

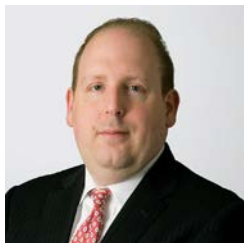
# DC Study Tour: Lobbying and Political Engagement

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# Meet Our Team



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# CHANGING FACE OF PUBLIC SECTOR ENGAGEMENT

- The goal of public sector engagement—anticipating and managing political and regulatory risks
  - Public officials' decisions can affect the profitability and long-term viability of a business (contracts, regulatory approvals, mergers)
- Competitive disadvantage for those that choose not to engage
- McKinsey: Company earnings are at stake from government and regulatory intervention
  - 30% of earnings at stake in most industries
  - 50% of earnings in highly-regulated industries, such as finance, healthcare, or tobacco
    - Source: Organizing the Government-Affairs Function for Impact, Reinier Musters, Ellora-Julie Parekh, and Surya Ramkumar, McKinsey Quarterly (Nov. 2013).
- Forbes: The top ten Fortune 100 companies receiving the most federal funding saw an ROI on lobbying of 1,000 to 1.
  - Source: How The Fortune 100 Turned \$2 Billion in Lobbying Spend Into \$400 Billion of Taxpayer Cash, Adam Andrzejewski, Forbes (May 2019)

# U.S. PUBLIC SECTOR ENGAGEMENT

- Companies operating in the U.S. increasingly recognize the importance of engaging with political and government actors
  - McKinsey: Half of survey respondents said that managing external affairs ranged in top three priorities on CEO's agendas
- U.S. companies tend to have highly developed public affairs and lobbying functions
- Firms' reliance on public affairs functions is increasing
- A key element of this is electoral engagement
  - It is common for U.S. companies to be electorally engaged
  - In the 2017-2018 midterm elections, 1,732 corporate PACs raised over \$417 million
  - In the 2015-2016 Presidential cycle, corporate PACs raised over \$405 million

# CORPORATE PUBLIC SECTOR ENGAGEMENT

*“The question is not, ‘Should companies have a voice in the democratic process?’ but how do we exercise that voice? We have a responsibility to shareholders and society to do it in a transparent and accountable way.”*

- Dan Bross, Microsoft Senior Director for Corporate Citizenship

# PUBLIC SECTOR ENGAGEMENT: FACTORS TO CONSIDER

- There are five primary factors in your decision whether to engage the U.S. public sector:
  1. What is the regulatory environment for my business?
  2. What is the risk to growth posed by government regulation of my business?
  3. What is my likelihood of success?
  4. What is the cost to engage measured in time and treasure?
  5. Is the Government a Customer?



# PUBLIC SECTOR ENGAGEMENT: LOBBYING STRATEGIES

- Work with your public sector engagement counsel to use all four legs of the lobbying table:
  - Direct Lobbying (Shoe-leather lobbying);
  - Grassroots and Grasstops Lobbying (Employees, Executives and Key Supporters);
  - Political Giving; and
  - Public Affairs.



# PUBLIC SECTOR ENGAGEMENT: POLITICAL REALITIES

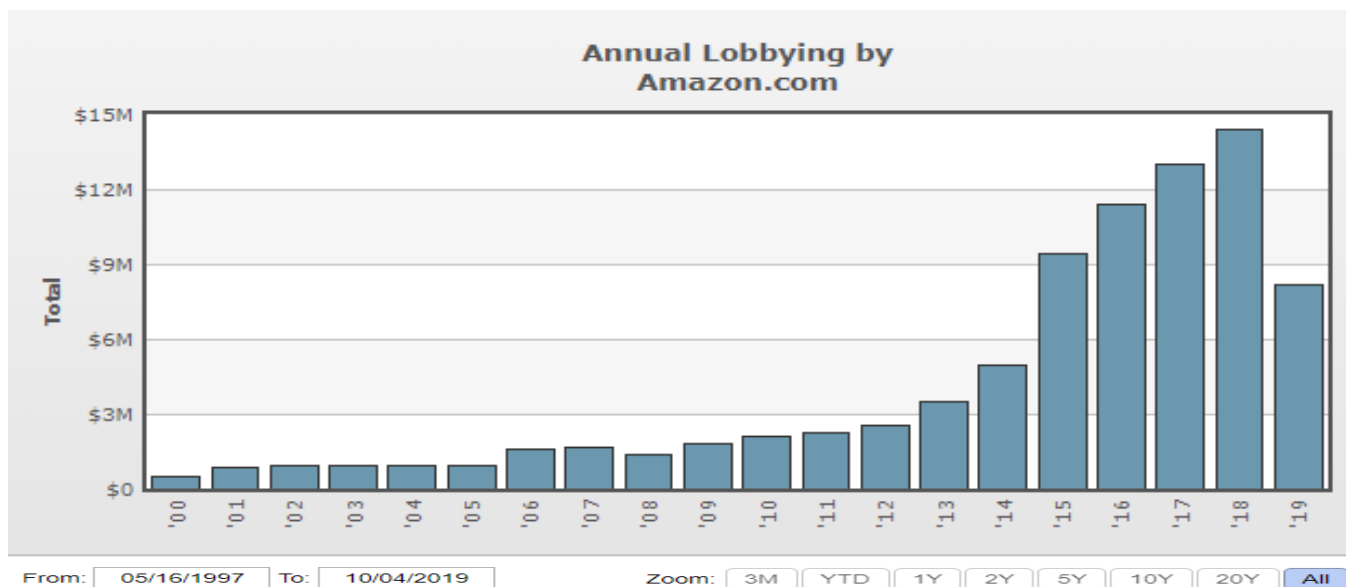
- Government does not move at the pace of the private sector
- Understand the political realities for each issue you engaged in
- Local government pace > State government pace > Federal government pace
- Come to an agreement with your public sector engagement counsel on the expected timeline to achieve results
- Understand the market rate for the lobbying services you need and hold your government affairs counsel to the commitment of service



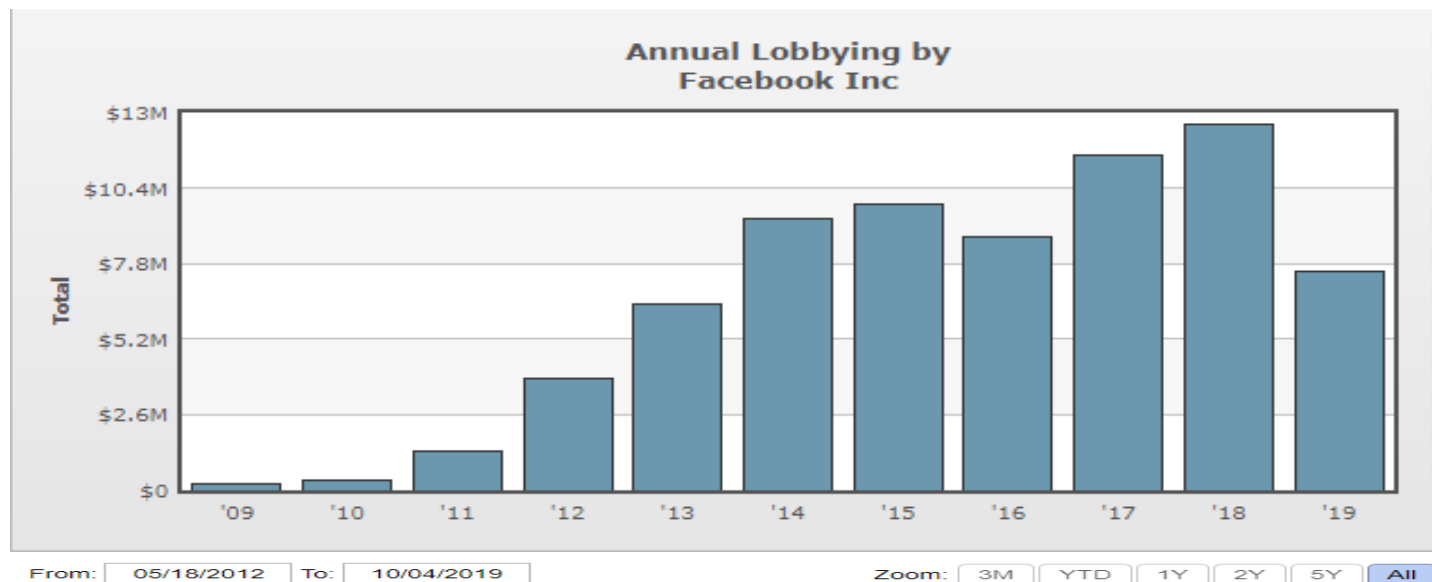
# PUBLIC SECTOR ENGAGEMENT: BEST PRACTICES

- Engage before the government determines your future
- Set lobbying strategy based on business goals
  - Not personal goals
  - Not building a utopia
  - Not political party based
- Establish regular calls and ask your government affairs counsel to develop the agenda
  - Bi-weekly or monthly is typical
  - More frequently during lobbying sprint
  - Institutes discipline and natural timeline for deliverables
- Maintain a strong lobbying disclosure and gift rule compliance program

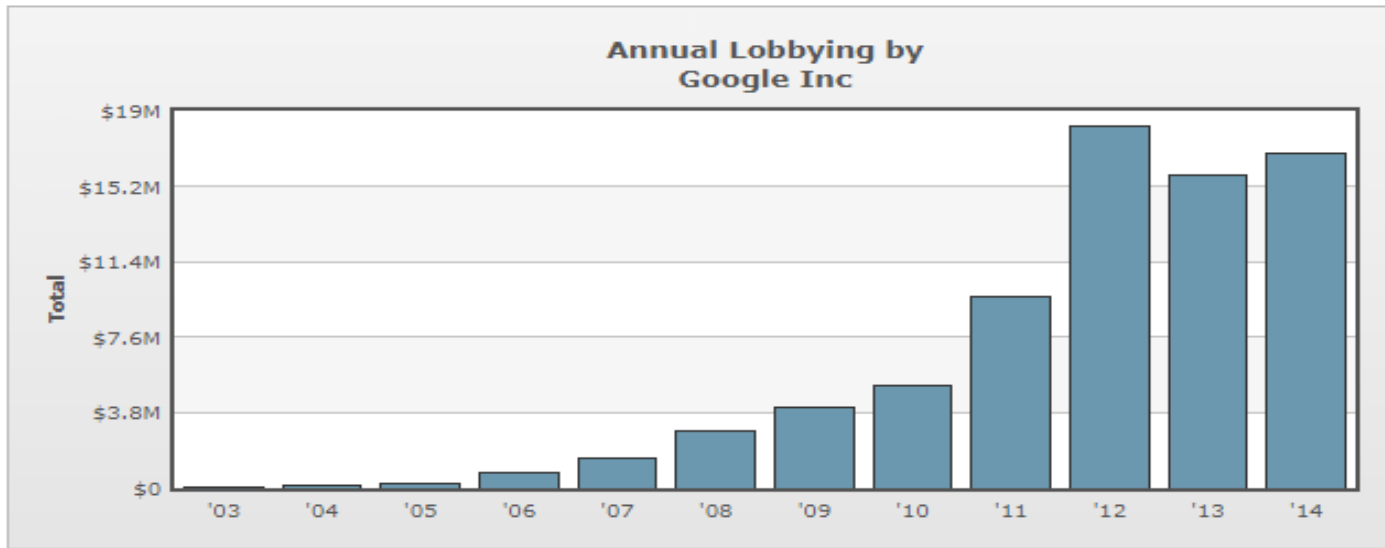
# AMAZON LOBBYING SPENDING



# FACEBOOK LOBBYING SPENDING



# GOOGLE LOBBYING SPENDING



From: 08/19/2004 To: 03/19/2014

Zoom: 3M YTD 1Y 2Y 5Y 10Y All



# POLITICAL LAW

- “Political Law” broadly refers to the legal regimes that regulate the interactions between the private and public sector and/or the political process
  - Political laws exist at federal, state, local, and entity levels
  - Public sector engagement is highly regulated, creating legal and reputational risk
  - Increasing media focus on corporate electoral engagement

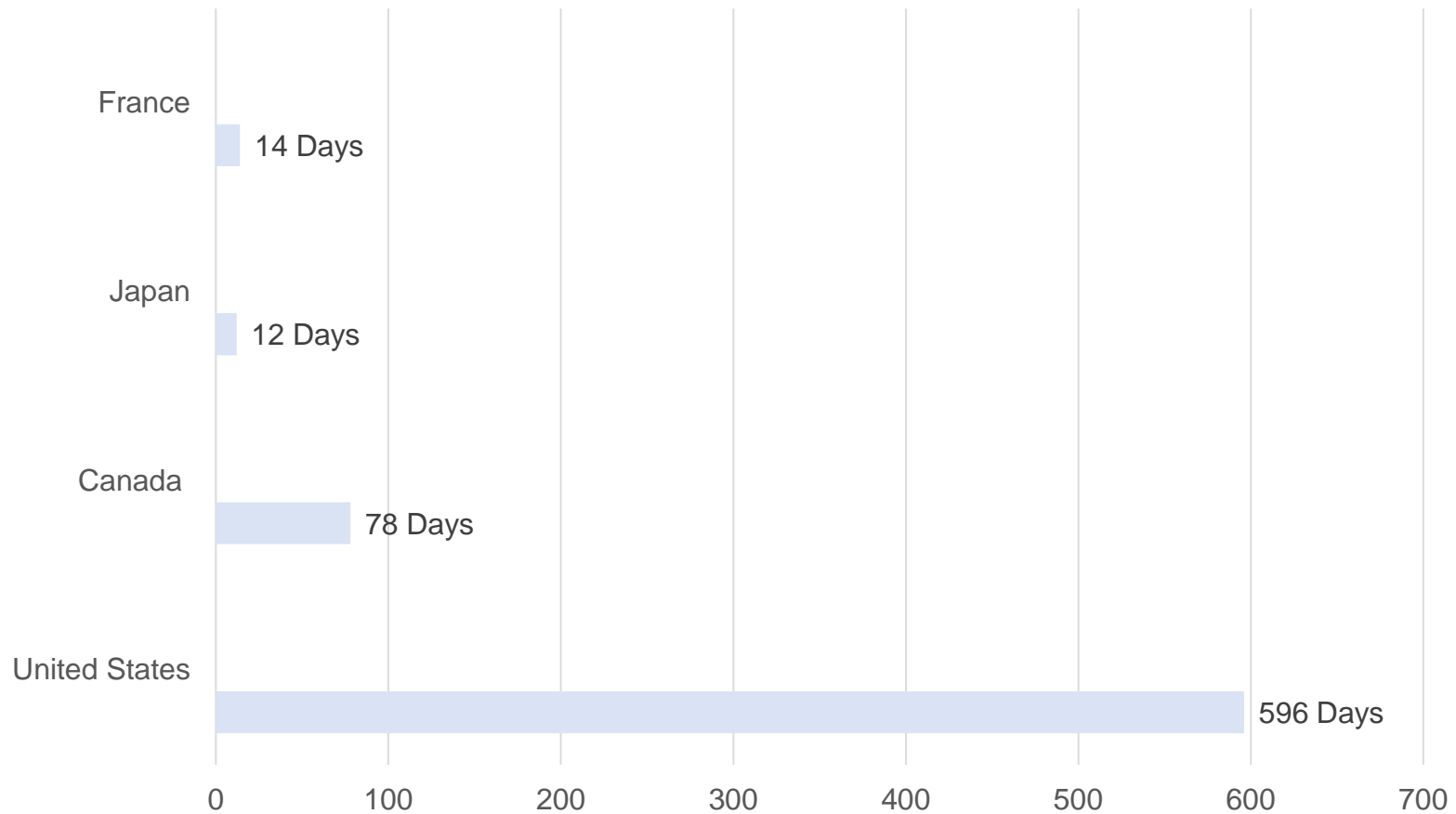
# POLITICAL LAW

- Political Law regimes primarily regulate:
  - Political contributions and involvement in the electoral process
  - Lobbying of public officials, including attempts to win public sector business
  - Gifts and entertainment provided to public officials and employees
  - Employment of former public servants (i.e., “Revolving Door” rules)



# U.S. ELECTIONS—ALWAYS IN SEASON

Length of Campaign Period By Country



# WHAT IS A PAC?

- Highly regulated and long-standing mechanism for corporate political engagement
  - Corporate executives and employees
  - Connected by issues, beliefs, interests
  - Combining resources to support candidates and engage with the political process
- Corporate PACs are the most common mechanism for corporate involvement in U.S. elections
  - Other methods for corporate engagement (direct corporate contributions, Super PACs, contributions to political non-profits) may attract greater scrutiny

# BENEFITS OF ESTABLISHING A PAC

Corporate Sponsor	Members
Employee engagement in political process	Access to senior executives
Bolster public affairs efforts	Special benefits and resources for members
Raise corporate profile in Washington	Trusted source of information about policies and politics
Develop relationships with policymakers and political class	Sense of community and common purpose
Draw first time participants into the political process	Leverage individual giving into a larger force
Transparent and highly regulated	Leadership opportunities for executives and engaged employees

# CAMPAIGN FINANCE: PROHIBITIONS

- **Corporations** are prohibited from making contributions in connection with federal elections to candidates, candidate committees, corporate PACs, and party committees
- “**Foreign nationals**” are prohibited from making contributions or spending money in connection with federal, state, or local elections.
- These limits and bans apply to **monetary** contributions as well as **in-kind** contributions
- **Straw donors** cannot use others to make contributions
- “**Pay-to-play**” laws may add an another layer of restrictions

# LOBBYING: INTRODUCTION

- Lobbying is a key element of corporate political engagement
  - Provides an opportunity to “make your case” to political decision makers
  - Includes both direct communications with public officials and indirect or “grassroots” lobbying campaigns
  - Sales communications with potential government clients can also be considered “procurement lobbying”
- Lobbying is also a highly regulated activity
  - Lobbying laws apply at the federal, state, and local levels

# SPENDING ON FEDERAL LOBBYING

## Top Lobbying Spenders—2018

U.S. Chamber of Commerce	\$94,800,000
National Assn of Realtors	\$72,808,648
Open Society Policy Center	\$31,520,000
PhRMA	\$27,989,250
American Hospital Assn	\$23,937,842
Blue Cross/Blue Shield	\$23,884,221
Business Roundtable	\$23,160,000
Alphabet Inc. (Google)	\$21,770,000
American Medical Assn	\$20,427,000
AT&T Inc	\$18,529,000



# LOBBYING: OVERVIEW

- Broad definition of lobbying:
  - In the past, “lobbying” was limited to attempts to influence legislation or rulemaking
  - Lobbying regimes have expanded significantly, and increasingly include procurement contacts
  - Often apply to both third party and “in-house” lobbyists
- Disclosure: lobbying laws are primarily disclosure laws requiring parties to register and report
  - They generally do not impose significant conduct restrictions (though there can be special limits on gifts, contributions, compensation, etc.)
- Variation: jurisdictions vary widely in approach

# Charles Borden



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**Charles E. Borden** focuses his practice on the intersection of law and political activity, and regularly counsels multinational corporations on the regulatory and compliance obligations. Mr. Borden advises clients on the political and reputational consequences, of political activity relating to campaign finance law, the Lobbying Disclosure Act (LDA), state and local lobbying law, the Foreign Agents Registration Act (FARA) and U.S. Securities and Exchange Commission (SEC) regulation of municipal advisors.

Mr. Borden is a visiting Fellow at the Centre for Analysis of Risk and Regulation (CARR) at the London School of Economics and Political Science. The Centre focuses on cross-border regulatory analysis, including with respect to the regulation of public corruption and political activities. Mr. Borden also co-teaches a Government Ethics: Scandal and Reform course at Harvard Law School, where he is a visiting lecturer.

In his Strategic Counseling practice, Mr. Borden frequently assists clients in crafting legislative and regulatory solutions to complex problems, and advises clients on the management of legislative and public policy risk.

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**Joel E. Roberson's** practice focuses on public policy development, legislative advocacy and regulatory compliance with a strong emphasis in technology policy, as well as food and drug law. He has significant experience in bipartisan coalition building, strategy development and high-stakes negotiation on behalf of Fortune 500 companies, not-for-profit organizations, educational institutions and trade associations.

Mr. Roberson advises high-tech clients on emerging public policy and regulatory issues, including self-driving cars, unmanned aircraft systems (UAS), cybersecurity, privacy and data breach response. He is well-versed in preparing clients to testify before Congress, including congressional investigations into data breaches. Additionally, Mr. Roberson advises healthcare and nutrition clients on public policy and regulatory issues, including the regulation of food, pharmaceuticals, over-the-counter (OTC) drugs and medical gases.

Prior to entering private practice, Mr. Roberson worked within the elected leadership offices of the U.S. House of Representatives for former Congressman J.C. Watts (R-Okla.) and former Congresswoman Deborah Pryce (R-Ohio). In this role with Congress, he prepared major legislation for floor debate, including development of debate strategy, creation of key messages and distribution of floor briefings for members of Congress and congressional staff.

# Sam Brown



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**Samuel C. Brown** is a Washington, D.C., attorney who advises clients on the unique political law issues associated with doing business with public sector entities or engaging in government affairs campaigns. Mr. Brown counsels multinational corporations, banks and asset managers on placement agent regulations, lobbying laws, gifts and entertainment rules, revolving door restrictions, campaign finance laws, and issues relating to the federal Freedom of Information Act (FOIA) and state Public Records Acts. Mr. Brown has significant experience with state and federal pay-to-play laws, including regimes that apply to investment advisers, third-party placement agents, swap dealers and firms engaged in municipal securities or municipal advisory activities.

In addition, Mr. Brown counsels individuals appointed to Executive Branch positions on federal conflict-of-interest, security clearance and financial disclosure requirements. He regularly advises clients on issues related to the Federal Advisory Committee Act (FACA), Foreign Agents Registration Act (FARA), municipal advisor regulations, anti-Boycott, Divestment and Sanctions (BDS) legislation, and state and local contracting issues. He also advises a range of financial services companies on compliance with anti-money laundering requirements, including recent beneficial ownership rules.

Previously, Mr. Brown served as counsel to Commissioner Ellen Weintraub of the Federal Election Commission (FEC), where he played a key role in formulating the Commission's response to the *Citizens United* decision, among other developments.

Questions?

Thank you.