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## US Congress and the politics of strategy

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# The Centre of Gravity series

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# US Congress and the politics of strategy

Alan Tidwell, Professor and Director, Center for Australian, New Zealand and Pacific Studies at the Edmund A. Walsh School of Foreign Service, Georgetown University

## Executive Summary

- ✦ Without Congressional support any US strategy – towards Asia or elsewhere – is virtually meaningless. Gaining that support requires actively lobbying Congress.
- ✦ In the United States, because of the separation of powers diplomats can make representations directly to members of Congress. The embassies of Australia, Canada, and Israel, have offices that both report on Congress and undertake a broad range of other lobbying activities.
- ✦ Australia has a successful track record of diplomatic lobbying on issues such as trade, migration, and defence.
- ✦ Further investment and innovation will be required in the years to come for Australia to continue its diplomatic lobbying success.

## Recommendations

- ✦ Enhance Australia's capacity to lobby the US Congress by expanding and integrating up-to-date database software to handle Congressional relations more effectively, while maintaining staffing levels.
- ✦ Plan for future innovation in lobbying Congress by assembling a task force to identify areas of innovation in engagement with Washington.
- ✦ Redouble efforts in public diplomacy by reinvesting in public diplomacy in Washington through links with think tanks and universities.

US strategy towards Asia both concerns and confounds Australian observers.

The US has guaranteed peace and prosperity in the Asia Pacific for decades, yet the future of American engagement seems murky. Many things influence the creation of US strategic policy. A majority of those influences result from rational analysis. Another weighty influence on strategy is politics and in the US the primary source of this political influence is the US Congress. Many forces come to bear on the US Congress; most are domestic and some are international.

This paper addresses the question of how politics, especially in the US Congress, shapes US strategic policy, particularly towards Asia. Asia Pacific countries can use the political environment to influence American strategy. The US Pivot to Asia unfolds against the backdrop of a deeply divided Congress, not given to passing much legislation. Levers available to influence US Asian security strategy are few but important. Refining and sharpening those levers will figure prominently in Australia's continued success in the American capital.



## The Pivot

President Obama's speech in the Australian Parliament in November 2011 outlined the Pivot. The rationale focused on the mismatch between the rise of East Asia and the distribution of American strategic resources. The Pivot promised to be a reallocation of US military, economic and social resources to reflect the strategic realities in Asia. The precise details of the Pivot would be articulated as things unfolded.

Kurt Campbell, the former Assistant Secretary of State for East Asia and the Pacific, in his recent book, *The Pivot*, reminds readers of the inherently political nature of what the Americans sought to do. In describing the diversity of names given to the Pivot – the other being the rebalance – he observes that the State Department uses the term 'Pivot', whereas the National Security Council preferred 'rebalance'.

Before the Pivot had been announced headwinds against realignment blew through Congress. The Budget Control Act (BCA), or sequestration, limited the funds available to make the Pivot a reality. Passed in August 2011, the act called for cuts in spending including defence. Funding had to come from somewhat diminished sources. The BCA cut defence spending from the Administration's requested \$578 billion to \$553 billion in FY2012 and then \$518 billion in FY2013. The BCA has been modified three times, delivering very modest increases in defence-related spending.

In 2014 the Senate Foreign Relations Committee published "Rebalancing the Rebalance: Resourcing US Diplomatic Strategy in the Asia-Pacific Region." Senator Robert Menendez (D-NJ), Chairman of the Senate Foreign Relations Committee, said that:

... despite progress in some areas, implementation of the rebalance thus far has been uneven, creating the risk that the rebalance may well end up as less than the sum of its parts.<sup>1</sup>

The Senate Foreign Relations Committee's report expressed the Democratic-led Senate's assessment of the status of the Pivot. Broadly supportive of the administration's point of view, the Committee laid out a legislative agenda for the Pivot. The Committee's report reminded the Republican-controlled House of the stakes. It outlined what needed to be done to accomplish the Pivot and detailed for members of Congress just how sequestration impacted US strategic policy.

A central economic element of the Pivot is the Trans-Pacific Partnership (TPP). Accession to the TPP requires Congressional approval and to date Congress has yet to pass judgment. In the face of the fraught elections of 2016, the Obama administration has been pushing for passage of the TPP in the lame duck sitting of Congress; GOP Senate leaders oppose lame duck consideration. If the TPP fails, the Pivot will take on a distinctly khaki, or Pentagon-centric, character.



In the meantime events elsewhere in the world caused tensions in Congress over the Pivot. Angst over a revanchist Putin and bloodthirsty ISIS combined to draw Congressional attention away from the Asia Pacific. Some events also helped refocus Congressional attention. The Chinese construction of military bases out of sand bars and reefs in the South China Sea helped shift attention back on American interests in Asia.

Support for the Pivot is not partisan; advocates come from both the Democrats and Republicans. Yet, the politics within the US Congress are fraught, and numerous issues complicate the Pivot. Countries without an effective voice in Congress languish, while those with a voice at least face a fighting chance of being heard. Australia has such a voice.

### Why congress matters

As a coequal branch of government with the Executive the US Congress matters. Without Congressional support any US strategy – towards Asia or elsewhere – is virtually meaningless. The US Constitution clearly lays out the role of the US Congress in foreign affairs. Congress' responsibilities include:

- declaring war,
- raising taxes,
- passing legislation relevant to foreign affairs, and
- the US Senate alone ratifies treaties and confirms the appointment of senior executive officials.

Without the US Congress, the president of the United States is severely hamstrung in carrying out policy. Executive orders alone fall well short of the power required to fund and implement the Pivot.

Congressional institutional power has not been exercised efficiently in recent years. Since 1973 Congress has passed 4.6% of the 293,424 pieces of proposed legislation. That efficiency has dropped, with the 114<sup>th</sup> Congress passing only 2% of the bills introduced. When legislation passes out of both houses, it is the result of herculean efforts on behalf of not only the members and their staff but a host of other interests too.

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## Influencing congress

Congress has always played host to a wide range of interests across the US. Finding a precise count of the number of lobbyists in Washington is difficult. Counts vary from as low as 10,000 and as high as 16,000 depending upon who is considered a lobbyist.

Interest politics has been a central part of American democracy since the earliest days. Citizen's groups, churches, corporations, professions and unions all lobby Congress seeking to further their particular interests. Groups may strive to prevent the passage of legislation, while others work to find its passage. For example, the American Chamber of Commerce has been an active supporter of the TPP, whereas the Teamsters union has actively campaigned against it.

Sometimes the goal is to modify a given bill, rather than block it entirely. The essential ingredient in all lobbying is information. Almost "... every study of lobbying ever conducted illustrates that the lobbyists stock in trade is information."<sup>2</sup>

Not all who seek to influence Congress are lobbyists, however. The Sunlight Foundation reported in 2013 that the actual number of those who try to influence might be double the total number of registered lobbyists.



Consider the example of Newt Gingrich, the former Republican Speaker of the House. In 2012 he ran against the eventual Republican Presidential nominee, Mitt Romney. The Romney campaign accused Gingrich of influence peddling on behalf of the mortgage lender, Freddie Mac. Gingrich rebutted the accusation claiming he was a consultant, not a lobbyist. Clearly, the label of a lobbyist is sometimes problematic, and by relabeling what one does, it can be managed.

Among those who would seek to influence Congress is the myriad of Washington 'think tanks'. Think tanks relevant to US strategy towards Asia include the Council on Foreign Relations, Center for Strategic and International Studies (CSIS), Carnegie Endowment for Peace, the federally funded East-West Center, the Heritage Foundation, Brookings Institution, and the Center for New American Security (CNAS). While none of these 'think tanks' claim to lobby Congress, they provide information -- or as a former a US diplomat put it, they float 'ideas in the air'.

## How do foreign countries influence Congress?

Not all those who lobby Congress are American. Diplomats representing countries from around the globe also make their views known to Congress. Typically, diplomats do not directly lobby legislators, with the notable exception of those stationed in Washington. The Convention on Diplomatic Relations stipulates that diplomats may not interfere in the domestic affairs of the host country. Australian diplomats, for example, do not lobby individual parliamentarians in London.

In the United States, however, because of the separation of powers diplomats can make representations directly to members of Congress. These direct appeals cover a range of issues from Swiss concern over US banking laws to Mexican interest in countries of origin labeling to Irish efforts to ease visa requirements. More often than not these appeals go unnoticed by the public. Sometimes they break out into the open, as in the case of Israeli Prime Minister Benjamin Netanyahu's address, on 3 March 2015, to a joint sitting of both houses of the US Congress.

The Prime Minister's address, in and of itself, was not unusual. What was unusual was who invited him to speak and what he was trying to do. The invitation came from the Republican Speaker of the House, John Boehner, who along with others in his party opposed the Iran nuclear deal negotiated by President Obama.

Netanyahu's public condemnation of the Obama administration's nuclear deal with Iran marked one of the few times when a foreign government steps out into the light and actively use Congress to oppose legislation. It earned the Israeli government the accusation of interference in US internal affairs. More typically, foreign governments operate with greater stealth.

Embassies in Washington vary in their capacity to lobby Capitol Hill. Small embassies do not have someone assigned exclusively to covering the Congress. Several larger embassies hire a locally engaged staff member, usually a former staffer from Capitol Hill, to cover Congress. The primary task of these small offices is reporting on relevant events to their embassy. Their lobbying activity is light.

A more select group of embassies use a diplomat to cover Congress, and may have a small staff supporting them. The embassies of Australia, Canada, and Israel, have offices that both report on Congress and undertake a broad range of other lobbying activities.

Of course, embassies may also only hire lobbying firms. Those who lobby on their behalf have made a calculation, however, to opt for in-house lobbying. In-house diplomatic lobbying of Capitol Hill has some distinct advantages:

- Diplomatic lobbyists speak with genuine and deep knowledge of their country.
- With direct contact to members of Congress and their staff, diplomats can form personal relationships on Capitol Hill.
- No requirement exists for diplomats to report to the American public on their actions, thus allowing them to avoid public scrutiny.
- Unlike lobbyists, diplomats also have undiluted allegiance to their country.
- Also unlike lobbyists, diplomats have a security clearance from their country giving them greater ability to have frank discussions within the embassy about events on Capitol Hill.
- Diplomatic lobbyists are not subject to the same commercial pressures of a lobbying firm who rely on billable hours.

There are disadvantages to in-house lobbying, mostly concerning diplomatic training and resources for lobbying. Embassies overcome this by hiring locally engaged staff with Congressional experience and contracting with advisors who can help deepen embassy knowledge about Capitol Hill.

Some early entrants into diplomatic lobbying of the Congressional include:

- Taiwan, securing their relationship of Washington following the recognition of the PRC government in Beijing.
- The United Kingdom over concerns that Congress might side with Argentina over the Falkland Islands.
- Canada, which sought to find agreement with the US over acid rain.
- Australia on trade and defence issues.

Australia has a well organised and effective in-house lobbying capacity, the Congressional Liaison Office (CLO). Begun in 1987 the CLO was an early innovation in diplomatic representation in Washington. The CLO came into being to address Australian trade concerns over US farm subsidies and to insulate the AU/US Alliance from those disputes.

Today, the CLO advocates on Australia's behalf, helps establish political relationships and provides Canberra political analysis and interpretation.<sup>9</sup> With the direct assistance of the CLO Australia has secured, through Congress, a free trade agreement, a unique visa category, and closer defence trade relations as represented by the Australia-US Defence Trade Cooperation Treaty. In each case the CLO played a central role in monitoring Congress, helping to organise support and providing critical information to members of Congress.

Led by a diplomat, the CLO has a staff of five who follow events in Congress, organise visits to Congressional offices by visiting Australian leaders, provide information to Congressional offices and support efforts to pass legislation deemed in Australia's national interests.



**Australia has a well organised and effective in-house lobbying capacity, the Congressional Liaison Office (CLO).**



The environment on Capitol Hill in which they work is unique. There are 435 voting members (and six non-voting members) of the House of Representatives, and 100 Senators. Up to 18 staff can work in an individual Representatives office, and no cap exists in the Senate. Also, Congressional committees and leadership offices have additional staff. In 2011, roughly 15,000 staff were working directly for members of Congress or associated committees.<sup>4</sup>

The reality for the CLO is that their task is not merely to work with the 535 voting members of the Congress, but rather to establish working relationships with a large and diverse bureaucracy serving the Congress.

One might well ask why any member of Congress should care what Australians think. After all, Australians do not vote in US elections. Some members of Congress, with an international interest, are curious to know more about US allies. Other members of Congress, with perhaps a more parochial outlook, may not be interested. The key for Australian outreach to Congress is to identify those with an appropriate international interest, and then identify those interests that closely parallel Australia's.

For example, some on Capitol Hill may have no interest in Australia, but a keen interest in containing prescription medicine costs. CLO staff can provide useful information while at the same time helping to introduce that member of Congress to Australian interests. The former group of internationally minded are easier to track, whereas those with specific interests less so. The challenge for the CLO is keeping track of both groups.



An excellent example of the way in which the CLO uses its understanding of Congress to gain benefits for Australia is the E3 visa. To put the E3 visa in context, however, one must start with the Australia–US Free Trade Agreement (AUSFTA).

In the early 2000s, at the start of the GW Bush administration, the White House promoted bilateral free trade agreements. By 2003 the US had concluded free trade agreements with Chile and Singapore. As Australian and American negotiators were putting the finishing touches on the agreement two groups were formed to ensure Congressional passage. To coalesce support in Congress, the CLO facilitated assembling the Friends of Australia Congressional Caucus. This bipartisan caucus had members drawn from both House and Senate.

Free Trade Agreement Business Coalition. Together the Caucus and the Coalition worked to rally support for the AUSFTA. By mid-July 2004 both houses of Congress had passed the AUSFTA by substantial majorities. Even before the economic impact of the AUSFTA was known one thing was clear – the AUSFTA proved to be a tremendous political benefit to Australia. Never before had members of Congress had such a deep and sustained education in Australian political and economic interests.<sup>5</sup>

There was, however, one thing missing from the AUSFTA – human mobility. In previous bilateral free trade agreements, the US had included visas as a feature. The AUSFTA did not have any visas included in it.

Washington politics explains why the AUSFTA excluded human mobility. To reassert Congressional power against the Executive branch, following the conclusion of the Singapore and Chile free trade deals, leaders of the House Judiciary Committee informed the US Trade Representative that no human mobility provisions would be included in trade agreements. The Representatives argued that including human mobility in trade agreements limited Congress's legislative authority.

The failure to include visas in the AUSFTA was not a failure on Australia's part; instead, it was the result of a fit of Congressional pique. Rather than accept the situation, the Australia embassy fought back. One former CLO staff member said it was "... unconscionable for Australian nationals not to be afforded a similar opportunity in tandem with..." other bilateral trade agreements.

Congress was not against giving free trade partners human mobility visas; they just did not want the Executive branch to exclude Congress from the process.<sup>6</sup> To prove a point, members of Congress, working with the Australian embassy and the CLO, crafted legislation on human mobility for Australia. Congress created the E3 visa, good for two years and renewable. On top of that, the E3 did not require employer sponsorship. Australia was given all 10,500 visas in the new category.

The resulting E3 visa was a win for both Congressional authority as well as Australian national interests. According to the former CLO staff member, in the end by linking with Congressional interests, Australia gained "... a visa that is superior in almost every respect to analogous visas available to nationals from other countries..."<sup>7</sup>

In the intervening years, other countries have sought to gain a portion of the E3 visa category for their citizens. Ireland, for example, tried to gain access to the E3 category. They succeeded in getting the unused Australia E3 visas allocated to them in the Border Security, Economic Opportunity, and Immigration Modernization Act 2013, which passed the Senate but was never taken up by the House.<sup>8</sup> Ireland's interest in the E3 visa was in supplying Irish labor to the Cape Cod tourist industry. The CLO have worked successfully to insulate the E3 from poaching by other countries.

Without a good understanding of the US Congress and a team of people ready to take action it is unlikely that Australia would have succeeded in either getting the E3 passed or defended.

Lobbying and influence involve more than operating in the halls of Congress. Expert opinion plays a critical role in Congress. In a study of whose views are most influential in on Capitol Hill researchers found that 'internationalist' business people ranked first, followed closely by 'experts'.<sup>9</sup> In Washington, experts are easily sourced from think tanks and universities. Businesses and foreign governments stack the deck in their favor by funding think tanks when it comes to testimony in Congress.

Countries, like Australia, use financial resources to support Washington think tanks. By backing friendly think tanks, countries can inject ideas into the Washington environment. Think tanks, according to the *New York Times*, once thought of as universities without students, now blur "the line between researchers and lobbyists."<sup>10</sup>

Australia has given the Brookings Institution a generous donation, and it is not surprising that Australian leaders often visit Brookings and give public talks from there. Former Prime Minister Julia Gillard is a distinguished fellow at Brookings.


Think tanks often use innovative means to get their point across. At CSIS in addition to corporate money, several governments provide support including Japan, the UAE, US, Norway, Taiwan, Brazil, and the UK. CSIS plays an active role in floating ideas. For example, the Japan Chair at CSIS has initiated, through CSIS, the innovative Asia Maritime Transparency Initiative ([amti.csis.org](http://amti.csis.org)).

A central focus of the AMTI is the Chinese construction campaign, converting reefs and sandbars in the South China Sea to military bases. AMTI publishes satellite imagery of China's island conversion program. Newspapers around the globe have republished images from the AMTI. The imagery was incredibly powerful in alerting the public, not to mention policymakers in both the Executive and Legislative branches in Washington, to China's building campaign.

## Future directions

Congress holds the keys to the future of the Pivot to Asia. Without the TPP the Pivot – as a coherent policy – still has room to go ahead. It will do so, however, with a more notably khaki appearance. With the TPP, of course, the Pivot is strengthened.

Sequestration is another matter altogether. Should the White House and Senate fall to the Democrats, sequestration will come under enormous pressure. Of course, the House is likely to remain in Republican hands. Legislative wiggle-room may appear, however, with a Democratic Senate and White House. With sequestration still in place, however, the Pivot will be considerably reduced.



## Congress holds the keys on the future of the Pivot to Asia.

When Congress does legislate, then the stakes are higher. With fewer pieces of proposed legislation making their way into law Australia cannot risk missing out.

Enhancing the effectiveness of the CLO is important for Australia. Further building the CLO's capacity to manage and grow relationships is vital, as is the capacity to float ideas in the air.

Improving the range of databases and computer aided communication tools will be vital. For example, Congress Plus, software designed to handle Congressional relations, has a module designed for the Canadian Embassy that allows users to look at Canadian interests at the Congressional district level. A similar product would be helpful for Australia.

Even better might be the new database product, Quorum, which is like Congress Plus with the Canadian plug-in but with the added ability to follow Congressional social media. It is a powerful tool helping to keep up to date on what is happening in any given Congressional office.

While these databases and analytic tools are useful, they are no replacement for embassy staff visiting and talking to people on Capitol Hill. Securing the use of databases should not be a replacement for people. Rather, the databases should be seen as a way of enhancing and improving what people do.

The lobbying environment in Washington will continue to evolve; Australia must keep up. Australian expenditure on think tanks and other influencers of opinion must become more creative. This requires a two-stage process. First, Australia should redouble its efforts at public diplomacy in Washington with renewed funding. Second, Australia should assemble a group of diplomats, academics, and lobbyists to discuss innovative steps that can be taken to enhance Australian diplomatic lobbying.

## Recommendations

- ✦ Enhance Australia's capacity to lobby the US Congress by expanding and integrating up-to-date database software to handle Congressional relations more effectively, while maintaining staffing levels.
- ✦ Plan for future innovation in lobbying Congress by assembling a task force to identify areas of innovation in engagement with Washington.
- ✦ Redouble efforts in public diplomacy by reinvesting in public diplomacy in Washington through links with think tanks and universities.

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