

On February 11, 2019, Harvard Law School invited former US Secretary of Transportation Rodney E. Slater to speak before the students of the Policy Advocacy Workshop on the federal legislative process and the role of an advocate. Sharing his insights gleaned from decades of public and private sector service in the public policy arena, Secretary Slater offered a presentation covering the following topics, including using a case study on the recent attempt to pass an autonomous vehicles (AV) legislation in Congress, to broaden the students' understanding of the legislative labyrinth and the integral role that advocates play in providing a voice for citizens in this important constitutional process.

Overview of Presentation Topics

- How to advance legislation: From good idea to federal law.
 - The role of advocates (lobbyists) in the advancing legislation
- The majority of introduced bills never become federal law. What if that happens to your bill?
 - **Case Study:** When legislation does not pass – AV legislation in the 115th Congress
 - House and Senate AV bills
 - US Department of Transportation (DOT) AV policy, guidance and regulation
 - State legislation and regulation
 - Industry stakeholders



How to Advance Legislation: Moving From Idea to Legislation to Enacted Law

Schoolhouse Rock: "I'm Just a Bill" Got Most of This Right – Including Likelihood of Enactment

- Many federal laws have their origin in a member of Congress (MoC) seeking to address an individual concern, to right a wrong that occurred with a constituent's experience working with a federal agency or federal grant program. The MoC drafts a bill and introduces it in Congress.
- The great majority of introduced bills never become law. Of the 13,000 bills introduced in the 115th Congress (January 2017 – January 2019), only 442 were enacted into law, but for those that did, some, but not all, followed the standard process from legislation to enactment.
- The policy work of the Congress happens in its committees. Once a bill is introduced, it is assigned to the appropriate committee with jurisdiction over the subject matter the bill addresses (e.g., all revenue bills are referred to the Ways and Means Committee in the House and the Finance Committee in the Senate).
 - Congress holds the federal funding purse strings. MoCs jockey for positions on the most sought-after committees, which are the appropriations committees (that move spending bills each year) and the armed services committees (with jurisdiction over the enormous defense programs).
 - Committee assignments are made by seniority of office within each party, and committee breakdowns, Republicans and Democrats, are drawn based on the overall partisan breakdown in the chamber.
- Most bills die in committee, meaning the chairman of the committee does not choose to formally consider the bill and "report out" the bill to the full House or Senate.
 - It is smart to build support for one's bill with the chairman of the relevant committee **before** introducing the bill.
 - A bill sponsor might work with the chairman to get the bill included as **an amendment to another bill** that the chairman supports and will mark-up in his/her committee.
- If the committee of jurisdiction approves the bill in a meeting of the committee called a "mark-up," the bill is reported out of committee to the full House or Senate.
- Even bills that get over the very high hurdle of committee consideration can fail to advance to consideration on the House or Senate floor for a wide number of reasons, such as if another MoC has objections to the bill. While the House is governed by majority rule, in the Senate, the objection of a single senator will keep a bill from reaching the Senate floor.

- Floor consideration of a bill varies in the House and the Senate.
 - Most House bills are considered on the floor in accordance with a set of rules tailored to each bill, which inform MoCs which amendments can and cannot be offered for consideration. So all MoCs interested in offering an amendment to the bill must get their amendment pre-cleared by the House Rules Committee.
 - Senate consideration of a bill does not occur under any formal rule structure, but bills are normally considered on the Senate floor in accordance with an informal agreement between the Majority and Minority Leaders.
- Once approved by either chamber, a bill must also pass the other chamber within the same (two-year) congressional session and then be reconciled, via a “conference committee” of House and Senate members who each produced their chamber’s bill. Then the single, conferenced bill is brought to the floor of each chamber for a vote on final passage.
- The bill then goes to the President, who has 10 days to act on the bill.

The Role of Advocates (Lobbyists): Proposed Policy Is Arguably Good for Clients, the Public and Industry

- Public policy advocates engage in many forums: the US Congress, federal agencies, state governments, trade associations and think tanks, among others.
- Today’s discussion will focus primarily on policy work in the legislative arena, but will also briefly touch on federal agencies and states.
- Policy work is both dynamic and nuanced. It will help contextualize our discussion if we look at public policy advocacy through the lens of a particular issue – autonomous vehicles – to illustrate the methods, challenges and tactics at work in public policy advocacy.

Advocacy: The Role of Outside Advocates in Proposing/Advancing/Thwarting New Legislation and in Changing Existing Law

- Petition government for redress of grievances: The first amendment specifically prohibits Congress from abridging “the right of the people . . . to petition the Government for the redress of grievances.”
 - This language is meant to protect citizens’ right to participate in government. It is couched in the Constitution as such – a right of the people that Congress cannot limit.
 - The halls of congressional office buildings are often crowded with citizens directly exercising that right – meeting with their MoCs.
- Many entities rely on hired third-party advocates – lobbyists – to advance their federal priorities in Washington DC.
 - Third-party lobbyists are not just a resource for large corporations, some of which also often have in-house lobbyists that advocate on the same or similar issues. Many public sector entities – cities, counties – rely on lobbyists to help amplify their voice in Washington DC.

Lobbying 101: How to Advance a Client’s Interests via Federal Legislation

- The role of an advocate – whether it be a litigator or a lobbyist – is to convince the listener to buy into your version of the world. However, a policy advocate must go further in the congressional arena. While trial lawyers face a collective audience of 12 jury members, arguments by today’s policy advocates must be tailored to each listener, adequately supported with data, and sold to every stakeholder – for some context, there are 435 MoCs in the House alone. Your goal should be to turn a listener into an ambassador for your cause.

What should your strategy be? Smart advocates rely on data-driven arguments, and they reach out to absolutely everyone with a stake in their proposal to achieve favorable results.

- Understand the problem and craft a legislative solution.
 - Study the client’s business footprint: What is the economic impact of the client’s business? Where is it located? Where are the employees? What is the value to suppliers of the client? What communities benefit from the requested change? Importantly, who might oppose it and why?
 - Understand the fiscal impact of the change requested: How much money would the change cost/save the federal government?
- Identify “champions” in Congress.
 - Identify the MoCs that are impacted by the client’s business footprint (e.g., manufacturing jobs along the client’s supply chain).
 - Identify any MoCs that have particular interest in this issue or to which the client has ties (e.g., home state of corporate HQ).
 - Identify the committees with jurisdiction over the issue and look for connections to their members, particularly the chair and ranking member.
- Meet with MoCs and staff for committees of jurisdiction.
 - Remember, Congress acts through its committees, so you must build support for a measure with individual MoCs but also with the committee of jurisdiction. Sound public policy arguments are necessary to secure the support of the committee.
 - MoCs rely on their staff to assess the merits of potential legislation. Building relationships with congressional staff is often as important as a direct relationship with the MoC.
- Develop compelling advocacy materials.
 - “One-pagers” for MoCs and staff that are tailored to fit each MoC’s constituency. MoCs are enormously busy, holding dozens of meetings each week on countless issues. If you cannot distill your issue to a compelling argument that fits on a single page, you can lose before you start.
 - Explain the problem and legislative fix to remedy it.
 - Explain why the change would benefit the constituents in the MoC’s district or, for committee staff, why the change is a “good government” measure (e.g., it will save taxpayer money).

- Draft legislation.
 - Do not present a problem without a solution. Draft legislation that fixes your concern.
 - Few legislative fixes move as standalone bills; your language will likely travel as an amendment to a much larger bill.
 - In fact, it is smart to try to ride as an amendment on a “must pass” bill that has more momentum than your own.
- Secure passage of the legislation.
 - Must secure the support of the committees of jurisdiction in both the House and the Senate to move your legislative fix.
- Implement the legislation. Your bill was passed – but your work is not over.
 - Legislation often requires implementation by one or more agencies within the Executive Branch, so your advocacy work is not done upon enactment.
 - Work with the agency implementing your legislation: Submit comments to the docket on the agency rulemaking implementing the law and secure supportive comments from like-minded stakeholders.

Your Bill Does Not Pass. What is Next?

Case Study: Autonomous Vehicle Legislation

Congress is concerned about the safe testing and deployment of AVs, especially testing on public roads, and both chambers moved bills in the 115th Congress to address their concerns.

House

In 2017, the House Energy and Commerce Committee passed an AV bill to direct US DOT to establish regulations for the safe testing and deployment of AVs, including some exemptions from federal requirements that vehicles have steering wheels and brake pedals. The bill passed by unanimous vote out of committee and by a large majority in the full House.

Senate

In 2018, the Senate Commerce Committee had a tougher time advancing their AV bill. Their bill was amended in committee and reported out to the full Senate, but senators’ objections to the committee-passed bill meant it could not advance to the Senate floor. Vehicle safety advocates believed both the Senate and House bills did not go far enough to ensure highway safety, and tort lawyers were concerned both bills did not do enough to protect the rights of vehicle crash victims. Therefore, both groups secured the support of Democratic senators to hold up the Senate bill until amendments could be added to address safety and victims’ rights.

Conference

Without taking their AV bill to the Senate floor, Senate Commerce Committee members worked to pre-conference their bill with their House counterparts, trying to reach agreement on common bill text that could come to the Senate and House floors for a vote. House and Senate conferees could not reach agreement before the end of the 115th Congress on January 3, so both the House and Senate bills died at the end of the session.

What Happens Now?

Congress: Under congressional rules, all bills of the 115th Congress not enacted by the end of the Congress are dead and must be reintroduced in the 116th if the sponsors seek to advance them again.

Other Stakeholders: In the case of federal AV legislation, as with most bills, many stakeholders are affected. In the absence of federal AV legislation, key stakeholders can decide to take certain actions of their own – to step into the breach created by the failure of Congress to pass an AV bill.



Federal Agencies – US DOT

- Already has the authority from Congress under previous legislation to adopt safety standards for motor vehicles.
- Federal Motor Vehicle Safety Standards cover a broad range of safety standards automakers must meet, such as requirements for airbags, seat belts, tires and crashworthiness.
- However, those standards do not reach the new technologies and vehicle configurations of self-driving vehicles. Should US DOT issue new rules, such as where there is no human driver sitting behind a steering wheel?
- US DOT has issued voluntary guidance to the industry and automakers about safe testing and deployment of AVs, but it has not yet developed rules – required standards automakers must meet – that apply to new AV technologies and vehicle configurations.¹
- US DOT can influence AV rules by issuing new rules or changing existing rules. It can do so formally through the federal rulemaking process, or informally by issuing voluntary guidance documents or providing interpretations to its rules. For example, US DOT effectively modified the regulatory definitions of “driver” and “operator” through guidance, so that these terms no longer require a human behind the wheel.²
- US DOT can study and fund research on AV policy with participation of the industry stakeholders for the purpose of guiding and informing future rulemaking.³
- Federal agencies can influence AV public policy through grant funding. The Smart City Challenge, for example, was a nationwide competition for US\$40 million in grant funding for smart transportation technologies; this one-time program in the Obama Administration has continued to generate significant advancements in US cities eager to introduce new transportation technologies, including AVs.⁴

1 **DOT & AV Policy Guidance 3.0:** The DOT has released three iterations of its AV policy guidance, with the just-released 3.0 version addressing all modes of surface transportation. In that guidance, Transportation Secretary Elaine Chao has established a framework for collaboration between industry stakeholders and all levels of government. The policy takes a permissive approach to AV guidance, letting the industry innovate without a heavy hand. However, Secretary Chao has made it clear that she will increase oversight if she believes safety is threatened, knowing that safe operation is key to public acceptance of AV technologies.

2 In a significant first step, the DOT has revised, via interpretation, its definitions of “driver” and “operator” as used in US DOT regulations (including the Federal Motor Vehicle Safety Standards). Per the 3.0 Guidance, “[t]he Department will interpret and, consistent with all applicable notice and comment requirements, adapt the definitions of ‘driver’ and ‘operator’ to recognize that such terms do not refer exclusively to a human, but may in fact include an automated system.”

3 **ANPRM Pilot Program for Collaborative Research:** Additionally, on October 10, 2018, NHTSA announced a Pilot Program for Collaborative Research on Motor Vehicles with High or Full Driving Automation, publishing an advance notice of proposed rulemaking (ANPRM) on this subject. The ANPRM seeks public input on factors that should be considered in designing a pilot program for on-road testing and deployment of AVs. NHTSA’s aim in such pilot is to explore whether new manufacturer standards for AVs may be needed and, if so, to develop and implement non-traditional, performance-based FMVSSs.

4 Columbus, Ohio, won the US\$40 million US DOT Smart City challenge in 2016, which brought the Vulcan grant and a half-billion dollars in pledges of private investment. The Smart City Grant helped the city of Columbus purchase its first batch of electric vehicles in February 2018.

State Governments

- The federal government sets safety standards for the manufacture of vehicles. State and local government set standards for vehicle and driver licensing and for operation – speed limits, etc.
- No federal preemption of state action on AVs: Where Congress has not preempted the states to legislate, they may do so within their constitutional police powers reserved for the states.
- US DOT does not propose to preempt any state or local rules governing the safety testing and deployment of AVs. Therefore, testing in AV-friendly states like California and Arizona will likely continue under these states’ own frameworks, without additional federal rules, for the foreseeable future. However, companies prefer a single set of AV rules at the federal level to promote consistency in developing and testing technologies.
- In absence of binding federal vehicle safety standards, states may decide to regulate AVs themselves, potentially creating a patchwork of individual state requirements.
- Approximately 33 states have passed or introduced legislation covering AVs, mainly vehicle and driver licensing rules.⁵ Many cities are passing laws, too.⁶

Industry: AV Manufacturers

- Manufacturers in the AV industry will not wait on the federal government to establish rules and standards for AVs – they are testing their vehicles today on public roads in several states, mainly warm-weather locations like California, Arizona and Florida.
 - Some industry players are frustrated by the lack of federal standards to guide deployment, believing those standards will inevitably be developed – but may lag behind where the industry is in deploying new technologies.
 - Other industry stakeholders believe that regulation is premature and will stifle innovation.
 - Industry players are instead relying on their own trade associations and engineering standards agencies, such as the Society of Automotive Engineers (SAE), to develop common practices and standards for the development and testing of AVs.
- In this case, industry association standards and engineering best practices can become the established “rules,” in the absence of federal legislation or regulation.

5 National Conference of State Legislatures, [Autonomous Vehicles](#) (November 7, 2018).

6 Harvard’s Autonomous Vehicle Policy Initiative reported on the city of Toronto’s efforts to regulate a fleet of driverless cars used by transportation network companies (TNC) like Uber and Lyft. The city’s efforts to manage traffic flow included designating streets as “local” meant for slower speeds and used primarily for local residents. See Benjamin Gillies, [Toronto: A Model for AV Policy Making](#), Autonomous Vehicle Policy Initiative (August 20, 2018). See also Mark Fagan, [A Warning Shot for AV Policy Action](#), Harvard Kennedy School (August 7, 2018) (article encouraging cities and states to “move into the driver-seat now to set the right course for their constituents” before AV technology floods the market).

What Is Next for AV Stakeholders in the 116th Congress?

- While many industry players are not waiting on Congress or US DOT to issue rules for AV testing and deployment, Congress is likely to make another attempt at advancing an AV this year. No bills have been introduced yet.
- House Democrats, now in the majority, are interested in moving an AV bill that better addresses the concerns of safety advocates – concerns that thwarted passage at the end of last year.
- US DOT seems committed to its approach of nonbinding policy announcements to guide – but not regulate – the manufacture and testing of AVs.

To supplement this lecture, our Public Policy team provided the following materials:

[2018 Midterm Elections Analysis: President Donald J. Trump, a Democratic House, and a Republican Senate](#)

[Congressional Leadership in the 116th Congress](#)

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About Our Public Policy Practice

The team with the connections to make your voice heard across the globe. We do three main things, and we do them well: We lobby policymakers, we engage in advocacy before regulatory bodies and we undertake political due diligence to help clients anticipate potential deal problems and opportunities.

Our Public Policy Practice works with clients to make sure they are heard at the right time, by the right people, with the right message in Washington DC and state capitals in the US, and in Brussels, London, Canberra and other major capitals around the world. We have developed one of the most sophisticated public policy practices of any law firm anywhere in the world to help private sector, public sector and sovereign clients across the globe.

We offer pragmatic experience and relationships in the halls of government in the US and abroad. Our team includes former Speaker of the US House of Representatives John Boehner, as well as former US Senate Majority Leader Trent Lott, former US Senator John Breaux and former US Representative Jack Kingston. In addition, our deep bench of advocates includes six former ambassadors, a former US Secretary of Transportation, top US congressional staffers and numerous agency officials who have served in the federal government and in state and local governments. In Europe, our team includes former members of the European Parliament, current and past members of national parliaments, former government ministers and heads of national regulatory authorities, as well senior private sector executives.

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