



M U L T I S T A T E

### [‘Choosing winners and losers’: Behind the battle to be deemed essential](#)

In New York, the real estate lobby tried to convince Gov. Andrew Cuomo that people could be left homeless if the industry is forced to shut down.

Retailers in Illinois pressed to get businesses that service swimming pools and hot tubs added to the list of businesses considered too essential to be closed.

And the Golf Course Superintendents Association of America provided talking points to its members to push states and localities to let the greens stay open. The game of golf has “tremendous benefits to offer during times of crisis,” the trade group argued on its website.

As states and cities have forced what they consider “nonessential businesses” to close to slow the spread of coronavirus, lobbyists for industries from retail to reefer have been hustling to make the case that they’re too important to be shut down — a designation that could mean millions for companies and the employees who keep them running.

Business interests have argued that the constantly changing rules in different states, counties and cities have created a patchwork of restrictions that are inconsistently enforced and are costly to adhere to, as the Retail Industry Leaders Association and the National Retail Federation wrote in letters to governors last week.

“In a lot of ways, states and local governments are choosing winners and losers,” said Douglas Friednash, a Denver lawyer who has lobbied on the restrictions in recent weeks.

Companies and trade groups seeking to shape the rules are lobbying governors, most of whom have issued executive orders detailing which businesses can remain open and which must close. They’ve also appealed to the Trump administration, which has put out recommendations outlining which industries it considers essential — although states and cities aren’t bound by the recommendations.

The National Shooting Sports Federation, for example, successfully convinced the Trump administration to add gun stores and shooting ranges to its list of essential businesses. The move convinced New Jersey to change its own rules — but it didn't sway Los Angeles, which has shut down its gun stores. A federal judge sided with the city on Monday in a lawsuit brought by the National Rifle Association and other gun-rights groups.

Some companies have turned to lobbyists with ties to the administration to help them make the case that they should be added to the list.

Laundrylux, which makes commercial washers and dryers, and the title insurance company Fidelity National Financial last month both hired Brian Ballard, a lobbyist who's a top fundraiser for Trump's campaign. Laundrylux wanted laundromats included on the list. Fidelity sought to have county recorders of deeds — who are crucial to its business — designated essential.

Ballard's firm lobbied DHS, which later included "laundromats, laundry services and dry cleaners" and government workers "who perform title search, notary and recording services in support of mortgage and real estate services and transactions" on an updated list of essential industries.

And Energizer Holdings hired Scott Mason, who worked on Trump's 2016 campaign, to convince the administration the company's battery manufacturing operations should be considered essential. Mason lobbied the White House and DHS on the matter, according to a disclosure filing.

In an interview, Mason said Energizer's operations in states such as Wisconsin, North Carolina and Ohio should be designated essential because the company supplies batteries that hospitals battling coronavirus rely on.

"They're a direct supplier of dozens of health care and hospital systems across the country, millions of patients across the country," he said.

Energizer paid Mason's firm \$20,000 to lobby on the essential business designation and other matters for less than two weeks last month, according to disclosures.

Christopher Krebs, the director the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, wouldn't specify which industries have lobbied his agency but said in a statement that the list "includes the feedback and suggestions received from" the private sector.

Other battles over what's an essential business have been fought in the states.

When a New York state agency said that real estate wasn't considered critical, the state's powerful real estate industry warned that deeming it nonessential could have devastating consequences.

"Right now, there are buyers and sellers in the final stages of their transactions and absent the ability to conduct legally required walk-throughs, they simply will not be able complete their purchase or sale," Jennifer Stevenson, the president of the New York State Association of Realtors, wrote in a letter to Cuomo obtained by POLITICO. "Should real estate services not be able to proceed, New Yorkers will be faced with the prospects of losing down payments, being in contractual breach, or worse yet, homeless if the sale of their current residence just recently settled."

New York reversed course last week, indicating that real estate agents could resume showing houses, apartments and offices. But the move spurred an immediate backlash in a state that has reported more than 7,000 people have died of the novel coronavirus.

The state clarified the next day that only virtual showings would be allowed, though back-office work, walk-throughs and appraisals still appear to be allowed.

The Golf Course Superintendents Association of America, meanwhile, organized golf executives to lobby every governor in the country. "The ask was, 'Keep golf open for play where possible,'" Chava McKeel, the trade group's top lobbyist, said in a webinar last month.

In states that have forced golf courses to shut, the trade group has asked that courses at least be allowed to keep up with maintenance. It also has pressed the DHS to designate golf course maintenance as essential.

In Illinois, retailers successfully convinced Gov. J.B. Pritzker's administration to add bicycle repairs shops to the list of essential businesses. With many Chicagoans avoiding mass transit, "bikes become a whole lot more popular, and bike repair businesses a whole lot more essential," said Rob Karr, the president and chief executive of the Illinois Retail Merchants Association.

But the trade group failed to persuade Pritzker to add tree nurseries and businesses that service pools, spas and hot tubs to the list. "That was not included," Karr said.

The retail industry has also chafed against rules in Vermont and cities in other states forbidding stores from selling goods not considered essential, even if they're allowed to remain open to sell groceries, hardware and other supplies.

Lindsay Kurrle, Vermont's commerce secretary, directed big-box retailers such as Walmart and Target last week to "reduce the number of shoppers by requiring online ordering, delivery and curbside pickup whenever possible, and by stopping the sale of non-essential items."

Jason Brewer, an executive vice president at the Retail Industry Leaders Association, said such rules were unfair because they forced employees to try to police the items that customers were buying.

"For a lot of retailers, there are aisles that contain essential and nonessential goods," he said. "Simply roping off an aisle doesn't really work."

Some of the battles are being fought in cities and counties rather than state capitals.

Like several other states, California has designated recreational cannabis an essential industry — a much-needed win for the state's dispensaries, which are already struggling to compete against an underground market that can't be shut down by executive order. But Long Beach, the state's seventh most populous city, and Santa Clara County, announced last week that they'd only let dispensaries sell to those with medical marijuana cards.

That's a problem because many Californians who use cannabis medicinally no longer have cards now that recreational weed is legal, said Adam Spiker, a co-founder of the Southern California Coalition, a cannabis industry trade group. His group has mounted "a full-court press" against the restrictions, which he said came at a particularly bad time.

Medical marijuana users need the drug more than ever now, he said, "because everyone's panicked about what's going on in the world."

### **[Tourism lobbyists want taxpayer help for advertising agencies](#)**

Tourism industry lobbyists are pressing Congress and the Trump administration to extend emergency aid meant for small businesses to taxpayer subsidized advertising agencies such as Visit Orlando and Visit Florida.

“That’s a huge priority of ours,” said Tori Emerson Barnes, a lobbyist for the U.S. Travel Association, whose members include tourism businesses such as the Walt Disney Co., Marriott International Inc., Carnival Corp. and Avis Budget Group Inc.

The group’s members also include a cadre of taxpayer-supported convention and marketing bureaus from around the country. And many of those bureaus are organized as a type of nonprofit that appears to be ineligible for a \$350 billion pot of forgivable small business loans that is central to the \$2.2 trillion emergency relief plan Congress passed last month to keep the U.S. economy afloat during a coronavirus pandemic that has forced a near-total closing down of commerce.

Industry lobbyists initially expected tourism bureaus to be eligible for the new Small Business Administration program in which businesses can get loans that they will not have to repay if they keep workers on their payroll or rehire those they have let go. But the final version of the legislation, which sped through Congress in less than a week, ended up excluding them without any explanation.

“It’s a significant oversight,” Barnes said.

Under the “Paycheck Protection Program,” small employers and self-employed workers — and some mid-sized and large employers in certain industries like hotels and restaurants — can get a loan equal to two-and-a-half times its monthly payroll costs up to \$10 million.

It’s not clear how much an organization like Visit Orlando could qualify for if it were eligible to apply. The agency, which has 175 employees, spent roughly \$1.5 million a month on wages and benefits last year, according to its most recent tax filings.

But companies are supposed to exclude any wages they pay above \$100,000 a year. Visit Orlando CEO and President George Aguel made nearly \$700,000 in total compensation last year, according to the tax filings, and the agency had at least nine other executives who made more than \$200,000.

Demand for PPP loans has overwhelmed the Small Business Administration in the first week, and the initial \$350 billion is expected to be disbursed very quickly. Tourism lobbyists have attempted, unsuccessfully so far, to persuade SBA officials to interpret the rules broadly enough to include marketing bureaus in the program.

Congressional leaders have begun negotiating a supplemental package that would add another \$250 billion to the PPP fund. So the industry is now trying to get a provision attached to that legislation that would open up the program to tourism agencies and other entities that use the same nonprofit structure, such as chambers of commerce.

But others say U.S. taxpayers should not be made to bail out entities that already get lots of money from local and state taxpayers — and that exist to subsidize the marketing costs of private tourism businesses.

“To hear that some of these larger public-private tourism-focused entities are lining up for this money when I know that small businesses are going to get so much less than what they really need in this moment, it definitely seems unfair,” said Stephanie Porta, the executive director of Organize Florida, a left-leaning group that advocates for low- and moderate-income Floridians.

Visit Orlando received nearly \$73 million in local taxpayer money from Orange County in 2019, according to its financial statements. The organization is led by a board of directors that includes the chief commercial officer of Walt Disney World, the president of Universal Orlando, and hoteliers representing various Hilton, Hyatt and Marriott properties.

Visit Florida got nearly \$76 million in state tax money during its last fiscal year. The agency’s board includes executives from Disney, Universal, Hilton and Hertz.

Revenues have essentially evaporated at tourism businesses as cities and states around the country have ordered residents to shelter in place to slow the spread of COVID-19. Many of those businesses have responded by laying off and furloughing workers en masse.

Publicly subsidized tourism bureaus have been somewhat insulated so far because there is a time lag in tax collections. But that’s about to change: Florida sales and hotel collections from March — the month that much of Florida shut down — are due by April 30.

“Things are going to get worse before they get better,” Orange County Mayor Jerry Demings told reporters last week.

Some tourism bureaus are already bracing themselves. D.T. Minich, the president and CEO of Experience Kissimmee, said the agency has put its staff on 32-hour work weeks, suspended paid advertising and canceled or postponed all sales activities. Visit Florida, meanwhile, has closed its four welcome centers indefinitely and suspended media campaigns and press trips.

Visit Orlando said it has suspended its global advertising campaigns, though the organization said it continues to do some digital marketing. Becca Bides, a spokeswoman for the agency, said it has also rescheduled 15 convention for later this year and devised a tentative advertising campaign aimed at tourists who drive to Orlando, rather than fly, which would begin once travel resumes.

“We will be ramping up a campaign that targets this audience when we launch and will adjust based on our research from there,” Bides said.

Executives at the Greater Miami and the Beaches Convention & Visitors Bureau did not respond to repeated requests for comment.

Tourism bureaus are eligible for other programs under Congress’ coronavirus relief bill, including small-business disaster loans or loans through a fund aimed at larger businesses and governments.

But the industry would prefer marketing agencies get the Paycheck Protection Program loans because those will most likely be forgiven. Boosters say every dollar that Visit Orlando and other marketing agencies spend repaying loans will be one less dollar they can spend advertising when the pandemic passes.

“When we’re ready for a recovery, we’re going to need them to promote tourism around the country,” said Barnes, the U.S. Travel Association lobbyist.

But Porta, the executive director of Organize Florida, said some tourism agencies have more fat to cut than many small businesses.

“It seems greedy,” Porta said. “Particularly in this moment where so many folks are suffering such enormous losses — financially, emotionally and health-wise.”

### **[NJ Lawyer-Lobbyists Saw Big Payday in 2019, See Uncertainty For 2020](#)**

Being heard has never been more expensive in Trenton, or lucrative for lobbyists—the hired guns paid to make sure their clients’ interests are represented and amplified at the highest echelons of power at the Statehouse.

Last year’s booming economy, an activist governor, one-party rule, and more than 11,000 bills in the Legislature generated a windfall of clients, and made 2019 a banner year for lobbying in the state—with expenditures by clients topping \$100 million for the first time ever.

And law firms with lobbying arms staffed by heavy-hitting lawyers, typically those with extensive experience in dealing with or working in government, or lobbying firms made up of lawyers by trade, made out quite well, according to data from the New Jersey Election Law Enforcement Commission. Overall, 28 such firms generated \$15.4 million in total receipts. That's up 7% from what the same group earned in 2018. The \$15.4 million figure also is the highest total ever for lawyer-lobbying firms, according to ELEC, which regulates the industry.

Of the top lawyer-lobbying firms in New Jersey, seven grossed \$1 million or more in 2019: Gibbons, at \$2.83 million; Optimus Partners, with \$2.27 million; Komjathy & Kean, \$1.51 million; River Crossing Strategy Group, \$1.45 million; Porzio Governmental Affairs, \$1.3 million; Archer Public Affairs, \$1.15 million; and Riker Danzig Scherer Hyland & Perretti, \$1.05 million.

Some say the increase in receipts was largely due to the addition of new clients with an interest in a range of issues, including health care, insurance, renewable energy and internet gaming space. And with Democrats in full control of the government, issues that had not seen consideration in the prior Republican administration of Gov. Chris Christie suddenly moved to the top of the agenda.

Marijuana interests also came out in full force since legalization of adult recreational use, with an added focus on social reforms, emerged as a key initiative by Gov. Phil Murphy. Although the massive New Jersey Cannabis Regulatory and Expungement Aid Modernization Act ultimately failed to clear the Senate, it is expected to generate as much—if not more—lobbying attention this fall, when it is to be decided by voter referendum.

Gibbons of Newark led the lawyer-lobbyist pack for the 12th consecutive year with its Trenton-based government and regulatory affairs department, co-chaired by David Pascrell and Kevin Walsh. The department's \$2.8 million in 2019 receipts represented a 16% increase from 2018, and placed Gibbons sixth overall among all lobbying firms in the state.

"The reason why Gibbons is so far ahead of the curve is that we have had an established regulatory and government affairs group for nearly two decades," said Pascrell, who's been with Gibbons since 2002, and whose father is longtime U.S. Rep. William Pascrell, D-New Jersey. "We have been doing this longer than other firms. It puts us in a unique position. No one can marry the intersection of law and government as good."

Many are trying, it seems. There were 945 registered lobbyists in New Jersey in 2019, up from 900 in 2017, and the number of clients rose to the largest total ever at 2,222, representing a 16% increase, according to ELEC reports.

“There was a lot of pent-up demand on progressive legislation while former Gov. Christie served two terms,” Pascrell said. In addition, “Gov. Murphy has a serious agenda that he would like to get done in areas like health care, [poverty], the environment, and energy, and he wants to execute on those items, and have a very prolific legislative legacy.”

Senate President Steve Sweeney and Assembly Speaker Craig Coughlin “always have an aggressive agenda, and they don’t always match up [with Murphy], which often produced competing legislative priorities with the governor and more legislative activity,” Pascrell added.

One such bill that created a lot of controversy was sponsored by Sweeney, D-Gloucester, that sought to address classification of independent contractors and employees. A-5936/S-4204 never made it out of either chamber in the last session. In this new session, which started on Jan. 14, the Senate bill was introduced as S-863, while an Assembly counterpart has not yet been introduced.

That legislation was just one example of the thousands that Gibbons tracked, according to Pascrell.

Experience also paid off for Morristown-based Riker Danzig, which finished seventh among lawyer-lobbying firms in receipts at \$1.05 million, up from \$982,724 the previous year.

“Riker Danzig has had one of the longest-standing government affairs practices in Trenton,” said partner Mary Kay Roberts. “Most of our clients have been with the firm for decades.”

Riker Danzig also attracted new ones from the health care and insurance fields, which helped drive revenue.

“In the 2018-2019 legislative session, we saw a record number of legislative introductions of close to 11,500 bills, and our clients are keenly aware of the need for representation in New Jersey,” Roberts said.

River Crossing’s top clients last year were in renewable energy—everything from solar to offshore wind to electric vehicles. Murphy making alternative energy a key issue didn’t hurt. Marijuana was another area of heavy focus, as was education and real estate, said co-founder Eric Shuffler. The uptick propelled River Crossing to a fourth-place finish among lawyer-lobby firms, with \$1.45 million in revenue.

“I am a lawyer, did pass the New Jersey bar, but I have never practiced nor do I practice now, but the legal education and training has been exceptionally helpful in my work and my efforts

both inside of government and as a lobbyist,” said Shuffler, who previously worked on Capitol Hill as chief of staff to then-U.S. Sen. Robert Torricelli, D-New Jersey, while attending Catholic University’s law school at night.

Receipts at Porzio Governmental Affairs totaled \$1.3 million last year, up from \$1.18 million in 2018, an increase of 10%. It gave Porzio a fifth-place finish among lawyer-lobbying firms.

“It was a good year,” said Vito Gagliardi, managing partner of Porzio, Bromberg & Newman in Morristown and president of the firm’s 10-year-old lobbying subsidiary, Porzio Governmental Affairs, based in Trenton. “It was an active year in the Legislature, and we had more activity from long-standing clients. But the key to our success is that it complements our law firm.”

Among Porzio’s newer clients last year were: Vote.org, which was very involved in the issue of online voter registration; Girls Who Code, which addresses gender inequality in the technology field; and Continent 8 Technologies, which partnered with the Casino Reinvestment Development Authority to open a new data center in Atlantic City last June. The center houses technology infrastructure for internet gaming and sports wagering, and is located at the Atlantic City Convention Center.

### *Minding the Details*

Language in a bill coursing its way through the Legislature—even an obscure, seemingly overlooked sentence—can impact a client’s bottom line substantially. That’s where lawyer-lobbyists can come in and fight either for or against the measure, or seek to have it amended or stalled through influence with lawmakers.

At Gibbons’ Trenton office, lawyers monitor legislation down to the minute details, the group says.

Walsh, a former assistant U.S. attorney in the Criminal Division in Newark, describes the department as “a profit center” for Gibbons that “serves to drive business for other departments in the firm.”

So much so that Gibbons opened an office in Washington, D.C., in January 2019 staffed by William Palatucci, the Republican National Committee’s committeeman for New Jersey, and Jason Redd, former deputy executive director and general counsel to the New Jersey Senate Majority Office, senior counselor to the Senate president and chief of staff to the Senate majority leader.

“We have not just former Assembly and Senate staffers, but from all over state government,” Walsh said. “And we can pull in from all levels. It’s a real luxury for us.”

Two of Porzio’s three registered lobbyists are women, including Barbara DeMarco, vice president of Porzio Governmental Affairs.

Last year DeMarco focused on legislation that impacted the cost of doing business in New Jersey, all education-related legislation and regulation (both K-12 and higher education), state budget concerns, and issues rooted in constitutional rights and freedoms, according to the firm.

While she’s not an attorney, DeMarco said having Porzio’s deep legal bench was a tremendous help.

“I have the former head of the Secret Service in New Jersey, a former assistant commissioner of the Department of Human Services, the former commissioner of education, a director of knowledge [Harvard graduate in charge of technology systems], the first African American New Jersey Supreme Court justice [James Coleman], among others to tap,” DeMarco said. “These individuals are spread across the [firm's] other three companies. If they do not have an answer, they know where and how to get it.”

### *The Big Spenders*

The \$100 million in total lobbying expenditures last year represented the biggest one-year increase since 2015, jumping nearly \$8.4 million, or 9.1%, according to ELEC.

The surge in lobbying activity occurred as the three top-spending groups—the New Jersey Education Association, New Direction NJ Corp. and Horizon Blue Cross-Blue Shield of New Jersey—collectively spent \$10.2 million more in 2019 than they did a year earlier.

The three groups were behind a heavy surge in communications spending (\$13.6 million) to get their message out, as their hired lobbyists relied more frequently on the airwaves and internet to build pressure for or against a measure—known as issue advocacy advertising.

“A good economy encouraged development of legislative initiatives that otherwise would not have been considered,” said Dale Florio, head of Princeton Public Affairs, the state’s top-grossing lobbying firm, raking in \$10.6 million last year. “The Murphy administration has indicated it is willing to spend money on initiatives it deems important, and that breeds new opportunities for clients who want to see if they can advance their interests.

“The flip side of that is some businesses and industries felt threatened by potential tax increases and different policies,” added Florio, a nonpracticing attorney. “There’s a whole genre of interest that want to use advocates for defensive purposes—such as natural gas pipelines.”

Perhaps the most vocal was the New Jersey Education Association, the state’s oldest registered lobbying group that represents about 200,000 teachers and other school workers. There was a more than elevenfold increase in the NJEA’s lobbying spending in 2019, jumping to \$6.24 million, its largest expenditure since 2015.

NJEA had 15 registered lobbyists, all in-house, who tracked approximately 350 different bills during the last legislative session. Not by coincidence, the NJEA and Sweeney announced earlier this year that they had reached an agreement on health benefits, arbitration and sick leave.

“That was an important thing for the NJEA,” ELEC Executive Director Jeff Brindle said. “That was one of the things they were lobbying on.”

No. 2 in special interest lobbying spend was New Direction NJ, a 501(c)(4) social welfare group created in November 2017 by Murphy’s former campaign manager Brendan Gill that ran a series of issue advertisements touting Murphy’s policies. New Direction NJ ramped up its lobbying spending from the previous year by 676%, to \$3.9 million, according to ELEC.

ELEC reports filed by Horizon Blue Cross Blue Shield-New Jersey showed it had the third-largest increase in spending, at \$1.43 million. Part of Horizon’s funds went toward Move Health Care Forward NJ Inc., which spent \$849,866 on an advertising campaign seeking support for a bill that would let the state’s largest health insurer modernize its corporate structure.

Thomas Vincz, a Horizon spokesman, said the money was well spent.

“To continue meeting the needs of our members, Horizon began pursuing legislation last year that would allow the company to become a not-for-profit mutual ... that would allow us to be more flexible and responsive in the face of the enormous changes occurring in health care today,” Vincz said. “The increased spending reflects the work that Horizon is doing to help ensure that policymakers, stakeholders and the public understand the legislation, and why it is critical to the future of health care in New Jersey.”

Groups who wanted a piece of the potentially multibillion-dollar marijuana industry opening up also came out in force and spent big. ELEC listed 68 marijuana interests—with such names as

Acreage Holdings, Beyond Green, and Compassionate Care Centers of America Foundation/Garden State Dispensary—that spent \$1.9 million to get heard in Trenton.

Cannabis was a big revenue driver at Porzio. “It’s an area where the law is developing so quickly,” said Gagliardi. “Clients come to us for both legal and lobby work. We can do both.”

“For us, it’s the fact the lobbying and legal work is so complementary,” Gagliardi added. “It attracts clients and we advocate for them in two areas: in the part of government where they make the laws, and the part of government where they interrupt the laws, mainly the courts.”

With the marijuana bill failing to garner enough Senate support in May 2019, lawmakers decided to ask voters to decide the issue this fall as a November ballot question.

But no one fully anticipated the impact of the novel coronavirus pandemic. New Jersey has been under a public health state of emergency since March 9—the same day the 2019 ELEC figures came out.

### *Navigating a Pandemic*

It seems lobbyists may have to rethink how they practice their craft. Earlier this month, Murphy extended the state’s emergency declaration up to 30 days to continue social distancing measures he’s put into place to slow the spread of the potentially deadly virus. Traditional face-to-face lobbying in the Statehouse with lawmakers will be difficult, it appears.

The Legislature nevertheless has been busy. To address the COVID-19 fallout, lawmakers acted swiftly. With the public barred from the Statehouse due to health and safety concerns, the Assembly and Senate passed a coronavirus emergency package of 28 bills in mid-March to aid residents, businesses, schools, hospitals, food banks, and others impacted by the pandemic.

The Senate plans to vote on an additional 23 bills and two resolutions on April 13.

“There’s really no baseline to judge what this year will bring,” Brindle said.

“Regarding the ballot question on marijuana, if we had spoken a month and a half ago, I would have predicted record spending for marijuana. Now with the pandemic, it will be interesting to watch. The question is, ‘If business is impacted and profits are down, what is going to be the level of contributions to pro- and anti-marijuana efforts to defeat or pass the ballot question?’

“If things straighten up real quickly, \$10 million could be spent on the ballot question alone. But what if it’s all by mail-in voting because people can’t go to the polls? They can’t go out period. We just don’t know at this point,” he added.

But events suggest there will be a lot of lobbying going on in the coming months, especially since the leaders of the Legislature and Murphy just announced that the legislative calendar would be extended from June 30 to Sept. 30 to give the state sufficient time to reach a balanced budget and get recovery efforts underway.

DeMarco of Porzio Government Affairs said, “During a pandemic, when new laws, executive orders, administrative orders, emergency rules and regulations and guidance memorandums are coming in quickly from the governor’s office and each department and authority/commission in the state, your clients want answers as to, ‘What does this mean?’ immediately.

“Having a lawyer or professional in security or education or disability law or pharmaceuticals to interpret it for you from a legal perspective, tells the lobbyist if it is good enough or expansive enough to protect the client,” she said.

“Again, invaluable.”

### **Businesses lobby to make Trump’s list of ‘essential’ industries**

Pet stores are considered essential. So are landscapers. Hair salons aren’t. Neither are shops that sell books or clothes.

The Trump administration’s labeling of industries considered “essential” is quickly creating winners and losers as coronavirus shuts down swaths of the economy. It’s also setting off a lobbying frenzy among industries — from battery makers to poultry producers — angling to join the ranks of hospitals, supermarkets and other businesses whose continued operation has been deemed necessary.

But because the designation by the Department of Homeland Security is advisory only, it’s left a patchwork of rules from state to state. California has adopted the federal recommendations entirely, protecting whole sectors from the consequences of lengthy closings. Other state and local governments have used the advisory as a guide and added their own orders — leading to rules that vary by border, as some such as Pennsylvania opt to keep liquor stores closed while others consider them essential.

“There has been a flurry of lobbying as this crisis is almost an existential threat to just about every single business in the country in a way we haven’t seen,” said Dan Auble, a senior researcher with the Center for Responsive Politics, which has been tracking efforts to influence the process. “If you know the right people to call and argument to make, you can get on that list.”

The battle to win the essential designation reflects the growing economic stakes as coronavirus takes hold in the U.S., forcing thousands of businesses to close and sparking a record surge in jobless claims. It comes as President Donald Trump presses to reopen the nation for business to slow the damage to the economy and lawmakers weigh another massive stimulus to save mom-and-pop firms.

In all, the administration has deemed as many as 62 million workers essential for the federal list, according to an estimate by the Brookings Institution, a Washington-based think tank. That’s more than one-third of the 152 million workers on U.S. non-farm payrolls in February. But not everyone’s been successful. Groups representing the beer, wine and liquor industry have yet to receive a national designation. Shops that sell vaping products, which also weren’t included on the list, were planning to mount a lobbying effort to change that, according to the American Vaping Association.

And not all states follow the administration’s guidance. In Virginia, for instance, golfers can still hit the links, but in nearby Maryland the courses are closed. Recreational marijuana dispensaries can remain open in Michigan, but not in Massachusetts. Florida Gov. Ron DeSantis late last week wrote a memo exempting employees of professional sports productions with a national audience, a category that will allow World Wrestling Entertainment Inc. to continue filming events at its training facility in Orlando, according to ESPN.

California has exempted all the sectors listed by DHS and added its wine industry — though tasting rooms have to be carryout only. And bike shops have been deemed essential in New York, but not in Ohio, according to Adie Tomer, a fellow at the Brookings Institution.

“These lists are different everywhere,” Tomer said. “The door is wide open for governors and mayors to make their own designation.”

Among the most controversial designations involve the firearms industry. Gun and ammunition manufacturers and retailers were added to a revised version of the Trump administration’s list as were shooting ranges following a lobbying effort by groups such as the National Shooting Sports Foundation.

“It is precisely in times like these that citizens need to be self-reliant,” the Gun Owners of America wrote in a letter to the Department of Homeland Security.

Not all states agree. New York ordered firearm retailers closed but permitted liquor stores to stay open — prompting an outcry from the National Rifle Association.

New York officials are “going out of their way to protect liquor stores and release criminals onto the streets, while ignoring the public’s outcry over the suspension of Second Amendment rights,” the NRA said in a lawsuit challenging Governor Andrew Cuomo’s March 20 executive order.

### *NRA lawsuits*

The New York lawsuit follows similar action the NRA took in Northern California, where it sued several cities including San Jose for ordering gun stores to close. Late last month in New Jersey, Governor Phil Murphy lifted a temporary ban on the sale of guns in the state after the NRA filed suit to block it, and Los Angeles County also backed off an earlier ban.

The patchwork is worrisome for groups ranging from the American Walnut Manufacturers Association to the Vinyl Siding Institute, which joined with dozens of other trade association in a March 25 letter to the president, governors, mayors and other local elected officials.

“It is imperative that the federal, state and local governments come together with uniform definitions of ‘critical infrastructure’ making clear what manufacturers must continue to operate, as well as take seriously the need to transport those products and have the workforce available to keep operations running,” they wrote.

Some companies and trade groups have hired lobbyists to argue their case. St. Louis-based battery maker Energizer Holdings Inc. sought the help of Washington’s Holland & Knight LLP to secure a coveted “critical industry” designation, according to a lobbying disclosure form.

“The reality is Energizer makes battery products that power dozens of home and hospital health devices,” said Scott Mason, a senior policy adviser for Holland & Knight. “They are without a doubt a key part of the fight against COVID-19.”

The National Chicken Council and the National Waste & Recycling Association have also enlisted lobbyists to gain designation as essential industries.

Appeals have been successful on the federal level. Groups representing coal mining companies were successful in adding the fossil fuel to the Trump administration's list of essential industries after being left off the original version. Among their arguments: Reliable coal power "is critical to supporting hospitals, health care providers and others on the front line," according to a letter sent by America's Power, a trade group that counts Peabody Energy Corp. and Murray Energy Corp. among its members.

### *Dirty laundry*

Even laundromats have gotten in on the action. Laundromat workers, laundry services and dry cleaners were added to the list after Inwood, New York-based Laundrylux Inc., hired the lobbying shop Ballard Partners at the end of March. Their mission: "Designation as essential business in response to Covid-19 virus," according to a lobbying disclosure form.

"You don't think about laundry in a crisis situation until you run out of clean clothes," said Daniel McFaul, who previously served as chief of staff to Trump ally Florida Representative Matt Gaetz and teamed up with Brian Ballard, the firm's marquee lobbyist, to press the issue with the Trump administration.

The process isn't sitting well with some good-government types, who say the list provides a way for the Trump administration to dole out favors.

"It's sickening that Trump is exploiting a pandemic to deliver financial benefits for his key political and financial allies," said Tyson Slocum, an official with the watchdog group Public Citizen.

### **Strip clubs and lobbyists sue for stimulus dollars**

Strip clubs and lobbyists are suing the federal government to try to get access to [coronavirus stimulus](#) dollars.

In three separate lawsuits, they say they were ineligible for loans because of the types of business they run, alleging the stimulus law is infringing on their free speech and other constitutional rights.

The owners of Little Darlings strip club in Flint, Michigan, and Silk Exotic Gentlemen's Clubs in Milwaukee and Middleton, Wisconsin, brought lawsuits over the past few days against the US Small Business Administration because the businesses applied for but cannot get [loans under the \\$2 trillion financial relief bill](#) passed by Congress in late March. The American Association of

Political Consultants and the Denver-based political firm Ridder/Braden Inc. filed another suit in Washington, DC's federal court on Tuesday, also against the Small Business Administration.

"Covid-19 is not just ravaging the health of Americans, it is also ravaging the Nation's economy," the political operatives wrote in their court papers. "The government does not have a legitimate interest during this global pandemic in preventing small businesses from obtaining much needed cash to cover payroll and health insurance for their employees just because these small businesses exercise fundamental constitutional rights."

Many small businesses are eligible for up to \$10 million each through the stimulus loan program.

But in addition to sex-related venues and political advocates, a handful of niche types of businesses cannot access the loans. Other organizations barred from the program include some types of nonprofits, some types of private membership-based clubs and religion-promoting businesses.

Yet those businesses say they're suffering.

The strip clubs say they had to close in mid-March because of stay-at-home orders from their governors. They then applied for SBA loans but were denied or expect to be denied, the lawsuits said. Even if the businesses are eventually allowed access to the loan program, the owners worry stimulus funds may be gone by then.

The political consultants hadn't applied for loan money because they are ineligible, their lawsuit said.

If the strip clubs don't get access to the federal funding, "They may lack the staff and/or funds to reopen following the COVID-19 pandemic," the Silk lawsuit in Wisconsin said.

The Silk clubs shouldn't be shut out from the loans because their entertainment is "non-obscene (and not prurient), appeals to healthy human interests and desires, and is in full compliance with the numerous licenses and permits," the club owners' attorney wrote to the federal court in Wisconsin.

Both strip club lawsuits claim that though their dancers are semi-nude or nude, the entertainment isn't against the law -- with the Michigan club noting some of its dancers are fully clothed.

Rick Ridder, one of the political consultants suing, noted the irony of how lobbyists, too, were shut out from the funding. "Everybody wanted a piece of the action, but it turns out the lobbyists didn't take care of themselves" when Congress passed the stimulus in late March, he said.

Ridder, a Democrat, is not the typical Washington operative. He and his wife have a small office next to the baseball stadium in Denver, and primarily do polling and consulting in Colorado state politics. Ridder's firm has worked for candidates up and down the ballot, including Colorado Democratic Gov. Jared Polis. He works as a lobbyist for only one client, a group that advocates reviving Colorado's gray wolf population.

Ridder said on Tuesday his firm is cutting pay to its partners but not to its staff as the economy's ripple effect hits his business. "People don't have money, then they don't give to campaigns. If they don't give to campaigns, they don't have money to pay consultants," he said. "There's been a definite reduction of business since March."

So far, there are relatively few lawsuits in federal court against the SBA over the loan program, and these lawsuits are in their earliest stages before federal judges.

An SBA spokesperson declined to comment on the lawsuits on Tuesday because the agency doesn't discuss pending litigation.