

WHY WE DO NOT  
WIN EVERYTIME

IT'S US, NOT THEM!

*A Government Relations Primer for  
Employee Ownership Advocates*



**The ESOP Association**

WHY WE DO NOT  
WIN EVERYTIME?

IT'S US, NOT THEM!

A personal message from ...

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## About The ESOP Association

The ESOP Association is the national, non-profit association of companies with employee stock ownership plans (ESOPs) and service providers with a professional commitment to ESOPs. Based in the nation's capital, the Association is the prime source of educational materials necessary for the successful administration and management of ESOP companies. It publishes a monthly newsletter, an annual directory, employee-communications information and materials, and books covering administrative and technical aspects of ESOPs. Membership dues enable members to receive significant discounts on all of The ESOP Association's services. The ESOP Association sponsors a national network of state and regional Chapters which provide its members with cost effective, easily accessible education programs. In addition, The Association provides networking activities through which members exchange ideas and views on ESOP-related issues and experiences. The ESOP Association's Annual Conference is the largest gathering in the world of ESOP companies and service providers. The Association also sponsors national, regional and local meetings to promote the ESOP concept and provide the latest information to the business community. For all these reasons, we believe that ESOP Association membership is essential to all those who believe in employee ownership through ESOPs. The Association devotes considerable time and energy to maintain and create favorable ESOP legislation. Decision-makers in Washington rely on The ESOP Association for information and guidance they need to help ESOP companies. The Association also provides members with the latest legislative and regulatory information on ESOP law and regulations. For more information regarding ESOPs and/or membership please contact The ESOP Association.

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## Table of Contents

I.	Introduction .....	1
II.	History .....	2
III.	Arguments Against ESOPs .....	4
IV.	Is There Hope? Or What Can You Do? .....	7
V.	There Is A Foundation .....	8
VI.	Be Involved .....	9
VII.	Persistence; More Important Than Brilliance .....	11
VIII.	A Final Word .....	14

### OUR VISION

#### ***“Prosperity with justice through employee ownership”***

*We believe that employee ownership improves American competitiveness...that it increases productivity through greater employee participation in the workplace...that it strengthens our free enterprise economy and creates a broader distribution of wealth...and that it maximizes human potential by enhancing the self-worth, dignity, and well-being of our people.*

*Therefore, we envision an America where employee ownership is widely recognized as a catalyst for economic prosperity...where the great majority of employees own stock in the companies where they work...and where employee ownership enables employees to share in the wealth they help create.*

*And we look for our nation to become for all the world an example of prosperity with justice through employee ownership.*

## INTRODUCTION

After many years of trying to persuade our national leaders to become active and intense about spreading employee ownership in America, and after talking about this effort with employee owners throughout our nation, I am continually challenged by employee ownership advocates with this refrain,

**“Why do the Congress and President not do more to promote employee ownership effectively? And why, oh why, do we see periodic efforts, sometimes successful, to actually reduce the number of ESOPs and employee ownership in America? Why do top leaders in both the House and the Senate, and the White House, sometimes agree to steps to decrease the number of employee owners, not increase the number?”**

For example, despite our arguments to the contrary, in 1996, Congress agreed to repeal a modest ESOP tax incentive, Code Section 133, the ESOP lender’s interest exclusion. The same year, however, ESOP advocates won an expansion of ESOP law to include S corporations.

Well, you can imagine that for over 25 years, I have asked myself the above questions, over, and over, and over.

I want to share with you what the answers are to your questions about why ESOPs and employee ownership are **not** mainstream public policy in America.

For example, we all know that other laws, such as permitting tax deductions for gifts to churches and charities, or tax deductions for payments of mortgage interest on your home, or tax deductions for the payment of wages, are solidly supported by nearly every member of Congress, and the President – no matter what year it is, no matter whether the Democrats or Republicans are in charge.

Why is it that laws promoting ESOPs and employee ownership do not enjoy the same level of support?

Is it because we, the ESOP community, do not have the big dollars to hire the most famous lobbyists in America to “fix” things for us? Is it because we, the ESOP community, do not give hundreds of thousands of dollars to politicians and their political parties by buying \$50,000 tables at the big dinners, and so on?

**NO.** The lack of money is **not** the reason.

The reasons are more complex, and are historical to great extent. And in the final analysis the major reason is **us — you and me.**

In other words, we need to understand why...

If Employee Ownership Is So Wonderful –  
How Come Our National Leaders Don't See it That  
Way?

## HISTORY

### How An Idea Becomes Law

Much of the answer to the above question lies in history – the history of how the laws were developed that sanctioned ESOPs, and do provide valuable and real financial incentives for current owners to transfer stock to an ESOP to create new employee owners.

Normally, major public policy in America develops slowly in Congress. Key to that slow development is that a group of citizens, who are perceived as voters by the leaders of our nation, rally behind an idea or policy.

Usually, when those people, sometimes directly, sometimes through their retained lobbyists, or trade group, or labor union, first present their ideas and desires to Congress, the idea is not immediately accepted and written into law.

But, when the people supporting a new idea persist, and present it again and again, year after year, with evidence that they care, and that they vote, then slowly but surely, more and more members of Congress agree to promote the idea.

Then, the idea is reviewed at a Congressional committee hearing, and the pro's and con's of the idea are aired. Most important is that the idea is now reviewed by the key staff experts, who the members of Congress trust to provide good advice as to what is good policy, and what is bad policy.

After this process drags on for a few years, the number who now agree with the idea reaches a critical mass, which means the idea might be proposed as part of a Presidential message, or as an amendment to some legislation being developed by a Congressional Committee.

Usually, the first time the idea is proposed formally by the President, or a group of Congresspeople on a Committee, it does not succeed. But if the group of people, or voters, continue to push, and continue to “witness” for their beliefs, then it will finally make its way into legislation, signed by the President.

Why is this process important to developing mainstream public policy that does not get challenged or weakened year after year?

Because, at each step of this long process, more and more Congresspeople and key staff experts took “ownership” of the idea, or proposal. Each developed not only a comfort level with the idea, but many became advocates as well, feeling that his or her views were part of a “participatory” process.

What does all this have to do with ESOPs and employee ownership? **A lot.**

### ESOP Law: An Exception to the Rule

This process of slow progress, with more and more Congresspeople and staff people “owning” the final product, is not the history of how ESOP law was developed.

Instead of being an inclusive process, that was driven by top-to-bottom buy-in’s, ESOP law was “crammed” down from the top, by a very powerful member of Congress.

Now do not get me wrong, I am not being critical of what our beloved Congressional father of ESOPs, the late Senator Russell B. Long, of Louisiana, did in 1974, when at the last moment as Chair of the Senate Finance Committee he told the tax staff to “take” care of ESOPs in ERISA, the abbreviation for our retirement laws.

No, without the Senator’s vision, and power, we would not have ESOPs at all as far as I am concerned.

But facts are facts, and the birth of ESOP law in 1974, and even subsequent provisions to make ESOPs more attractive, were all put in place not because a significant number of Congresspeople or their staffs bought into the idea, but because Senator Long wanted it done. He was so powerful that other members did not wish to oppose any of his favorite ideas.

So, while it was great for ESOP and employee-ownership advocates to have a key individual like Senator Long single-handedly make sure ESOP law was developed, the fact is that our greatest success

also sowed the seeds of cynicism and distrust on the part of many key decision makers in America, and even academics who follow the legislative process.

For example, were Congressional staff experts consulted, or made part of the original process of promoting ESOPs? No.

Did a group of Congresspeople have to come together to plot strategy and tactics with their staff to include pro-ESOP law in legislation? No.

For the long term, this fact of the historical development of ESOPs is not good.

For when Senator Long left Congress in 1987, staff members and members of Congress who had only known ESOP law as something “Russell” wanted, were now free to give weight to the doubters in Congress about the real value of ESOPs and employee ownership – I will turn to what those doubts are in a moment – and supporters of ESOPs had never been through the “boot” camp like other public policy advocates of slowly building the base of support needed to sustain an initiative.

This historical background does not explain “why” ESOP support has not met our dreams, but does explain the context of why cynical views of ESOPs and employee ownership have found fertile ground in the deep reaches of our national government.

By the way, the source of my views was Senator Long, who before his death, spoke to me frequently about building a foundation for ESOPs.

## ARGUMENTS AGAINST ESOPs

The doubts about ESOPs as good public policy stem from three main criticisms – One, the opponents of ESOPs claim that ESOPs are bad retirement policy since an ESOP is not a diversified investment scheme. Since the collapse of Enron, which rendered Enron stock worthless, and which was the primary asset in many Enron employees’ ESOP and/or K-SOP accounts, this criticism has become the most cited reason for discouraging ESOPs. ESOP advocates respond that in 1986 Congress addressed this issue by permitting ESOP participants who built-up sizeable accounts to diversify up to 50% of the ESOP account balance. Furthermore, ESOP advocates point out that there is

much misunderstanding about the concept of diversification – it is a concept for rich people who have wealth. For average people, diversifying a little bit in a variety of investments never leads to wealth.

Two, the opponents of ESOPs claim that ESOPs are a waste of \$1 billion a year of taxpayer money because only a very small percentage of taxpayers, both individual and corporate, benefit from ESOPs – thus they claim that the vast majority of Americans are subsidizing this small group’s ESOP benefits. ESOP advocates respond that in a \$11 trillion plus economy, with a \$3 trillion federal budget, and with the Federal government collecting nearly \$2.8 trillion in taxes, is it asking too much, or committing too many Federal resources of approximately .000001% to employee ownership? ESOP advocates think not.

Three, the opponents of ESOPs claim that ESOPs do not represent “real” ownership, because among other things, employees cannot sell their ESOP stock if they want to. ESOP advocates respond that “ownership”, while ingrained in most Americans since their youngest years, is a concept not defined with black and white definitions that are found in law books. For example, owners of stock of a major U.S. Corporation such as Microsoft or AT&T may be able to dispose of the stock as she/he wishes, but the employee owner in an ESOP company probably has more “real” ownership than that outside shareholder in a big company. It is debatable which person is a “real” owner influencing the value of his/her shares of equity.

So these are the criticisms of ESOPs, which are heard from various individuals at various times.

While true that since the turn of the 21<sup>st</sup> century several academic papers have expressed the opinion that employee stock ownership is the “worst” thing that could happen to employees, no one has organized an effort against ESOPs. The lack of organized opposition is perhaps strong evidence that in the real world of American business and employees, the ESOP concept has proven beneficial many more times than not.

## Why Do These Arguments Continue To Have Weight When ESOP Companies Overall Prove The Arguments Are Weak?

A story will answer this question.

Back in 1988, during the Presidential elections, one of the leading advocates of employee ownership in America had a long lunch with one of the key advisors to then Vice President and Presidential candidate George H.W. Bush. The ESOP advocate was making the pitch that candidate Bush promote ESOPs and employee ownership during the campaign – in speeches, policy papers, TV spots, etc.

The top aide said, “Listen, I am with you 100%. I believe in ESOPs and employee ownership. But Vice President Bush will not do what you want, even though I suspect he generally believes as I do; and do you know why he won’t? Because you, ESOP advocate, you and your cohorts, cannot show me *any ESOP voters*. Where are the voters who care about ESOPs? Where are the people who will cast a vote based on Mr. Bush’s position on ESOPs and employee ownership? You can show me a handful, no more. You certainly can’t show me enough to make any wit of difference in how the election will turn out.”

And, the top aide was right, and the ESOP advocate fell silent.

(A more up-to-date example demonstrates that there is still no ESOP voter. In the 2006 election, House Super Champion former Representative Nancy Johnson lost her re-election bid, after over 20 years of service that included standing up and pushing pro-ESOP legislation. Led by a senior ESOP executive of a well-known leading ESOP company, the word went to all the ESOP companies in her Congressional district touting her support of ESOPs. But, even if all the employees and their relatives voted for former Representative Johnson, it would have been at best 1,000 votes. In sum, there were not enough ESOP voters in 2006, in the 3<sup>rd</sup> District of Connecticut, to help a super ESOP champion win re-election.)

Here is another story providing the same point. In the mid-80s, on the House side of Congress, where support for ESOPs was very weak at the time (1989), an ESOP supporter, a member of the Ways and Means Committee, who was willing to promote ESOPs, met with a top executive of a New York City ESOP company.

This top executive had just made a strong case to the House Ways and Means Committee to support ESOPs and ESOP promotion laws in the face of a proposal from the Chair of the Committee to limit ESOPs.

In the meeting, the pro-ESOP Congressman said, “Why is it you come down here and tell the Committee how great ESOPs are for employees, but I never see employees? All I see are lawyers, and deal makers who are making big bucks when setting up ESOPs, or I see top guys like you who are making a bundle at the company, both in the ESOP, in stock options, and in big salaries. If ESOPs are so good for America, if the ESOPs are so good for the average employee, how come average employees never come to see me asking me to help save ESOPs?”

In other words, this pro-ESOP member of Congress wanted to know, where were the ESOP voters?

In sum, the reason those arguments advanced against the worth of ESOPs and employee ownership are not stopped by Federal elected officials of our Congress and Administrations is because those officials do not perceive any direct electoral gain for their expenditure of time and energy – they see no ESOP voters who care about ESOPs.

## IS THERE HOPE? OR WHAT CAN YOU DO?

Should we give up? Is it hopeless? Is it too much to hope that the over 1,400 or so ESOP companies in The ESOP Association and their over 1 million employees and family members can make a difference in a nation of over 8 million corporations with approximately 115 million full-time employees?

And, even among the over 1,400 companies, aren't most more concerned about their economic health as measured by the sale of their product and services versus whether ESOPs and employee ownership in America are growing.

Yes, it is easy to be discouraged when we realize our little size versus the size of the entire American economy.

But we also recall truisms that can strengthen our faith that we can be stronger.

For example, each of us have heard that the long journey begins with the first step.

And, so it does.

And, let me share with you some good news: we have already taken the first step in making ESOPs and employee ownership widely accepted national policy.

## THERE IS A FOUNDATION

The ESOP and employee ownership community does not start its work to make our Vision of a nation of owners mainstream policy at ground zero. Since 1974, many leaders in America have reviewed ESOP policy and law, and a significant number have concluded that ESOPs are good for America.

There is ample evidence of this fact.

For example, President George W. Bush's Administration has on several occasions rejected proposals that would have harmed ESOP creation and operation, especially after the collapse of Enron. His predecessor President Bill Clinton publicly stated more than once that he believed ESOPs and employee ownership are a good thing.

Furthermore, former President George H.W. Bush's Treasury Department openly opposed cutbacks in ESOP tax benefits in the late 80s.

Former President Ronald Reagan was also a strong ESOP advocate, as were many of his close personal staff.

Former Congressman Beryl Anthony who used to be a top Congressional leader among Democrats, time and time again, won a pro-ESOP vote in the House Ways and Means Committee in the 80s.

Current Congressmen Dana Rohrabacher, Jim McCrery, Paul Ryan among several others have faithfully pushed pro-ESOP legislation year after year in the U.S. House of Representatives. Senator Blanche Lincoln pushes hard for ESOPs in the Senate. And, the list could go on.

Over half of the members of the key tax committee in the House publicly opposed a cutback in 1997 law promoting S corporation ESOPs. Expanding the dividends deduction for ESOP dividends had near unanimous support in 2001.

When proposals to require three year diversification of ESOP stock surfaced after the collapse of Enron, WorldCom, and other companies, the Bush Administration and the committees of Congress with jurisdiction over ESOP law rejected those proposals with regard to privately held ESOP companies.

Various favorable media stories have appeared about ESOPs in the past 30 years, and each year there are more positive stories about ESOP companies.

On the other hand, negative reviews of ESOPs and employee ownership in the handful of companies where the experience was not positive have not made a major impact on American leaders.

The number of men and women in positions of leadership in America that are actively opposed to promoting ESOPs, or who are actively committed to repealing laws promoting ESOPs are few – most are key staff persons in the key Congressional committees overseeing ESOPs, and in the agencies that regulate ESOPs.

Thus, if you become involved with making ESOPs and employee ownership a mainstream policy in America, you will already have allies in positions of power.

ESOP advocates have two goals – one, increase the number of national leaders who are “for” ESOPs; and two, have those leaders who are already inclined to help become more intense about ESOPs, moving the ESOP cause up the list of issues that he or she feels deeply about.

## BE INVOLVED

So now you know the history, and where we stand. Now we ask for your involvement.

Yes, your involvement in a meaningful way.

My pitch to you is a hard sell – not a soft sell.

Let me explain. If you read the various lobbying kits and documents prepared by The ESOP Association, they are pretty milk-toast; they do not get directly in your face and demand that you interact with one of our leaders about ESOPs.

These prior documents say, “Oh, okay if you do not wish to write a letter to a Congressperson, for whatever reason, why don’t

you try to get some good publicity for your company in the local newspaper.”

Now, we need more. Now you need to be on the playing field, not in the stands cheering the players on. **YOU NEED TO BE A PLAYER.**

We will not get into the details on how to play the game of making ESOPs mainstream public policy. We can provide those directly to you – one on one and tailored for the contact you wish to make – in other words, you might approach a prior ESOP supporter in Congress one way, and approach the Congressman with no public position another way.

Let’s talk about the general rules of the game, or the specific things you must do to be involved.

First, your company has to be a member of The ESOP Association. If you are not a member, many important policy developments will not be known to you and your colleagues. You will not know of the latest pro-ESOP legislative initiative; you will not know of threats against ESOPs.

If you have no knowledge of what is going on with ESOPs and your Congress, and your President, then you will not, and can not, do an effective job of helping ESOP advocates win our Vision.

Second, you must develop a relationship with your Congressperson, your Senators, and their staff; you and your fellow employee owners will not “win” with last minute letters and telephone calls about an ESOP issue. You have to build a foundation. Now some of you, and some of your companies, have already had interactions with your Congressperson and/or Senators. If you have, please continue the effort.

If you haven’t, the best way is to have that member of Congress, or his or her staff person in your area, come out to your place of business – to see and learn firsthand about your ESOP and your company.

Year-after-year, episode-after-episode, we have hard evidence that a national leader’s visit to a real ESOP company is the biggest selling point for our cause.

The other activities include writing a letter to your member of Congress when The ESOP Association alerts you to a piece of legislation or bill; inviting your member of Congress to the

Congressional Reception in Washington, and/or dropping by his/her office when you come to the Annual Conference; looking in your home town newspaper for notices that your member of Congress will have a town hall meeting for the public, and you go to ask a question, or introduce yourself after the meeting; following through on opportunities to interact with a Congressional office – perhaps your Congressperson will dedicate your son's or daughter's new Little League Ballpark – before or after the ceremonies, introduce yourself and your family.

The list can be endless of opportunities for you and others in your company to present your story to a national leader and his or her staff.

The same is true of our President – letters, faxes, or even an invite to your company during a campaign swing. Though very unlikely that you will have a chance to interact directly with the President and a high ranking member of his staff, it can, and has happened, as exemplified by an average pay employee owner dialoguing with President Clinton and Secretary of Labor Robert Reich in 1993.

As mentioned earlier, we don't have enough time now to go into details of each of these activities, and how to exploit opportunities for moving employee ownership forward. We of The ESOP Association make this commitment, however – if you decide to become involved, we will provide you with all the tools you need to make a positive mark of our Vision where ESOPs and employee ownership are mainstream American policy.

But, we have seen many people volunteer in the past. They have responded and said yes, "I want to help – where and when do I sign up!" And then they drop out, disgusted with the lack of progress, or convinced that no one listened to them.

And, here is the greatest failure of our cause – people who want to help, and who get involved – but only once or twice – and then quit.

## PERSISTENCE; MORE IMPORTANT THAN BRILLIANCE

Often times we fail because we give up.

Often times we give up because we don't like the way a Congressional office responds to our interaction with the office.

While we in our own company expect the CEO and co-workers to be busy, and to delegate much of their work, or to not give a definitive answer until they have more facts and time to review an issue, when a member of Congress is too busy to talk to us personally, or to come to our reception, or to respond to a letter with a definitive yes or no answer, or has a staff person review our concerns, we sometimes get huffy, mad, or just say, "that's politics, it's disgusting." In other words, we act like the member of Congress should "work" for each of us individually, and never let someone else stand in his/her place, not read all his/her letters, all the legislation, etc.

Just as in your own company, your CEO does not handle every problem, review every detail of every decision, (if he/she did it would drive you crazy), a member of Congress can't be everywhere, and has to delegate many things to his/her staff. He/she can't see everyone, can't go to every reception, and can't have a definitive answer to each and every issue all the time every time.

So, the first thing to make sure you don't give up is to have a little more understanding that a Congressional office is like your company – there are many things going on; the top person does not deal in all the details, and while true that he/she works for you the voter, he/she also works for about 600,000 other people if a member of the House, and literally millions of people if a member of the Senate.

Let's assume that you are an understanding person, and recognize that the elected member of Congress can't work with you on an individual basis, and do everything for our issue of employee ownership that we want him or her to do.

You may still get frustrated, and give up.

You may write two or three letters asking for help on an ESOP issue; you have had the member of Congress out to your company; you may have talked to the key staff aide at the last Congressional Reception or visit to Washington; but yet you see no concrete evidence that a pro-ESOP agenda is present in the Congressional office. You may have even gotten a few encouraging words about support for ESOPs and employee ownership, but you have nothing evidencing real support.

You tire of this routine. You wonder, what good is this?

Well, we can use all kinds of famous sayings and parables to answer that question – the race belongs to the strong, not the swift; the tortoise and the hare; and so on.

The fact is, in lobbying like so much in life, it is not the brilliance of the arguments; it is the persistence of the person, or people, making the argument that wins the day.

Having a member of Congress, or any government official, support our cause requires building a foundation. Building a foundation in the political arena is brick-by-brick; often times you have to start over, as the voters elect a new member of Congress, or the staff person who knew about ESOPs leaves for other work.

Building the foundation is not in accord with a well-mapped out plan.

Sometimes you have to be ready to exploit, in a positive manner, opportunities that you never anticipated.

For example, what if your company wins recognition from a local club, or you give a boost to a local charity and get some press, or win an award from The ESOP Association? Bring that to your Congressperson's attention via letter or fax. Brag on yourself and your company.

What if the Congressperson is having a town hall meeting in the community center in your hometown or neighborhood? Make a point to go, or to have others in your company attend. Even if you don't ask a question, introduce yourself after the meeting to the member of Congress and his/her staff aide.

Always, at every opportunity, extend an invitation to the member of Congress to visit your company.

Think of the Congressperson as a potential customer. You are marketing a product – it is an idea, a powerful idea – employee ownership. But, just like in the marketplace for your company's product, customers do not come easy. There are many other products that the Congressperson has to deal with. We have to "sell" the Congressperson on the idea that he/she should deal with our idea, our cause.

Remember, the basics of marketing remain the same: persistence, persistence, and more persistence.

## A FINAL WORD

In sum, together, employee owners, from the CEO to the average pay employee to the production supervisor to the treasurer, can make a difference.

We will fail if we are discouraged, if we do not act in concert, and if we do not understand how to “market” employee ownership.

We have a Vision for America – it is not a fake vision, or just a bunch of words – it is a real, old-fashioned Vision, one that has substance – a nation where the majority of employees are owners, increasing our competitiveness, and improving each employee’s life.

A famous professional football coach once said to his team, “Forty people unified can reach any goal they set.” Exaggeration? Maybe. But 1 million employee owners, unified can mean that **WE WILL WIN EVERYTIME!**



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