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**Phoenix Strategies, Inc.**

## Memo

To: USBC Hill Day Participants  
From: Gregory Willis  
Date: June 18, 2024  
Re: Meetings with Congressional Staff July 16, 2024

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USBC is convening on Capitol Hill July 16, 2024 to engage in meetings with congressional staff as part of their Hill Day.

The purpose of this initial round of meetings is:

- 1) to raise the awareness of the existence of a US Black Chamber affiliate in the region, develop or deepen the Member's understanding of the social and economic impact that the Chamber's member companies have within their respective districts;
- 2) to educate the members and their staffs about the current issues impacting the minority business community, nationally, and what impact that is having on the local black business community; and
- 3) request the Member take specific action on behalf of the local minority businesses in his/her community. (e.g. cosponsor legislation, send a letter raising concerns, floor statement, hold a field hearing, request a hearing in the committee of jurisdiction, etc.).

These initial meetings are an opportunity to educate your Congressional delegations and as a show of strength. Elected officials are sensitive to votes and money. Business groups represent both, with respect to an elected official's calculation of whether and to what extent they will be responsive to your needs. These meetings are your opportunity to emphasize your reach in terms of economic activity, number of business owners, and employees that your organization has influence over.

### **Congressional Office Structure**

Congressional offices are divided between legislative/policy staff, which resides in Washington DC, and District staff who manage the constituent services, track local political activity and policy issues. These meetings are making a local connection to national issues. We have chosen these members based on the local/constituent interest they have by representing your regions and the committees of jurisdiction that they sit on.

If you are not able to meet with the Member at this time, you want to meet with the Chief of Staff and the legislative staffer that handles minority business issues. The Chief of Staff will be the person that manages the Member when in Washington DC. The legislative aide is the person that will be briefing the Member about your issues in Washington and will likely attend the meeting in July.

### **Logistics**

Your meeting request should be for the Member, with the email going to the scheduler and Chief of Staff and the legislative/policy staffer that handles minority business or minority issues. We have provided the contact names and email addresses of the appropriate staff. Please see the draft email meeting request below (page 5).

Meetings in the Washington office while Congress is in session are often limited to 30 minutes max and are marked with a lot of distractions (small offices, simultaneous meetings, votes) and conflicting interests that make it difficult to deliver messages. In-district meetings during recess (or during "District

work periods”) are usually more relaxed, provide more time (30-45 minutes) to have detailed conversations, and are viewed as an opportunity for Members to stay connected to their constituents. There are no votes, no buzzing clocks, and limited staff interruptions.

You should include at least one person from your Chamber’s leadership team and at least one Member company representative. This makes the connection personal when you are able to point to a specific business in the community. Do not include more than 4 people/company representatives, as there will not be enough time for everyone to speak and managing that many people in a meeting (in-person or virtual) can be distracting from the message.

### **USBC Economic Data & Context**

Part of your conversation with your individual Congressional offices should include a recitation of the economic data from your individual chambers. This should include:

- local job creation and retention, tax revenue, and dollars spent by the businesses to local suppliers, support services, etc.;
- who makes up the local Chamber - show that these are not just business owners but leaders in the local community; and
- how the local Chamber helps build the capacity of member companies (technical assistance, networking, strategic planning, business growth opportunities) to help continuously grow the local economy.

Given the current political climate an emphasis on global competitiveness should be front and center in these conversations. You should emphasize the value that your companies provide to the overall economy and that global competitiveness depends on every community getting access to opportunities and capital. A point should be made to include a discussion about the threat of global competition from other countries.

### **Message/Talking Points**

Your message should follow a clear “AND, BUT, THEREFORE” structure:

- USBC represents 176 local and regional chambers. This Regional Chamber is a membership organization made up of {insert a number of member companies} **AND** these companies provide significant economic value to the district, including: {insert economic data points}.
- **BUT** the ability for these firms to continue growing our local economy is at risk of being destroyed because of the challenges that are being brought through legislation and in the courts.
  - As a result of recent court decisions, there have been attempts from conservative attorneys general to pressure Fortune 100 companies to abandon their DEI initiatives, including supplier diversity programs. The SBA has recently halted new applicants to the 8(a) Business Development Program and some MBDA offices have been blocked from providing grant and technical assistance services to minority-owned firms.
- **THEREFORE**, we are asking you to take immediate action in Congress on behalf of your constituents being negatively affected and on behalf of diverse businesses across that nation that are working to help bolster the American economy and maintain our global competitiveness.
  - We would like the Representative to hold field hearings/roundtables in the District to hear the concerns from local black business owners and from other firms and organizations that rely on these companies to remain a viable part of the local economy.
  - We would like the Representative to make a statement on the floor of the (House of Representatives/Senate) putting into the Congressional record the findings of the hearings/roundtables, the concerns raised by his/her constituents, and the potential economic impact/disruption that could be caused in their district by these anti-diversity initiatives.

- We would like the Representative to make a statement on the floor of the (House of Representatives/Senate) highlighting the important role diverse companies play, and of robust/diverse supply chains in increasing competition, driving innovation, reducing costs, and driving America's competitiveness in a global marketplace.

### Discussion Points

- Minority business programs are under attack in state legislatures, Congress, and in the courts. Coinciding with a recent actions in Congress and State legislatures to pass restrictive laws prohibiting DEI programs, there have also been specific attacks on supplier diversity programs and on programs aimed at helping improve the growth and performance of minority owned businesses
  - The Supreme Court decision on affirmative action in higher education included a number of references to previous cases focused on State and Federal minority business programs
  - In July of 2023, a federal district court in Tennessee enjoined the operation of the race conscious presumption for the 8(a) program, essentially eliminating the presumption of disadvantage bases on someone's race. As a result of the injunction placed by the court, the SBA has halted new applications to the 8(a) program.
  - On March 5, 2024, a federal judge in Texas struck down a federally-sponsored racial preference extended to minority groups seeking to access capital and government contracts. *Nuziard v. Minority Business Development Agency ("Nuziard")*.
  - The United States Court of Appeals for the 11th Circuit recently delivered a blow to philanthropic efforts to advance racial equity. The court ruled that a grant program established by the Fearless Fund to support small businesses owned by Black women is likely illegal because it relies on race to determine eligibility.
- These programs and initiatives are intended to address the economic disparity that is the result of past and existing discrimination. Programs like the 8(a), SDB, and DBE programs were created so the Federal and local governments, as well as private sector firms, could help small companies owned and operated by socially and economically disadvantaged persons develop their businesses, while also increasing the size and diversity of their supply chains.
- These programs play a critical role in supporting minority-owned firms through corporate mentorship and partnership, technical assistance, access to capital, and access to contracts. They are essential to the continued growth of our firms and our ability to drive the economic growth in our local community.
- In the Federal marketplace, these programs are the tools used to ensure the "*maximum practicable utilization*" of the available firms owned by socially and economically disadvantaged individuals, as required by law.

### Background

1. Following the SCOTUS decision on affirmative action, the Tennessee District Court - in the Ultima V Dept of Agriculture case against the 8(a) program - enjoined the operation of the race-conscious presumption for the 8(a) program, essentially eliminating the presumption of race as a basis of disadvantage in 8(a) set-asides. "*The Court DECLARES that Defendant's use of the rebuttable presumption violates Ultima's Fifth Amendment right to equal protection of the law. It is ORDERED that Defendants are ENJOINED from using the rebuttable presumption of social disadvantage in administering Defendant SBA's 8(a) program.*"

The "rebuttable presumption" in this case is the inclusion of a business owner in a specified set of racial/ethnic groups being the basis of "socially disadvantaged." Therefore, simply being in one of those designated race classifications cannot be used as a presumption of disadvantage.

2. Affirmative action opponents are preparing strategies to fund “activist shareholders” to object to any corporate spending on DEI programs (including supplier diversity) that “divert resources” to activities that “undermine the primary fiduciary responsibility of the corporate entity, which is to maximize shareholder value.” This coincides with 13 state attorneys general sending a letter to Fortune 100 companies – essentially threatening them against continuing their hiring, promotion, retention, and supplier diversity programs. This was then followed by 21 Attorneys General, led by the AG of Nevada, sending a letter making it clear that they did not stand with that position and did NOT support the baseless assertion that any attempts to address racial disparity are by their very nature unlawful.
3. There were already reports that, based on the recommendation of internal Counsel, many corporations have already begun cutting back on DEI initiatives and funding based on concerns that they would make the company vulnerable to legal fights from other employees who believe the DEI programs discriminate against them and hurt their hiring, promotions, etc.
4. On March 5, 2024, a Texas court placed an permanent national injunction on the Minority Business Development Agency (MBDA), and stated that they could not exclude the plaintiffs from receiving services from MBDA, an agency within the Department of Commerce created by President Richard Nixon, and designed to help minority business owners with grants, training, consulting, and government contracts.

**Draft Email Meeting Request**

August 7, 2023

The Honorable {full name}  
U.S. House of Representatives

Dear Representative {Last Name}:

On behalf of [name of Regional/Local Chamber] that represents [footprint of representative region], I am writing to request a meeting with you while you are in [state] this August. We represent the interests of more than [number] businesses in our region. Our companies generate more than [\$dollars] in annual revenue, have created more than [number] jobs, and are suppliers for many of our nation's top corporations.

Unfortunately, the ability of these firms to continue generating millions of dollars of economic growth and employing thousands of your constituents is at risk due to recent court decisions concerning minority small businesses and lawsuits attacking access to capital for women and minority owned firms. We would like to discuss these challenges and how you can help drive Congressional actions to support these essential businesses.

I look forward to meeting with you to discuss these important issues and look forward to hearing from your scheduler regarding a specific meeting date and time. Thank you in advance for the opportunity to meet with you.

Sincerely,

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August 7, 2023

The Honorable [full name]  
United States Senate

Dear Senator [last name]:

On behalf of [name of Regional/local Chamber] that represents [footprint of the representative region], I am writing to request a meeting with you while you are in [state] this August. We represent the interests of more than [number] businesses in our region. Our companies generate more than [\$dollars] in annual revenue, have created more than [number] jobs, and are suppliers for many of our nation's top corporations.

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