

# Foreword

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*Senator Elizabeth Warren\**

## INTRODUCTION

America is facing a problem, and it's larger than Donald Trump. That problem can be summed up in two numbers: 73 and 18. For more than half a century, the National Election Survey has been asking Americans a simple question: Do you trust the federal government to do the right thing all of the time, or at least most of the time?<sup>1</sup> In 1958, the first year this survey was conducted, 73% of Americans polled said they trusted their government to do the right thing at least most of the time.<sup>2</sup>

For a long time, the number remained high.

1968 was a year of historic convulsions. Martin Luther King, Jr. was assassinated, Bobby Kennedy was killed, North Korea captured a US surveillance ship, and North Vietnam launched the Tet offensive.<sup>3</sup> Faith in government went down, but overall, it held firm. 62% still trusted government.<sup>4</sup> After Watergate, the number took a big hit, dropping to 36%.<sup>5</sup>

Today, that number has plummeted. Only 18%—not even one in five Americans—trust their government to do the right thing.<sup>6</sup> This was not some sudden drop in trust in our government that occurred after Donald Trump's election. This problem is far bigger than Trump. A loss of faith this broad, and this profound, is more than a problem: it is a crisis of faith.

This is the kind of crisis that leads people to turn away from democracy. The kind of crisis that forces people to stop believing in what we can do together. The kind of crisis that creates fertile ground for cynicism and discouragement. The kind of crisis that gives rise to authoritarians.

### I. WHY HAVE SO MANY PEOPLE LOST FAITH IN GOVERNMENT?

Thoughtful people give different answers to the question of why so many Americans have lost faith in government. Some say it's the result of

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<sup>1</sup> *Public Trust in Government: 1958–2017*, PEW RESEARCH CTR. (Dec. 14, 2017), <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017> [<https://perma.cc/95PD-MEGK>].

<sup>2</sup> *See id.*

<sup>3</sup> Katie McLaughlin, *Eight unforgettable ways 1968 made history*, CNN (July 31, 2014, 7:20 AM), <https://www.cnn.com/2014/07/31/us/1968-important-events/index.html> [<https://perma.cc/4AT7-HNFC>].

<sup>4</sup> *See Public Trust in Government: 1958–2017*, *supra* note 1.

<sup>5</sup> *See id.* (showing trust in government dropped from 53% in 1972 to 36% in 1974).

<sup>6</sup> *See id.*

politicians portraying the government as the enemy.<sup>7</sup> And that's true. Since Watergate, generation after generation of American politicians have attacked the very idea that our government can do anything right. Recall Ronald Reagan's famous line: "The nine most terrifying words in the English language are: I'm from the Government, and I'm here to help."<sup>8</sup>

But is government help really terrifying? Give me a break. Do you know what's actually terrifying? Hurricanes like Katrina and Maria are terrifying, which is why victims of natural disasters ask for government help. After a lifetime of hard work, growing old and going broke is terrifying, which is why the American people strongly support Social Security.<sup>9</sup> Choosing between food and medicine is terrifying, and that's why the American people rise up and take to the streets when Republicans try to cut back Medicare and Medicaid.<sup>10</sup>

And there's so much more that we want to work on together. Americans want roads and bridges.<sup>11</sup> They want power and water systems.<sup>12</sup> They want a top-notch economic system. They want real cybersecurity and a military that defends our nation.<sup>13</sup> And they want a government that can deliver those things.

Government can be a powerful force for good—but only when it works for the people. And the American people understand that today, government isn't working for them. Our national crisis of faith in government boils down

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<sup>7</sup> See Uri Friedman, *Why Trump Is Thriving in an Age of Distrust*, THE ATLANTIC (Jan. 20, 2017), <https://www.theatlantic.com/international/archive/2017/01/trump-edelman-trust-crisis/513350> [<https://perma.cc/P8CG-SF9B>].

<sup>8</sup> *The American Presidency Project: Ronald Reagan—The President's News Conference*, UNIV. CAL., SANTA BARBARA, <https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-957> [<https://perma.cc/BP3C-9UW6>] (last visited Feb. 24, 2019).

<sup>9</sup> See John Gramlich, *Few Americans Support Cuts to Most Government Programs, Including Medicaid*, PEW RESEARCH CTR. (May 26, 2017), <http://www.pewresearch.org/fact-tank/2017/05/26/few-americans-support-cuts-to-most-government-programs-including-medicaid/> [<https://perma.cc/7HC2-9H7B>].

<sup>10</sup> See Jeremy Raff, *Why Americans With Disabilities Fear Medicaid Cuts*, THE ATLANTIC (July 10, 2017), <https://www.theatlantic.com/politics/archive/2017/07/why-disabled-americans-fear-medicaid-cuts/533085/> [<https://perma.cc/8RAK-P972>].

<sup>11</sup> See RJ Reinhart, *In the News: Public Backs More Infrastructure Spending*, GALLUP (Feb. 12, 2018), <https://news.gallup.com/poll/226961/news-public-backs-infrastructure-spending.aspx> [<https://perma.cc/UF84-HH4C>].

<sup>12</sup> See *New National Poll Finds 95% of Americans Want Public Officials to Invest in Water Systems, 60% Are Willing to Pay More for Secure Water Service*, WATER ENV'T FED'N (Feb. 24, 2016), <https://www.wef.org/resources/pressroom/press-releases2/2016/new-national-poll-finds-95-of-americans-want-public-officials-to-invest-in-water-systems-60-are-willing-to-pay-more-for-secure-water-service/> [<https://perma.cc/2XYS-KT8P>]; Tom DiChristopher, *Americans want more clean energy, Here's what they're actually willing to do to get it*, CNBC (May 16, 2018, 8:15 AM), <https://www.cnbc.com/2018/05/16/americans-want-more-clean-energy-heres-what-theyll-do-to-get-it.html> [<https://perma.cc/UN8X-YVCS>].

<sup>13</sup> See Aaron Smith, *Americans and Cybersecurity*, PEW RESEARCH CTR. (Jan. 26, 2017), <http://www.pewinternet.org/2017/01/26/americans-and-cybersecurity/> [<https://perma.cc/4T54-23FT>]; see also Brian Kennedy, *Most Americans trust the military and scientists to act in the public's interest*, PEW RESEARCH CTR. (Oct. 18, 2016), <http://www.pewresearch.org/fact-tank/2016/10/18/most-americans-trust-the-military-and-scientists-to-act-in-the-publics-interest/> [<https://perma.cc/L6SN-3FNL>].

to this simple fact: people don't trust their government to do the right thing because they think government works for the rich, the powerful, and the well-connected—not for the American people.

## II. HERE'S THE KICKER: AMERICANS ARE RIGHT ABOUT GOVERNMENT.

At a time when this country faces enormous challenges, our government actively serves the richest and most powerful and turns its back on everyone else. We have skyrocketing inequality and stagnant wages for the middle class, but our government is giving gargantuan handouts to the wealthiest Americans.<sup>14</sup> Mass incarceration grinds down human beings and destroys communities of color, but our government is putting more cash into the for-profit prison industry.<sup>15</sup> Sea levels are rising and the health threats posed by climate change are accelerating by the day, but our government is handing over both taxpayer money and federally protected lands to the fossil fuel industry.<sup>16</sup> Americans face staggering drug prices and soaring out-of-pocket costs, but our government tucks tail and runs away from any serious challenge to Big Pharma and greedy insurance companies.<sup>17</sup> Students face crippling loan debt, but our government is bending over backwards to help bogus for-profit colleges and student loan companies get richer by cheating those who are just trying to get ahead.<sup>18</sup>

Across the board, our government is failing to fix the problems that face our working families. Instead, it's making the problems worse by giving more money, more power, and more advantages to those who already have all three. And so often, whether it leads to poisoned water or toxic bank loans, communities of color are hit first and hit hardest.<sup>19</sup> Our government

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<sup>14</sup> See Chuck Marr et al., *New Tax Law Is Fundamentally Flawed and Will Require Basic Restructuring*, CTR. ON BUDGET & POLICY PRIORITIES (Aug. 14, 2018), <https://www.cbpp.org/research/federal-tax/new-tax-law-is-fundamentally-flawed-and-will-require-basic-restructuring> [<https://perma.cc/7YJL-LNHA>].

<sup>15</sup> See Aimee Picchi, *One winner under Trump: The private prison industry*, CBS NEWS (Feb. 21, 2018, 5:00 AM), <https://www.cbsnews.com/news/one-winner-under-trump-the-private-prison-industry/> [<https://perma.cc/7U2L-GUAZ>].

<sup>16</sup> See Brian Maffly, *Trump's team offers a new vision for Utah's former grand staircase: Nearly 700,000 acres would be open to mining or drilling*, SALT LAKE TRIB. (Aug. 15, 2018), <https://www.sltrib.com/news/environment/2018/08/15/feds-release-management/> [<https://perma.cc/4UC2-4NGD>].

<sup>17</sup> See Wayne Drash, *Medicare drug prices soar at 10 times rate of inflation, report says*, CNN (Mar. 26, 2018, 5:41 PM), <https://www.cnn.com/2018/03/26/health/report-medicare-drug-prices-soaring/index.html> [<https://perma.cc/HUN4-FCPS>].

<sup>18</sup> See Danielle Ivory, et al., *Education Department Unwinds Unit Investigating Fraud at For-Profits*, N.Y. TIMES (May 13, 2018), <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html> [<https://perma.cc/E8QG-MWUL>].

<sup>19</sup> See Jasmine Bell, *5 Things to Know About Communities of Color and Environmental Justice*, CTR. FOR AM. PROGRESS (Apr. 25, 2016), <https://www.americanprogress.org/issues/race/news/2016/04/25/136361/5-things-to-know-about-communities-of-color-and-environmental-justice/> [<https://perma.cc/B4JD-8VZK>].

systematically favors the rich over the poor, the donor class over the working class, the well-connected over the disconnected.

This is deliberate, and we need to call this what it is—corruption, plain and simple.

Corruption has seeped into the fabric of our government, tilting thousands of decisions away from the public good and toward the desires of those at the top. And, over time, bit by bit, like a cancer eating away at our democracy, corruption has eroded Americans' faith in our government.<sup>20</sup>

I know that's a stark assessment. I'm not talking about the death of democracy. I'm talking about fighting back. Change is hard, but change is possible.

Change can start with reforming how our largest companies operate. In August, I introduced the Accountable Capitalism Act,<sup>21</sup> which would restore the once-common idea that giant American corporations should look out for a broad range of American stakeholders.<sup>22</sup> By requiring our largest companies to seat workers on their boards, limiting the ability of executives to get rich quick off short-term stock price bumps, and giving shareholders and directors a real say in corporate political spending, this bill could go a long way toward restoring real economic democracy in America. And in the process, it would ensure that when American businesses engage with our government, they are speaking on behalf of their entire communities—and not simply as megaphones for the wealthy and the powerful.

Getting American corporations to start acting like responsible American citizens is an important first step toward limiting corruption. But broader changes are needed.

That is why I also introduced the Anti-Corruption and Public Integrity Act, which is the most ambitious anti-corruption legislation proposed in Congress since Watergate.<sup>23</sup> The bill proposes an aggressive set of reforms that would fundamentally change the way Washington does business. These reforms have one simple aim: to take power in Washington away from the wealthy, the powerful, and the well-connected who have corrupted our government and put power back in the hands of the American people.

We can do this. We must do this. And when we do, we will restore the faith of the American people—not just in our government, but in democracy itself.

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<sup>20</sup> See *Public Trust in Government: 1958-2017*, *supra* note 1.

<sup>21</sup> See Press Release, Sen. Elizabeth Warren, Warren Introduces Accountable Capitalism Act (Aug. 15, 2018), <https://www.warren.senate.gov/newsroom/press-releases/warren-introduces-accountable-capitalism-act> [<https://perma.cc/G6RY-FWG6>].

<sup>22</sup> See Matthew Yglesias, *Elizabeth Warren has a plan to save capitalism*, VOX (Aug. 15, 2018, 11:05 AM), <https://www.vox.com/2018/8/15/17683022/elizabeth-warren-accountable-capitalism-corporations> [<https://perma.cc/LG3A-7ZS5>].

<sup>23</sup> See S. 3357, 115th Cong. (2018); see also Kathryn Watson, et al., *Elizabeth Warren introduces sweeping ethics bill that faces tough odds on Capitol Hill*, CBS NEWS (Aug. 21, 2018, 11:38 AM), <https://www.cbsnews.com/news/elizabeth-warren-unveils-anti-corruption-legislation/> [<https://perma.cc/TZX9-B5XG>].

## III. BIG MONEY: A GUT PUNCH TO OUR DEMOCRACY

The recent explosion of big political spending has delivered a gut-punch to our democracy. I do what I can by not accepting PAC money or money from federal lobbyists. There's a lot of work to do on campaign finance, starting with overturning *Citizens United v. FEC*.<sup>24</sup> But that's not nearly enough. The corrupting influence of big money in Washington reaches much further than political campaigns.<sup>25</sup>

Big money eats away at the heart of our democracy. Over the last few decades, it has created a pervasive culture of soft corruption that colors virtually every important decision in Washington. Consider a couple of examples:

First, the rich and powerful buy their way into congressional offices. Exhibit A: Mick Mulvaney. After he left Congress, Mulvaney told a roomful of bankers that he had a rule in his office: If a lobbyist didn't give him money, the lobbyist didn't get a meeting—he met only with those lobbyists who ponied up for his campaign war chest.<sup>26</sup> Today, Mulvaney is President Trump's acting White House Chief of Staff, as well as the head of The Office of Management and Budget. He previously ran The Consumer Protection Bureau. And when he made these comments—right out in public with the press listening in—Trump and pretty much every Republican in Washington just shrugged.

The rich and powerful also offer up fancy gifts for public servants to do their bidding. In the early 2000s, Congressman Billy Tauzin started pushing an idea: expand Medicare to cover prescription drugs.<sup>27</sup> In some ways, this plan was good for seniors. In fact, it was lifesaving for some. But Tauzin's plan was also very good for Big Pharma: the more prescriptions were filled, the more money came into their pockets.<sup>28</sup>

It might all have ended there, with seniors getting drug coverage and drug companies selling more drugs. But Big Pharma wanted more. Number

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<sup>24</sup> 558 U.S. 310 (2010).

<sup>25</sup> See Benjamin I. Page, *How Money Corrupts American Politics*, SCHOLARS STRATEGY NETWORK, <https://scholars.org/how-money-corrupts-american-politics> [<https://perma.cc/WGU2-M9TM>].

<sup>26</sup> See Renae Merle, *Mulvaney discloses 'hierarchy' for meeting lobbyists, saying some would be seen only if they paid*, WASH. POST (Apr. 25, 2018), [https://www.washingtonpost.com/news/business/wp/2018/04/25/mick-mulvaney-faces-backlash-after-telling-bankers-if-you-were-a-lobbyist-who-never-gave-us-money-i-didnt-talk-to-you/?utm\\_term=.0175bbfb3108](https://www.washingtonpost.com/news/business/wp/2018/04/25/mick-mulvaney-faces-backlash-after-telling-bankers-if-you-were-a-lobbyist-who-never-gave-us-money-i-didnt-talk-to-you/?utm_term=.0175bbfb3108) [<https://perma.cc/Q4M3-75U9>].

<sup>27</sup> See Robert Pear, *House's Author of Drug Benefit Joins Lobbyists*, N.Y. TIMES (Dec. 16, 2004), <https://www.nytimes.com/2004/12/16/politics/houses-author-of-drug-benefit-joins-lobbyists.html> [<https://perma.cc/3J5P-DLWL>]; see also Paul Blumenthal, *The Legacy of Billy Tauzin: The White House-PhRMA Deal*, SUNLIGHT FOUND. (Feb. 12, 2010, 12:51 PM), <https://sunlightfoundation.com/2010/02/12/the-legacy-of-billy-tauzin-the-white-house-pharma-deal/> [<https://perma.cc/35SB-TXAZ>].

<sup>28</sup> See Sharyl Attkisson, *Health Care Lobbyists' Rise to Power*, CBS NEWS (Oct. 20, 2009, 6:02 PM), <https://www.cbsnews.com/news/health-care-lobbyists-rise-to-power/> [<https://perma.cc/Q2L9-VJF2>] (explaining how the pharmaceutical industry earned billions off of the Medicare Part D expansion); see also Blumenthal, *supra* note 27.

one on their list was a flat prohibition on the worrisome possibility that the government might actually negotiate for lower drug prices.<sup>29</sup> Tauzin delivered them just that.<sup>30</sup> Today, Big Pharma rakes in billions from seniors on Medicare while charging sky-high prices for the drugs they need—and no one in government can negotiate those prices.<sup>31</sup>

Tauzin's fealty to the pharmaceutical industry came with perks. Besides the \$200,000 in campaign contributions he received from the industry (which I'm sure had nothing to do with the deal he cut on drug prices), the Congressman also got a job offer. In December of 2003, the very same month the Medicare expansion bill was signed into law, PhRMA—the drug companies' biggest lobbying group—dangled the possibility that Tauzin could be their next CEO.<sup>32</sup> In February of 2004, Congressman Tauzin announced that he wouldn't seek re-election. Ten months later, he became CEO of PhRMA—at an annual salary of up to \$2 million.<sup>33</sup> Big Pharma certainly knows how to say “thank you for your service.”

Sometimes the payoff comes upfront. Goldman Sachs handed Gary Cohn over a quarter of a billion dollars on his way out the door to become the head of President Trump's National Economic Council.<sup>34</sup> A quarter of a billion dollars to help quarterback a tax package that included giveaways worth just over a quarter of a billion to Goldman—in the first quarter of 2018 alone.<sup>35</sup> That's quite the return on investment for Goldman Sachs. The return was not so good for the taxpayers who paid Mr. Cohn's salary, and were under the mistaken impression that Mr. Cohn was working for them.

The examples are everywhere these days. A Commerce Secretary who acts like a cartoon version of a Wall Street fat cat, awash in financial conflicts, intertwined with Russian financial interests, suspected of swindling millions from his business partners and using his official position to pump up his fortune through shady stock trading.<sup>36</sup> An EPA Administrator who

<sup>29</sup> See Chris Macke, *Ex-rep. is still costing taxpayers billions in prescription fees*, THE HILL (Feb. 15, 2018, 12:45 PM), <https://thehill.com/opinion/healthcare/374035-ex-congressman-still-costing-taxpayers-billions-in-prescription-fees> [https://perma.cc/N9NJ-ZKS3].

<sup>30</sup> See Mike Stuckey, *Tauzin aided drug firms, then they hired him*, NBC NEWS (Mar. 22, 2006, 11:15 AM), <http://www.nbcnews.com/id/11714763/t/tauzin-aided-drug-firms-then-they-hired-him/#.W6w8juhKg2x> [https://perma.cc/VY36-H5XA].

<sup>31</sup> See Macke, *supra* note 29.

<sup>32</sup> See Stuckey, *supra* note 30.

<sup>33</sup> See *id.*

<sup>34</sup> See Kate Kelly, *Goldman's \$285 Million Package for Gary Cohn is Questioned*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/business/dealbook/goldman-sachs-gary-cohn-285-million-departure-package.html> [https://perma.cc/BC38-WD8B].

<sup>35</sup> See Michael Rapoport, *The Biggest U.S. Banks Made \$2.5 Billion From Tax Law—in One Quarter*, WALL ST. J. (Apr. 17, 2018, 5:29 PM), <https://www.wsj.com/articles/the-four-biggest-u-s-banks-made-2-3-billion-from-tax-law-in-one-quarter-1523984836> [https://perma.cc/M8Z8-M8DL].

<sup>36</sup> See Dan Alexander, *Lies, China and Putin: Solving The Mystery of Wilbur Ross' Missing Fortune*, FORBES (June 18, 2018, 5:00 AM), <https://www.forbes.com/sites/danalexander/2018/06/18/lies-china-and-putin-solving-the-mystery-of-wilbur-ross-missing-fortune-trump-commerce-secretary-cabinet-conflicts-of-interest/#68ee049b7e87> [https://perma.cc/ATL5-GUE8].

resigns in disgrace over corruption, only to be replaced with another EPA Administrator who belongs in the coal baron's hall of fame.<sup>37</sup> A Congressman who has been indicted for insider trading.<sup>38</sup>

Let's face it: There's no real question that the Trump era has given us the most nakedly corrupt leadership this nation has seen in our lifetimes. But they are not the *cause* of the rot—they're just the biggest, most rotten example of it. Corruption is a form of public cancer, and Washington's got it bad. It's time for treatment, time to isolate and quarantine the ability of big money to infect the decisions made every day by every branch of our government.

#### IV. THE ANTI-CORRUPTION AND PUBLIC INTEGRITY ACT: THE MEDICINE WASHINGTON NEEDS

##### *A. Padlock the revolving door between big business and government.*

This problem is enormous—but we've dealt with enormous problems before. We just need some big reform ideas and a willingness to fight for real change. The first big idea is to padlock the revolving door between big business and government.

We need to ban federal elected and appointed officials from becoming lobbyists after they leave office. Not for *one* year. Not for *two* years. For the rest of their *lives*.<sup>39</sup> Sorry, Billy. No more Congressman Pharma.

And no more advance bribes like the Gary Cohn giveaway. No special deals for millions and millions of dollars to the policymakers who will be in a position to pay back their old employers.

We can also lock the revolving door for people who have led a company that got caught breaking the law or anyone who worked as a lobbyist for *any* corporation. A six-year time-out before that lobbyist or outlaw CEO can take a job in government.<sup>40</sup> And we can limit the ability of America's biggest and most powerful companies to gain unfair market advantages from vacuuming up every former regulator on the market. Companies—including federal contractors—should not be able to lobby federal officials, and then dangle lucrative jobs in front of them to entice them to join their ranks.<sup>41</sup> In

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<sup>37</sup> See Umair Irfan, *Scott Pruitt is leaving behind a toxic mess at the EPA*, VOX (July 9, 2018, 12:33 PM), <https://www.vox.com/2018/7/6/17539834/scott-pruitt-resigns-andrew-wheeler-epa-legacy> [<https://perma.cc/C2H6-XTMJ>].

<sup>38</sup> See Michael Scherer, *New York congressman facing insider trading charges suspends reelection bid*, WASH. POST (Aug. 11, 2018), [https://www.washingtonpost.com/powerpost/new-york-congressman-facing-insider-trading-charges-suspends-bid/2018/08/11/92c818ba-9d72-11e8-b60b-1c897f17e185\\_story.html?utm\\_term=.810c8775a29f](https://www.washingtonpost.com/powerpost/new-york-congressman-facing-insider-trading-charges-suspends-bid/2018/08/11/92c818ba-9d72-11e8-b60b-1c897f17e185_story.html?utm_term=.810c8775a29f) [<https://perma.cc/7784-GANK>].

<sup>39</sup> See, e.g., Zachary Warmbrodt, *Warren proposes sweeping crackdown on lobbying*, POLITICO (Aug. 21, 2018, 10:54 AM), <https://www.politico.com/story/2018/08/21/elizabeth-warren-lobbying-crackdown-745261> [<https://perma.cc/Z9VJ-N7AU>].

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

fact, we also should prevent all federal employees and Congressional staffers from cashing in on their personal relationships and connections after they leave public service by banning them from lobbying their old employers and colleagues right after they walk out the door.<sup>42</sup>

Sure, there is a lot of expertise in the private sector, and government should be able to tap that expertise. And, yes, public servants should be able to use their expertise when they leave government. But we have gone way past expertise and are headed directly into graft. It's time to padlock the revolving door.

*B. Stop self-dealing by public officials.*

If a person works for the government, then that work should serve the public. That person should not be making policy decisions to help himself or herself instead of taxpayers.

Right now, that problem begins with a President who may be vulnerable to financial blackmail, and maybe even worse, from a hostile foreign power and potentially other unsavory actors. The President and his family may be personally profiting off hundreds of policy decisions every day, but we don't know, because he won't show us his tax returns and he won't get rid of his personal business interests.<sup>43</sup>

The truth is, it's *insane* that we have to beg the President of the United States to put the American people ahead of his own business interests. Presidents should not be able to own companies on the side. And we should not have to beg candidates to let the American people see their financial interests. That should be the law—not just for presidential candidates, but for every candidate for every federal office.<sup>44</sup>

While we're at it, enough of the spectacle of Health and Human Services Secretaries and herds of congressmen caught up in insider trading schemes. It is time to ban elected officials and senior agency officials from owning or trading any company stocks while in office. They can put their savings in conflict-free investments like mutual funds or investment accounts managed by the federal retirement thrift investment board, or they can pick a different line of work.

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<sup>42</sup> See *id.*

<sup>43</sup> See Charlie Gasparino, *Making a new case for Trump's tax returns to be released*, FOX BUS. (July 25, 2018), <https://www.foxbusiness.com/politics/making-a-new-case-for-trumps-tax-returns-to-be-released> [<https://perma.cc/7VBX-DN3W>].

<sup>44</sup> Instead of investing in individual stock, I propose creating conflict-free investment vehicles managed by the Federal Retirement Thrift Investment Board for federal officials. We should also ensure that all government employees, including unpaid White House staff and advisors, are required to abide by federal ethics rules, and that executive branch employees recuse themselves from matters that might benefit their pocketbooks or the financial interest of a previous employer or client from the preceding four years.



*C. End lobbying as we know it.*

The term “lobbying” has been around for nearly two hundred years.<sup>45</sup> And our Constitution protects “the right of the people . . . to petition the Government for a redress of grievances.”<sup>46</sup> But as recently as the 1970s there was no real corporate lobbying industry. There were lobbyists here and there, but it was a skeleton force at best.<sup>47</sup>

Today, the national Chamber of Commerce spends tens of millions of dollars to block policies that threaten the profits of a handful of America’s richest corporations.<sup>48</sup> They currently occupy an enormous building facing the White House,<sup>49</sup> a sort of visual alternative to the government elected by the people. But back in the 1970s, the Chamber had no presence in DC to speak of. That started to change in 1972, when a hotshot corporate lawyer named Lewis Powell wrote a secret memo for the Chamber. The Powell Memo declared that the free enterprise system was under assault and urged the Chamber to mobilize America’s biggest businesses and establish themselves as a political force to be reckoned with.<sup>50</sup>

It was a declaration of war on democracy. Powell called on corporations to raise armies of lobbyists and descend on Washington. And boy, did they respond. Today, lobbying is a multibillion-dollar industry—more than \$3.3 billion in 2017 alone.<sup>51</sup> More than eleven thousand registered lobbyists are deployed to work day and night to influence our government, largely on behalf of wealthy clients.<sup>52</sup> And, by the way, that memo worked out pretty well for Lewis Powell too—a few months later, he was named to the Supreme Court.<sup>53</sup>

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<sup>45</sup> See *A Lobbyist By Any Other Name?*, NAT’L PUB. RADIO (Jan. 22, 2006, 11:10 AM) <https://www.npr.org/templates/story/story.php?storyId=5167187> [<https://perma.cc/9R3Y-3DBH>].

<sup>46</sup> U.S. CONST. amend. I.

<sup>47</sup> See Bill Moyers, *The Powell Memo: A Call-to-Arms for Corporations*, MOYERS & CO. (Sept. 14, 2012), <https://billmoyers.com/content/the-powell-memo-a-call-to-arms-for-corporations/> [<https://perma.cc/6544-KRQU>].

<sup>48</sup> See *Influence & Lobbying: U.S. Chamber of Commerce*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/lobby/clientsum.php?id=D000019798> [<https://perma.cc/RU4T-VS4B>] (last visited Feb. 24, 2019); see also *U.S. business group lobbying surged as tax reform took shape*, REUTERS (Jan. 22, 2018 10:00 PM), <https://www.reuters.com/article/usa-companies-lobbying/u-s-business-group-lobbying-surged-as-tax-reform-took-shape-report-id-USL2N1PI02S> [<https://perma.cc/HW7E-QXBM>].

<sup>49</sup> See *Building History*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/about/history/building-history> [<https://perma.cc/QU69-ABRN>].

<sup>50</sup> See Memorandum from Lewis F. Powell, Jr., to Eugene B. Snyder, Jr., Chairman, Educ. Comm., U.S. Chamber of Commerce (Aug. 23, 1971), <http://law2.wlu.edu/dep-timages/Powell%20Archives/PowellMemorandumPrinted.pdf> [<https://perma.cc/UHM4-JRY3>].

<sup>51</sup> *Influence & Lobbying: Lobbying Database*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/lobby/index.php> [<https://perma.cc/N8UH-8DYG>] (last visited Feb. 24, 2019).

<sup>52</sup> See *id.*

<sup>53</sup> See *Supreme Court Nominations, 1789–Present*, U.S. SENATE, <https://www.senate.gov/pagelayout/reference/nominations/reverseNominations.shtml> [<https://perma.cc/KD29-3N94>] (last visited Feb. 24, 2019).

Nobody would argue that companies have nothing to contribute to our democratic process. Of course they do. But today, lobbyists working for the wealthy and well-connected crowd the halls of government like it's happy hour every hour. Particularly in Congress, where staff budgets and in-house expertise continue to shrink,<sup>54</sup> it is easier than ever for lobbyists to simply overwhelm our democracy so that they—or their paying clients—are the only ones whose stories get heard. That is not how a government of the people—all the people—is supposed to work.

We can start to fix this problem by ending the current Swiss cheese definition of a “lobbyist.” Instead, we should require everyone who gets paid to influence government to register.

We should also bring lobbying out into the sunlight by making every single meeting between a lobbyist and a public official a matter of public record. We should require public disclosure of any documents that lobbyists provide to government officials. Put it all online and let everyone see what is really going on. And if that seems overwhelming—too many meetings, too many company-drafted bills, too many love notes—think about what that means is going on in the dark recesses of our government right now. We can also put a windfall tax on excessive lobbying. The idea is simple: if a company spends \$500,000 or more per year to lobby government, then it should pay a tax on those lobbying expenditures that goes to the agencies that are the targets of the lobbying activity. The proceeds from the tax will help ensure that when companies spend hundreds of thousands or millions trying to stop the government from protecting the public, the cops on the beat get more resources to fight back. We should also end legalized lobbyist bribery by prohibiting lobbyists from writing campaign checks or giving personal gifts to anyone running for or holding federal office.

While we're at it, let's strengthen the government's independence from lobbyists. Raising Congressional salaries to track other federal officials would mean that low-paid staffers don't feel compelled to audition for jobs with influence peddlers when they should be standing up to them.<sup>55</sup>

Finally, let's get rid of some of the most corrosive and dangerous lobbying practices. The trial of Donald Trump's campaign manager has exposed how foreign governments hide their efforts to influence the American government through lobbying.<sup>56</sup> We should ban Americans from getting paid to lobby for foreign governments—period. If foreign governments want to express their views, they can use their diplomats. We should also end legalized

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<sup>54</sup> See Curtlyn Kramer, *Vital Stats: Congress has a staffing problem, too*, BROOKINGS (May 24, 2017), <https://www.brookings.edu/blog/fixgov/2017/05/24/vital-stats-congress-has-a-staffing-problem-too/> [<https://perma.cc/R44V-4NE4>].

<sup>55</sup> See Anna Palmer & Jonathan Allen, *Hill staffers fear pay cuts, layoffs*, POLITICO (Sept. 13, 2011, 11:37 PM), <https://www.politico.com/story/2011/09/hill-staffers-fear-pay-cuts-layoffs-063451> [<https://perma.cc/T8P6-RMWG>].

<sup>56</sup> See, e.g., Mark Mazzetti & Katie Benner, *Mueller's Digging Exposes Culture of Foreign Lobbying and Its Big Paydays*, N.Y. TIMES (Aug. 1, 2018), <https://www.nytimes.com/2018/08/01/us/politics/fara-foreign-agents-mueller.html> [<https://perma.cc/GF2Y-5R2F>].

lobbyist bribery by prohibiting lobbyists from writing campaign checks or giving personal gifts to anyone running for or holding federal office.<sup>57</sup>

*D. End corporate capture of rulemaking.*

Too often, decisions in the federal agencies charged with implementing our laws end up captured by the very same corporate giants that they are supposed to be keeping in check.<sup>58</sup> It's time for that to stop. Corporations should have a seat at the table, but they should not take over the whole restaurant.

We should start by empowering beleaguered agencies to stand up to well-heeled corporate giants that don't want to follow any rules. For example, when someone lies to a court, we call it "perjury." But, too often, when companies lie to regulatory agencies during the rulemaking process, they just call it "analysis"—and no one bats an eye.<sup>59</sup> Meanwhile, Donald Trump's EPA has the gall to try to block objective, high quality science from being considered in the rulemaking process.<sup>60</sup>

Enough of this garbage. We should prosecute companies that knowingly mislead government agencies and stop the practice of companies paying for sham "studies" designed to derail the rulemaking process.<sup>61</sup> Instead, let's force anyone who submits a study to a regulatory agency to disclose who is paying for it and who is editing it. If studies with financial and editorial conflicts do not meet minimal methodological standards, throw them out before they disrupt the process.<sup>62</sup>

We should also take steps to inoculate agencies against corporate capture, starting with giving agencies more resources to do their jobs. The pro-

<sup>57</sup> It is also critical that Congress have the necessary resources and expertise to make decisions affecting all Americans, which is why I propose reinstating the nonpartisan Congressional Office of Technology Assessment to provide critical scientific and technological support to Members of Congress.

<sup>58</sup> See, e.g., Elizabeth Warren, *Corporate Capture of the Rulemaking Process*, REGULATORY REVIEW (June 14, 2016), <https://www.theregreview.org/2016/06/14/warren-corporate-capture-of-the-rulemaking-process/> [<https://perma.cc/L2UA-VA2F>].

<sup>59</sup> See *id.*

<sup>60</sup> See Trevor Nace, *EPA Chief Scott Pruitt: Delete Decades of Science In The Name Of Transparency*, FORBES (Apr. 24, 2018, 12:50 PM), <https://www.forbes.com/sites/trevornace/2018/04/24/epa-chief-scott-pruitt-delete-decades-of-science-in-the-name-of-transparency/#316cbf6e7afa> [<https://perma.cc/TE2Y-BTFG>].

<sup>61</sup> See, e.g., Anahad O'Connor, *Study Tied to Food Industry Tries to Discredit Sugar Guidelines*, N.Y. TIMES (Dec. 19, 2016), <https://www.nytimes.com/2016/12/19/well/eat/a-food-industry-study-tries-to-discredit-advice-about-sugar.html?> [<https://perma.cc/6LYE-BMVM>].

<sup>62</sup> There is a laundry list of other ways we can and should re-orient the rulemaking process to serve the public interest, including restricting negotiated rulemaking, limiting inter-agency review, ensuring that only federal appeals courts can stop the implementation of final rules, and banning agencies from using the presence of litigation to postpone implementation of final rules. We can also empower the public to police agencies for corporate capture by creating a new Office of the Public Advocate to help ensure the public can meaningfully participate in the rulemaking process and allow the public to initiate private lawsuits to hold corporations accountable when they break the rules, and hold agencies accountable when they fail to do their jobs.

ceeds from the windfall tax on lobbying will create a substantial stream of funding to help agencies overwhelmed by corporate influence peddling. In addition, we should require courts to presumptively defer to agency interpretations of the laws that govern those agencies, and stop courts from considering flimsy studies and research that corporations use to try to overturn strong, public interest-centered rules.<sup>63</sup>

*E. Restore faith that ordinary people can get a fair shake in our courts.*

For starters, we must strengthen the code of conduct for all federal judges—no stock trading, no payments from corporations for attending events, no honoraria for giving speeches, no lavish getaways and fancy hunting trips funded by billionaires.<sup>64</sup>

And I mean *all* federal judges, including Supreme Court justices. I've heard Supreme Court justices say we should just trust that they will be ethical all on their own.<sup>65</sup> Yeah, right. I watched as Justice Gorsuch trotted over to Trump International Hotel to give a speech sponsored by a political organization that has worked for decades to break the backs of unions.<sup>66</sup> A few months later, Justice Gorsuch delivered the deciding vote to crush public sector unions.<sup>67</sup> What union member believed that her side actually had a fair hearing? There's a reason judges should be required to avoid even the appearance of favoritism.

The courts should also be more open. Individuals and small businesses should be able to have their day in court. That means we should restore the pleading standards that make it easier for Americans who have been harmed

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<sup>63</sup> See generally JARED COLE, CONG. RESEARCH SERV., AN INTRODUCTION TO JUDICIAL REVIEW OF REGULATORY ACTION (Dec. 7, 2016), <https://fas.org/sgp/crs/misc/R44699.pdf> [<https://perma.cc/XB4A-UBY2>]. I also propose eliminating 5 U.S.C. § 801(b)(5), the provision in the Congressional Review Act (CRA) that prevents agencies from issuing rules that are “substantially similar” to a rule that has been rescinded pursuant to the CRA. See 5 U.S.C. § 801(b)(5)(2012).

<sup>64</sup> See generally Joseph P. Williams, *The Ethical Honor System*, U.S. NEWS AND WORLD REP. (June 9, 2017, 6:00 AM), <https://www.usnews.com/news/the-report/articles/2017-06-09/supreme-court-justices-play-by-their-own-ethics-rules> [<https://perma.cc/TTX4-LU5J>].

<sup>65</sup> See, e.g., JOHN G. ROBERTS, JR., 2011 YEAR-END REPORT ON THE FEDERAL JUDICIARY 5 (2011), <https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf> [<https://perma.cc/2Q3J-UDXF>] (stating that “the Court has had no reason to adopt the Code of Conduct as its definitive source of ethical guidance”). See also *Code of Conduct for United States Judges*, U.S. COURT (last revised Mar. 20, 2014), <http://www.uscourts.gov/judges-judge-ships/code-conduct-united-states-judges> [<https://perma.cc/SQY9-QH73>] (noting that the Code of Conduct does not apply to Supreme Court justices).

<sup>66</sup> See Josh Gerstein, *Gorsuch speech at Trump hotel attracts protests*, POLITICO, (Sept. 28, 2017, 1:30 PM), <https://www.politico.com/story/2017/09/28/neil-gorsuch-trump-hotel-speech-243251> [<https://perma.cc/ZB24-H4QT>].

<sup>67</sup> See Adam Liptak, *Supreme Court Ruling Delivers a Sharp Blow to Labor Unions*, N.Y. TIMES (June 27, 2017), <https://www.nytimes.com/2018/06/27/us/politics/supreme-court-unions-organized-labor.html> [<https://perma.cc/SJ9P-7HG6>].

to make their case before a judge.<sup>68</sup> We should also make the legal process more accessible and open to individuals without law degrees. Public filings should be easier to access online and free to the public. The public should be able to easily access and review judges' financial reports, recusal decisions, and speeches. And it's ten years past time for us to start audio livestreaming federal appellate and Supreme Court proceedings.

We can do a lot more to ensure that the judicial branch also reflects the rich diversity of America. The place to begin is requiring more reporting of racial, ethnic, gender, and professional diversity on the federal bench.

*F. Hire a new independent sheriff to police corruption.*

There are dedicated public servants that enforce our ethics laws, but they have less authority than security guards at the mall. We need to build a new anticorruption agency to enforce the nation's ethics laws and make sure that all key federal officials—even powerful Senators and Presidents—file disclosures and get rid of conflicts. And we can do our best to insulate the sheriff's office from partisan politics and give it the tools and the subpoena authority it needs to seriously investigate violations and punish offenders—including giant companies and lobbyists.

While we're at it, we should empower the independent Office of Congressional Ethics, give it authority over the United States Senate, and further insulate it from congressional politics.

The new anticorruption agency can shine floodlights on government actions and empower the public and press with new tools to help safeguard our democracy. We also need to close the loopholes in federal open records laws, including loopholes that shield from open records disclosure private prisons and immigrations detention centers that depend on the federal government for business from disclosure.<sup>69</sup>

## V. A FIGHTING CHANCE FOR A BETTER GOVERNMENT

Washington corruption is not a small problem, and it will not be rooted out with small solutions. In addition to the big changes I have just outlined, my legislation contains dozens more ideas to promote clean government—from giant reforms to small tweaks, and everything in between.

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<sup>68</sup> For a more in-depth discussion of the current state of pleading standards, *see generally* Jonah B. Gelbach, *Material Facts in the Debate over Twombly and Iqbal*, 68 STAN. L. REV. 369 (2016).

<sup>69</sup> Transparency is fundamental to ridding Washington of corruption. In addition to taking steps to boost transparency of the financial interests of high level government officials and candidates for federal office, we should also require nonprofit organizations to list donors who bankroll certain influence-peddling activities, close loopholes in the Freedom of Information Act that allow federal officials to hide corporate influence, and increase transparency in Congress so that the public has more information about committee activities, members' voting records, and lobbyists' efforts to tilt the legislative process in their favor.

These changes will require everyone who runs for or who holds office to change at least some of their practices—including me. Many of these ideas challenge the most fundamental assumptions about how business is currently done in our nation's capital. Inside Washington, some of these proposals will be very unpopular, even with some of my friends. Outside Washington, I expect that most people will see these ideas as no-brainers and be shocked they are not already the law.

I'm sure the people who make big money off the current system will yell and scream and spend millions of dollars trying to stop these changes. And the all-day-long pundits and Washington insiders who live in the same neighborhoods and eat at the same sushi bars and go to the same book parties will say 'this will never pass' and try to color me naïve for even trying. But it is that kind of self-serving group-think that has allowed corruption to spread through this town for decades. Besides, such nay-saying ignores our history: Our country has responded to deep corruption with bold action before.<sup>70</sup>

I won't pretend to be sure I've gotten everything exactly right. I'm willing and eager to discuss the details. My bill proposes a year-long transition for people to adapt to the new system before these changes would go into effect. But here is my promise: I plan to fight to pass as many of these reforms as possible. I believe we can break the stranglehold that the wealthy and well-connected hold over our government. I believe we can get our democracy working again.

#### CONCLUSION

There are millions of good people working in government. People who show up to do a hard day's work in federal, state, and local government determined to deliver essential services and their best judgments on behalf of the public. Men and women who are uniquely aware that they owe their jobs, and their salaries, to the people of the United States.

They are Members of Congress on both sides of the aisle, their staffs, interns, and volunteers. They are career public servants, serving at home and in remote corners of the world. They are unified by a belief in the greater good of government. It is that belief, that shared vision of what it means to live and work and fight for a future in our democracy, that gives me hope.

We owe everyone fighting for that greater good a debt of gratitude. But we also owe them rules that promote an unwavering determination to serve the public—and only the public. This is not about big government versus small government. It's about whether government works for the wealthy and well-connected or whether government works for the people.

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<sup>70</sup> See, e.g., Bipartisan Campaign Reform Act of 2002, 52 U.S.C. § 3010 (2002); Civil Service Reform Act of 1978, 5 U.S.C. § 5112 (1978).

Only 18% of Americans believe our government is doing right most of the time.<sup>71</sup> But I'm not throwing my hands up and walking away. I'm not giving in to the cynicism. I still believe that in our darkest hours, at our lowest points, government can be a force for good to bring us back together. And here's the good news: deep down, Americans still believe that too.

You see it in the fight to make government affirm healthcare as a basic human right; to make government stand for people and against giant corporations; to insulate government from the influence of corporate contributions; to make government a force for healing our racial and cultural divides.

Americans know that they have a government that isn't working for them. But instead of giving up, more and more people are demanding a government that is run *by* the people *for* the people. Americans demand a country where everyone—*everyone*—has a fighting chance to get ahead. They demand a country that stands for truth, honesty, compassion, and service to one another. And most of all, they demand a country and a government worth believing in and worth fighting for.

That's the country I believe in. That's the government I will fight for. I believe we can save our government, and together we can make it work for the people.

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<sup>71</sup> See *Public Trust in Government: 1958–2017*, *supra* note 1.