from a pending Senate bill on tax extenders.

Prevented tax increases that discourage flows of foreign capital into the United States.

- Averted attempt by Congress to impose taxes on foreign corporations that invest and create jobs in the United States. This tax increase would have discouraged foreign investment in the United States, overridden long-standing tax treaties, damaged U.S. relationships with major trading partners, and could have prompted retaliation by foreign governments against U.S. companies operating abroad.

TECHNOLOGY AND E-COMMERCE

Broadband

- Successfully thwarted an attempt by the Federal Communications Commission to use Title II of the Communications Act to impose monopoly-era telephone rules on broadband providers.

Wireless

- Successfully advocated for H.R. 690, the MOBILE Cell Phone Act of 2009, which will simplify tax rules regarding cell phones and similar communications equipment given to employees. The legislation was included as part of H.R. 5297, the Small Business Jobs Act, which was signed into law by President Obama on September 27, 2010.

TRANSPORTATION

Water Resources and Marine Transportation

- Successfully lobbied to extend and modify Section 214 of the Water Resources Development Act, which allows the secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits.

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