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[Lobbyists' influence felt in Topeka](#)

Lobbying can have a big impact on which bills get traction in Topeka.

A lobbyist in Kansas can buy a lawmaker dinner to discuss a possible bill but it must be reported. If a lobbyist gives a lawmaker a gift, it must be under 40 dollars.

"We require that they register as a lobbyist and then the people of Kansas can see what expenditures they're making to influence legislation," said Mark Skoglund, executive director at the Kansas Governmental Ethics Commission.

KSNT News Political Analyst Bob Beatty said some of the biggest groups can impact what bills come to light on both sides of the aisle.

"Educations unions do have quite a bit of influence. On the more conservative side, obviously the National Rifle Association, the Kansas Chamber of Commerce is very active, they represent a number of businesses, so they have a lot of power," said Beatty.

When the bill finally makes it to the statehouse, the background behind it isn't always known.

"A group can write a bill, can write the language for a bill, can push a bill, and then a legislator will carry that bill," said Beatty.

There are 535 lobbyists that represent nearly 1,500 clients in the state this year. The Kansas Governmental Ethics Commission keeps records on what lobbyists are doing.

"So there are two parts that are always publicly available, who a lobbyist represents is always public as well as if they spend any money promoting a particular interest," said Skoglund.

[Investigation Into One Lobbyist's Actions Raises Questions About Workplace Harassment Policy At The Capitol](#)

State [Sen. Jessie Danielson](#) was talking to friends and colleagues at a fundraising dinner at the Four Seasons Hotel in Denver nearly four years ago when lobbyist Benjamin Waters allegedly walked up and grabbed her buttocks. The incident has been the subject of a formal investigation that concluded in February of this year.

"No one's allowed to touch people like that," Danielson told CPR recently. "So the fact that a lobbyist came up to me, at a work event, and did that was embarrassing and belittling. It didn't much matter what his job was, he still came up and thought that he was entitled to touch me like that."

Waters denies the allegation.

"I have never grabbed or slapped [Complainant's] butt in jest or otherwise on any occasion," Waters told investigator Mark Flynn of [Employment Matters LLC](#), who was hired to review the claim. Flynn disagreed with Waters and wrote, "This investigator finds it more likely than

not that Respondent's conduct violates the Policy as harassing conduct that denigrates Complainant because of sex."

Under the Capitol's current workplace policy, there is no mechanism to hold lobbyists and other third parties who work there accountable if they harass someone. Whether that should change is part of a larger discussion about updates to the legislature's workplace harassment policy that lawmakers are expected to [debate in the final days of the session](#).

Expanding the policy to lobbyists would require a rule change approved by both the House and the Senate with a two-thirds vote.

"They are part of the workplace environment, but they are not legislators. They're not elected officials," said Democratic Sen. Majority Leader [Steve Fenberg](#). "So we need to sort of thread the needle of what happens if they are involved in a potential violation, who oversees that investigation and what types of punishments are appropriate."

Danielson, a Democrat from Wheat Ridge, said she was moved to file a formal complaint late 2018 after she had learned Waters was bad-mouthing her around the Capitol.

"Because not only had he harassed me, but then he was threatening retaliation or retaliatory actions because I confronted the harassment. And that to me is as dangerous as the initial harassment itself," Danielson said.

Flynn's investigation, however, did not conclude that Waters had retaliated against her. Flynn wrote that he thought the lobbyist was someone "prone to make unconventional remarks observed by others as shocking," so critical comments about Danielson couldn't be linked to the underlying incident. Flynn also did not find it credible that Waters created a hostile workplace because it was an isolated incident that was not severe enough, and Danielson was able to avoid working with him.

The Original Incident

Waters, who is a Democrat and openly gay, has been a registered lobbyist since 2007. Some of his clients include Mile High United Way, Colorado Association of Gifted and Talented, Fostering Colorado, Colorado LGBTQ Chamber of Commerce, Native Roots and the Colorado Coalition of Land Trusts among others.

Shortly after the One Colorado dinner in August 2015, Danielson requested a meeting with Waters and then-House Chief of Staff Ian Silverii to talk about what happened. In describing that conversation to the investigator, Waters said he apologized out of deference to Danielson but that he "did not remember anything like that occurring." Waters recalled saying, "I am deeply sorry if that's what you experienced, and I pledge that nothing like that will happen in the future."

CPR reached out to Waters for an interview about the incident and complaint. He responded with a written statement.

"I am sorry for any behavior that made someone feel unsafe or uncomfortable. I immediately apologized once the issue was brought to my attention more than four years ago and pledged that it would not happen again. I have since reflected on my behavior and am committed to making sure everyone feels safe in the workplace."

Waters has not requested a copy of the report so he hasn't yet read the investigator's findings.

“This process has been handled well. I’ve learned a lot and appreciate the opportunity to better understand the concerns of all parties. I commend the legislators for putting this protocol in place to give all sides a voice and an opportunity to be heard when issues arise.”

After their meeting, Danielson and Waters both thought the matter was resolved. Danielson decided not to resume working with Waters on bills, and he confirmed to the investigator that they stopped communicating.

In fact, Danielson said the issue didn’t come up again until 2017 when she said she started to hear that Waters had been making disparaging remarks about her because of the initial confrontation about the harassment. Danielson was headed into a busy legislative session and a competitive senate race, so she decided to file her formal complaint on Dec. 3, 2018, after the election was over. Then-Speaker of the House Crisanta Duran hired Employment Matters LLC to investigate. CPR obtained a copy of that report.

The investigator interviewed one woman, known as Witness 3, who said Waters had also acted inappropriately with her and she feels he gets away with this type of conduct toward women because he is gay.

“[Respondent] has grabbed my [body parts] more times than I can remember.” She told the investigator she set some boundaries a few years ago and the physical behavior stopped but not the inappropriate comments: “It’s still about power.”

A Question Of Retaliation

One of Danielson’s main reasons for moving forward formally was her charge that Waters had retaliated against her. She heard from Witness 3 that he was going to “take her down” for turning him in.

Witness 3 told the investigator she’d heard secondhand that, “He would say. ‘You know she reported me for grabbing her.’”

The investigator couldn’t confirm those comments. The person who had told Witness 3 declined to participate in the investigation because she was not granted anonymity and she feared retaliation. Reached by CPR recently, the woman said Waters made those remarks to her in 2017.

Witness 3 added in the report, “My perception is he retaliates about everything. That’s just who he is. I think he considers us friends. I’m cautious about that friendship.”

Democratic political strategist Audrey Kline remembers talking to Waters in 2017 about state senate races that would be in play in the next election when Danielson’s name came up. Kline told the investigator and CPR that it seemed like Waters had a vendetta against Danielson and wanted revenge.

“It got really vicious really fast,” Kline told CPR. “To go after Jessie and then sort of dwell on it. And the way that he did was, it was ‘shocking’ is the word that comes to mind. It was not sort of politics as usual. It was ... ‘I’m going to make her life miserable.’ And ‘I’m coming right for her.’” Kline added, “I’m willing to talk right now because I don’t work with Benjamin, and he doesn’t have any power over me or, or my livelihood.”

Under the legislature’s workplace harassment policy “retaliation can be any action that is taken against a person that would deter a reasonable person from coming forward to complain of misbehavior under this Policy.”

Waters denied retaliating against Danielson.

“I have never suggested that I would ‘take down’ [Complainant]. I do not have the power to do so either,” he told the investigator. “I have not called [Complainant] horrible but I have heard others call her that.”

Though Flynn concluded Waters likely did make unprofessional comments about Danielson, including a potential threat to “make her life miserable,” he said the link between the 2015 incident and Waters’ criticisms was too tenuous. “Waters has a reputation of making critical comments about others, too, and doing it in a variety of contexts apart from this occasion,” Flynn wrote.

The investigator also explained why he didn’t conclude Waters created a hostile workplace.

“The act appears sexual in nature, unwelcome, and unreasonably offensive, but not so severe as to effectuate a hostile environment under the policy,” he wrote. Flynn said it didn’t “substantially interfere with [Complainant’s] work performance” and took into account the fact that the two had been friends at one point.

“This is not to excuse the offensive conduct at issue, but only to recognize that Complainant knew at the time that the contact came from Complainant’s friend, who acts inappropriately on occasion. That seems far less threatening than, for example, a similar act by a stranger with sexual intent,” the report reads.

Flynn also said Danielson’s decision to cut off contact with Waters after the incident “does not appear reasonably justified” and was “too extreme under the circumstances.”

Indiana University Law Professor Jennifer Drobac, a national expert on sexual harassment, reviewed the investigation and took issue with those conclusions.

“So what is severe? I think that the touching of an intimate body part is severe. And if it's not, what threshold is he using for severity?” she said. “It is ludicrous to say that if women can go around avoiding their harassers, there is no hostile work environment. That would totally defeat anti-discrimination laws.”

As for retaliation, “She complains and he starts bad-mouthing her,” Drobac said. “I’m stunned the investigator didn’t see this.”

Current Speaker of the House [KC Becker](#) oversaw the investigation and reviewed the final report. She asked Waters to take sensitivity training, which he agreed to do.

For her part, Danielson thinks the Capitol’s system for handling complaints is inadequate.

“I was very hopeful that we would have already dealt with some kind of legislation to help remedy some of these problems. That's also part of why I think it's important to come forward now is to remind folks that this is still a problem,” Danielson said. “It happens to people. And if we don't stand up and do something about it, it's going to continue to happen.”

Policy Changes

During the 2018 legislative session, workplace harassment allegations against five state lawmakers were found to be credible. Former Democratic [Rep. Steve Lebsock was expelled from office](#), the first expulsion in 103 years. Former Republican [Sen. Randy Baumgardner resigned](#) after three separate investigations concluded he had created a [hostile and offensive workplace](#).

The legislature has spent nearly \$400,000 dealing with workplace harassment so far.

Investigations Law Group studied the Capitol's culture. The consultants surveyed more than 500 people and concluded that female lawmakers were the most likely demographic to experience or observe harassing behavior or sexist conduct. State lawmakers were the most likely to harass people.

The current legislature wraps up its work May 3. The issue of lobbyists has not been widely discussed yet in either chamber, or whether a record of credible complaints against lawmakers should be released to the public, although a bill has been introduced to do that.

The Senate plans to set up a bipartisan committee to oversee complaints and review investigations, so it no longer falls to the top Senate leader. The House is expected to propose a similar idea. The goal is to depoliticize the process, although it creates less confidentiality for accusers, which could reduce the number of complaints filed, and the evenly split committee would be vulnerable to reaching a deadlock on recommendations for consequences.

'Clean Missouri' group concerned with Legislature's proposed amendment

The group "Clean Missouri," which backed the proposed constitutional amendment of the same name, is worried state lawmakers will ask Missourians to undo the amendment before it really takes effect.

Last week, Clean Missouri Director Sean Soendker Nicholson urged his plan's supporters to contact lawmakers in opposition to House Joint Resolution 48.

The House General Laws Committee recommended the full House debate and pass the proposal by an 8-4 vote, while the Standing Committee on Rules-Legislative Oversight endorsed the measure by a 6-2 vote.

The resolution is on the House debate calendar, so leaders could go to it whenever they choose.

However, since the resolution is a proposed constitutional amendment, even if it passes the House and Senate, it still must go to a statewide vote and be passed before it could be effective.

Last November, more than 1.4 million Missourians — or more than 62 percent of those who cast ballots — approved the "Clean Missouri" plan which was on the ballot as Amendment 1.

It made several changes to Missouri's Constitution, including:

- Changing the process used to redraw state House and Senate district boundaries every 10 years, after the federal census is finished.
- Creating the post of "nonpartisan state demographer" — to be chosen by the state auditor from applications — to oversee the redistricting process.
- Reducing the limits on campaign contributions that candidates for state Legislature can accept from individuals or groups.
- Limiting the gifts state lawmakers and their employees can accept from paid lobbyists to items that cost \$5 or less.
- Prohibiting lawmakers and their employees from serving as paid lobbyists for a two-year period after the lawmaker leaves office.
- Prohibiting political fundraising on state property by candidates for, or members of, the Legislature.
- Requiring legislative records and proceedings to be open to the public under the Sunshine Law.

With voters' approval, the various lobbyist and gift provisions already are in effect.

The redistricting changes also are in effect, but won't be activated until some time in 2021 — after the official U.S. Census numbers for Missouri are reported to state officials.

If voters agree, HJR 48 would make several changes to the newly passed amendment, including:

- Eliminating the \$5 lobbyist gift limit allowed by Amendment 1, so lobbyists could make no gifts to members of the General Assembly, or their staff.
- Eliminating the nonpartisan state demographer's position created by Amendment 1, and the requirement that the demographer draw redistricting maps using mathematical formulas based on partisan fairness and competitiveness.
- Changing the redistricting criteria in several ways.

Before Amendment 1, Missouri's Constitution required legislative districts to be "composed of contiguous territory as compact as may be," with an extra requirement that state Senate districts don't cross county lines except in areas where the population is too large to be in one district.

Amendment 1 added a criteria of partisan fairness and competitiveness, and an objective to keep cities within the same district unless they were too large.

The proposed new amendment would require districts to be composed of contiguous territory and as compact as possible — and also that they approximate squares, rectangles or hexagons to the extent permitted by natural or political boundaries.

The proposed new amendment also would create new redistricting commissions for the House and Senate, with members appointed by the governor based on recommendations from the congressional committees of the two political parties with the most votes in the previous election.

That mirrors the process the state has used for years, but with smaller committees.

In his email last week, Nicholson said: "This new stealth gerrymandering proposal is of, by, and for politicians — and is an outrageous attempt to undo the mandate from the 1,469,093 Missourians who voted for the Clean Missouri Amendment in November."

Nicholson also said the proposed amendment erases one of Amendment 1's provisions that the data used for drafting the new district maps be made public, "opening the door to backroom deals."

The resolution is sponsored by Rep. Dean Plocher, R-St. Louis County — who is a lawyer and chairs the General Laws Committee.

According to the House summary of the committee's March 25 hearing, he was the only one who testified in favor of the bill, while four testified in opposition, and another 22 testified for informational purposes.

The committee summary said the informational testimony generally said possible changes to Amendment 1 could undermine the will of the people, but that some changes to ethics provisions alone might be plausible — so long as the redistricting process wasn't modified.

The committee's summary doesn't indicate how many people testified in-person, as opposed to submitting written comments.

[O'Rourke faces question about acceptance of lobbyist money](#)

Democratic Presidential Candidate and former Texas Congressman Beto O'Rourke faced a tough question at a campaign event in New Hampshire.

After O'Rourke, [who announced his run for the presidency on March 13](#), said "As you may know, I take no money from lobbyists from any organization...", someone from the audience shouted that he actually had back in March.

The voter said: "Beto, I was really inspired to see that you said you would not take money from fossil fuel executives, but I looked it up and you did. You took the max contribution from eight different fossil fuel industry CEOs and executives and a lobbyist from Chevron on March 29 and that just makes it hard for us to believe that you're going to keep your promises to address the climate crisis. So we want to know, do you stand with us and the millions of people whose lives are being affected by the climate crisis? Those people in Houston. And if you do, will you prove it today by returning that dirty money and signing the no fossil fuel money pledge."

O'Rourke responded with a lengthy answer, saying:

"So, you're right. I was just told as we drove in that we accepted on one of the last days of the FEC filing period a check from a lobbyist. We are returning that check from the lobbyist because we declared at the outset that there would be no money accepted from lobbyists. There's a reason that I'm here right now with you and with these kids and not with my kids back home — Ulysses and Molly and Henry, who are 12, 10 and 8. It's because I understand what is coming for them unless we take action right now. And I know that there is a way to do it. I know there's a way to do it without excluding entire industries. Without making people who work for oil and gas companies feel like they're the enemy, without coal miners feeling like they are somehow guilty of doing something wrong to this country or to this planet, bringing everybody in to the solution that we have going forward. The single greatest industry that has contributed to our campaign so far, a campaign that has not accepted a single dime from a single political action committee, a campaign where 98% of our contributions are under \$200, 99% of them came online, and raised more than any other campaign in its first 24 hours, was public school educators and school teachers. So listen, I'm in this fight with you and I know that you have a number of other candidates to vet and to ask questions of and to listen to their plans and policies. But I want to do everything within our power to make sure that we get to net zero greenhouse gas emissions as soon as possible. I know that everything rests on the next 10 years. Reinstating the clean power plan, raising the vehicle emissions standards, investing in wind and solar, like we have in Texas, believe it or not. We generate four times the wind capacity of the closest state behind us and we've invested in the infrastructure, the transmission lines, the opportunities to be able to do that. I know that we can do that in solar where we're investing in utility-scale solar in El Paso right now and yes, we must absolutely free ourselves from fossil fuels to drive our cars, our businesses and our economy. And you've got my commitment to doing that, but I'm not going to write off an entire industry or group of people based on that. If we're going to come together at this very divided, highly polarized moment, we've got to bring people together, see common cause and ensure that everyone is part of the solution."

Litigation Funders Flex Muscles in Washington, Keeping Lobbyists in Demand

As they amass ever-greater capital and legal market expertise, third-party litigation funders are facing a well-financed, heavily lawyered adversary of their own: the U.S. Chamber of Commerce, which wants to force disclosure of funding agreements in civil actions.

“The transparency argument is, frankly, a red herring,” said Allison Chock, Bentham IMF’s chief investment officer for the U.S. “Their true motivation, as stated in other venues, is to deter the use of litigation finance and gain an advantage for their largest donor-type clients.”

While the Chamber of Commerce, through its U.S. Chamber Institute of Legal Reform, is advocating for changes to federal rules of civil procedure as well as federal legislation, the biggest players in the litigation finance industry are pushing back. Among their weapons are Washington, D.C., lobbyists working to make sure their voices are being heard on Capitol Hill. Bentham IMF and Burford Capital, the two publicly traded litigation funders at the apex of the industry, are also at the lead when it comes to federal lobbying activity, likely because they have the most at stake.

Bentham started its Washington spending in 2015. The beneficiaries have been Wilmer Cutler Pickering Hale and Dorr, led by Jonathan Yarowsky, co-chair of the firm’s public policy and legislative affairs practice, and lobbyist Ken Cunningham, former chief of staff and general counsel to Senate Judiciary Chair Charles Grassley.

Bentham spent \$210,000 on federal lobbying in 2018, a decline from the last two years that’s explained by the end of its engagement with Cunningham, who received just \$10,000 in the first quarter. (While Cunningham’s [site](#) is still active, he showed no other lobbying clients in 2018, and didn’t respond to a request for comment.) The company has paid Wilmer at least \$800,000 for federal lobbying efforts, records show.

“The goal is to educate congresspeople about what we do, how we do it and why the cute, pithy phrases about why we’re terrible don’t make sense,” Chock said.

In February, Grassley joined several other Republican senators in introducing the Litigation Funding Transparency Act for the second year in a row. The measure, backed by the Chamber, would require disclosure of third-party litigation funding for class actions and multidistrict litigation within 10 days of a case being filed, or 10 days after the closure of a funding deal.

Burford started its own lobbying push in 2017, splitting \$50,000 between the **now-defunct Podesta Group** and the Klein/Johnson Group. The latter entity, which received \$200,000 from Burford in 2018, is a bipartisan operation whose Republican principal came from the Podesta Group and was previously Sen. John Cornyn’s top aide. Cornyn is another sponsor of the LTFA.

Even though the bill has been introduced in **two separate sessions**, Chock at Bentham said that little is expected of it this year, with supporters unlikely to expend political capital in advancing the measure.

But the industry’s lobbyists are also keeping an ear to the ground, making sure that the provisions sought by the chamber are not quietly attached as a rider to any other measure. And the funders are also finding other strategies to bolster their influence in Washington.

Earlier this year, Burford hired Danielle Cutrona, the former senior counselor to former U.S. Attorney General Jeff Sessions, as its director of global public policy. Cutrona, a former

Skadden, Arps, Slate, Meagher & Flom lawyer who has also served as a senior lawyer for the Senate Judiciary Committee and the New Jersey legislature, is leading the firm's lobbying efforts at the federal and state levels, as well as around the globe. She registered as a lobbyist in Washington in January.

"While we always have been attuned to legislative or regulatory proposals that might affect our business model, the company has experienced extraordinary growth since its founding a decade ago and is now more akin to an investment bank for the business of law rather than a 'litigation funder,'" a Burford spokesperson said in a statement. "Given this exceptional track record, it is only natural that we would devote more resources to areas like public policy and others in anticipation of our continued expansion."

Still, on a strictly dollars-and-cents level, both funders are substantially outgunned by the Chamber, which has spent no less than \$21.5 million on federal lobbying for each of the last four years. That money does get spread on a wider array of issues, like opposing legislation aimed at curbing arbitration agreements and supporting measures aimed at making it harder for plaintiffs to bring civil claims. A spokesperson for the Chamber did not respond to a request for comment.

"We don't have anywhere near the lobbying budget the Chamber has, but we feel that we have logic and righteousness on our side," Chock said, noting that Bentham is also investing in lobbying at the state level.

A Larger Battle

Another part of the fight is in the federal judiciary, where a group of 30 current and former top lawyers at major companies including Google, Verizon Wireless and AT&T Inc. have joined the Chamber in [pushing a proposed amendment](#) to Federal Rules of Civil Procedure [26\(a\)\(1\)\(A\)](#) that would require the full disclosure of third-party funding agreements in civil actions.

They have argued that defendants and courts have a right to know who has a stake in a lawsuit and whether anyone is using unethical or illegal means to move the case forward.

Bentham and Burford, along with Therium Capital Management—another long-established litigation funder—have staked out a position on the opposite side. In a February [joint letter](#) to the Administrative Office of the United States Courts, which is considering the proposed changes, Chock, Cutrona and Therium U.S. CEO Eric Blinderman called the move a "PR stunt" by the chamber.

Like Chock, Blinderman asserts that the Chamber's efforts—both in the courts and at the federal level—are built on a number of false premises.

U.S. Chamber Institute for Legal Reform president Lisa Rickard has [argued](#) that litigation funding leads to more lawsuits and unnecessarily prolongs litigation, noting that a major funder [told](#) The Wall Street Journal in 2019, "We make it harder and more expensive to settle cases."

"As a general rule, nobody is going to quarrel with reasoned and rational regulation that is designed to solve a real problem," Blinderman said, arguing that there's no evidence that litigation funding leads to an increase in frivolous claims.

“We underwrite on the fundamentals,” he said, ticking off the likelihood of success on the merits, timing of recovery, quantum of recovery, and the judgment of the attorneys involved in funded matters.

“The moment you veer from that, you lose cases, you lose your investors’ money, and you will no longer be able to survive as a funder,” he added.

Blinderman also pushed back at the argument that undisclosed funders could take control over the litigation process, noting that this is prohibited by existing ethics rules and common law at the state level.

“That’s important, because it means that if we’ve violated these rules, anyone could challenge contacts, void those contracts and put us out of business,” he said.

Blinderman and Chock both argue that the Chamber has different, unstated goals in pushing for disclosure: corporate defendants want to know how they can outlast their adversaries in court.

“If you are a deep-pocketed defendant and you know that litigation funding is on the other side, you can immediately engage in secondary and tertiary discovery requests,” Blinderman said.

“First you can increase costs, second, increase timing, and third, provide the defendant with an absolutely critical tactical advantage.”

And the advantage goes two ways, Chock emphasized. In the event of a rules change, defendants would also gain from learning who doesn’t have outside help from a third-party funder.

“If this smaller, midsized company doesn’t have funder backing,” she said, “I can make certain assumptions in how I can conduct myself in this litigation.”

All cases are financed in some way or another, Chock added.

“Why it is relevant when it is a dedicated litigation finance company?” she asked. “Whether it’s a bank loan, Uncle Joe or a contingency fee lawyer, it doesn’t make any sense logically why it would be any different.”

[Gillum admits illegally accepting gift from lobbyist, will pay fine](#)

Former Democratic gubernatorial candidate Andrew Gillum agreed Wednesday to pay a \$5,000 fine in a settlement reached with a state ethics-commission attorney, who agreed to drop four of five charges of ethics violations related to trips to Costa Rica and New York, a boat ride around the Statue of Liberty and a ticket to the Broadway hit, “Hamilton.”

Nearly two hours after a hearing on the alleged ethics violations was supposed to begin Wednesday morning, the Florida Commission on Ethics’ advocate, Elizabeth A. Miller, told Administrative Law Judge E. Gary Early that she and Gillum’s lawyer, Barry Richard, had reached an “amicable settlement agreement.”

“Obviously, this has taken a lot of time and energy from my wife, myself, our family. Obviously, all of this happening in the context of a statewide election didn’t make it any easier. We came prepared today to say fully what our experience has been and what the truth of the matter is,” Gillum, accompanied by his wife, R. Jai, told reporters.

In January, the ethics commission unanimously found probable cause that Gillum, as Tallahassee mayor, violated state ethics laws for allegedly accepting gifts from Tallahassee entrepreneur Adam Corey and undercover FBI agents posing as developers. Corey had been a close friend of Gillum and lobbied city officials.

The commission found probable cause that Gillum accepted gifts with a value of more than \$100 from a lobbyist or vendor of the city and failed to report the gifts.

The accusations against Gillum became a theme for now-Gov. Ron DeSantis during a heated campaign leading to November's election, in which the Republican narrowly edged out the former mayor. The race drew a national spotlight, in part, because of Gillum's attempt to become the state's first black governor.

Speaking to reporters following the brief court session Wednesday morning, Richard stressed that Gillum did not request the settlement but had entered into negotiations with Miller at the judge's behest.

Richard said the settlement doesn't specify which of the gifts Gillum agreed to have accepted, "but from Mayor Gillum's standpoint it was the boat ride around the Statue of Liberty that he took with people that were his friends and it just didn't occur to him that one of them was also a lobbyist and that he wasn't supposed to accept the gifts."

Later Wednesday, Gillum issued a statement describing the end of the case as "vindication. The results confirm what I've said all along — the facts matter and I never knowingly violated any ethics laws."

In brief remarks to Early, Miller did not elaborate on what prompted the settlement. But the attorney's case hinged on an elusive Corey, who was involved in the New York and Costa Rica trips.

Gillum said he paid Corey — who made the arrangements for a luxury villa — \$480 in cash, or \$120 per night, to cover his and his wife's share of the Costa Rica trip. Corey, who submitted an affidavit to the ethics commission but refused to appear before the panel because he had been subpoenaed by a federal grand jury in a city corruption probe, swore that he never received any money from his onetime pal.

But Corey has been out of the country, and efforts to get him to testify in the administrative-law case were unsuccessful, according to documents filed in the case. Miller asked Early to postpone the hearing until August because Corey's lawyer, Chris Kise, had a "serious cardiac condition" that left him temporarily unable to work.

After Early refused to put the hearing off, Miller asked the judge to allow the record in the case to remain open after the hearing, writing that Corey is willing to testify after he returns to the country on Aug. 5 or Aug. 6. Early said he would reserve a ruling in that request until after the hearing.

While Corey was on Miller's witness list for the hearing that was scheduled to last up to three days, it is unknown whether he is back in the country or would have appeared in court.

It is also unclear whether undercover FBI agents known as "Mike Sweets" would have appeared, although Early ordered that the agent could come into the courtroom through a private entrance, remain in disguise and testify in secret in a courtroom closed off to the public.

Richard said he could not say what prompted Miller to propose the settlement, but he gave details to reporters about evidence that contradicted charges that Gillum had accepted gifts involving a hotel room in New York City and a meal in Costa Rica, among other things.

"These are the types of things... that I believe that if the commission had known about at the time, they probably would not have found probable cause. And that's one of the reasons that we

have a settlement today. We learned things. The advocate learned things. I learned things that nobody knew at the time of the probable cause hearing. I think that Andrew Gillum knew that he hadn't done these things, but nobody else did," Richard said.

Gillum has steadfastly maintained his innocence and said Wednesday that he had been prepared to "vigorously defend" himself against the ethics charges.

The settlement agreement "keeps intact what I have said all along," Gillum, now a commentator for CNN, said.

"But, as any adult, when you learn more information you have to step up and take responsibility for what it is that you come to know," said Gillum, who last month launched a voter registration effort in Florida, aimed at denying President Donald Trump a second term in office.

"I will tell you we are thankful for where we are today, and quite frankly, I am more than excited now to move on to the work that we've got for ourselves and that is, we've got to get a million new voters registered throughout the state of Florida. I am going to move very swiftly to get to that work soon," he said.

[The Weed Industry Is Burning Millions on DC Lobbyists and Getting Nowhere](#)

In its quest to usher in a new world of legal profit where the global weed trade is no longer controlled by drug traffickers, the rapidly growing American cannabis industry is using a very old strategy: showering lobbyists with money and unleashing them on Congress.

In recent years, a growing number of recently formed cannabis trade groups have enlisted the services of former staffers for top Republicans and Democrats, now working at some of K Street's most prominent lobbying firms, disclosure forms show. Cannabis lobbying groups are spending up to \$60,000 a month apiece trying to win friends and persuade recalcitrant lawmakers to see their point of view.

The results, however, have been pretty paltry: Cannabis is still illegal nationwide, businesses still can't **[bank or deduct expenses on their taxes](#)** like other merchants, and legitimate interstate cannabis commerce remains a distant dream. With few exceptions, **[bipartisan](#)** bills that would de-schedule the drug or give businesses tax relief are still withering in committee **[without hearings](#)**, let alone votes.

In other words, the new wave of spending hasn't bought any results—even though President Donald Trump has **[reportedly said](#)** he'd sign a bill letting states freely legalize cannabis if Congress passes one, **[and even though Attorney General William Barr told Congress](#)** that he prefers cannabis reform to the current status quo.

Cannabis lobbyists point out that theirs is still a very young industry and the game in Washington is a long one. The first legal sale of commercial recreational cannabis was in January 2014, and even if an **[overwhelming majority](#)** of voters clearly want legalization, a corresponding shift in Congress will take time.

"We're just doing what we've always done," said Neal Levine, a former lobbyist with the legalization advocacy group Marijuana Policy Project who is now the executive director of the Cannabis Trade Federation (formerly named the "New Federalism Fund").

In Washington, "we're operating like every other industry out there," hiring lobbyists with "subject-matter expertise" and the right connections, he added, "except that we've got federal issues that nobody else shares."

But so far, several Hill veterans told VICE, all the cannabis industry has been able to buy in Washington is an expensive lesson in how the Capitol works—and how little cannabis matters compared to other well-established business interests burning cash in DC.

One problem is that cannabis industry lobbyists aren't beloved by either side of the aisle, for different reasons. Despite cannabis's [potential in the marketplace](#), consistently estimated in the tens of billions of dollars, most weed-friendly lawmakers—nearly all of whom are Democrats—would rather meet with representatives from established legalization advocacy groups rather than hired guns on retainer from the for-profit industry. In key Congressional offices, the “suits” are greeted with deep suspicion and given a brush-off, several Hill staffers said.

And long-tenured Senate Republicans, whose support or at least neutrality will be required for any major cannabis reform bills to make it through Congress, are not meeting with anyone from the industry at all.

The response to lobbyists, no matter who they are, is “completely negative from Senate Republicans over the age of 65,” said one Hill veteran working on the issue. (Several sources contacted for this story requested anonymity in order to speak freely and not compromise their relationships on Capitol Hill.)

In a way, what's going on in Washington mirrors results from cannabis lobbying efforts at the state level.

Up until recently, spreading money around at state legislatures rather than in DC was a smarter strategy for the cannabis industry. The effect of these payoffs can be seen in states like [Illinois](#) and [Ohio](#), where a [few very well capitalized companies enjoy](#) limited competition for market space—and have made themselves attractive targets for hundred-million-dollar buyouts—thanks to state laws that cap the number of dispensaries and cultivation centers. And in Illinois, where new Governor J.B. Pritzker made a campaign promise to legalize cannabis, those companies are now lobbying state lawmakers to keep the cap in place.

But there is growing recognition among Democrats, especially Democrats of color, that the cannabis industry is about profits first. Promises of social justice and racial equity successfully used to sell legalization are now looked upon with suspicion as a hollow and cynical sales pitch.

“They thought we were going to trust that at the end of the day, these communities would be invested in. But that's not something I want to trust,” New York State Assembly Leader Cheryl Peoples-Stokes, the first black woman to lead the state legislature, [told the New York Times in March](#). Peoples-Stokes warned she and other lawmakers would only support legalization if such a bill guaranteed benefits for low-income communities of color. “If it's not required in the statute, then it won't happen,” she said.

Doubts about the industry's commitment to social justice were deepened by ham-fisted attempts at power moves. Last year, the New York State Medical Cannabis Industry Association [sent a memo to Governor Andrew Cuomo](#) arguing New Yorkers shouldn't be allowed to grow their own cannabis at home, unlike adults in other states.

Cuomo appeared to listen to the industry. The governor proposed banning home cultivation in his short-lived legalization proposal while promising that equity components, such as guaranteed benefits for drug-war victims, would come later. It was a blunder. As Peoples-Stokes

promised, the industry-first, reparations-later proposal was [abandoned for lack of support](#). Similar opposition recently [blocked a legalization proposal in New Jersey](#).

While industry lobbying may yet grant cannabis businesses banking rights, including those few businesses owned by minorities, “we need to ensure that equity and social justice elements are included in ALL cannabis policy,” Shanita Penny, the president of the board of the Minority Cannabis Business Association, told VICE in an email.

Such sentiments are shared by members of Congress. [As VICE News first reported](#), New Jersey Senator Cory Booker recently pulled his support from Elizabeth Warren’s STATES Act, which cannabis lobbying firms report spending much of their time advocating for, in favor of a social justice–centric bill called the Marijuana Justice Act.

Cosponsored by key cannabis-friendly lawmakers like Congresswoman Barbara Lee—who represents Oakland, California, one of the few jurisdictions that has an “equity” law—the bill is the first at the federal level that would require businesses to invest in black and brown communities devastated by the drug war that have [thus far not enjoyed economic benefits under legalization](#).

This is putting the suits, for whom the STATES Act was the best thing going even as critics said it would largely preserve the inequalities in state cannabis law, in a difficult position. “If you poo-poo the Marijuana Justice Act, Barbara Lee is not going to want to talk to you,” one lobbyist said.

Traditional Republican-friendly talking points—jobs, states’ rights, libertarianism—also aren’t necessarily effective when it comes to selling cannabis bills.

“It took us a long time to get where we are,” said Justin Strekal, NORML’s Hill lobbyist. Strekal also pointed out that the “marijuana industry” doesn’t work as a metonym and is not as powerful as it might think. “There is no monolith of industry,” he said. “And ‘the industry,’ writ large, pales in comparison to the economic power of the nail polish industry.”

“It’s not like energy or healthcare or something like that,” said Michael Collins, a lobbyist with the Drug Policy Alliance who has been working on cannabis on Capitol Hill for six years. “What wins members [of Congress] over isn’t, ‘Hey, we’re creating jobs,’ or ‘Hey, we’re creating tax revenue.’ We’re not at that level yet. What wins the day on the Democratic side is social justice, and the industry doesn’t necessarily make that argument.”

Cannabis lobbyists are realizing that the advocacy bona fides enjoyed by social justice–oriented reform groups, like NORML and the George Soros-funded Drug Policy Alliance, actually mean something.

“The industry is spending *millions* on lobbying at the federal level, mostly on the banking issue,” said Dan Riffle, a former lobbyist with the Marijuana Policy Project who now serves as a senior policy advisor to New York Congresswoman Alexandria Ocasio-Cortez.

The industry spending easily eclipses what the traditional advocacy groups can spend, Riffle said, but “the industry is paying guys who don’t give a shit about this issue beyond the money, so they mostly don’t do anything.”

And yet the money keeps rolling in, with no sign of stopping.

[According to lobbying disclosure records](#), a handful of cannabis trade groups spent \$1.3 million lobbying Congress last year. Based on initial filings, spending in 2019 will easily surpass that amount.

In the past month, two new trade groups—the Global Alliance for Cannabis Commerce and the National Cannabis Roundtable—have filed registration papers. In addition to banking and tax reform, major cannabis businesses want to be able to ship vast oversupplies of cannabis from states suffering price crashes like Oregon to states like Louisiana, where medical weed is technically legal but not widely available.

Recently hired guns enlisted by the cannabis industry to woo their former bosses and colleagues include Nadeam Elshami, a former chief of staff for current House Speaker Nancy Pelosi, now at Brownstein Hyatt Farber Schreck, and David Schnittger, a former deputy chief of staff for ex-Speaker John Boehner now at Squire Patton Boggs, according to records.

Both of those firms consistently rank among the top revenue-generating lobbying outfits in Washington. And certain players in cannabis have shown no compunction about enlisting erstwhile enemies to help their cause. (Representatives from both firms who lobby on cannabis did not respond to phone messages and emails seeking comment.)

The most prominent flip-flopper on cannabis is almost certainly Boehner, a conservative who last year joined the board of Acreage Holdings, an upstart cannabis firm based in the US that Canadian juggernaut Canopy Growth Fund [recently announced](#) it planned to acquire.

Last fall, Boehner appeared on an infomercial for would-be players on the volatile stock market for cannabis. And as the *Hill* reported earlier this year, Boehner, who joined Squire Patton Boggs, [is also chairing the National Cannabis Roundtable](#) and taking meetings with lawmakers on cannabis.

According to disclosure forms, NCR billed \$45,000 through the first three months of 2019, all of it in support of the SAFE Banking Act, which would clarify that major financial institutions would not be forced to reject cannabis merchants' business, meaning those merchants would be able to make deposits and pay taxes electronically or with checks instead of with massive piles of [robbery-welcoming cash](#).

And despite the tobacco industry's terrible reputation and the zeal of legalization advocates to distance cannabis from an addictive and deadly substance, one trade group—the Cannabis Trade Federation—earlier this year hired veteran tobacco industry lobbyist Cassie Folk as their vice president of federal policy. Folk's past clients have included the National Confectioners Association and tobacco giant Reynolds American, according to disclosure filings and her [LinkedIn profile](#).

Folk did not agree to an interview, but CTF's Levine, who hired her, said that her addition "had nothing to do tobacco" but her entire resume. At the same time, "while our product is far different from tobacco, from a regulatory and a lobbying standpoint, there is a lot of subject-matter expertise that applies to our industry," he allowed.

The hire is raising some eyebrows as it is part of a wider trend as well as an *I told you so* moment among old-school cannabis heads, for whom a tobacco industry takeover is an ancient and well-trod conspiracy theory—that is at least partially coming true.

In December, Altria Group, the parent company of Marlboro, [made a \\$1.4 billion investment](#) in Cronos, a Canadian marijuana company, [while also quietly patenting](#)

[dozens of devices](#) that experts said could be used to vaporize cannabis. And in late 2016, before California, Nevada, Maine, and Massachusetts legalized recreational cannabis, Boehner joined Reynolds American's board of directors.

"I don't think anyone is going to listen to the lobbyists."

Tobacco lobbyists are also not the best look in a Capitol Hill meeting with a social-justice-minded lawmaker, and thus perhaps a strategic blunder for the cannabis industry that's also throwing money at former Hill staffers who can't deliver and may not even be really trying.

"How much can the lobbyists actually do?" asked Matt Kumin, a California-based cannabis attorney who recently spoke at the [Cannabis Dealmakers Summit](#). "We have so many people in so many positions of mainstream life saying, 'It's time to fix it.' I don't think anyone is going to listen to the lobbyists. It will be the governors, or the bankers, or the Chamber of Commerce," he added. "Anyone taking money from people to go do something in Washington better be very clear with the client exactly what they think they can accomplish."

"Cannabis Trade Federation is funny," another lobbyist said. "I used to think that they were the worst expenditure of money in policy in cannabis—since they are the functional equivalent of lighting money on fire—and then National Cannabis Roundtable came around."

If the industry is having an easier time getting meetings on Capitol Hill than before its spending flurry—and by most accounts from people VICE spoke to, it is—it's not because of Republican connections or the money they are spending. It's because the public is coming around. But as the industry struggles to translate that widespread support and success legalizing marijuana via ballot initiatives into concrete policy victories at the federal level, its big-spending approach is lining the pockets of K Street and, so far, not much else.

"You don't need 25 lobbyists," one Hill veteran said. "You need six good lobbyists with resources, a solid shop, and a good strategy behind them." Until the cannabis industry grasps this reality, cannabis will be very good for Capitol Hill—but not necessarily vice versa.

[The betrayal: How a lawyer, a lobbyist and a legislator waged war on an Alabama Superfund cleanup](#)

In autumn of 2013, a senior executive from a powerful coal company and a lawyer from one of the state's most influential firms hashed out a strategy for avoiding a serious — and expensive — problem.

The Environmental Protection Agency wanted to clean up toxic soil in the 35th Avenue Superfund site in north Birmingham, where residents, about 95 percent of them African Americans, live in the shadow of massive waste berms, industrial chimneys, and the fortresses of steel, coking and cement manufacturing.

For more than a century, those industrial plants had generated jobs — but also noxious emissions and waste. In 2009, the EPA found elevated levels of toxic chemicals, in some cases three times the amount considered dangerous enough to require immediate removal. In 2013 the agency notified Drummond, the coal company, and four other manufacturers nearby that they would have to spend tens of millions of dollars to dig up and replace the soil on hundreds of residential yards. David Roberson, Drummond's vice president and top lobbyist, worried that it would cost his company \$100 million or more.

Roberson and Joel Gilbert, a powerhouse lawyer with Balch & Bingham, had fought off environmental rules before. But for this campaign they needed a public face, someone with credibility both with the state government in Montgomery and the black communities in north Birmingham.

Someone who could persuade the people living on contaminated land to protest not the pollution, but the cleanup.

By early 2014, they had chosen Oliver L. Robinson Jr. (D), an African American state legislator and former University of Alabama at Birmingham basketball star.

But that was long before they all turned on each other. Before the guilty verdicts. Before the prison sentences that, so far, only one of them is serving.

The bribe

This tale of power, pollution and duplicity played out in Alabama's poorest communities, in its executive suites and its storied courtrooms. It was gleaned from a review of thousands of pages of court documents and hours of interviews with people who witnessed or were embroiled in the drama, as well as coverage by an Alabama news organization, Al.com, that closely tracked the trial.

In the summer of 2014, Roberson the lobbyist and Robinson the legislator met over cheeseburgers at Billy's sports bar out in the suburbs.

The men would reach an understanding about what needed to be done: Keep the EPA out of Birmingham's backyards and stop the agency from enlarging the Superfund site, a federally designated area contaminated with hazardous waste and pollutants.

The stickier point was price. How much would Robinson charge to undertake a grass-roots campaign to get it done?

Everyone knew Robinson, the 6-foot-4-inch Birmingham native who led a thrilling Alabama-Birmingham team to the Elite 8 of the NCAA tournament. When he ran for office, he was elected in a landslide.

The lobbyist and his lawyer, Joel Gilbert, were counting on Robinson's charisma and connections in the community to fend off the EPA.

They needed a powerful message that would resonate with people who were used to losing. The logic was this: The EPA would set a struggling place even further on its heels. By digging up evidence of toxic chemicals, the government would drive down property values — the one asset left to many here. And the best way to stop it was to sign letters of protest to keep the agency's workers off their property.

Robinson would canvass the neighborhoods to rally support. He'd also press the cause before two state environmental agencies.

All, of course, for a price.

Robinson initially wanted \$10,000 a month.

By December, after haggling, his price had dropped.

"Joel, go back to Dave and the Drummond people and let them know that we will need \$7,000 per month," Robinson wrote on Dec. 11 in an email later divulged by federal prosecutors.

David Roberson (Obtained by The Washington Post)

When Robinson told Gilbert that he was going to meet with a team of EPA officials the next day, Gilbert responded within 12 minutes: “Spoke to Drummond. They have approved your request for \$7,000 a month,” Gilbert emailed. “Call me when you get a chance.”

The legislator had one more request: “Make payments to the Oliver Robinson Foundation.”

This was a fateful choice — and one they would regret.

It’s not unusual for a private corporation to pay a state legislator in Alabama. Robinson and his wife, for instance, had a communications firm with five clients. One was a bank that paid between \$100,000 and \$150,000 a year when Robinson was a member of the state House Financial Services Committee, according to his ethics filings. That raised eyebrows in one of the state’s leading news outlets, Al.com, but the Alabama ethics commission took no action.

But paying the foundation was different — and a way to conceal Drummond’s role, prosecutors would later charge.

Robinson had set up the foundation to promote financial literacy among low-income families and students. Every year its Black Achievers Awards Gala was one of the highlights of the social and philanthropic calendar and it buffed Robinson’s image.

As a philanthropic nonprofit organization, it wasn’t the right vehicle for a company seeking services for a fee. Robinson’s foundation was what the IRS calls a 501(c)3 organization, and it was supposed to engage in religious, charitable, scientific or educational activities. It wasn’t supposed to take money from a company seeking to use his good name and public position to lobby for a private interest.

Yet Robinson wrote to Gilbert: “The foundation is best because all types of corporations support our foundation.”

The three men agreed on that and that the new contract would be “kept confidential.”

Roberson, the lobbyist, later said the work was in keeping with the foundation’s mission. “It was an outreach type of foundation, and that’s what we needed. They put people on the ground and did the work we wanted done,” he said. “The residents out there were getting so much misinformation.”

Anything to slow the EPA’s roll.

“The less remediation EPA did, the less those companies would have to reimburse,” said former federal judge U.W. Clemon, who worked with the north Birmingham communities after he retired from the bench.

Jay E. Town, the U.S. attorney for the Northern District of Alabama, would put it this way: “It’s cheaper to pay for a politician than it is to pay for an environmental cleanup.”

Keisha Brown sits outside her home in Birmingham. Brown has respiratory problems that she attributes to the level of pollution in her area. (Bonnie Jo Mount/The Washington Post)

'An urban nightmare'

Ground zero in the plot was the Superfund site, just a 10-minute drive from the Balch & Bingham offices in downtown Birmingham. Homeowners like Keisha Brown had long sensed that they lived on the front lines of an environmental disaster.

Her hair wrapped in a bun, Brown stood recently in front of a small white house with an aqua blue awning.

Her grandfather bought the house 68 years ago when this was a thriving middle-class neighborhood. Brown said that the nearby industrial plants spewed toxic chemicals she blamed for her respiratory problems and for driving away many of her neighbors.

Robinson would need to urge people like Brown to say no to a chance to fix the root of their problems.

A stack from the ERP Coke plants releases fumes. (Bonnie Jo Mount/The Washington Post)

But with time, it had devolved into what Brown called “an urban nightmare.” U.S. steel output began to dwindle and people moved away. The Methodist church left. A handful of grocery stores closed. Bus service was discontinued. Some abandoned homes were demolished. Those left behind complained of soot.

Today, row on row of dilapidated housing marks the area as the rail cars rumble slowly by. Nearly 14,000 people live within a mile of the 35th Avenue Superfund site, one third of them below the poverty line.

Drummond, a family-owned company, was founded in 1935 by a coal miner who put three mules up as collateral for his first loan. Since then the company flourished, doing business in Japan and Colombia. In 1985, Drummond bought ABC Coke.

A coking plant heats coal to very high temperatures in closed oxygen-free ovens, so the coal does not burn. The process creates pitch-black coke that is used to fuel the blast furnaces of nearby steel, cement and aluminum manufacturers.

Drummond’s coking operation had violated air pollution limits before the Superfund flap. In 2004, the Alabama Department of Environmental Management cited ABC Coke for allegedly exceeding the daily limits on the release of benzo(a)pyrene, a cancer-causing pollutant, 37 times.

Dennis Jett, 63, views plumes expelled by ABC Coke in Birmingham. Jett said he has been an employee at Image Craft, a business near the plant, for six years. “My health has dropped since I’ve been working here,” he said, noting that in 2015 he had to see 15 doctors. (Bonnie Jo Mount/The Washington Post)

By 2013 EPA wanted the area cleaned up. The 1,099 soil samples it started testing in 2009 showed elevated levels of toxic chemicals — arsenic, lead and cancer-causing benzo(a)pyrene — in the yards of about a third of homes in northern Birmingham neighborhoods.

The agency wanted to take two steps. It would conduct tests to see whether it should extend the boundaries of the Superfund site to nearby neighborhoods of Tarrant and Inglenook just over the Birmingham line. And it wanted to add the 35th Avenue Superfund site to the national priorities list (NPL), which would make it easier to hold companies liable for the cleanup.

Both steps would sharply increase remediation costs, but they could protect residents from some of the ongoing health effects of living near the industrial plants. And taxpayers wouldn't have to foot the bill.

Roberson, a biologist by training who had once been the compliance chief for hazardous waste at the Alabama Department of Environmental Management, argued that the Drummond-owned ABC Coke facilities were a mile and a half away from the Superfund site and that airborne toxic pollution couldn't float that far.

In a September 2013 letter, citing a "threat to public health and the environment," the agency notified five companies — including Drummond. The money would go to paying to remove the toxic dirt and truck in fresh soil, according to Franklin Hill, Superfund director for EPA's region 4. EPA said it would start cleaning up 52 properties.

That's when Drummond hired Balch & Bingham.

The influence game

Gilbert was an old hand at the environmental influence game, and his law firm, Balch & Bingham, had been a political player in Alabama since 1922.

He was a lobbyist for the Business Alliance for Responsible Development (BARD), a front group with a wholesome-sounding name that business interests created to support development in an ecologically sensitive area.

Nelson Brooke, executive director of Black Warrior Riverkeeper, part of a conservation network for the nation's waterways, came to call Gilbert an "environmental hit man."

Gilbert's lawyer did not return calls or email inquiries for comment.

Drummond too had a formidable record as a lobbying force.

"The only time I can remember when Drummond got beat on something is when they wanted to mine property owned by the University of Alabama right on the edge of the Black Warrior River," said Jack Drake, an Alabama civil rights and plaintiffs' lawyer.

Then there were their political connections. Drummond and Balch & Bingham were two of the top three donors to the last two Senate campaigns of Jeff Sessions, later President Trump's attorney general. Drummond also gave then-Alabama Attorney General Luther Strange \$50,000 in campaign contributions.

To thwart the EPA, Gilbert and Roberson tapped their vast network — what one lawyer in a trial filing called "the standard playbook."

Gilbert wrote or edited letters opposing the EPA that were signed by Sessions, Strange, Sen. Richard C. Shelby (R-Ala.), Gov. Robert J. Bentley and six members of the Alabama congressional delegation, according to evidence and testimony presented later in Gilbert's criminal case.

He also drafted a letter for the superintendent of Tarrant schools to rescind the school board's permission for the EPA to test soil samples.

A warning sign on the grounds of the former Carver High School in Birmingham. (Bonnie Jo Mount/The Washington Post)

Balch and Drummond also got the legislature behind them. Gilbert drafted a joint resolution urging the “overreaching” EPA to abandon its testing methods for airborne pollutants and keep northern Birmingham off the Superfund national priorities list. It said EPA had “applied its enforcement authority arbitrarily and unfairly.” It passed by a voice vote.

The barrage was unexpected. EPA seeks agreement — and a 10 percent contribution — from state governments for Superfund sites. Usually states are happy to get federal money. Companies, fearful of EPA’s power to triple fines, typically cooperate.

But in this instance, opposition was coming from everywhere. In Washington, the head of EPA’s Superfund program met with Sessions staffers and others who argued that airborne emissions could not explain the contamination. And they questioned whether EPA was pursuing a misguided case of “environmental justice” for the poor rather than acting on solid evidence of harm.

“I was surprised when I started getting letters from senators saying the state of Alabama would not move forward and support an NPL listing because it came with such force,” said Heather McTeer Toney, who was then the regional EPA administrator. Then came letters from congressmen and the governor.

“It was very clear that this was not going to be done easily,” she said.

The secret tapes

The law firm Balch & Bingham has been a political player in Alabama since 1922. (Bonnie Jo Mount/The Washington Post)

In his campaign, Robinson got a lot of help from Gilbert. It was Gilbert who had a firm attorney draft letters for residents to sign. And it was Gilbert who fed Robinson questions to ask when talking to EPA officials or the activists pushing the cleanup. “Push them to tell why they think ABC Coke is responsible and, if so, do they have any proof?” Gilbert said in an email.

On Dec. 12, 2014, armed with his talking points, Robinson walked into the Westin Hotel in downtown Birmingham to meet with EPA officials, led by Toney.

In a second-floor conference room, he pulled out his iPhone and secretly started recording. He gave the recording to Gilbert to get the information “back to the people who wanted it.”

Later he met with an attorney from GASP, an activist anti-pollution group. Gilbert sent Robinson an email with “Questions for Use in the GASP meeting.” Robinson recorded that, too. The tapes would help Gilbert anticipate arguments used against Drummond.

They were running out of time. As the deadline loomed for comments on the EPA’s national priorities proposal, Robinson emailed Gilbert that “Oliver needs to get some of the neighborhood officers to send letters [to the EPA] opposing the listing.”

Gilbert instructed one of Balch & Bingham’s new, bottom-rung lawyers to draft three versions of a “community” letter that Robinson would get residents to sign. Gilbert asked the associate to “dumb them down a bit” to make them sound more authentic and not like a “coordinated effort.”

Robinson paid an old friend to collect signed petitions against EPA action, yielding nearly 100 signatures. Brown wasn’t one of them.

“I do not support the EPA adding our community to the National Priorities List,” read one. “Doing so will only make things worse than they are already. Our homes are worth almost nothing now, and we still have to keep paying higher taxes on them.”

Appearing before state environmental regulators, Robinson said that if new areas were added to the Superfund site it would hurt residents who are already “considered to live in a dump. And nothing can happen there until it’s cleaned up. And after that, it will take tremendous investment to get it to move forward.”

Georgia Waugh, Juanita Bates and Shekelah Weatherspoon socialize in their Harriman Park neighborhood, which is surrounded by industry. Many homes in the neighborhood have been vacated, and residents complain about health issues related to pollution. (Bonnie Jo Mount/The Washington Post)

Robinson also reached out to his first campaign manager, Hezekiah Jackson, who was president of the Birmingham chapter of the NAACP. Robinson told him that EPA efforts to rope in several companies would lead to long litigation and only delay money flowing into cleanup efforts.

And Jackson believed him.

“I’ve always been an advocate of everybody in the area being relocated,” Jackson said. “I just don’t think the place can be cleaned up. It’s been more than 50 years.”

In October 2015, Robinson formed a group called Get Smart Tarrant and made his daughter Amanda, a freshly minted law school graduate, executive director. Jackson was brought on board, too. The group discouraged residents from letting EPA take soil samples from their yards. Gilbert and Roberson kept a close eye on the new campaign. Gilbert edited fliers Amanda distributed in Tarrant at places such as the Lily Baptist Church and the House of Prayer. And he reviewed the roadside signs: “Get Smart Tarrant. Don’t let EPA fool you!”

Busted

The Gilbert-Roberson-Robinson alliance had raised some alarms. As early as November 2014, Drummond CEO Mike Tracy asked in a meeting whether the work with Robinson was legal.

Tracy would later testify that Gilbert said he had checked the plan with Balch’s ethics experts and that community outreach through a foundation was “perfectly fine.”

It’s not clear, however, that Gilbert checked with Balch senior partners. He says he consulted briefly with one in December, but the partner later testified that he could not recall the exchange.

To cover payments to the foundation, Gilbert and Roberson set up a new group called Americans For Jobs and the Economy, bringing in not only Drummond but other companies in the Superfund area, just as they had done earlier with BARD. Balch & Bingham cut the checks to the Robinson foundation. The new group, with Roberson as its head, made payments to Balch. It was a way “of distancing” the companies from the arrangement, Roberson later told federal prosecutors.

The Balch billing department balked at instructions from Gilbert to scrub the Oliver Robinson Foundation’s name from certain invoices and list work as “community outreach” instead of consulting.

“I’m not sure why we cloak the reference in our invoice,” chief operating officer David Miceli wrote in a Sept. 22, 2015, email.

“You ever hear anything from Joel on this?” he asked in a later email flagging a \$25,500 payment.

The internal back and forth, documented later in the criminal case, dragged on for months. Balch & Bingham, which would not make anyone available for an interview for this article, has insisted that Gilbert, as a partner, acted alone and would not have raised any flags as he deposited \$360,000 into the Robinson foundation account because the money went out at a moderate pace over many months.

Roberson later said that 21 Balch & Bingham attorneys “played at least some part” in the anti-EPA campaign built on Robinson’s efforts. But the indictment would name only one other defendant from the firm, and charges against him were dropped.

How it all came apart is a mystery. The assistant U.S. attorney wouldn’t say where the tip came from. But on Nov. 30, 2016, Robinson abruptly resigned his seat in the statehouse. He said he did so to avoid ethics conflicts for his daughter, who had just been offered a job in the governor’s legislative liaison office.

“Quitting a job like that . . . always portends something,” Al.com journalist John Archibald opined that day. He said the explanation “caused many in Birmingham to snort breakfast beverage through their noses.”

It was the Federal Bureau of Investigation that finally brought the scheme to its end.

In February 2017, its agents paid a visit to Robinson, looking into tax evasion charges; he had not paid taxes on the money he took from the foundation. Robinson made little effort to deny charges. Tears welled up in his eyes, an FBI report noted, and his lips quivered.

“I was lying to myself,” he said later, adding that he was more upset about having deceived his family than the prospect of going to jail. Asked whether the FBI had broken him, Robinson said, “I broke myself.”

'Not the way a crook operates'

On a mild, partly rainy day in June 2017, the U.S. attorney charged Robinson with receiving bribes, wire fraud and tax evasion for using \$17,783 of campaign funds and at least \$250,000 of foundation contributions for personal expenditures. Robinson faced a sentence of as much as 100 years in jail and hundreds of thousands of dollars or more in penalties.

And then the state lawmaker who had betrayed his constituents and family, turned on the people who had paid him to stop the EPA. He entered a guilty plea and agreed to testify for the government.

By September, Gilbert and Roberson were charged with bribery, conspiracy, wire fraud and money laundering.

“This case gets at the heart of public corruption in Alabama,” acting U.S. attorney Robert O. Posey said when the charges were filed. “Well-funded special interests offer irresistible inducements to public officials. In exchange, the officials represent the interests of those who pay rather than the interests of those who vote.”

Gilbert’s lawyer sought to downplay his client’s role. The money paid to the foundation was no lump sum but made in installments, he argued: “That’s not the way a crook operates.”

Roberson's lawyer said that Robinson had not acted in his capacity as an elected official and was not paid "to use the powers of his office," and therefore wasn't bribed. Besides, he said, Roberson relied on Gilbert and Balch to say whether something illegal was going on.

But Robinson's own testimony and a trail of emails and invoices proved a potent combination at the trial.

Emails showed that Gilbert had taken precautions. He urged Amanda Robinson to convert the letters he edited into PDFs "so no one, ie., a third party, can see the metadata should they receive it via electronically."

Prosecutors later told the jury that Gilbert was hiding a crime — evidence of corrupt intent.

Gilbert and Roberson were convicted of all federal criminal charges — conspiracy, bribery, honest services wire fraud and money laundering — in July 2018. In October, Gilbert was sentenced to five years in prison, Roberson two and a half years and Robinson 33 months.

Immediately Balch & Bingham sought to distance the firm from Gilbert, who lost his partnership. But with the hours he logged on this case, Gilbert's earnings from the firm had gone from \$298,000 in 2014 to \$466,000 in 2016, according to the news site Al.com, which has covered the entire affair closely.

"The jury determined that Joel Gilbert engaged in conduct that is contrary to the standards to which each of us at Balch & Bingham is committed and expected to uphold," Balch & Bingham managing partner M. Stanford Blanton said in a statement.

Drummond initially stuck by Roberson, its executive. "While we respect the judicial process, we consider David to be a man of integrity who would not knowingly engage in wrongdoing," the company said in a statement when he was convicted.

Then in February, Roberson was summoned to a meeting with the company's CEO and chief legal officer. Roberson, who earned \$300,000 a year, had expected to discuss a bonus.

Instead, he was fired. Tracy, the CEO, said it was "one of the toughest things ever" and offered to pay him a lump sum of about half a year's salary. Roberson said he had "worked hard for this company" and was "so disappointed."

On March 17, Roberson filed a \$50 million lawsuit against Drummond and Balch & Bingham, claiming that they misled him and "destroyed" his reputation and that he had been "humiliated." He said Drummond's general counsel had normally signed checks but asked Roberson to sign the ones to reimburse Balch for Robinson's grass-roots campaign. Now Roberson said he felt like "the fall guy."

"Joel was a friend," Roberson said in an interview with The Washington Post. "I don't consider him much of a friend now for doing what he's done to me."

Roberson was fired immediately after the end of the statute of limitations for legal malpractice, which his lawyer said was an effort to shield the company.

Drummond wouldn't comment, and Julie Wall, director of external affairs at Balch & Bingham, said in an email: "We believe the claims are without merit and we will have no further comment at this time." The company has asked the court to dismiss Roberson's case.

Gilbert and Roberson remain free pending the outcome of their appeals.

Only Robinson is in jail. He said he felt fortunate that his sentence wasn't longer. He showed up for his sentencing in September with a check for \$169,151, the full amount of restitution, which his lawyer said were his "life's savings."

It was a steep fall for Robinson, from statewide basketball hero to discredited dissembler.

"I was bribed, and I sold out my community," Robinson testified in the Gilbert trial.

And all for about \$260,000, Gilbert's lawyer noted.

"You sold out the people in your community and everything that you had worked for your adult life for this chump change?" he said.

"Now that I look back on it, I sure did," a downcast Robinson replied.

Sherie Huggins, 32, teaches her daughter Paris Powell, 6, to ride without training wheels in Birmingham. In the background a stack from ERP Coke stands above the landscape. Huggins said "it smells sometimes." (Bonnie Jo Mount/The Washington Post)

The cleanup

The plot that began that autumn day continues to take surprising turns, shaking the state's political and corporate establishment.

It's also illustrative of the grave challenge that remains to clean up the environmental ruin that is a legacy of America's industrial age.

A short distance and a world away from Balch & Bingham's offices and the federal courthouse, the EPA has been gradually cleaning up some of the toxic waste in the 35th Avenue Superfund site.

"Because of deadly pollutants that have contaminated our building and our grounds, we have moved," a sign proclaimed in late November in front of the red brick Friendship Baptist Church of Collegeville, one of the three neighborhoods belonging to the Superfund site.

In some places, yards are surrounded with plastic mesh where toxic topsoil has been removed. The old Carver High School in the Collegeville has become an EPA staging ground. It is fenced in with signs warning: "No trespassing." In back of the school, a sign says "Superfund cleanup EPA" and piles of new dirt lie underneath white tarps waiting to replace the contaminated soil that is being taken to a landfill for hazardous materials.

Yet one cruel irony of the Birmingham tale is that Gilbert and Roberson succeeded in the narrow sense. The EPA has not expanded the Superfund site, and it has not placed the 35th Avenue neighborhoods on the national priorities list. And so far, none of the five companies alleged by EPA to be responsible for remediation — Drummond's ABC Coke, ERP Coke (formerly Walter Coke), U.S. Pipe, Alagasco and KMAC — has shouldered any of the costs, an EPA official said in an interview. That job has been left to U.S. taxpayers.

EPA's reason for not unilaterally adding the site to the national priorities list is that there is not enough Superfund money to cover the costs of cleaning up the 1,337 existing sites now, including a dozen in Alabama.

"We'll have to wait longer about the NPL listing," said George Martin, one of the assistant U.S. attorneys who prosecuted Gilbert and Roberson. "The national priorities list would have given access to a greater pot of money that would have allowed a quicker fix."

EPA rarely spends more than a few hundred thousand dollars of government funds on a site, but as of Dec. 14, it had spent \$25.6 million and removed 56,000 tons of contaminated soil. In some cases, the EPA dug a foot deep.

The excavations so far have revealed soil laden with lead, arsenic and the carcinogenic benzo(a)pyrene. But there are different toxic concentrations at different properties, an EPA official said. After all the controversy over whether toxic chemicals can travel by air, the agency now believes that most cases of contamination came from fill materials that were trucked in decades ago and deposited in this low-lying area to prevent flooding.

Residents disagree. They say that they can see pollution settling from the air on their rooftops, cars and clothes and that it is causing cancer and asthma — if only someone studied it. So far, no one has.

Superfund cleanups generally reduce the incidence of congenital anomalies in infants of mothers living within 1,250 yards of a site by roughly 20 to 25 percent, academic research has shown.

The final casualty of the Superfund fight has been the tenor of politics here. Under fire from fellow NAACP officials, Robinson's first campaign manager and Get Smart associate Hezekiah Jackson quit his position as head of the group's local chapter.

"The whole process has been very disappointing to me," said Clemon, the retired federal judge. "The trust that the black community has posed in its elected representatives has been breached in a very serious way."

From her front yard, Keisha Brown can see the unsightly berms of mineral wool, a byproduct of the coking process. And she can feel the rail cars as they rumble into view and stop before the entrance to the ERP Coke plant.

Robinson's betrayal has contributed to her sense of abandonment and anger.

"I put them, the leaders, along with the polluters," Brown said. "The only difference is the polluters have to get a permit to release harmful chemicals in our bodies."

[Luzerne County hires lobbyist firm](#)

Luzerne County now officially has its own lobbyist firm to fight for funding and other goals.

After hearing a presentation from Harrisburg-based Maverick Strategies, a council majority voted Tuesday to grant county Manager C. David Pedri's request to retain the firm for \$5,000 per month. Pedri argued a more active presence is needed in the state capital to maximize grants and other funding for county projects, particularly a 911 emergency radio system upgrade that he said will range from \$16 million to a \$24 million.

Councilman Chris Perry said he arrived at Tuesday's meeting "on the fence" about a lobbyist, but the Maverick representatives won him over with their confidence they will yield funding for the county, which is "in such dire need for money."

Council Chairman Tim McGinley said he performed his own due diligence and is willing to support the new approach to "alleviate some of the local pressure" to fund the 911 project and other work.

"I think it's worth a try," said council Vice Chairman Eugene Kelleher, who also voted for the contract along with colleagues Patrick Bilbow, Robert Schnee, Matthew Vough and Jane Walsh Waitkus.

Council members Harry Haas, Linda McClosky Houck and Stephen A. Urban voted against the contract and had unsuccessfully attempted to convince the others to delay voting until a future meeting to allow for further review.

McClosky Houck said the county's home rule charter requires the county to publicly seek proposals in case other entities are interested in performing the work because the contract is over \$25,000. Pedri did not advertise the work but said he obtained a quote from another lobbyist firm that came in higher and also spoke to two other companies about the potential work.

County Assistant Solicitor Shannon Crake told council delaying the matter won't "solve the problem" raised by McClosky Houck because the council-adopted administrative code never spelled out what policies and procedures should be followed to advertise for such professional services.

Crake said she cannot deem the failure to follow a policy a charter violation because there is not a complete process in place. Some past contracts were obtained through public requests, but others were not, she said, noting the manager did contact other firms for comparative pricing.

Urban said he wants it on record that he believes the contract is a charter violation.

Even if the charter requirement had been overlooked in the past, McClosky Houck said it should not be knowingly violated now that the issue has come to light. Council must address the administrative code issues, she said.

Aside from the charter concern, McClosky Houck said it is a "sad day in America" when a county government resorts to hiring a lobbyist to lobby the government.

Urban concurred, saying legislators are paid "more than enough" to look out for the county's interests.

"It's a sad day when you have to pay someone to knock on their door to say we need help," Urban said.

Two citizens harshly criticized the lobbyist plan, while a third was supportive of the concept. Ray Zaborney, one of Maverick's founders, told council his bipartisan firm employs a mix of workers from both political parties with experience working in state government and politics. The firm represents Harrisburg, King's College in Wilkes-Barre and more than 30 other corporations or entities, Zaborney said. While Luzerne is the firm's only county client, 11 counties in the state have other lobbyists, including Tioga and Philadelphia counties, he said. Zaborney said he can't promise a specific monetary yield, but the firm would not be publicly pitching a contract with the county if its advanced research didn't make the firm "very, very confident" the county will be pleased with the results.

The firm will seek input from both the county administration and council on its assignment goals and report its progress at regular intervals requested by the county, he said.

[Florida Court Green-Lights Invitations to Negotiate for State Contracts](#)

A recent Florida Division of Administrative Hearings decision clarifies the invitation to negotiate (ITN) process and signals that the state has considerable flexibility in how far it can press ITN bidders to offer value-added services in bids. Dean Mead attorney [William D. Hall, III](#), who represented the Florida Department of Corrections (DOC) in the case, said the decision

– if it stands following any appeals – may indicate that vendors should expect to see more ITNs and be prepared for the give-and-take that comes with negotiations.

Hall, a litigator in Dean Mead’s Tallahassee office with extensive experience in administrative law, said the March 2019 decision in [*Securus Technologies v. Department of Corrections and Global Tel*Link*](#) involved the DOC’s contract to provide phone services for inmates in state prisons. The state had long contracted with Securus Technologies Inc. for this service and, while the company performed well, the state decided to test the waters with an ITN when the contract neared its expiration date. The core service in the contract is to provide phone service in which inmates pay per minute for calls to their families or others on the outside. In the past, neither the state nor the vendor paid each other, and the vendor kept all revenue from the inmate charges. This arrangement is common in prisons across the United States. Securus’ main competitor for the contract was Global Tel*Link Corp. (GTL), and both companies were regarded well by the state.

ITN brings flexibility to bid process

An ITN differs in important aspects from a request for proposal or invitation to bid where specifications are not flexible, and the lower bid usually wins. An ITN, explained Hall, is more like buying an automobile, with the buyer and seller discussing various option packages and haggling over pricing. Perhaps the dealer will hold fast to a price but throw in an upgraded sound system to win over the buyer. In this case, the state asked Securus and GTL to include a “commission” to the state of \$5 million plus yard radios for prison staff, a biometric exit and entry, and a radio frequency identification system (RFID) – an electronic tag system to track inmates. All were related in some way to the phone system. Specifically, all are helpful in preventing and/or investigating the introduction of contraband cell phones, which present a huge safety problem in prisons.

After extensive negotiating with both companies, the DOC awarded the new contract to GTL in what the state said was a close call. Both companies were offering variations of the same value-added services, but the DOC decided that GTL offered the overall best value for the state based on the difference in base contract length. GTL offered a five-year term and Securus offered a 10-year term. Securus protested, claiming, among other things, that the value-added services were not related to inmate communications, specifically the yard radios, biometric entry and exit, and RFID systems. Securus also said the DOC abandoned its stated ITN goal of lowering the cost of calls for inmates because the value-added services could result in raising the rates for some inmates (although the rate for the most common form of call is reduced in the intended GTL contract).

The administrative law judge came down squarely on the side of the DOC, explaining that the state has considerable flexibility in asking for value-added services as long as the bid process is transparent and fair.

Best negotiator won

To win its protest, Securus had to show the bid award was, according to statute, “contrary to the DOC’s governing statutes, rules or policies, or the solicitation specifications” and, if so, whether it was “clearly erroneous, contrary to competition, arbitrary or capricious.” The ALJ considered each of these standards and concluded that the process was competitive and did not arbitrarily favor any vendor. The ALJ also cited a Florida statute that defines “best value” in bidding as

“based on factors that include, but *are not limited to*, price, quality, design, and workmanship” (emphasis added).

As the ALJ wrote: “That Securus was out negotiated is not a basis upon which a legal challenge may be sustained.”

Bidders: Come prepared to wrangle

Hall said the decision suggests that state agencies can test how much value they can coax from bidders in value-added services, rather than rely on the traditional low-price bid based on set specifications. Still, he cautioned there is a limit to how far value-added services can extend. For example, asking the phone contractor to build a new prison would seem to be going too far afield. An ITN can't be a Christmas tree loaded up with anything and everything.

For bidders, said Hall, the lesson is to come prepared to wrangle in an ITN. Just as in automobile sales, the better negotiator may come away with the deal.