
**REGULATORY OVERSIGHT, S01 Ep13, HOW LAW FIRMS AND LOBBYISTS CAN WORK TOGETHER: A LOOK INTO LOBBYISTS' ROLE AMONG STATE AGS
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Stephen Piegrass:

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piegrass, one of the hosts of the podcast and leader of the firm's regulatory investigations strategy and enforcement practice group. This podcast features insights from members of our practice group, including its nationally ranked state attorney's general practice, as well as guest commentary from business leaders, regulatory experts, and current and former government officials. We cover a range of topics affecting businesses operating in highly regulated areas.

Before we get started today, I wanted to remind all of our listeners to visit and subscribe to our blog at regulatoryoversight.com so you can stay up to date on developments and changes in the regulatory landscape. Today we're joined by Matt Hoekstra, a partner at William & Jensen, and by my colleague Ryan Strasser. And we'll be discussing how law firms can work with firms like Matt's on behalf of clients during congressional inquiries with parallel AG investigations or consumer litigation.

We'll also touch on how AGs are using firms like Matt's to lobby and influence congressional legislation and how legislative and regulatory initiatives may be changing now that the midterms are over. Matt has been with Williams & Jensen since 2007 and was named one of Washington's top lobbyists by The Hill in 2019, 2020 and 2021. He's represented Fortune 500 companies and leading trade associations before legislative branches and executives.

Prior to and during his time at Williams & Jensen, Matt has played an active role in dozens of successful campaigns for House, Senate and various statewide offices. He also serves on the board of directors of a company that specializes in building coalitions and engaging policy makers at a grassroots level across all 50 states. Prior to his time in Washington, Matt was an all-American nationally ranked chess player. He's also been a guest lecturer at an institution near and dear to my heart and Ryan's, Duke University, where he holds a degree in political science. Matt and Ryan, thank you so much for joining us today.

Matt Hoekstra:

Thanks, Stephen.

Ryan Strasser:

Thank you. Stephen, maybe I'll get us kicked off here. Matt and I have had an opportunity to cross paths in the past and we thought this would be a fun podcast, because served a lot of the same clients and same industries, and so there's just a lot of collaboration and coordination that we've seen in our careers over the last 15 years or so. So Matt, just jumping right in. As you know, our group works a lot with companies engaging with state attorneys general across the country. I was wondering to what extent do you work with state AGs? Do state AGs or companies involved with state AGs seek out assistance or guidance from you and your firm about federal policies and legislation, that kind of thing?

Matt Hoekstra:

Thanks, Ryan. It is interesting having primarily a federal lobbying practice. People are always wondering what is our role with state Attorneys General? How do we end up working with them, where our client interests are and questions of those nature. and what we always tell them is that state Attorneys General, I think they play a very unique role in driving some of the things that happened in Washington DC, maybe even more so than a lot of other statewide officials say for governor, so you could certainly say the same thing in a lot of cases. Our paths end up crossing with attorneys general quite a bit, and there are certainly a lot of lobbyists federally here that engage with the different AG groups and very closely follow the issues as you do, but more from a federal lobbying and federal legislative perspective. One thing that I think is fascinating in this time, and we have to talk about it, because the midterms just happen, you have state AGs particularly on the Republican side that are playing a very important role in terms of oversight right now.

And one thing I think many people are expecting from this election was that it would be a change election that Republicans would be vaulted into positions of power from a federal perspective. And that's really not what happened. So in this continued next two years of divided government, we should expect, I think more and more people in Washington are going to pay particular attention to the issues that you pay attention to that are happening at the state level that Attorneys General are driving, because that's where a lot of the oversight of the Biden administration is going to occur. And more and more I think we'll see legislating, particularly with the narrow Republican majority in the house, you're going to see the Biden administration focused on different administration policies, executive orders, executive actions that are done outside of the legislative branch. And I think the Republican Attorneys General are going to have certainly something to say about that.

One thing that we always remind our clients, and I think it's useful to keep track of stats like this, since President Biden took office, Republican AGs have filed 89 lawsuits, 15 motions to intervene in 139 letters, really targeted against the administration, and I think we're going to see more and more of that going forward. So it's an interesting check that particularly Republican state AGs have. And I think the other thing I'd mention in terms of the midterms, they were very successful.

Every state republican AG office was held and they picked up Iowa and Arizona remains too close to call at this point, but basically they're going to continue to hold, I believe it's 28 out of the 50 AG offices, and that could go up to 29 depending on how Arizona pans out. A trio of races coming up in the odd election years coming up next year, you've got Kentucky, you've got Mississippi, and you have Louisiana. And those are three more probably Republican strongholds there, a couple incumbents up for reelection including Attorney General Fitch from Mississippi. So the eyes of DC are very much on state Attorneys General and kind of the role that they'll play going forward in this divided government.

Ryan Strasser:

When you say they're going to take an active role sort of in oversight in 2023 and 2024 leading up to the next presidential election. Can you give us some discreet or tangible examples of how they develop the path and what will that look like over the next two years?

Matt Hoekstra:

I think from a 30,000-foot level taking issue like tech, you have a divided Congress, you have, even with the Democrats holding the House Senate in White House, you had a senate which requires 60 votes for almost anything in the antitrust space. So if you take an issue like federal antitrust policy, you have

people in Congress like Senator Mike Lee who is very much more of a classical conservative libertarian when it comes to antitrust policy. And then you have more people on the democratic side and some of his colleagues on the Republican side that want to be more aggressive when it comes to enforcing antitrust laws. So I think from that perspective, there's been a lot of deadlock. There's been a lot of talk for the last two years, which you all had heard no doubt of all this big package of bills that would take on antitrust from an advertising and news media perspective or for consumer choice perspective or for shopping different things that people are doing online.

You take an issue like that where I think state AGs have been fairly active in driving the conversation and filing lawsuits in moving the conversation for it. And Congress, despite their being bipartisan interest in these issues, has essentially done nothing in this area in terms of actual legislation. So I think there are areas like that, and I think there'll be more areas like that going forward into the next Congress with Republicans holding control. And somebody like Congressman Jim Jordan from Ohio who's expected to chair the House Judiciary Committee, he's not going to agree with a lot of his democratic counterparts on antitrust. Senator Lee, Senator Graham, some of those leaders, Senator Grassley on the Senate side are not going to agree with a lot of their Democratic counterparts on those policies. So I think you're going to see the administration continue to be very aggressive from a FTC perspective, DOJ enforcing antitrust laws, people like Jonathan Canter driving that conversation. But I think you're going to see state AGs playing a very important role there.

Ryan Strasser:

On that front, one of the things that we've heard about, and my colleagues and I actually wrote a recent article about, focuses on the idea that there are some in Congress who actually want to sort of augment enforcement arms of certain agencies who maybe lack resources or the budget to reach all the different industries and companies that they want to reach. And so, there's actually a push or been a movement to perhaps provide statutory authorization to state AGs to take on certain cases they may not otherwise have authority to do. Have you seen anything like that in proposed legislation or anything that you've encountered?

Matt Hoekstra:

It's a great point, Ryan. I mean, I think in terms of some of the proposal legislation we've seen, Congress is frequently interested in kind of, maybe I would say meddling, in how some of these cases are heard and some of the authority at the state level. And it doesn't always necessarily play out along party lines like you would think it might. There's been a lot of discussion over venue legislation in the antitrust perspective, and that was a bill, which a number of Republicans in the house side, including Conservative Freedom Caucus Republicans, supported a bill that would have significant venue reforms that was put forward by Democrats. And Ken Bach from Colorado was one of the leading Republicans that ranking member of the antitrust subcommittee on some of that legislation. So I think there is legislation like that out there. I'm not aware of necessarily where that legislation might go next Congress, but I think it's something that Congress will continue to think about, particularly with such an active FTC and DOJ Republican members in particular, I think thinking through how some of those issues are.

But one issue that I think is something that we've seen a lot of interest in the federal level and maybe giving more power to states and state AG offices are on issues like fentanyl and issues related to border security. And that's another area where I think Republicans will be very focused on the border, they'll be

very focused on fentanyl and opioid use and those type of issues as are their democratic counterparts. But I think as you see comprehensive immigration reform, really not having a realistic chance of doing big things given the current margins in the House and Senate. I think you will see more of a focus on issues like border security, on fentanyl, opioids, those type of issues. And I think there's a lot of interest from members of Congress perspective of working with their state, with their governors, with their state AGs back home and figuring out how we're empowering those kind of the top cops and the state level in going after some of these issues.

Stephen Piegrass:

Ryan, I think that's a really interesting point you made about the agencies themselves at the federal level too, looking for ways to cooperate, and some might say co-opt state AGs effectively expanding their regulatory authority or tapping into the resources of other office holders at the state level to advance their enforcement priorities. The CFPB I think is a really good recent example where they have actively encouraged state AGs, "Hey, look, you've got parallel enforcement authority for the same laws that we do, and even if we don't have the resources, state AGs, you should step up and enforce these laws." So I think that's a very interesting dynamic, and I think it's one we will see continued, especially with, as Matt's pointing out, the divided Congress that we've got and some of the gridlock we think we're likely to see in Washington, every time we see that. And we've seen that over the last couple decades, the states step up their enforcement efforts. And I think that the federal agencies and the states are now working even more closely than they ever have before to advance some of these regulatory initiatives.

Ryan Strasser:

Matt, do you see it being sort of a partisan divide as to whether state AGs ought to be used more to enforce and implement federal policy, or is it really kind of a bipartisan push or is it issue by issue?

Matt Hoekstra:

I think it's a little bit issue by issue, but I think there are some bipartisan undertones to it. I mean, I think if you're looking at issues like pandemic fraud, that's something where some of these pandemic rescue packages that happened at the federal level, some of them had bipartisan support such as the CARES Act, and some of the stuff that happened towards the end of the Trump administration. Some of them were more along party lines such as the American Rescue Plan, the ARPA, which happened towards the beginning of the Biden administration. But I think regardless of how those packages went through Congress, you have a very strong interest, I think, in both parties in preventing some of these programs from being abused, the PPP program, unemployment fraud, some of the things that we've seen happen where government just needs more integrity and accounting.

And there are members out there like Senator Grassley who just got reelected from Iowa, who is very strongly oriented towards oversight, definitely wants to see integrity in government. So I think there a fair number of Republicans out there that want to do that, but I think there are a fair number of Democrats out there that want to do the same thing. And I think it's a little bit bipartisan also, because if you're looking at some of these issues, what were the big issues of the 2022 midterms? Issues like crime, issues like abortion, issues like border security, if you set aside inflation, which also has some antitrust undertones to it as well. A lot of those other issues really are issues that State Attorneys General are taking on. I think there will continue to be a big focus from the federal level on what their state AGs are

doing back home and how they can implement policies at the federal level that help, particularly if their state AG is a member of their party, can help them do their job better.

Ryan Strasser:

We talked a lot so far about individual discreet state AG and how they may work with members of Congress that you just referenced. What about the AG associations? So DAGA, RAGA, NAG, AGA, do you work with them at all, Matt, or do you attend the conferences? What's your role if any with respect to those entities?

Matt Hoekstra:

Yeah, we do work with them Ryan. I think more on the Republican side, so I'm more familiar with RAGA than attending some of those other organizations, but they're great organizations. They're really, I think driving a lot from agenda and policy standpoint. People like me in DC that are federal lobbyists are paying more and more attention to what these organizations are doing. And I think part of what makes these organizations interesting and what makes people like us want to attend them and get to know state AGs and particularly when they come to DC, is that a lot of these people are leading on important issues that have a federal nexus, but they're also future senators and future governors. So even from just a relationship standpoint, I think there's a tremendous amount of importance that people in DC put on these organizations, because they are attorney general one day and then the next day they're serving the United States Senate particularly because of the importance of their positions back home and their relevance to the current political landscape.

I think there's a lot of interest in these organizations. It's interesting because when you have more of the bipartisan associations, everything has become so partisan in the way that people think about it. And I do some work with another organization, National Association of State Treasurers. I'm one of their DC lobbyists, and it used to be that state treasurers agreed on so many different issues. They agreed on far more than they disagreed on. And NASDA does a great job of working on issues that they agree on. But more and more there are issues, for example, ESG related issues and state investment portfolios that have become very partisan. So I think you're seeing the same thing on AG issues. So I think you have certainly your issues where there's some bipartisanship, there's some bipartisan interest, but I think as time goes on, people, companies, associations really find value in working with the partisan associations like RAGA and DAGA, so that they can also have those relationships separately and work on issues where maybe most of the Republican AGs agree, or most of the Democratic AGs agree, but there's not an agreement between the two.

Ryan Strasser:

When one of these associations or even a state AG, I don't know if they ever hire you or not per se, but when you're retained to work on their behalf, what are the types of things they'll actually have you execute or operationalize when getting out whatever messaging that they want?

Matt Hoekstra:

Great question, Ryan. Our clients tend to be more corporate in nature. The clients, the associations won't come to us that want to work on issues related to associations or industries that may be a target of an investigation at a state level, or they may be a target of a DOJ or FTC or more of a federal investigation where there are state AGs that are playing a role or very interested in the outcome of that.

So we tend to represent kind of the corporate clients, the corporate associations, the industries that are under investigation or quite frankly sometimes are taking more of an offensive position and are trying to drive investigations and are trying to make sure that there is a lot of light shed on a particular practice, be it antitrust or something else. I think what people tend to come to us on are things with a very strictly kind of federal legislative, federal oversight component.

So one thing would be a state AG starts investigation, they gain steam in Congress because people in the states are shining light on it, and then all of a sudden somebody like the Senate HSGAC committee, the Homeland Security and Government Affairs Committee or the House Oversight Committee and Oversight Reform. All of a sudden they take on that issue. And then a client comes to us and says, "Okay, well, we need you to work with the leadership of these committees with the members on these committees, because we're finding ourselves a target of this investigation, or we're finding ourselves with an opportunity to highlight an investigation that one of these committees is putting forward." So there's a lot of investigations, a lot of oversight, I think as we talked about at the beginning, that will be happening over the next couple years, and some of that will be oversight of different regulatory policies.

And certainly everyone in DC was very closely following that EPA West Virginia case, and that has big ramifications across the board. CFPB, as you mentioned Stephen, there are a lot of issues like that, but I think when you look at the leadership of the next Homeland Security and Government Affairs Committee, Senator Paul announced today that he'll be the ranking member, he'll seek the ranking member slot of HSGAC. On the Democratic side, Chairman Peters from Michigan. There's going to be a lot of interesting issues that Peters and Paul take on, Rand Paul being of course more of a libertarian, and that's going to be interesting. On the house side, you're going to have a different dynamic because Republicans with an incoming majority are going to be able to lodge and lead a number of investigations that they wanted to do over the last two years that they haven't been able to because Democrats have had the gavel.

Listen for the name Jamie Comer from Kentucky. He's going to be one of the most probably important and talked about members of the next two years, because he's going to be leading that oversight committee and they're going to have their work cut out for them, because there's going to be thousands and thousands of ideas, and he's going to have to figure out where they put their committee time and resources. We definitely get looped into a lot of conversations like that. The other thing that we get pulled into planning, what goes into at the federal level, we're being investigated. There's an investigation at the state level, or there's an investigation by the DOJ or the FTC. How can we help our clients position themselves legislatively? We always joke, I think, Stephen, you mentioned in the introduction, we're a law lobbying firm. We're structured as a law firm, but nobody ever hires us to do legal work, nor would I recommend anybody to hire us to do legal work.

That's for you all. You're the experts on that. We're the experts on lobbying and legislation and the relationships with some of these members. We find ourselves working with firms like yours a lot, where there's a very defined legal strategy, there's a communication strategy, and then there's a lobbying strategy. There needs to be synergy between the three for it really to work out, especially with some of these complex federal investigations. So whether it's issues like we've seen with school boards and issues we've seen in the antitrust space, there are no shortage of things that will be investigated going forward. And I think they'll be definitely a lot of interest in partnerships between firms like you all bringing the legal expertise, firms like ours, bringing the lobbying and legislative expertise, and then having a communication strategy that really captures what's happening at the federal level, but also at the state level with these AGs.

Stephen Piegrass:

Matt, I couldn't agree with you more. And we have found that we are at our most effective when we're dealing with major multi-states involving dozens of states or with a national push against our client at the federal level, when we pull together folks like you in your lobbying arm, our legal expertise, and then crisis management and communications teams to really develop a holistic strategy to take those things on. And I think it really is necessary to have all of those different pieces of the puzzle together with the client to end up getting the best result. Tell me a little bit more about that, and maybe even the nuts and bolts of how you go about doing that. Y'all get in a conference room and map it all out, or teams or what do you suggest?

Matt Hoekstra:

We can really nerd out on this portion. I have a lot of fun doing that, because what typically will happen with these things is a firm like yours will be involved first, because you'll be working on representing this client from a legal perspective. They're running into issues at this state and then at the federal level, and then all of a sudden it starts filtering up towards Washington and having a DC centric strategy. So what will often happen is, we'll get brought in by the client's legal representation. We'll come in and then we'll get ourselves in a conference room and with the client's general counsel with better legal minds than ours. And we'll sit there and we'll say, "Okay, what do we need to do? Prepare for a potential hearing?" And that's always the best case scenario, is you're preparing for a potential hearing or you're responding to a letter that your client just received yesterday that they have some time to prepare response for.

Because, a lot of these investigations at the federal level, they start off with a letter and then maybe they fizzle out. And that's often the best outcome for your clients, for our clients. But sometimes, of course, if they're not satisfied with the results of the letter with the response or with the lack of response or whatever, then that's when it can really escalate to the next level. So ideally, that first convening of the minds is happening very early on, and there's not a hearing scheduled, no witnesses have been invited to testify yet, the CEO is not going to be on the hot seat tomorrow kind of situation. That's the ideal. And then we really look at the committee makeup. We look at where does the company have existing congressional relationships? Where do they have jobs? Do they have jobs in any of the districts where there are significant committee members that may be driving these investigations? How do we attack the issue from that perspective?

When these things tend to progress, that's when it gets fun, because then you have a situation where the CEO of the company may be invited to testify or Congress has decided to call a hearing where they're going to look into certain business practices or a certain industry. That's when we typically work, I think, really well with a firm like yours where you're working with the legal counsel, you're just very involved in the legal strategy, and we're bringing the perspective of, okay, here is what this senator may ask you tomorrow, here are the interests of this senator, here's how this senator approaches these type of oversight hearings. We saw this in the big tech space where every senator takes kind of a different line of questioning, a different role in some of these hearings where certain big CEOs of tech industries are testifying.

And we kind of have the staff relationships, the Senate and congressional knowledge to say, "Here's what we should be anticipating here." We can advise the client from that perspective. And then you're advising the client, of course, on legally, here are the things you should be saying, here are the overarching messages. And then I think if you have the coms angle as well, that's helpful because of

course, people are going to write about these hearings, they're going to write stories about them, and that's going to potentially draw further hearings.

So one thing that we see frequently is, there's a first hearing, and then that first hearing goes well from the congressional standpoint, they get a lot of attention and press. And then all the other committees start saying, "Well, maybe I should hold a hearing on that. I'll get some nice press as well." So that's, when you get 3, 4, 5, 6 different committee chairs and ranking members really pursuing you legislatively, that could be in a dangerous position to find yourself in. So Stephen, to answer your question, one of my favorite things is when we're kind of all in a conference room together and we're just planning it out, we're saying, "Here's what to anticipate. Here are the questions you're going to get. Here's how you should probably handle this, Senator. Here's how you should handle this representative." And then of course, it's all governed by the legal strategy and what needs to be said and communicated at that hearing.

Stephen Piegrass:

And I think businesses can make a mistake if they focus exclusively on the legal side of things, because we can win in every legal case that we're handling. And if our competitor or if a regulator has a legislative strategy that they're executing at the same time and they succeed on that, all that legal success, it just goes right out the door, because the other side is one on the legislative side. So bringing in folks like you, Matt, at the front end and thinking about the potential legislative strategy and how it fits with your goals and objectives that we're trying to carry out on the legal side, is really crucial. And any general counsel who's facing a bet the business type of situation with the potential for significant press and legislative action, not just legal action needs to be thinking holistically like that and thinking about, you know what? We do need to get all of these players in a room together and map this thing out if we want to end up with the best result possible.

Matt Hoekstra:

Yeah, that's a great point. And I think the other thing that kind of strikes me when sometimes we get in that room together, is we all kind of have our own biases and blind spots when it comes to recommending the best strategy for it when it comes to these investigations. And sometimes we find ourselves as lobbyists saying, "Okay, well, you got a letter from chairman so-and-so, or chairwoman so-and-so. This is a very important person. This is a very important member, so you need to respond to that letter, and you need a thorough response and you need to do X, Y, and Z." But of course, we don't have the legal acumen to necessarily say that's the right path forward, because there are dangers sometimes in responding to that letter and how you respond. It's always good when we're communicating at the front end, because you have that better perspective there.

And then sometimes we have the better perspective out, well, you know what? This person is not going to let this issue go. We can try to avoid it. We can try to answer the question without answering the question, but that might backfire. So it is interesting to kind of have the meeting of the minds, and we always appreciate working with firms like yours that have that expertise and knowledge that we can and our clients rely on because we know from a legal standpoint, they're getting the best possible advice in these cases. And then we can decide what the best thing to do from there is. But you always hate to see the client that may be relying on information that you second guess or that you're doubting from a legal standpoint. And then if they make a bad decision there, then they're just going to continue making more and more bad decisions down the road, and then we all look bad. We always appreciate, I think, the

professionalism of working with a firm like yours where we can kind of look at it from all sides of the coin.

Ryan Strasser:

I think Stephen's smiling a lot. For the listeners who may not know Stephen actually worked on The Hill before we going to law school and becoming the head of our practice group. So I don't know Stephen if you are having flashbacks, but...

Stephen Piegrass:

Yes.

Ryan Strasser:

It seems like a very enjoyable conversation for you.

Stephen Piegrass:

It's been about 20 years, so things have changed a lot, and the coordination between states and the federal government has just dramatically increased since the years I was there. We used to love being able to say, "Sorry, that's a state issue, don't bother us with it." Can't do that today because there is so much overlap between the two.

This has been great, Matt. It's been fun talking to a fellow Blue Devil, of course, but someone who also has so much experience on the political side of things, and then you and Ryan with your chest connection as well. Lots of different synergies here. It's been a wonderful conversation this morning. Glad our listeners could tune in. I want to thank you all in the audience for tuning in today. Please make sure you subscribe to the podcast either through Apple Podcast, Google Play, Stitch, or whatever platform you use. And we look forward to talking with you all next time. Matt Ryan, thanks so much.

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