

KI HONG Masters Balancing Act in Risky Political Law

By Jeremy Conrad

When the political law arena was expanding beyond a narrow focus on elections in the early 2000s, Ki P. Hong was there to make his mark.

The Skadden, Arps, Slate, Meagher & Flom LLP partner was interested, in part because of his own experience as a perpetual groundbreaker, and from his understanding of the importance of involvement and participation.

“At each stage, I have been the first at things — because of my disability, and because I am Asian American,” he says.

Hong, who was born in South Korea, contracted vaccine-derived poliovirus at age two that damaged his nervous system significantly; he has been a wheelchair user ever since. His parents relocated to the United States in 1971 when he was four, and he entered an educational system that, at the time, segregated children with disabilities.

“There was no such thing as mainstreaming at the time,” he says. Children with disabilities were taught at separate institutions and treated the same regardless of whether they had cognitive or mobility issues. “Early on, it was very isolating,” Hong says.

IN SEARCH OF INCLUSIVE SPACES

As Hong entered the third grade, his family moved from Baltimore to Howard County, where he excelled academically and socially. He graduated second in his high school class, served as student body president his junior year, and manned the scoreboard for the football team.

Still, obstacles to participation remained. When an Ivy League school invited him to interview



Skadden, Arps, Slate, Meagher & Flom LLP partner Ki Hong scuba diving with his daughter in the Bahamas in 2019.

Courtesy of Ki Hong

for a spot in its chemistry program, Hong learned that the chemistry department was located on the second floor of a historic building with no elevator. The school offered to carry him up the stairs to attend classes, but the lack of accommodation turned Hong off.

Hong attended Cornell University instead, graduating cum laude with a degree in chemistry. His extraordinary marks in organic chemistry suggested a potential career, but the nerve damage to his upper body made lab work increasingly difficult. Hong also understood that if he pursued theoretical chemistry, it would effectively isolate him.

“You’re sitting there with a computer in a windowless room most of the time,” he says. “That’s why I got interested in law. I knew it would deal with people, and that’s something that’s always been an imperative for the career [path] I was going to go down.”

In 1992, the year before he graduated from Harvard Law School, Hong accepted a summer associate position at Skadden, noting the firm’s willingness to innovate. “It’s a great firm, and I think [my long tenure] says a lot about the firm,” says Hong, head of Skadden’s political law group.

A PIONEER IN A COMPLEX FIELD

In the early years of Hong’s career, the term “political law” as it’s known today hadn’t yet been minted, but a changing regulatory environment had begun to introduce business concerns relating to the disparate laws governing the intersection of government and politics. Hong chanced into the area, in part due to the severe economic recession in the early 1990s. Many law firms closed during that period, and work at Skadden slowed significantly.

The resulting financial scandals associated with government ethics prompted Hong to coau-

thor *Ethics Handbook for Entertaining and Lobbying Public Officials*, a state-by-state summary of lobbying and gift laws that continues to be referenced by financial institutions and others to this day. “It really captured my interest,” Hong says. “On the one hand, these laws are hyper-technical and counterintuitive, a little bit like tax law, but ensconced within these laws are huge reputational and practical issues.”

Specializing in political law also gave Hong the social aspect he was looking for in legal practice. “You’ve got to know your client very well. You have to know what their tolerances are and the pressures they are dealing with,” he says. “A big part of being a successful lawyer is being a translator for your client [so] they understand not only the law, but also what it means to them in the real world.”

Political law practice has become increasingly complex, with numerous interactions between the private and public sector. “Because we are at the tip of the spear in the political law space, we find ourselves getting into, and helping define, new areas as it expands,” he says.

Hong cites the overlap between political activities and ESG (environmental, social, and governance) shareholder proposals as one example. “I dealt with the very first shareholder proposals in the political space back in 2002, when the AFL-CIO’s pension plan had proxies on 11 companies and I represented 6 of them in responding to that very first proposal,” he recalls. The shareholders requested that the businesses disclose their political giving, something Hong says most S&P 500 companies now do.

In recent years shareholder demands have become more substantive and sweeping, calling for more than disclosure. For example, “shareholder proposals are asking for congruency analysis or gap analysis between the company’s view on ESG issues and the trade associations they belong to or the political issues they are giving money to,” Hong says.

The political activities undertaken by companies are also changing. “I deal with the overlap of ESG and political activity. After January 6, most PACs shut down their political giving and went back to the drawing board,” Hong says. This withdrawal gave companies the opportunity to establish procedures to more holistically address their political contribution decision-making process.

“It’s a tough balance,” Hong says. “On the one hand, to support your public policy efforts you

have to give on a bipartisan basis, but also give in a way that is socially responsible. That’s the balance that I help clients reach.”

ASSESSING RISKS FOR CLIENTS

Hong represents a wide array of clients across industries, including three of the Big Four accounting firms; leading companies in technology, energy, media, insurance, and communications; and nine of the top 10 U.S. banks and most of Wall Street. According to Hong, businesses wanting to engage in public discourse have grown to appreciate the potential risks associated with political law, and that getting guidance is a cost of doing business.

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there’s a huge reputational risk that wasn’t there before,” he says. “Another risk that’s just as important is that the law itself has become much more draconian.”

Hong was among the first entrants into the pay-to-play space, where laws generally prevent businesses from receiving government contracts if executives and employees have made campaign contributions to, or raised money for, certain political candidates. He’s critical of the way in which the rules stifle speech.

“Making political contributions is a form of speech, so the idea that an executive, or their kids, their spouse, are shut down from the ability to contribute worries me,” Hong says. “What we are finding is that a lot of the political laws go beyond what is necessary to get at the concern and shut down First Amendment activity. So, I am a proponent of reform. I think they should only be going after people when they can show a connection between the contribu-

tion and the business ... some sort of a quid pro quo.”

In 1994 the Municipal Securities Rulemaking Board implemented Rule G-37, which applied stiff penalties to broker-dealers, regardless of the motivations behind the violative political contributions. The pay-to-play rules have since expanded, coming to cover nearly any large financial institution doing business with the government. The rules have also been replicated at the state and local level. Rule G-37 has survived constitutional challenge on several occasions, but Hong remains skeptical.


The potential exposure has not prevented the continuing expansion of political engagement by private business. “As far as companies go, I don’t see how they withdraw from getting involved in politics,” Hong says. “It’s part of, now, their business profile. You definitely have to lobby, weigh in on public policy. It’s baked into the cake of a business model. Companies also have to recognize that the risk in this space is going up as well. They’re going to have to constantly update their view of the risks and manage those risks.”

“From a practitioner’s perspective, this area is just exploding and has been for years,” he adds. “The challenge is staying ahead of the work.”

Hong helped define and establish the political law practice he now directs at Skadden, ensuring a nonpartisan focus. “Not all political law departments do the same thing. For example, we don’t represent political organizations. I only represent companies; I don’t do parties or candidates ... I make sure my clients know that we aren’t partisan,” he says.

“I think clients value that. I may tell you what I think about a certain law or advise you about what a certain shareholder proposal means, or what the political landscape is like out there,” Hong says. “Clients really appreciate that I don’t let my own personal political views enter the picture.”

Hong challenges his clients to define their own values, and then he produces strategies to pursue them lawfully and effectively. He counsels clients to “figure out what the company stands for and then stick with it.”

This philosophy, Hong says, has served him well as he cut a path to success in uncharted territory. 

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