NOTES & COMMENTS

MONEY TALKS: THE DISPROPORTIONATE INFLUENCE OF CORPORATIONS ON U.S. GOVERNANCE TODAY

by
*Davis C. Hayter**

Corruption: "Dishonest or illegal behavior especially by powerful people (such as government officials . . .)"; and "inducement to wrong by improper or unlawful means (such as bribery)."[1]

What does the word "corruption" first bring to mind? For some, maybe a foreign country—where political regimes blatantly use the government as a tool to further personal agendas or gains without due consideration of the citizenry. For others, a fictional movie or TV show depicting politicians and police officers providing protections to mafia members in exchange for cash. No matter what comes to mind, many today think of corruption as manifested through blatant and illegal acts often overlooked as a considerable threat to modern governance and democracy within the United States. However, due to narrow laws and restrictions in areas like lobbying and political campaign contributions, corporations and other parties possessing the necessary means can command far more influence over public officials than the general public. Therefore, the U.S. government remains vulnerable to corruption—particularly when it comes to regulation and oversight of private sectors.

* J.D., Lewis & Clark Law School. I wish to thank my family and my fiancé, Bella, for their endless love and support during law school and beyond; Professor Parikh for his invaluable guidance, support, and inspiration while writing this Note; and the Lewis & Clark Law Review team for their exceptional work in bringing this Note to publication. In addition, I dedicate this Note to Professors Janet Steverson, Sandy Patrick, and Jack Bogdanski, each of whom profoundly shaped my journey as a Lewis & Clark Law student and for whom I have come to greatly admire.

[1] *Corruption*, MERRIAM-WEBSTER DICTIONARY (2024).

This form of corruption manifests more discreetly than historically understood, with those involved often shielded from consequences by ambiguities present within the Constitution and other laws. Nonetheless, the existence of corruption within government today is undeniable, and is largely derived from a phenomenon traditionally known as "regulatory capture": where government regulatory agents are manipulated through various means to serve the interests of those they are intended to regulate. However, this idea of capture may not be a risk limited only to those directly involved in government regulation. This Note makes the case that the prevalence of various government officials becoming captured by private sector entities continues to be problematic in American society today.

This Note does not suggest that general regulation—or government—is conceptually counterintuitive; nor that all of those within the United States government are maliciously corrupt. Additionally, this Note does not propose that elected officials or regulators are solely, or even primarily, culpable for the specific events and harms discussed. Rather, this Note takes the position that government control and regulation can cause more harm than good if not effectively enforced and without adequate oversight and accountability—something the United States has fallen short of in many ways.

INTRODUCTION

In April of 2023, Oregon Secretary of State (SoS)[2] Shemia Fagan admitted that while actively holding her public office position, she had been providing "consulting services" to an affiliate company of La Mota, an Oregon-based privately held cannabis company,[3] since February of that year.[4] This disclosure was in response to questions she had received from local media regarding the possible existence of such an arrangement and whether it had created a conflict of interest in her office's recent audit of, and ultimate recommendations on, Oregon's cannabis regulations. Eleven days later, Fagan submitted her resignation as Oregon's Secretary of State.[5]

Fagan was elected to serve as Oregon's SoS in 2020.[6] At her induction ceremony in January of 2021, Fagan centered her speech around how government should be "run by everyday people," stating that the SoS position has come to be known across the United States as "the 'guardians of democracy.'"[7] She had been identified as a rising star among Oregon political leaders, some seeing her as a strong future candidate for Oregon Governor or Congress.[8] In January of 2023, when Fagan was

---

[2] The SoS is one of three constitutional officers in Oregon's executive branch, serving as the state's "chief elections officer, chief auditor, and oversees the State Archives and the Oregon Corporate Division." *About Us*, OR. SEC'Y OF STATE, https://sos.oregon.gov/Pages/aboutus.aspx (last visited May 28, 2025). In Oregon, the SoS becomes interim governor in the event of resignation, disability, death, or discharge of the state-elected governor. OR. CONST. art. V, § 8a. As chief auditor, the SoS "examines and audits accounts of all publicly funded boards, commissions, and agencies." *Secretary of State Tobias Read*, OR. SEC'Y OF STATE: OR. BLUE BOOK, https://sos.oregon.gov/blue-book/Pages/state/executive/secretary-of-state-bio.aspx (last visited May 28, 2025).

[3] *La Mota, LLC*, OR. SEC'Y OF STATE, https://sos.oregon.gov/business/Pages/find.aspx (last visited May 28, 2025) (enter "La Mota, LLC" into the search bar and click "search"; then follow hyperlink for "LA MOTA, LLC").

[4] Sophie Peel, *Secretary of State Shemia Fagan is Working as Private Consultant to Troubled Cannabis Couple*, WILLAMETTE WEEK (Apr. 27, 2023, 2:54 PM) [hereinafter Peel, *Fagan is Working as Private Consultant to Troubled Cannabis Couple*], https://www.wweek.com/news/state/2023/04/27/secretary-of-state-shemia-fagan-is-working-as-private-consultant-to-troubled-cannabis-couple/.

[5] Press Release, Or. Sec'y of State, Secretary of State Shemia Fagan Announces Resignation, Effective Monday May 8 (May 2, 2023) [hereinafter Secretary of State Shemia Fagan Announces Resignation], https://apps.oregon.gov/oregon-newsroom/OR/SOS/Posts/Post/secretary-of-state-shemia-fagan-announces-resignation—effective-monday-may-8-54863; *see also* Julia Shumway, *Fall of a Rising Star: Oregon Secretary of State Shemia Fagan Resigns Over Cannabis Side Job*, OR. CAP. CHRON. (May 2, 2023, 6:19 PM), https://oregoncapitalchronicle.com/2023/05/02/fall-of-a-rising-star-oregon-secretary-of-state-shemia-fagan-resigns-over-cannabis-side-job/.

[6] *Shemia Fagan*, BALLOTPEDIA, https://ballotpedia.org/Shemia_Fagan (last visited May 28, 2025).

[7] Shemia Fagan, Or. Sec'y of State, Remarks at Swearing In Ceremony (Jan. 4, 2021).

[8] Fagan claimed in May 2022 that the mission of her SoS office was "'to build trust between the people of Oregon and [the] state government.'" Shumway, *supra* note 5 (quoting Shemia Fagan).

asked whether she would seek reelection for her position, she responded, "'Hell yes, I'm running.'"[9] However, Fagan prematurely resigned just three months later.[10]

Fagan's resignation followed public criticism she faced over her side arrangement with La Mota—one of Oregon's largest recreational and medical marijuana retailers.[11] La Mota paid Fagan $10,000 per month, plus a $30,000 bonus any time the company acquired licenses in a state "other than Oregon or New Mexico."[12] Both parties initially defended this arrangement, claiming Fagan's consulting services pertained only to La Mota's business operations *outside* of Oregon.[13] However, no demonstrated efforts by La Mota to actually expand into states other than Oregon or New Mexico can be found. Furthermore, the actual contract terms were unclear as to what Fagan's consulting duties were—only that the contract term was indefinite.[14]

Aaron Mitchell and Rosa Cazares, the owners of the La Mota enterprise at that time, claimed they had contracted with Fagan because they were "growing their business outside of Oregon and . . . felt that [Fagan's] expertise [was] there."[15] But what expertise? Before being elected as SoS, Fagan was an employment lawyer.

---

[9] Gary A. Warner, *Election 2024: Fagan in, Read out, and Rosenblum Mum So Far*, OR. CAP. INSIDER (Jan. 21, 2023, 8:00 PM), https://oregoncapitalinsider.com/2023/01/21/election-2024-fagan-in-read-out-and-rosenblum-mum-so-far/#1 (quoting Shemia Fagan).

[10] *See* Secretary of State Shemia Fagan Announces Resignation, *supra* note 5.

[11] The La Mota enterprise, owned jointly by Aaron Mitchell and Rosa Cazares, is structured as a conglomerate of various limited liability corporations (LLCs); one being Veriede Holding, LLC which contracted Fagan to serve as a "consultant." *See* Ben Botkin & Julia Shumway, *Fagan Apologizes and Resigns from Her Cannabis Consulting Job*, OR. CAP. CHRON. (May 1, 2023, 2:18 PM), https://oregoncapitalchronicle.com/2023/05/01/fagan-apologizes-and-resigns-from-her-cannabis-consulting-job/.

[12] *See* CONSULTING AGREEMENT BETWEEN VERIEDE HOLDING, LLC AND SHEMIA FAGAN 1 (Feb. 24, 2023) (reprinted in its entirety at Appendix A); *see also* Julia Silverman, *Fagan Contract: Read Oregon Secretary of State's Agreement for Side Job with Pot Company*, OREGONIAN (May 1, 2023), https://www.oregonlive.com/news/2023/05/fagan-contract-read-oregon-secretary-of-states-agreement-for-side-job-with-a-pot-company.html.

[13] Fagan argued she was following state ethics guidelines and did not "believe a real conflict exist[ed]." Dirk VanderHart, *Ethics Questions Arise as Oregon Audit Argues for Easing Regulations on Cannabis Industry*, OR. PUB. BROAD., https://www.opb.org/article/2023/04/28/shemia-fagan-oregon-secretary-of-state-cannabis-work-easing-regulations/ (Apr. 28, 2023, 11:57 AM).

[14] *See* CONSULTING AGREEMENT BETWEEN VERIEDE HOLDING, LLC AND SHEMIA FAGAN, *supra* note 12.

[15] This occurred during a live interview with KOIN 6, a local news network in Portland, after news broke about Fagan's consulting agreement with La Mota. Later during the interview, producers abruptly interrupted to inform Mitchell and Cazares that Fagan had announced her resignation. The pair's live reactions of concern and frustration to this news seemed to indicate there were more motives for entering the arrangement than what was disclosed. KOIN 6, *La Mota Owners React to Fagan Resignation*, YOUTUBE (May 2, 2023) [hereinafter *La Mota Owners React to Fagan Resignation*], www.youtube.com/watch?v=vBlVzLS5Or8.

However, given her bar license had since expired, she couldn't provide any legal advice to La Mota. Furthermore, Fagan had no known prior experience within the cannabis industry.[16] Thus, it is difficult to rationalize the reasoning La Mota used to defend their arrangement: that they contracted to pay Fagan so significantly for the expertise they *felt* she had. Mitchell and Cazares seemingly attempted to claim their engagement with Fagan was entirely independent and irrespective of her political office.[17] However, the consulting agreement between La Mota and Fagan was far from the first exchange between the parties. When Fagan ran for her position in 2020, Mitchell donated $25,000 to her campaign.[18] However, around the same time, the La Mota owners had accrued more than $7 million in both state and federal tax liens across their businesses.[19]

Why would La Mota and Fagan *really* make such an arrangement? Shortly after being elected in 2020, Fagan's office called for—and began overseeing—an audit of the existing state cannabis regulations put in place by the Oregon Liquor and Cannabis Commission (OLCC).[20] In January of that year (Fagan's first month in office), she requested her office's Audit Division to discuss the scope of the planned audit directly with Cazares (one of the two owners of La Mota).[21] Cazares and Mitchell went on to hold a second fundraising event for Fagan in April of 2021 despite her already successful election only a year earlier, and donated another $20,000 themselves.[22] From June to December of 2021, records show Fagan

---

16 Sophie Peel, *Fagan's Cannabis Contract Paid Her Far More Than Her State Salary*, WILLAMETTE WEEK (May 1, 2023, 9:25 AM), https://www.wweek.com/news/state/2023/05/01/fagans-contract-would-have-paid-her-more-than-state-salary/.

17 *La Mota Owners React to Fagan Resignation*, *supra* note 15.

18 Mitchell and Cazares also hosted a fundraiser for Fagan's campaign at a mansion they rented on September 18, 2020. Sophie Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*, WILLAMETTE WEEK (May 3, 2023, 5:30 AM) [hereinafter Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*], https://www.wweek.com/news/2023/05/03/a-timeline-of-shemia-fagans-dealings-with-la-mota/.

19 Additionally, the La Mota owners had been sued multiple times by vendors for non-payment of invoices. *See* Peel, *Fagan is Working as Private Consultant to Troubled Cannabis Couple*, *supra* note 4.

20 Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*, *supra* note 18.

21 *Id.* The Audits Division is part of the SoS office. *Divisions*, OR. SEC'Y OF STATE, https://sos.oregon.gov/Pages/divisions.aspx (last visited May 28, 2025). The Audits Division conducts performance audits on state organizations to "improve public accountability and inform those charged with oversight." AUDITS DIVISION, OR. SEC'Y OF STATE, AUDITS DIVISION OVERVIEW AND PROTOCOLS 1 (Mar. 2025), https://sos.oregon.gov/audits/Documents/audits-division-protocol.pdf. In other words, the SoS has immense responsibilities and influence over Oregon's state regulations.

22 Aaron Mitchell made a $5,000 donation on March 2, 2021, and a $15,000 donation on April 26, 2021. *Oregon Campaign Finance Contributions by Aaron Mitchell*, OR. SEC'Y OF STATE, https://secure.sos.state.or.us/orestar/gotoPublicTransactionSearch.do?OWASP_CSRFTOKEN=IMXG-I32T-0CGI-3BH4-4KKR-Q96M-15AM-733Y (scroll down to "Contributor/Payee

continuously made reference to La Mota while overseeing the cannabis regulations audit. The completed audit was sent to the OLCC for a response on February 7, 2023.[23] Fagan emailed her staff eight days later stating she would recuse herself from "'further work'" on the already-completed audit, then began her consulting work for La Mota nine days later on February 24.[24] The audit's ultimate recommendations called upon the OLCC to loosen marijuana regulations.[25]

Not long after Fagan resigned, the Oregon Department of Justice hired a specialized consulting firm to examine the cannabis audit and determine whether it was "selected, planned, performed, and reported in accordance with Generally Accepted Government Auditing Standards (GAGAS)."[26] Among other findings, the report concluded the Audits Division did not take necessary steps to avoid potential threats to the integrity and independence of the audit "at all levels" when information emerged about Fagan's ties to La Mota.[27] Additionally, the report found Fagan's office had suggested a more rigorous risk assessment process in their 2021 Annual Audit Plan than what was actually demonstrated, and that the OLCC's existing cannabis laws were included in the scope because it was "an audit topic that the Secretary of State wanted on the audit plan."[28]

The irony present in the context of Fagan's cannabis regulations audit can be summarized in the audit's title: "Oregon Needs to Modernize Cannabis Laws . . . to Ensure Equitable Opportunities and Benefits for All Communities."[29] Even if

---

Information"; in the search bar next to "Name" type "Aaron Mitchell"; click "Search"); Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*, *supra* note 18.

[23] Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*, *supra* note 18.

[24] VanderHart, *supra* note 13; Peel, *A Timeline of Shemia Fagan's Dealings with La Mota*, *supra* note 18.

[25] The audit concluded that the state should ease up on various safeguards and regulations for the cannabis industry and use financing tools to help cannabis industries succeed. *See* Noelle Crombie, *Oregon Should Loosen Marijuana Rules to Help Industry, New State Audit Urges*, OREGONIAN, https://www.oregonlive.com/politics/2023/04/oregon-should-loosen-marijuana-rules-to-help-industry-new-state-audit-urges.html (May 2, 2023, 2:06 PM).

[26] SJOBERG EVASHENK CONSULTING, INC., REVIEW OF THE OREGON SECRETARY OF STATE'S 2023 AUDIT TITLED "OREGON NEEDS TO MODERNIZE CANNABIS LAWS TO HELP GROW THE STATE'S ECONOMY AND TO ENSURE EQUITABLE OPPORTUNITIES AND BENEFITS FOR ALL COMMUNITIES" 2 (Oct. 2023) [hereinafter REVIEW OF 2023 CANNABIS AUDIT].

[27] *Id.* at 3.

[28] Although the report did not concretely conclude the independence of the team conducting this audit was impaired by Fagan's outside dealings, its findings suggested concern, and the ultimate recommendation was for the SoS office to remove the audit report from its public website. *See id.* at 2–3; *see also* Ben Botkin, *Independent Review: Secretary of State Auditors Failed to Safeguard Against Fagan's Moonlighting*, OR. CAP. CHRON. (Oct. 11, 2023, 5:00 PM), https://oregoncapitalchronicle.com/2023/10/11/independent-review-secretary-of-state-auditors-failed-to-safeguard-against-fagans-moonlighting/.

[29] *See* REVIEW OF 2023 CANNABIS AUDIT, *supra* note 26.

Fagan's simultaneous involvement with La Mota may not be found to be *illegal*, it certainly appears, at the very least, *inequitable*. In other words, how does allowing one company special insider access to an ongoing audit of the industry's regulations ensure "equitable" opportunities and benefits for "all" communities? Despite Fagan's defense, it seems unlikely that no potential conflicts of interest were created given she was consulting for a cannabis company while actively overseeing an audit of the state's cannabis regulations. Instead, there is reason to believe Fagan agreed to allow La Mota to leverage her public office position as Oregon's SoS in exchange for money.[30] Since Fagan's resignation, the U.S. Department of Justice has issued subpoenas to multiple Oregon state agencies, including the Oregon Department of Revenue, to further analyze Fagan's tax filings.[31]

What happened with Fagan is an example of the problem the United States collectively faces today: Private actors compromising public officials into serving their interests over those of the general public. This issue has come to be understood as the "capture" of a government entity or officer.[32] In the case of Fagan, as essentially Oregon's "regulator of regulators," her alleged capture by La Mota can appear quite extreme.[33] However, Fagan is far from the only regulator whose inappropriate dealings with the regulated led to prospective conflicts of interest; she is merely among the few who have actually been exposed for doing it.[34] Indeed,

[30] Fagan even cited financial reasons for entering into the consulting arrangement during a press conference in May of 2023: "To put it bluntly, my secretary of state salary on its own is not enough for me to make ends meet." Shane Dixon Kavanaugh, *Oregon Secretary of State Shemia Fagan Cites Low Pay as Factor in Cannabis Side Job Scandal*, OREGONIAN, https://www.oregonlive.com/politics/2023/05/oregon-secretary-of-state-shemia-fagan-cites-low-pay-as-factor-in-cannabis-side-job-scandal.html (May 2, 2023, 2:02 PM) (quoting Shemia Fagan).

[31] Sophie Peel, *U.S. Justice Department Wanted Shemia Fagan's Tax Returns from Oregon Department of Revenue*, WILLAMETTE WEEK (Dec. 14, 2023, 8:53 AM), https://www.wweek.com/news/state/2023/12/14/us-justice-department-wanted-shemia-fagans-tax-returns-from-oregon-department-of-revenue/.

[32] Daniel Carpenter & David A. Moss, *Introduction*, *in* PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 1, 13 (Daniel Carpenter & David A. Moss eds., 2014).

[33] It is possible that La Mota could have been seeking Fagan's powers as SoS to, for instance, help alleviate their tax lien issues or remove regulatory barriers for expanding their cannabis empire inside of Oregon.

[34] Fagan is not even the only public official in Oregon to come under public scrutiny for being involved with La Mota. For example, U.S. Representative from Oregon Andrea Salinasa had a complaint filed against her with the Federal Elections Commission (FEC) in February of 2024, accusing her of improperly disclosing campaign donations from La Mota in her 2022 congressional campaign. *See, e.g.*, Sami Edge, *Oregon Member of Congress Andrea Salinas Improperly Reported Contribution from Cannabis Company La Mota*, OREGONIAN, https://www.oregonlive.com/politics/2024/02/oregon-member-of-congress-andrea-salinas-improperly-reported-contribution-from-troubled-cannabis-company.html (Feb. 7, 2024, 11:59 AM). Additionally, Val Hoyle (D.–Or.), former head of the Oregon Bureau of Labor and Industries (BOLI), has recently been accused of

private actors' capture of public officials continues to persist, and in some ways grow stronger, in the United States, while creating various harms against the general public.[35]

I. WHAT IS CAPTURE AND HOW DOES IT OCCUR?

"Capture," as used in this Note, is a phenomenon that occurs when government entities, specifically those intended to protect areas such as fair competition and public health and safety, are influenced and manipulated into serving the interests of select groups (commonly members of the very industries they oversee) instead of their general constituents.[36] Specific individuals holding public positions, such as Shemia Fagan, or collective government institutions, such as the Food and Drug Administration (FDA), bear capture risk. This phenomenon has historically been described as "regulatory capture," which has been defined as "the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself."[37]

However, this traditional view of capture is applied rather narrowly, mainly pertaining to inappropriate engagements between private for-profit enterprises and members of regulatory agencies.[38] This Note sets forth the proposition that capture's relevance and reach has perpetually expanded over time, now embroiling government officials beyond only those involved in regulations. Today, capture continues to be sought and achieved through distinct mechanisms such as lobbying, the "revolving door" between the private and public sectors, and corporate political campaign contributions.[39] In this Part, I investigate the primary mechanisms of capture, particularly how each has manifested and evolved throughout U.S. history, and continue to exist and operate today.

A. *Capture Through Lobbying*

I begin by exploring the manifestation of capture through lobbying.

---

corrupt dealings with La Mota, such as awarding the company's newly-created nonprofit over $500,000 in taxpayer funds shortly after receiving thousands of dollars in campaign contributions from Cazares and Mitchell. *See, e.g.*, Jennifer Singh, *Letter to U.S. Attorney Calls Attention to Investigation into La Mota to Look into Val Hoyle's Involvement with the Cannabis Chain*, KEZI 9, https://www.kezi.com/news/letter-to-u-s-attorney-calls-attention-to-investigation-into-la-mota-to-look-into/article_23cb9332-f86c-11ee-b874-0f832ff43eaa.html (Nov. 15, 2024).

[35] Carpenter & Moss, *supra* note 32, at 1–4.

[36] Susan Webb Yackee, *Regulatory Capture's Self-Serving Application*, 82 PUB. ADMIN. REV. 866, 867 (2022).

[37] Carpenter & Moss, *supra* note 32, at 13.

[38] *Id.* at 1, 13–14.

[39] See discussion *infra* Sections II.A–B.

"Lobbying" is the act of advocating on behalf of a client to public officials within the executive or legislative branches through oral or written communications regarding the client's specific policy desires (such as the modification or adoption of specific legislation and regulations).[40] Not long after the United States gained independence from Britain, select groups began using lobbying to attain greater influence over the government than what the rest of "the people" possessed.[41] In the 1830s, the term "lobbyist" was expansively used in U.S. print in reference to those who engaged with lawmakers on behalf of special interest groups.[42] An industry had been created around lobbying by the 1870s.[43] By the 1930s, lobbyists demonstrated significant abilities to influence government policy decisions and dictate outcomes on behalf of their clients. For example, during that time, the U.S. experienced the emergence of the long-distance motor trucking industry.[44] In response, the railroad industry sought to leverage lobbying to combat their new market competition.[45] Lobbyist organizations working for the railroads began pressing Washington to

---

[40] *See* Lobbying Disclosure Act of 1995, 2 U.S.C. §§ 1602(7)–(8)(A) (1994).

[41] 2 ROBERT C. BYRD, THE SENATE, 1789–1989: ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE 491–92 (Wendy Wolff ed., 1991). This can be first traced back to 1792 when William Hull was hired by veterans of the Continental Army to lobby the newly-established Congress for additional compensation. Hull became the first known lobbyist in American history, as well as the first government official to traverse the revolving door between the public and private sectors. *Lobbying Timeline*, OPENSECRETS (July 2014), https://www.opensecrets.org/resources/learn/lobbying_timeline.php; *see also* LELA AKIASHVILI, HUMNA BUTT, KIRBIE FERRELL, MORGAN GRAY, ALEXANDRA GONZALEZ, PEIQUAN LIN, MEGI LLUBANI ET AL., BUSH SCHOOL OF GOVT & PUB. SERV., TEX. A&M, LOBBYING AFTER FEDERAL SERVICE: THE REVOLVING DOOR, SHADOW LOBBYING, AND COOLING OFF PERIODS FOR FORMER GOVERNMENT OFFICIALS 11 (2018), https://bush.tamu.edu/wp-content/uploads/2020/02/CRS-Exec-Branch-Lobbying-Capstone-Final-Report-2017-2018.pdf.

[42] *See Lobbying Timeline*, *supra* note 41. During the 1850s, Samuel Colt, founder of the Colt's Patent Fire Arms Manufacturing Company, wanted an extension on his revolver patent and gifted guns to lawmakers and their families—including a congressman's twelve-year-old son—in an attempt to get it. *See id.*; AKIASHVILI ET AL., *supra* note 41, at 13; *The Hill's History-Cast: Those Damn Lobbyists*, THE HILL (May 11, 2017, 9:49 AM), https://thehill.com/homenews/news/332908-the-hills-history-cast-those-damn-lobbyists/.

[43] Sam Ward, crowned at the time as the "King of the Lobby," was the creator of "social lobbying," whereby he sought to create alliances with members of Congress by wooing them with things like fancy dinners and fine wines. *Lobbying Timeline*, *supra* note 41. Ward's legacy has ultimately come to be recognized as embodying the aspect of lobbying that presents risks of ethical and power abuse to the extent government personnel are receptive to favors and flattery. *See* Alan H. Lessoff, Book Review, at 3, H-NET REVIEWS (May 2010), https://www.h-net.org/reviews/showpdf.php?id=30385 (reviewing KATHRYN ALLAMONG JACOB, KING OF THE LOBBY (2010)).

[44] Before 1925, due to inadequate road and truck technologies, trucking was limited primarily to intracity routes, with the railroad industry dominating long-distance freight. This competitive landscape began to change as the trucking industry's technological barriers to long-distance freight began to dissipate. *See* Marco Poisler & Edward D. Greenberg, *History of Trucking Regulation: 1935 to 1980*, TRANSP. LAW., 2020, at 22, 22.

[45] *Id.*

sponsor a bill calling for economic regulation of the trucking industry.[46] By the early 1930s, all states had enacted regulations of truck weights which exerted more pervasive state control over trucking than the licensing of railroad common carriers.[47]

Congress passed the first significant legislative attempt to reform domestic lobbyist powers in 1946: The Federal Regulation of Lobbying Act (FRLA).[48] The FRLA marked the first time in U.S. history where domestic lobbyists, defined at that time as "anyone who spent at least half of their paid time directly lobbying the federal government," were required to register and file quarterly reports.[49] However, this bill was quickly exploited due to its ambiguous statutory language.[50] In 1954, the Supreme Court significantly reduced the reach of the FRLA in its decision in *United States v. Harriss*.[51] In *Harriss*, the Supreme Court interpreted FRLA's language to be somewhat vague, and held that the bill should only be applied to "'lobbying in its commonly accepted sense'—direct communication with members of Congress on pending or proposed federal legislation."[52] The *Harriss* decision

46 *Id.*

47 *History of the Trucking Industry in the United States*, DILIGENT DELIVERY SYS., https://www.diligentusa.com/history-of-the-trucking-industry-in-the-united-states/ (last visited May 28, 2025). To be fair, the ultimate regulations were not purely products of the railroad industry's lobbying efforts, but also reflected the economic conditions at that time (i.e., the Great Depression). Poisler & Greenberg, *supra* note 44, at 22–23.

48 *See Federal Regulation of Lobbying Act of 1946 is Ineffective: Gen. Acct. Off, Testimony Before the Subcomm. on Oversight of Gov't Mgmt. of the Sen. Comm. on Governmental Affs.*, 102d Cong. (1991) (statement of Milton J. Socolar, Special Assistant to the Comptroller General) [hereinafter *Federal Regulation of Lobbying Act of 1946 is Ineffective*]. While the Foreign Agents Registration Act (FARA) of 1938 was the first lasting legislative bill enacted to impose restrictions on lobbyists operating in the United States, it was not passed due to concerns about domestic corporate lobbyists, but rather because of threats from abroad. Up to that point, foreign companies and governments had regularly lobbied the U.S. government. *See Lobbying Timeline*, *supra* note 41. But in the years leading up to World War II, the U.S. government grew fearful of Nazi propaganda spreading throughout the country. Carrie Levine, *What is FARA? Understanding the Foreign Agents Registration Act*, CTR. FOR PUB. INTEGRITY (May 31, 2018), https://publicintegrity.org/politics/what-is-fara-understanding-the-foreign-agents-registration-act/. Believing greater transparency could reduce this threat, Congress passed FARA which "imposed new registration, reporting, and record-keeping requirements on individuals and entities acting within the United States on behalf of foreign interests." WHITNEY K. NOVAK, CONG. RSCH. SERV., IF11439, FOREIGN AGENTS REGISTRATION ACT (FARA): A LEGAL OVERVIEW, CONG. RSCH. SERV. (2023).

49 *Lobbying Timeline*, *supra* note 41.

50 *Federal Regulation of Lobbying Act of 1946 is Ineffective*, *supra* note 48 (noting that the FRLA was "not intended to regulate lobbying or restrict legislative activities by the public," but instead was intended to "provide for public disclosure of the identify and financial interests of persons engaged in lobbying").

51 *See* United States v. Harriss, 347 U.S. 612 (1953); *Lobbying Timeline*, *supra* note 41.

52 *Harriss*, 347 U.S. at 620 (quoting United States v. Rumely, 345 U.S. 41, 47 (1953)).

ultimately served as an early setback in attempts to limit the power and influence of lobbyists in the United States.[53]

The FRLA continued to be interpreted narrowly for decades until 1995, when more corruption scandals resulting from lobbying in the early 1990s forced Congress to revitalize the bill's dated and abstruse language.[54] The updated FRLA—commonly known as The Lobbying Disclosure Act of 1995 (LDA)—clarified ambiguous language contained in the old statute, strengthened registration and reporting requirements, and imposed substantial penalties for violations of the act.[55] However, the LDA soon proved to also not be a concrete solution for restricting excessive and unethical lobbying in the United States.[56] In the wake of subsequent lobbyist scandals, Congress passed another bill in 2007—the Honest Leadership and Open Government Act. This Act instituted, among other things, even greater lobbyist disclosure requirements and stricter restrictions on lobbyists providing gifts to members of Congress.[57] During the 2008 presidential election, Barack Obama announced he would not accept campaign contributions from federally registered lobbyists.[58] In hindsight, it would appear as if the

---

[53] JACOB R. STRAUS, CONG. RSCH. SERV., R44292, THE LOBBYING DISCLOSURE ACT AT 20: ANALYSIS AND ISSUES FOR CONGRESS 10 (Dec. 1, 2015).

[54] *See Lobbying Timeline*, *supra* note 41.

[55] Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, § 2, 109 Stat. 691, 691 (1995); Christopher DeLacy & Andy Emerson, *What is the Lobbying Disclosure Act (LDA)?*, HOLLAND & KNIGHT (Nov. 16, 2017), https://www.hklaw.com/en/insights/publications/2017/11/what-is-the-lobbying-disclosure-act-lda.

[56] In 2004, Jack Abramoff, once considered a powerful lobbyist in the U.S., was the first criminally convicted lobbyist under the LDA after he bribed public officials to further his clients' interests. *See generally* Nicholas L. Townsend, Murad Hussain & James W. Cooper, *The First Criminal Conviction Under the Lobbying Disclosure Act*, ARNOLD & PORTER (July 15, 2020), https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2020/07/the-first-criminal-conviction-under-lda. According to Abramoff's signed plea agreement, from 1994 to early 2004, he was employed by two law firms in Washington D.C. to lobby members of Congress. Press Release, U.S. Dep't of Just., *Former Lobbyist Jack Abramoff Sentenced to 48 Months in Prison on Charges Involving Corruption, Fraud, Conspiracy and Tax Evasion* (Sept. 4, 2008), https://www.justice.gov/archive/opa/pr/2008/September/08-crm-779.html. In his plea agreement, Abramoff admitted that he, in pursuit of accomplishing his client's wishes, corruptly provided gifts to public officials (such as luxurious golf trips, dinners at swanky restaurants, tickets to sporting events, etc.). In exchange, Abramoff stated he sought to receive from the public officials "agreements to perform directly and through others a series of official acts, including but not limited to, agreements to support and pass legislation, and agreements to place statements in the Congressional record." *Id.*; *Lobbying Timeline*, *supra* note 41.

[57] *See Lobbying Timeline*, *supra* note 41 ("In response to the Abramhoff scandal, Congress . . . quickly passed the Honest Leadership and Open Government Act, which required lobbying disclosure reports to be filed twice as often and electronically, and tightened restrictions on 'gifts' to members of Congress from lobbyists.").

[58] Louis Jacobson, *Barack Obama's Campaign Says It Doesn't Accept Lobbyist Donations*,

disproportionate powers of lobbyists had finally been contained at this juncture. However, that has ultimately proved not to be the case.

Indeed, the reach of lobbyist powers and influence within United States governance is far from diminished today, contrary to the intent of various prior legislative and executive actions. In 2024, a total of $4.43 billion was spent by private actors on lobbying in the United States.[59] If laws such as the Honest Leadership and Open Government Act are in place, why do lobbyist expenditures continue to be made? The answer is fairly ascertainable by using common sense: The laws themselves—or the enforcement thereof—are ineffective.

In addition to rising lobbyist expenditures being reported throughout the private sector, some have found ways around lobbyist registration and disclosure requirements altogether—just maybe in more discrete manners than before.[60] One lobbying technique that has become more frequent is the "revolving door," where individuals previously serving in public office are employed as lobbyists by the private sector.[61] By traversing the revolving door, former officials are presumptively able to exploit their governmental experience and network of former colleagues to further the interests of their clients.[62] Furthermore, once through the revolving door, many are able to avoid lobbyist registration and disclosure requirements altogether by describing themselves as consultants or advisors instead of lobbyists.[63]

B. *Capture Through Corporate Political Contributions*

Next, I explore another way in which capture is attained by leveraging corporate and other private capital. This form of capture extends beyond mere

---

POLITIFACT (Jan. 4, 2014), https://www.politifact.com/factchecks/2012/jan/04/barack-obama/barack-obamas-campaign-says-they-dont-accept-lobby/. After taking office, President Obama even prohibited agencies of the Executive Branch from appointing or re-appointing federally-registered lobbyists to their advisory boards or commissions. Jesse Lee, *Ending Lobbyist Appointments to Agency Boards and Commissions*, OBAMA WHITE HOUSE (June 18, 2010, 1:34 PM), https://obamawhitehouse.archives.gov/blog/2010/06/18/ending-lobbyist-appointments-agency-boards-and-commissions.

[59] *Lobbying Data Summary*, OPENSECRETS, https://www.opensecrets.org/federal-lobbying (Feb. 19, 2025).

[60] AKIASHVILI ET AL., *supra* note 41, at 7.

[61] STRAUS, *supra* note 53, at 26.

[62] Jordi Blanes i Vidal, Mirko Draca & Christian Fons-Rosen, *Revolving Door Lobbyists*, 102 AM. ECON. REV. 3731, 3731–32 (2012).

[63] *See Lobbying Timeline*, *supra* note 41. For example, even if former lawmakers are prohibited from directly lobbying their former colleagues immediately after leaving office, they will still commonly be hired by companies as "strategic advisers" in the interim. *Revolving Door*, OPENSECRETS, https://www.opensecrets.org/resources/learn/revolving.php (last visited May 28, 2025); Bob Silverman, *Why the Unregulated Influence of Strategic Advisory Firms is Destroying Washington*, THE NAT'L INT. (Feb. 7, 2021), https://nationalinterest.org/feature/why-unregulated-influence-strategic-advisory-firms-destroying-washington-177588.

bribery—although it still certainly happens.[64] Rather, money has increasingly become an essential ingredient for success in government elections at practically all levels, causing campaigns and candidates to focus on raising as much contribution proceeds as possible.[65] Corporations cannot make political contributions directly from their own funds, but they can establish a separate segregated fund (SSF), otherwise known as a political action committee (PAC), to support federal candidates.[66] As a result, candidates and their parties prioritize earning the support of corporations and other related organizations who are typically able to provide larger contributions than an ordinary individual U.S. citizen.[67] In essence, public officials have become largely reliant upon corporations for their elections.[68] Therefore, many argue that public officials intuitively make policy and regulatory decisions that favor their corporate donors more than their general constituents.[69]

Political campaigns, particularly in the areas of campaign financing and expenditures, were largely unregulated prior to 1907.[70] However, during the late 1800s, the United States experienced major industrialization.[71] As corporations grew in size and power, so did their desire to influence government policy, leading to corporate money becoming keystone to American political parties and their

---

[64] In fiscal year 2017, the U.S. Sentencing Commission identified 216 public officials that were sentenced for being involved in bribery. *See Quick Facts: Bribery Involving Public Officials*, U.S. SENT'G COMM'N (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Bribery_FY17.pdf.

[65] Ximena Bustillo, *It Takes Lots of Money to Win Elections. Here's What You Need to Know*, NAT'L PUB. RADIO, (Nov. 1 2023, 5:01 AM), https://www.npr.org/2023/11/01/1205728664/campaign-finance-donations-election-fec-fund raising-ad-spending.

[66] *Who Can and Can't Contribute*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/ (last visited May 28, 2025).

[67] Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSPECTIVES ON POL. 564, 567, 572 (2014).

[68] *See* Ian Vandewalker, *Megadonors Playing Larger Role in Presidential Race, FEC Data Shows*, BRENNAN CTR. FOR JUST. (Nov. 1, 2024), https://www.brennancenter.org/our-work/analysis-opinion/megadonors-playing-larger-role-presidential-race-fec-data-shows.

[69] Although this form of capture mostly pertains directly to elected officials, it can also have an indirect impact on the actions of regulators. For example, regulatory agencies may also depend on funds received from the industry they regulate, or corporate-supported legislators could apply pressure to agencies to carry out certain acts (e.g., through oversight committees). James Kwak, *Cultural Capture and the Financial Crisis*, *in* PREVENTING REGULATORY CAPTURE 75 (Daniel Carpenter & David A. Moss eds., 2014).

[70] J. Michael Bitzer, *Tillman Act of 1907 (1907)*, FREE SPEECH CTR., https://firstamendment.mtsu.edu/article/tillman-act-of-1907/ (July 2, 2024).

[71] Richard White, *The Rise of Industrial America, 1877–1900*, HUMANITIES FOR WISDOM, https://www.humanitiesforwisdom.org/uploads/5/8/9/8/58987361/the_rise_of_industrial_america_1877-1900_%7C_the_gilder_lehrman_institute_of_american_history_1.pdf (last visited May 28, 2025) ("By 1900 the United States had one half the world's manufacturing capacity.").

candidates.[72] Congress soon passed the Tillman Act of 1907, marking the first federal attempt to regulate campaign financing.[73] During legislative debates over the Tillman Act, Representative Mann (R.–Ill.) described the motivating force behind the bill's passage as "the popular demand of the country that we shall prevent the influence of corporations."[74]

The Tillman Act was ultimately passed with the intent of prohibiting corporations and national banks from making political campaign contributions in federal elections.[75] However, the bill's language left loopholes for corporations and other resource-abundant players to exploit, such as the broad definition of "contribution or expenditure."[76] This led Congress to pass another bill seeking to regulate corporate political spending again in 1910—the Federal Corrupt Practices Act (FCPA). The FCPA was the first law in the United States to require political parties to publicly disclose money spent "in House general elections."[77] However, the FCPA's reach was later significantly reduced in *Newberry v. United States*, where the Supreme Court held that Congress did not possess the necessary constitutional authority to police political party spending during party conventions intended to nominate a candidate.[78]

Congress made further amendments to the FCPA in 1925,[79] "requir[ing]

---

[72] Roosevelt urged Congress to pass campaign finance reform in 1905 after allegations that corporations had made large contributions to his campaign surfaced. Despite Roosevelt denying these allegations, post-election investigations revealed corporations had made large contributions to his campaign. *See* Bitzer, *supra* note 70.

[73] *Id.*

[74] 41 CONG. REC. 1452 (Jan. 21, 1907) (statement of Rep. Mann.); s*ee also* Adam Winkler, *The Corporation in Election Law*, 32 LOY. L. REV. 1243, 1247 (1999).

[75] *See Money-in-Politics Timeline*, OPENSECRETS [hereinafter *Money-in-Politics Timeline*], https://www.opensecrets.org/resources/learn/timeline (last visited May 28, 2025).

[76] Bitzer, *supra* note 70.

[77] The FCPA is also known as "The Publicity Act." *See, e.g.*, *Money-in-Politics Timeline*, *supra* note 75. This bill was amended in the following year to apply to primary elections, and also required individual candidates to disclose their own spending. Additionally, the amendments set loose contribution limits to individual candidates. Although the FCPA, as originally enacted and subsequently amended, served as a significant early move to curb efforts by select private parties to use money to gain governmental influence–it was short-lived. *Id.*

[78] Newberry v. United States, 256 U.S. 232, 245 (1920). Truman Newberry, a prominent Michigan businessman, had been convicted for violating the Act's laws regarding campaign financing during a Senate primary in 1918. Newberry was rumored to have spent more than $100,000 (approximately $2.2 million today, as adjusted for inflation) to beat out automaker Henry Ford in the election. *Id.* at 245–46. On appeal, the Supreme Court reversed Newberry's conviction. *Id.* at 258; *see also Money-in-Politics Timeline*, *supra* note 75.

[79] *Money-in-Politics Timeline*, *supra* note 75. These amendments came after the Teapot Dome Scandal, where Albert Bacon Fall, then-U.S. Secretary of Interior, secretly leased oil reserves to Mammoth Oil Company for hefty kickbacks. *Teapot Dome Scandal*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/event/Teapot-Dome-Scandal (last visited May 28, 2025).

quarterly financial disclosure reports from all entities that made political contributions to any elected official," and for any "contributions of more than $100 to be reported."[80] However, the lack of enforcement of these new laws soon became apparent. Economic changes following the Great Depression caused major shifts in the political landscape. Individuals were still partisan, but loyalty to their party began to dissipate, creating a necessity for effective political communications during a campaign.[81] Thus, political candidates became more reliant on external resources, such as skilled technicians and the media, to earn the support of the growing population of independent voters. As a result, voluntary associations, or PACs, were introduced to the U.S. political sphere.[82] Unions, trade organizations, and other special interest groups could now use PACs to raise funds from individual members and contribute to the campaign efforts of specific candidates.[83]

Congress passed the Federal Election Campaign Act (FECA) in 1971 which "largely replaced the [FCPA] in regulating federal campaign finance."[84] However, the bill did not stop PACs from growing in prominence. Although the FECA called for more comprehensive disclosures by campaigns regarding expenditures and receipts, and set limits on amounts candidates could spend on broadcast and other types of advertising, the FECA "allowed corporations and unions to use their own treasury funds to establish, operate, and solicit voluntary contributions for PACs."[85] As originally enacted, the FECA did not establish *independent* means for enforcing its provisions; "[i]nstead the Secretary of the Senate, the Clerk of the House, and the Comptroller General of the United States General Accounting Office oversaw its implementation, and the Justice Department was tasked with prosecuting."[86] Like when the 1925 amendments were made to the FCPA, actual enforcement of the FECA lacked severely.[87]

In 1974, after President Nixon resigned in the wake of the Watergate scandal, public "[r]evelations of campaign finance abuses in the 1972 election . . . spurr[ed] . . . a rewrite of the FECA" that would ultimately lead to the creation of

---

80 *Money-in-Politics Timeline*, *supra* note 75.

81 *See id.*

82 *Id.*

83 Legislation added labor unions and trade associations to the earlier 1907 prohibition on corporate contributions to federal campaigns, resulting in yet another type of interest group being unable to contribute directly to political campaigns. However, the introduction of PACs in 1943 provided these groups a means of indirectly contributing to such campaigns. *See id.*

84 *Id.*

85 *Id.*

86 *Id.*

87 For example, "[a]fter the 1972 elections, 7,000 cases were delivered to the Justice Department by congressional officials, and 100 cases from the comptroller's office." *Id.* The lack of litigation of these cases eventually raised concerns over abuse of the law. *Id.*

the Federal Election Commission (FEC).[88] The FEC was established as "a governing body with six voting members, . . . tasked with receiving candidates' campaign finance disclosure reports and enforcing the law."[89] The rewritten FECA also prescribed greater campaign contribution and spending reforms—including spending limits for all federal campaigns.[90] However, the FEC and rewritten FECA soon faced resistance, with many of the instituted reforms voided in *Buckley v. Valeo*.[91] The Court in *Valeo* believed limiting campaign contributions by corporations and other groups alone—without any evidence of prearrangement and coordination of dollars for influence—was not legitimately within the government's anti-corruption interests and, therefore, unconstitutional.[92]

The distinction made by the Court in *Valeo* continues to be a keystone in the existing legal landscape surrounding political campaign contributions. After *Valeo*, courts analyzed the applicability of the government's anti-corruption interests largely around whether there existed a "financial *quid pro quo*: dollars for political favors."[93] As a result, various legal loopholes were shortly discovered and exploited by private entities seeking to buy power and influence over the government in the years following *Valeo*. For example, in 1979, the U.S. saw the advent of "*soft money*"—a term of art used to describe funds that are raised outside the scope of federal campaign finance laws.[94] Congress amended the FECA to only permit "state and local parties to purchase unlimited campaign materials for volunteer activities

---

[88] *Id.*

[89] *Id.*

[90] *See id.*

[91] Buckley v. Valeo, 424 U.S. 1 (1976). The Supreme Court effectively nullified reforms previously instituted by the FEC and FECA in holding that, while contributions could be limited in order to avoid corruption (or the appearance of corruption), spending by individuals or groups could not corrupt elections and should not be limited under the First Amendment. *Id.* at 22, 44; *see also Money-in-Politics Timeline*, *supra* note 75.

[92] *Buckley*, 424 U.S. at 44–48.

[93] *See, e.g.*, SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686, 694 (D.C. Cir. 2010) (quoting Fed. Election Comm'n v. Nat'l Conservative Pol. Action Comm., 470 U.S. 480, 497 (1985)). In other words, courts have interpreted the risk of government corruption to exist only when cash is exchanged explicitly as consideration for access and influence (the "hallmark of corruption"). *Id.*

[94] "Hard" money refers to regulated campaign contributions and other funds directly used to influence the outcome of a federal election. Conversely, "soft" money refers to funds raised by national and state political parties that are not regulated because they are contributed to a party committee for "general party building" activities rather than directly to a specific candidate. MARY M. JANICKI, CONN. GEN. ASSEMB. OFFICE. OF LEGIS. RSCH., SOFT MONEY 2 (2003), https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0271.htm. Soft money was a result of further reforms Congress made to the FECA in 1979, after receiving complaints from candidates and political parties during the 1976 election cycle that the strict laws set forth in the FECA suppressed basic party activities. *See id.*

promoting federal candidates and party building."[95] However, the initial intentions of narrowly permitting the use of soft money for these purposes did not last long. "[U]nlimited donations from corporations and unions—sources of funding that were otherwise prohibited—began to flow in."[96] Corporate and other wealthy donors could now spend unlimited amounts to influence political parties and, by extension, the candidates the parties supported.[97]

During the 1996 presidential election, it became apparent that soft money contributions were in high demand, and that the laws regarding using such funds were being stretched.[98] The law pertaining to hard money contributions was unambiguous at that time: campaign contributions from corporate treasury funds were prohibited, and the maximum campaign contributions federal office candidates could accept were $1,000 per individual and $5,000 per PAC.[99] However, over the course of the election, the Republican National Committee (RNC) and Democratic National Committee (DNC) cumulatively received over $243 million in soft money contributions—an amount 38% higher than what the parties received during the previous two election cycles *combined*.[100] The national parties received many of these soft money proceeds by soliciting contributions from wealthy donors in exchange for various favors and perks.[101] Raising soft money was viewed largely as an essential component for campaign success.[102] Suddenly, the political parties prioritized "deep-pocket" contributors, allowing such donors to exert disproportionate influence over them.[103] Investigations into these contributions ensued in the wake of the 1996 presidential election; however, no change in the law occurred.[104]

---

95 *Id.*

96 *Money-in-Politics Timeline*, *supra* note 75.

97 Daniel I. Weiner & Tim Lau, Citizens United *Explained*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/our-work/research-reports/citizens-united-explained (Jan. 29, 2025).

98 *Money-in-Politics Timeline*, *supra* note 75.

99 Mark Shields, *A Scandal Crossing Party Lines . . .*, WASH. POST (Oct. 13, 1997), https://www.washingtonpost.com/archive/opinions/1997/10/13/a-scandal-crossing-party-lines/b1572680-4e49-4484-b0b4-4158f7e39e0e/.

100 *See* App. B; *Soft Money Backgrounder*, OPENSECRETS, https://www.opensecrets.org/political-parties/soft-money-backgrounder (last visited May 28, 2025).

101 For example, a letter circulated by the DNC during the summer of 1995—signed by the committee's co-chairman at that time—offered prospective donors a "menu" of rewards in return for contributions. One such reward listed was a stay in the Lincoln Bedroom for a contribution of $100,000 or more. *See* Margaret Ebrahim, *Fat Cat Hotel*, CTR. FOR PUB. INTEGRITY (Aug. 1, 1996), https://publicintegrity.org/accountability/fat-cat-hotel/.

102 JANICKI, *supra* note 94, at 1, 3.

103 David E. Rosenbaum, *In Political Money Game, the Year of Big Loopholes*, N.Y. TIMES, Dec. 25, 1996, at A1.

104 *Money-in-Politics Timeline*, *supra* note 75.

In 2002, President Bush signed the Bipartisan Campaign Reform Act (BCRA) into law which, among other things, explicitly prohibited political parties' use of soft money.[105] "After decades of efforts to contain the prevalence of campaign contributions and spending," the BCRA marked what appeared to be a significant step in the right direction.[106] Not long after the BCRA passed, it was, unsurprisingly, challenged as unconstitutional.[107] By 2003, the controversy over the BCRA found itself before the Supreme Court in *McConnell v. Federal Election Commission*.[108] One of the questions raised in *McConnell* was whether "large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption."[109] The Court determined the answer was yes; stating, in part, that "[i]t is not only plausible, but *likely*, that candidates would feel grateful for such donations and that *donors would seek to exploit that gratitude*."[110] The Court went on to uphold most of the BCRA as constitutional, marking a significant blow to its opponents.[111] Soft money contributions remained prohibited.[112] However, the fight was long from over, as subsequent legal proceedings again began eroding the law.

The BCRA was soon challenged again and back before the Supreme Court in *Federal Election Commission v. Wisconsin Right to Life*.[113] Wisconsin Right to Life, Inc. (WRTL), a non-profit advocacy corporation, had sued the FEC seeking declaratory and injunctive relief to allow it to broadcast political advertisements prohibited under the BCRA.[114] The advertisements WRTL sought to air were considered "electioneering communications," allegedly the functional equivalent of express political campaign speech or advocacy by an organization, and therefore illegal under BCRA § 203 (as originally enacted).[115] This time, the Supreme Court held the BCRA—as applied to the case of WRTL—to be unconstitutional.[116] This decision ultimately allowed groups to widely use corporate or union money to fund

---

[105] Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107–155, 116 Stat. 81 (2002); Richard Briffault, *The Future of Reform: Campaign Finance After the Bipartisan Campaign Reform Act of 2002*, 34 ARIZ. STATE L. J. 1179, 1180 (2002).

[106] *Money-in-Politics Timeline*, *supra* note 75.

[107] Opponents of the bill included both individuals and organizations, including Senator Mitch McConnell (R–Ky.), the California Democratic Party, the American Civil Liberties Union, and the National Rifle Association. *Id.*

[108] McConnell v. Fed. Election Comm'n, 540 U.S. 93, 94 (2003).

[109] *Id.* at 145.

[110] *Id.* (emphasis added).

[111] *Id.* at 108–09; *Money-in-Politics Timeline*, *supra* note 75 (noting that "some portions, such as a ban on minors contributing to elections were deemed unconstitutional.").

[112] *McConnell*, 540 U.S. at 94.

[113] Fed. Election Comm'n. v. Wis. Right to Life, Inc., 551 U.S. 449, 455–56 (2007).

[114] *Id.* at 460.

[115] *See id.* at 457–59.

[116] *Id.* at 457.

electioneering communications in a generally *unregulated* fashion, prompting national political parties to once again prioritize contribution receipts in their election campaigns.[117]

The next significant attack on the BCRA and other efforts to limit campaign contributions occurred in 2009. An appellate court decision in *EMILY's List v. Federal Election Commission* began the resurgence of soft money, which had remained banned by the BCRA up to that point.[118] The appellate court drew a distinction between contributions directly to national political parties themselves and contributions to interest groups,[119] ultimately holding the FEC's rules at issue to be unconstitutional.[120] This effectively allowed non-profit groups involved in state, local or federal government elections to use unregulated funds for "generic" political activities.[121] Corporations and other private entities could once again funnel contributions through non-profit interest groups to advance their political agendas.[122]

However, the final "knockout punch"[123] to political campaign finance laws came from a later Supreme Court decision in *Citizens United v. Federal Election Commission*.[124] The Court, in overruling parts of *McConnell*, held congressional attempts to suppress a corporation's political speech or electioneering communications expenditures violated the First Amendment right to free speech.[125] In other words, the Court effectively provided corporations with the same treatment as individual citizens when it comes to political election—even though corporations are neither natural persons nor have any voting power themselves.[126] Despite attempts to circumvent the *Citizens United* holding, it remains the law regarding political spending by corporations today.

---

117 *Money-in-Politics Timeline*, *supra* note 75.

118 EMILY's List v. Fed. Election Comm'n, 581 F.3d 1 (D.C. Cir. 2009).

119 "Interest groups" are essentially non-profits engaged in political activism. *Id.* at 14.

120 *Id.* at 15–16, 25.

121 *Id.* at 4, 14, 16.

122 *See id.* at 14, 16; Del Quentin Wilber & Dan Eggen, *Court Voids Campaign Finance Reform Rules, in Possible Boon to Political Groups*, WASH. POST (Sept. 19, 2009), https://www.washingtonpost.com/archive/national/2009/09/19/federal-appeals-court-voids-campaign-finance-reform-rules/0d7a1a65-72dd-41e0-9027-06b6a288ae4e/.

123 The term "knockout punch" is used in boxing to refer to a "hard punch that renders the opponent unable to continue boxing." *Knockout Punch*, VOCABULARY.COM, https://www.vocabulary.com/dictionary/knockout punch (last visited May 28, 2025).

124 Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 319, 341, 372 (2010).

125 *Id.* at 319, 339, 354–56, 365, 372.

126 Nina Totenberg, *When Did Companies Become People? Excavating the Legal Evolution*, NAT'L PUB. RADIO (Jul. 28, 2014), https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution. Additionally, the Court's reasoning was largely a reversion back to the rationale presented in *Valeo*: "independent" political spending by corporations in the absence of coordination with a candidate's campaign does "not present a substantive threat of corruption" (i.e., there was no apparent "financial quid pro quo"). Weiner & Lau, *supra* note 97.

The Supreme Court's decision in *Citizens United* combined with other ensuing court decisions has unequivocally paved the way for corporate and other wealthy players to achieve significantly more political and regulatory influence than the general public.[127] For example, we have recently seen the birth of *Super PACs*: organizations that can raise "unlimited contributions from individuals, corporations, labor unions, and other [PACs] for the purpose of financing independent expenditures and other political activity."[128] Many today believe Super PACs enable "billionaires to pour unlimited amounts into campaigns, drowning out the voices of ordinary Americans."[129] In addition to Super PACs, we have also seen the emergence of "*dark money*" groups: tax-exempt non-profit organizations engaged in political spending that do not disclose the identities of their donors.[130] These groups can accept contributions from *any source* without being subject to public disclosure requirements regarding their donors.[131] Therefore, corporate donors can now indirectly make unlimited monetary contributions toward a specific candidate's election efforts while remaining completely anonymous.[132]

Thus, it is difficult to ascertain the true scope and reach of the modern-day political contributions environment because of the anonymous and "indirect" characteristics of it.[133] However, the impact is fairly ascertainable; having success in

---

[127] *See, e.g.*, SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686, 696 (D.C. Cir. 2010) (holding that a provision limiting contributions by individuals to political committees that made only independent expenditures violated the First Amendment). *See generally Citizens United*, 558 U.S. 310; Weiner & Lau, *supra* note 97.

[128] *Registering as a Super PAC*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/filing-pac-reports/registering-super-pac/ (last visited May 28, 2025). Unlike traditional PACs, Super PACs allegedly cannot contribute directly to, nor coordinate with, a specific candidate's political campaign. By 2025, more than two thousand groups have been organized as Super PACs, reporting total contribution receipts of over $2.6 billion. *See Super PACs*, OPENSECRETS, https://www.opensecrets.org/political-action-committees-pacs/super-pacs/2024 (last visited May 28, 2025).

[129] Although contributions to Super PACs are defended as being distinct from contributing directly to a candidate, it remains unclear how truly "independent" from campaigns they are. *See, e.g.*, *Influence of Big Money*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/issues/reform-money-politics/influence-big-money (last visited May 28, 2025).

[130] *Money-in-Politics Timeline*, *supra* note 75.

[131] Like Super PACs, these groups are prohibited from contributing directly to a candidate. However, they can contribute unlimited amounts to a Super PAC that supports a candidate. *PACs, Super PACs & Dark Money Groups: What's the Difference?*, CAMPAIGN LEGAL CTR. (June 20, 2018), https://campaignlegal.org/update/pacs-super-pacs-dark-money-groups-whats-difference.

[132] The process is simple: One contributes to a dark money group that, without disclosing the donor's identity, then makes a contribution to a Super PAC (presumptively selected at the donor's discretion), which then makes "independent" expenditures to further a certain political initiative (such as supporting the election of a specific candidate).

[133] Emily Lau, *What is 'Dark Money' Political Spending, and How Does it Affect US Politics?*, THE CONVERSATION (Sept. 25, 2024, 8:28 AM), https://theconversation.com/what-is-dark-money-political-spending-and-how-does-it-affect-us-politics-236294.

elections for public office in the United States is largely dependent upon the amount of money a candidate can raise for their campaign.[134] The impact of dark money and Super PACs is also apparent in elections at state and local levels. Because spending in state and local elections costs less than nationwide federal elections, dark money spending has been found to dominate and distort these elections.[135]

C. Capture Today: Money Equals Power in the U.S. Government

Despite the many efforts to curb the reach of corporate money and lobbying in the United States throughout history, each remains a viable option for those in the private sector seeking to superfluously exert influence over U.S. policymakers and regulators. With the courts having adopted a narrow view of what would constitute corruption within the U.S. government and the enforcement of the remaining relevant laws in place being lackluster, those possessing the necessary monetary means continue to subtly maintain a larger voice than those who do not. In other words, the message has become clear: *money can buy government influence.* This is true not only at the federal level but at state and local levels too. Furthermore, capture manifestations in the U.S. today are not limited to lobbying and campaign contributions. Not all forms of capture are as explicit or quid pro quo; some forms of capture are more subtle and continuous, the consequences of which are often overlooked.

For example, consider the existing landscape of congressional stock trading activity. If an individual or private fund makes a trade based on restricted or nonpublic knowledge, it would be considered illegal as "insider trading."[136] However, prior to 2012, this seemingly did not apply to members of Congress, who were effectively able to freely trade securities despite having immense access to associated nonpublic information in their position.[137] This was supposed to be changed by the STOCK Act, which prohibits members of Congress from using

---

[134] This is anecdotally evidenced by elections becoming more and more expensive each cycle. For example, the 2020 presidential and congressional election cycle became the most expensive election in U.S. history with collective campaign spending totaling $14.4 billion. Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion*, OPENSECRETS (Feb. 11, 2021, 1:14 PM), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/.

[135] Chisun Lee, Douglas Keith, Katherine Valde & Benjamin T. Brickner, *Secret Spending in the States*, BRENNAN CTR. FOR JUST. (June 26, 2016), https://www.brennancenter.org/our-work/research-reports/secret-spending-states.

[136] 17 C.F.R. § 240.10b5-1 (2007).

[137] A study conducted on congressional member's trading activity between 2004 and 2010 found empirical evidence to support the conclusion that "(1) there is a close relationship between politicians' congressional activities and their trading decisions; and (2) politicians trade on private information that will become public shortly after their trades (i.e., time-sensitive private information)." Serkan Karadas, *Trading on Private Information: Evidence from Members of Congress*, 54 FIN. REV. 85, 86 (2019).

nonpublic information to gain an unfair advantage in the market and implemented general disclosure and accountability measures.[138] However, this bill did not seem to address congressional insider trading, as members continue to trade stocks of companies they hold insider information regarding and can affect through their legislative decisions.[139]

This presents serious public interest concerns. Particularly, the ethical considerations of policymakers being able to make these trades are worrisome. For example, congressional members can exchange defense stocks while receiving updates on things like ongoing wars, the U.S. annual defense budget, and executed agreements with defense contractors.[140] In fact, at least 25 Congress members who sat on national defense committees simultaneously traded stocks of related companies between 2019 and 2021.[141] In effect, these members were making serious policy decisions while owning interests in related companies whose stock values ordinarily rise during times of war or increased defense spending.[142] This intuitively presents significant ethical concerns with a high likelihood of conflict of interest.

Nonetheless, with the existing systems in place today, it is difficult to rationalize how one could argue corporations do not possess disproportionate power and influence over the U.S. government. Candidates for public office at all levels are

---

[138] *See id.*

[139] For example, Former House Speaker Nancy Pelosi (D–Calif.) nearly tripled the S&P 500's returns in 2023. During Pelosi's first two years of her second term as House Speaker (2019 to 2021), the estimated net worth of her stock portfolio increased by over 31%, with an estimated total ending value for her portfolio being $240.37 million in 2021. *See* Keith Speights, *Former House Speaker Nancy Pelosi Nearly Tripled the S&P 500's Returns in 2023: Here are the Stocks She's Been Buying*, THE MOTLEY FOOL (Apr. 28, 2024, 5:50 AM), fool.com/investing/2024/04/28/former-house-speaker-nancy-pelosi-nearly-tripled-t/; *Congressional Trading Profile of Nancy Pelosi*, QUIVER QUANTITATIVE, https://www.quiverquant.com/congresstrading/politician/Nancy%20Pelosi-P000197 (last visited May 28, 2025). Additionally, a 2022 analysis of congressional trading activity reported one in five members of Congress had traded stocks in businesses to which they held insider information regarding or could affect the stock value of through their official legislative actions. *See* Craig Holman & Savannah Wooten, *Lawmakers Still Benefiting From Share Trading in Defense Stocks*, FED. TIMES (Apr. 2, 2024), https://www.federaltimes.com/federal-oversight/congress/2024/04/01/lawmakers-still-benefitting-from-share-trading-in-defense-stocks/.

[140] Nick Cleveland-Stout, *Who Held Defense Stocks While Making National Security Policy?*, RESPONSIBLE STATECRAFT (Sept. 16, 2022), https://responsiblestatecraft.org/2022/09/16/lawmakers-making-national-security-policy-trade-in-defense-stocks/.

[141] *Id.* ("[T]he former chair of the Senate Armed Services Committee, James Inhofe (R–Okla.) . . . bought and sold shares of technology companies as they fought over a $10 billion cloud computing contract with the Pentagon . . . . John Rutherford (R–Fla.), for instance, traded Lockheed Martin, Microsoft, and BAE Systems stock while sitting on the House Appropriations subcommittee responsible for determining the Department of Homeland Security's funding.").

[142] *Id.*

now focusing more than ever on campaign fundraising.[143] Once elected or appointed, public officials are bombarded by lobbyists, many of whom are former public officials now leveraging their prior experience and network to further the interests of a specific client.[144] At the same time, members of Congress are enacting laws that directly affect the outcomes of their investments.[145] Thus, it would be arguably shortsighted to believe everyday Americans truly have an equal vote in deciding the policy making and governance of the nation, and that decisions made at the government level are truly concerning their best interests. Instead, it is reasonable to believe public officials now cater more to the benefit of their high-dollar donors—many of whom are corporations—instead of their general constituents. In other words, our government has become captured, leaving our system broken in many ways.

II. THE CONSEQUENCES OF CAPTURE

It is difficult to measure the complete impact of capture without resorting to anecdotal and circumstantial evidence. Nonetheless, the consequences of capture can be seen by analyzing its role in effectuating specific notorious corporate scandals and resulting public harms during recent U.S. history. This Part analyzes some of these circumstances; where the capture of specific regulatory agencies has led to subsequent catastrophic failures in enforcing consumer protection laws and protecting the general public.[146] However, as previously discussed, capture exists far outside the scope of these instances, reaching many other areas of the United States government and continuously harming the public.

---

[143] Bustillo, *supra* note 65.

[144] "For example, State Department veteran Samantha Carl-Yoder, now at [Brownstein, Hyatt, Farber, Schreck], contacted her former employer an astounding 56 times in a six-month period in 2021 as a representative of the government of Egypt." Nick Cleveland-Stout & Ben Freeman, *The Spinning Door: From US Government Service to Lobbying for Dictators*, RESPONSIBLE STATECRAFT (Aug. 25, 2022), https://responsiblestatecraft.org/2022/08/25/the-revolving-door-from-us-government-service-to-lobbying-for-dictators/.

[145] Cleveland-Stout, *supra* note 140.

[146] The agencies discussed are not the only ones who have experienced regulatory capture. Rather, they are implicated in instances where clear evidence supports indications of capture occurring, and the resulting impact on the public is readily ascertainable. Furthermore, this is not to say these agencies are solely responsible for the tragedies soon to be discussed. Indeed, the root cause of these harms lies with bad actors among the regulated, given they are who curated such harmful products in the first place. Instead, this Part seeks to acknowledge the regulators (i.e., the agencies) also bear significant responsibility in these instances—possibly more so than what they have been allocated.

A. *The Food and Drug Administration*

The Food and Drug Administration (FDA) is an agency within the Department of Health and Human Services that is responsible for, among other tasks, "protecting the public health by ensuring the safety, efficacy, and security of human and veterinary drugs."[147] The FDA is intended to be a source consumers can rely upon to provide "independent scientific reviews of medical products, including therapeutic drugs and vaccines."[148] The FDA enforces various federal laws and regulations, including the Food, Drug, and Cosmetic Act of 1938 (FD&C Act).[149] When a drug receives FDA "approval," it is *supposed* to mean the agency has determined the "benefits of the drug outweigh its risks when used according to its approved labeling."[150]

1. *The FDA's Approval of OxyContin*

In 1995, OxyContin received approval from the FDA and would soon be prescribed by doctors to many Americans.[151] OxyContin has since been identified as a significant source of the opioid epidemic that continues to plague the United States.[152] In 2003, after reports of overdoses and deaths from opioid products rose

---

[147] *What We Do*, FOOD & DRUG ADMIN., https://www.fda.gov/about-fda/what-we-do (Nov. 21, 2023).

[148] *Understanding the Regulatory Terminology of Potential Preventative and Therapeutic Drugs for COVID-19*, FOOD & DRUG ADMIN. [hereinafter *Understanding the Regulatory Terminology*], https://www.fda.gov/consumers/consumer-updates/understanding-regulatory-terminology-potential-preventative-and-therapeutic-drugs-covid-19 (Apr. 13, 2023).

[149] Clinton Lam & Preeti Patel, *Food, Drug, and Cosmetic Act*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. BOOKSHELF, https://www.ncbi.nlm.nih.gov/books/NBK585046/ (July 31, 2023). The FD&C Act provides the FDA with the power to, among other things, "demand evidence of safety for new drugs." *Laws Enforced By FDA*, FOOD & DRUG ADMIN., https://www.fda.gov/regulatory-information/laws-enforced-fda (Apr. 19, 2021). This Act requires drug manufacturers to prove their products are tested to be safe for consumer use, and include supporting data in any applications for approval submitted to the FDA. *See* Margaret A. Hamburg, *Innovation, Regulation, and the FDA*, 363 N. ENGL. J. OF MED. 2228, 2229 (2010). According to the FDA itself, before the agency can approve a drug, it must first determine whether it is "safe and effective for its intended use" and that the drug "can be made according to federal quality standards." *Understanding the Regulatory Terminology*, *supra* note 148.

[150] *Understanding the Regulatory Terminology*, *supra* note 148.

[151] OxyContin (oxycodone controlled-release) is a prescription opioid. In 1995, it was approved by the FDA as the "first formulation of oxycodone that allowed dosing every 12 hours instead of every 4 to 6 hours." *Timeline of Selected FDA Activities and Significant Events Addressing Substance Use and Overdose Prevention*, FOOD & DRUG ADMIN. [hereinafter *Timeline of Selected FDA Activities*], https://www.fda.gov/drugs/food-and-drug-administration-overdose-prevention-framework/timeline-selected-fda-activities-and-significant-events-addressing-substance-use-and-overdose (Jan, 13, 2025).

[152] Since 1999, over 260,000 people in the U.S. have died as a result of a prescription opioid overdose. *Rx Awareness: Prescription Opioid Awareness*, VA. DEP'T OF HEALTH, https://www.healthvermont.gov/alcohol-drugs/opioid-overdose-response/rx-aware-prescription-opioid-awareness

sharply, the FDA issued a warning letter to Purdue Pharma, the manufacturer of OxyContin, for misleading advertisements.[153] By 2007, twelve years after OxyContin was approved by the FDA, Purdue Pharma pled "guilty to federal charges relating to the misbranding of [the drug]."[154] Purdue Pharma and its former owners have been commonly understood to be the culprits of the opioid crisis.[155] However, what can be easily overlooked is the role the FDA itself played; in particular, how the capture of the agency by drug manufacturers may have been a significant factor in allowing such a harmful prescription drug to reach the American public.[156] To discover where this capture occurred, one can simply ask questions about how the agency's approval process of OxyContin played out.[157]

(last visited May 28, 2025). Even today, almost three decades since the FDA first approved OxyContin, this problem continues to get worse, with reported overdoses involving prescription opioids in 2020 being "nearly five times" the amount reported in 1999. *Id.*

[153] *Timeline of Selected FDA Activities*, *supra* note 151; Letter from Thomas W. Abrams, Dir. Div. of Drug Mktg., Advert., and Commc'n, FDA, to Michael Friedman, Exec. Vice President and Chief Operating Officer, Purdue Pharma, L.P. (Feb. 3, 2003), https://repository.library.brown.edu/studio/item/bdr:841746/PDF/?embed=true.

[154] *See, e.g.*, Mark R. Jones, Omar Viswanath, Jacquelin Peck, Alan D. Kaye, Jatinder S. Gill & Thomas T. Simopolous, *A Brief History of the Opioid Epidemic and Strategies for Pain Medicine*, 7 PAIN & THERAPY 13, 1 (2018). Purdue Pharma ultimately filed for bankruptcy in 2019 and had a plan of reorganization approved by the bankruptcy court in 2021 which, among other things, entailed the Sackler family, who had received approximately $11 billion in company distributions preceding the filing, agreeing to pay out $6 billion to victims. Amy Howe, *Court Conflicted Over Purdue Pharma Bankruptcy Plan that Shields Sacklers from Liability*, SCOTUSBLOG (Dec. 4, 2023, 4:42 PM), https://www.scotusblog.com/2023/12/purdue-bankruptcy-sacklers/. As the role Purdue Pharma and the Sacklers played in creating the opioid epidemic has come to light, they have been portrayed in many popular films and TV shows as the insidious and deceitful villains whose greed caused this catastrophe among many Americans. *See, e.g.*, *PainKiller* (Netflix 2023); *Dopesick* (Hulu 2021).While it is hard to debate these parties deserve at least substantial blame for causing the opioid epidemic, they may not be the only culprits. For example, since the approval of OxyContin, and despite issues with prescription opioids quickly becoming apparent, other pharmaceutical companies have brought opioid products to the marketplace, further fueling the crisis. *See Timeline of Selected FDA Activities*, *supra* note 151. Furthermore, the increased prevalence of illegal synthetic opioid manufacturing, smuggling, and distribution have certainly played a role in compounding this issue within the United States. *See* Christian Penichet-Paul, *Illicit Fentanyl and Drug Smuggling at the U.S.–Mexico Border: An Overview*, NAT'L IMMIGRATION F. (Oct. 25, 2023), https://immigrationforum.org/article/illicit-fentanyl-and-drug-smuggling-at-the-u-s-mexico-border-an-overview/.

[155] Andrew Kolodny, *Viewpoint: How FDA Failures Contributed to the Opioid Crisis*, 22 AMA J. OF ETHICS 743, 745 (2020); Howe, *supra* note 154.

[156] *See* discussion *supra* Section I.C (discussing the close relationships and financial ties between regulators and the industry they regulate, and further discussing the revolving door of staff moving between industry and regulatory agencies).

[157] The FDA's approval of OxyContin has come to be known as the "first wave" of prescription opioid deaths. *See, e.g.*, Karen Feldscher, *What Led to the Opioid Crisis—and How to Fix It*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Feb. 9, 2022), https://hsph.harvard.edu/news/what-led-to-the-opioid-crisis-and-how-to-fix-it/.

How did Oxycontin even gain FDA approval in the first place? When the FDA granted OxyContin approval, it did not properly enforce laws prescribed by the FD&C Act.[158] In particular, the FDA approved OxyContin without obtaining material evidence establishing the drug's long-term safety and effectiveness.[159] The FDA typically requires at least two randomized controlled tests, with each independently demonstrating clear efficacy.[160] However, in the case of OxyContin, the FDA granted approval based on only one study: a 2-week clinical trial in osteoarthritis patients.[161] This concession—diverging from a standard evidentiary protocol prescribed by the FD&C Act—was one of many the FDA provided to OxyContin, leading some to question why the drug was afforded such special treatment by the agency.[162]

How was OxyContin allowed to be marketed for such broad use? Granting the approval of OxyContin was not the only controversial decision made by the FDA regarding OxyContin. The FDA also failed to properly enforce the FD&C Act when the agency included ambiguous language in its approval of labeling that allowed Purdue Pharma to market the drug for broad use, including treating common conditions.[163] Indeed, Purdue Pharma built OxyContin's marketing campaign largely around a single sentence in the drug's approved labeling: "'Delayed

---

158 *See* Kolodny, *supra* note 155 (identifying numerous requirements of the FD&C Act that were not followed during the approval of OxyContin).

159 *Id.* at 745. Before prescription drugs can be approved, the FD&C Act requires manufacturers to provide evidence of the drug's effectiveness and safety based on "adequate and well-controlled" studies. *See* Food, Drug, and Cosmetic Act, 21 U.S.C. § 355. According to the FDA, at the time of OxyContin's approval, the agency believed that the drug would "result in *less* abuse potential" because of the "controlled-release" nature of the drug allowing it to be absorbed slower, therefore not creating "an immediate 'rush' or high that would promote abuse." *See Timeline of Selected FDA Activities*, *supra* note 151.

160 Nicholas S. Downing, Jenerius A. Aminawung, Nilay D. Shah, Harlan M. Krumholz & Joseph S. Ross, *Clinical Trial Evidence Supporting FDA Approval of Novel Therapeutic Agents, 2005–2012*, 311 JAMA 368, 369 (2014); *see also* Kolodny, *supra* note 155, at 745.

161 Kolodny, *supra* note 155, at 745. Additional evidence Purdue Pharma provided in its approval application relied on other clinical studies that compared OxyContin to Roxicodone, a then approved immediate-release form of oxycodone. However, within two months of Purdue Pharma's application being submitted, the Roxicodone studies included as evidence were found to no longer be a valid basis for comparison of OxyContin. Nonetheless, the FDA approved Purdue Pharma's New Drug Application without amendment a year later in 1995. *See* Internal Memorandum from Kirk Ogrosky, Deputy Chief, Fraud Section, U.S. Dep't of Just., on Proposed Indictment of Purdue Pharma LP, The Purdue Frederick Company, Michael Friedman (COO), Howard R. Udell (EVP GC), Paul D. Goldenheim (EVP) to Steve R. Tyrrell, Chief, Fraud Section, U.S. Dep't of Just., and Paul E. Pelletier, Principal Deputy Chief for Litigation, Fraud Section, U.S. Dep't of Just. (Oct. 6, 2006), https://www.mass.gov/doc/ogrosky-memo/download.

162 Kolodny, *supra* note 155, at 745.

163 *Id.* at 744–45.

absorption as provided by OxyContin tablets, *is believed* to reduce the abuse liability of a drug.'"[164] However, as previously highlighted, this "belief" by the FDA was not supported by adequate clinical studies.[165] Nevertheless, OxyContin—the active ingredient of which is twice as potent as Morphine—began rapidly being prescribed for treating "moderate-to-severe . . . pain" by 2003, and nearly half of the prescribers of OxyContin were primary care physicians.[166]

Had the FDA properly enforced the FD&C Act, OxyContin would have been narrowly prescribed for specific life-limiting illnesses where the benefits of the drug unambiguously outweighed the risks.[167] Instead, the broad labeling the agency awarded the drug allowed it to flood the marketplace. By 2013, the number of opioids that had been prescribed in the United States was enough to provide every adult in the country with a full bottle.[168] A new market had effectively been created for drug companies: Opioid prescribing became destigmatized, with risks minimized and benefits exaggerated, all largely stemming from, and allowed by, the original broad labeling approved by the FDA.[169]

How is all of this to say the FDA was captured? Some could argue the FDA's approval of OxyContin and other prescription opioids was not due to capture, but rather attributable to genuine mistakes or incompetence.[170] While that could be true to some extent, information has emerged since OxyContin's approval, indicating FDA officials at that time, particularly those tasked with overseeing prescription opioid products, may have failed to manage conflicts of interest with the drug's makers. For example, Dr. Curtis Wright IV, director of the FDA team responsible

---

[164] *See, e.g.*, Caitlin Esch, *How One Sentence Helped Set Off the Opioid Crisis*, MARKETPLACE, https://www.marketplace.org/2017/12/13/opioid/ (Oct. 21, 2020) (emphasis added).

[165] Kolodny, *supra* note 155, at 745. Instead, the FDA "thought" the controlled-release feature would "make the drug less attractive to abusers." However, what the FDA failed to recognize was that the controlled-release feature of the drug could be bypassed by dissolving it in water and injecting it, creating an immediate rush or high, and thereby increasing the risk for abuse. U.S. GEN. ACCT. OFF., GAO-04-110, PRESCRIPTION DRUGS: OXYCONTIN ABUSE AND DIVERSION AND EFFORTS TO ADDRESS THE PROBLEM 5 (2003).

[166] In a 2003 study on OxyContin abuse conducted by the Government Accounting Office, it found that the significant increase in OxyContin's availability—largely resulting from being prescribed for such broad use—was a likely factor in driving increased opportunities of obtaining the drug illegally. Furthermore, the study found that the original FDA-approved label on OxyContin that advised patients "not to crush the tablets because of the possible rapid release" of the drug's active ingredients may have "inadvertently alerted abusers to methods for abuse." *Id.*

[167] Kolodny, *supra* note 155, at 744.

[168] *Id.* at 745.

[169] *See id.* at 744–45.

[170] Jerry Mitchell, *How the FDA Helped Pave the Way For an Opioid Epidemic*, MISSISSIPPI CLARION LEDGER, https://www.clarionledger.com/story/news/2018/01/26/opioid-epidemic-how-fda-helped-pave-way/950561001/ (Jan. 26, 2018) (noting how the FDA commissioner at the time, Dr. David Kessler, claimed the approval of OxyContin was simply a "mistake").

for overseeing the application review for prescription opioid drugs at the time Purdue Pharma applied for the agency's approval of OxyContin,[171] was hired by Purdue Pharma just a few years after the drug's approval.[172]

Wright IV was not the only FDA employee who has faced public criticism for his simultaneous involvement with opioid producers. In 2002, due to mounting evidence that opioid prescriptions had extended beyond prescribed use, the FDA put together an advisory committee of ten "outside" experts to inquire about whether opioid labels should be narrowed to prohibit broad marketing for treating common conditions.[173] However, eight of these ten committee members had financial ties to pharmaceutical companies, including Purdue Pharma.[174] Despite the obvious early indications of an emerging crisis, the FDA did not narrow the label's language until 2008.[175] Even if it cannot be proven with absolute certainty that these circumstances caused the FDA to provide OxyContin special treatment, at the very least, the optics are worrisome.

2. The FDA's Continued Capture Today

Since OxyContin's approval, FDA personnel have continued to demonstrate symptoms of regulatory capture. For example, an extensive revolving door dynamic

---

[171] Wright IV served as active director of the Anesthetic, Critical Care, and Addiction of Drug Products Division, the department within the FDA responsible for supervising the determination of a drug's abuse potential, at the time Purdue Pharma submitted their New Drug Application for OxyContin to the FDA. *See* Letter from Curtis Wright, Acting Director, Div. of Anesthetic, Critical Care and Addiction Drug Prods., Off. of Drug Evaluation III, Ctr. for Drug Evaluation and Rsch., Dep't of Health and Hum. Servs., to Margaret J. Jack, Program Dir., Drug Regul. Affs., Purdue Pharma (Dec. 3, 1996) (on file with author); Transcript of the Deposition of Curtis Wright, IV, MD, MPH at 65, Poston v. Purdue Pharma, L.P., No. 4:02 CV 26-M-B (N.D. Miss. July 25, 2003). Wright played a substantial role in the FDA's original approval of OxyContin in 1995. *Id.*

[172] At Purdue Pharma, Wright IV served as the company's Executive Medical Director of risk assessment for new products under development. Within this role, he was a part of developing clinical trials for new drugs, putting together other FDA application materials, and risk assessment after a drug had been approved. *See id.* at 7–9. Essentially, Wright IV was seemingly able to leverage insider knowledge from his prior experience at the FDA to help Purdue Pharma navigate gaining the agency's approval on new drugs and keep them on the market after approval. Keep in mind, Wright IV was doing this all while OxyContin had already been established as a significantly problematic drug in the United States. *See Timeline of Selected FDA Activities*, *supra* note 151.

[173] *See, e.g.*, Peter Whoriskey, *Rising Painkiller Addiction Shows Damage From Drugmakers' Role in Shaping Medical Opinion*, WASH. POST (Dec. 30, 2012), https://www.washingtonpost.com/business/economy/2012/12/30/014205a6-4bc3-11e2-b709-667035ff9029_story.html.

[174] *Id.*

[175] *Id.* (In 2008, the FDA reported that claims of "risks of addiction in patients were small were removed from the OxyContin label, after 'extensive negotiations' with Purdue").

exists between the agency and the very companies they regulate.[176] The existing FDA safeguards are intended to keep potential future employment with companies in the industry from affecting the independence of agency decision-makers, and from exploiting connections former employees might have within the agency. However, this does not seem to be the case in practice—creating the potential for significant conflicts of interest.[177] At the same time, pharmaceutical companies continue to make immense lobbying expenditures, with the pharmaceutical and health products industry collectively spending more on lobbying each year than any other major U.S. industry.[178]

The pharmaceutical and health products industry has also been very active in making political contributions, spending roughly $387.5 million on lobbying in 2024.[179] However, as discussed earlier, this industry's true amount of political and campaign contributions cannot be completely ascertained due to the existing dark money dynamic allowed within our system.[180] Although it is difficult to determine the true impact these conflicts have had on the agency's actions, the existing relationship between the agency and the industries it regulates is, at the very least, problematic.[181] In essence, the FDA's relationship with the companies it regulates is

---

[176] For example, Sharon Hertz, who served as the head of the FDA's Anesthesiology, Addition Medicine, and Pain Medicine Director from 1999 to 2020, left the agency to start a consulting company to help drug manufacturers "successfully and efficiently bring [their] product to market." *Sharon Hertz*, LINKEDIN https://www.linkedin.com/in/sharon-hertz-7bb28a30/ (last visited May 28, 2025) ("With more than a combined 30 years of experience at the FDA, Ellen Fields and I are now available to help you successfully and efficiently bring your product to market."). Additionally, a 2016 study found that over a nine-year period, 15 of the 26 FDA staff who left the agency after being involved in drug reviews in the hematology-oncology field later worked for, or consulted, biopharmaceutical companies. *See* Charles Piller, *Is FDA's Revolving Door Open Too Wide?*, SCIENCE, July 2018, at 21, 21 (2018).

[177] For example, individuals who previously served in high-ranking positions within the FDA are prohibited from engaging the agency on behalf of subsequent private employers regarding issues they had regulated while at the FDA for a specified period of time, and sometimes permanently. However, a recent study revealed "that 11 of 16 medical examiners who worked on 28 drug approvals and then left the agency for new jobs are now employed by or consult for the companies they recently regulated." *Id.*

[178] The pharmaceutical and health products industry has spent the most on lobbying out of any industry from 1998 to 2024, a total of over $6.2 billion. This is over 60% more than the industry with the second-highest lobbyist expenditures, insurance, which has spent more than $3.7 billion on lobbying from 1998 to 2024. *See Industries*, OPENSECRETS, https://www.opensecrets.org/federal-lobbying/industries?cycle=a (Feb. 19, 2025).

[179] *Id.*

[180] *Money-in-Politics Timeline*, *supra* note 75; *PACs, Super PACs & Dark Money Groups: What's the Difference?*, *supra* note 131.

[181] To use analogical reasoning, imagine a simplified murder trial taking place in a federal court. The judge overseeing the case proceedings is a long-time friend and former associate with the defendant's counsel. Well over half of the jury deciding the outcome of the case had been

far too cozy. This capture is not strictly limited to the pharmaceutical industry either; lobbyists operate in the agriculture, tobacco, and alcohol sectors, also demonstrating desires to influence the agency's regulatory efforts.[182] The independence and integrity of agencies intended to safeguard the public from ingesting harmful products is compromised.

B. The Federal Aviation Administration

Another regulatory agency whose capture has created public health and safety risks is the Federal Aviation Administration (FAA). The FAA regulates all U.S. aerospace production and air travel, aiming to provide "the safest, most efficient aerospace system in the world."[183] For instance, the agency oversees domestic aircraft manufacturers such as Boeing to ensure they meet flight safety standards in developing, producing, and maintaining their aircraft.[184] "Integrity" is one of the agency's stated values, which claims that "[w]e perform our duties honestly, with moral soundness, and with the highest level of ethics."[185] However, recent news has called the agency's integrity into question, particularly whether it has succumbed to being captured by aircraft producers.

1. Boeing's Capture of the FAA While Developing the 737 MAX

In 2011, the board of directors at Boeing, one of the world's largest aircraft manufacturers, gave the go-ahead for the company to commence the development and production of the 737 MAX aircraft.[186] In March of 2017, the FAA granted

---

financially compensated by the defendant within the last five years. The defendant is ultimately found innocent and acquitted of their charges. How would you feel?

[182] For example, the agribusiness industry, which includes food processing, tobacco, livestock, and other companies, spent over $178 million in lobbying and gave $100 million in contributions to members of Congress from 2023 to 2024. *Agribusiness Sector Summary*, OPENSECRETS, https://www.opensecrets.org/industries/indus?cycle=2024&ind=A (Feb. 6, 2025).

[183] *What We Do,* FED. AVIATION ADMIN., https://www.faa.gov/about/mission/activities (June 27, 2016); *Mission*, FED. AVIATION ADMIN., https://www.faa.gov/about/mission (Jan. 22, 2025).

[184] *What We Do*, *supra* note 183.

[185] *Mission*, *supra* note 183.

[186] Liz Alderman, *Airbus is Pulling Ahead as Boeing's Troubles Mount*, N.Y. TIMES (Jan. 19, 2024), https://www.nytimes.com/2024/01/17/business/airbus-boeing.html. This decision by the board was largely due to Boeing's race to compete with the A320neo, an innovative and efficient aircraft launched by Airbus—Boeing's primary competitor—a year earlier. The pressure Boeing faced to match Airbus on the A320neo spurred significant efforts by company leadership to cut costs and avoid production delays on their competing model. Therefore, instead of developing a new plane from scratch, the decision was made to enlarge the company's existing 737 model, which meant pushing its design to the limit and rushing it into production in the name of cost savings and maximizing stock value. *See* John Cassidy, *How Boeing and the F.A.A. Created the 737 MAX Catastrophe*, THE NEW YORKER (September 17, 2020), https://www.newyorker.com/news/our-columnists/how-boeing-and-the-faa-created-the-737-max-catastrophe.

Boeing certification on the 737 MAX 8, which took its first commercial flight in May of that year.[187] Less than two years later, a Lion Air flight in Indonesia that was operating a 737 MAX 8 crashed shortly after takeoff, killing all 189 people on board.[188] Four months later, an Ethiopian Airlines flight that was also operating a 737 MAX 8, crashed six minutes after takeoff, killing all 157 people on board.[189] In sum, 346 lives were lost in a span of 132 days while flying aboard Boeing's new aircraft.[190]

Why did these crashes happen? A subsequent 2020 report conducted by the House Committee on Transportation and Infrastructure detailed several instances where Boeing's desire to meet the goals and expectations surrounding the 737 MAX jeopardized "the safety of the flying public" during the development and production of the aircraft.[191] The report, of course, allocated substantial blame to Boeing, which was found to have prioritized profitability and stock prices over everything else during this project.[192] These priorities led Boeing to omit disclosures of significant changes to aircraft systems in the new 737 MAX 8 model to both the FAA and airlines, including the "Maneuvering Characteristics Augmentation System" (MCAS).[193] Boeing ultimately announced the MCAS was a primary cause of both the Lion Air and Ethiopian Airlines crashes in a press release it made during April of 2019, claiming the MCAS issues were unintended and unforeseen.[194] However,

---

187 *Key Events In the Troubled History of the Boeing 737 Max*, ASSOCIATED PRESS (July 8, 2024), https://apnews.com/article/boeing-plea-737-max-crashes-b34daa014406657e720bec4a 990dccf6.

188 *See* Dominic Gates, *Q&A: What Led to Boeing's 737 MAX Crisis*, THE SEATTLE TIMES (Nov. 18, 2020, 5:17 AM), https://www.seattletimes.com/business/boeing-aerospace/what-led-to-boeings-737-max-crisis-a-qa/.

189 *Id.*; *Ethiopian Airlines Flight Crashes Minutes After Takeoff, Killing All 157 Onboard*, CBS NEWS (Mar. 10, 2019, 9:53 PM), https://www.cbsnews.com/news/ethiopian-plane-crash-flight-et-302-crashes-minutes-after-takeoff-boeing-737-8-max-live-updates-2019-03-10/.

190 *Ethiopian Airlines Flight Crashes Minutes After Takeoff, Killing All 157 Onboard*, *supra* note 189.

191 STAFF OF COMM. ON TRANSP. & INFRA., 116th CONG., FINAL COMMITTEE REPORT ON THE DESIGN, DEVELOPMENT & CERTIFICATION OF THE BOEING 737 MAX 13, 15–19 (Comm. Print 2020) [hereinafter COMMITTEE REPORT ON THE DESIGN, DEVELOPMENT & CERTIFICATION OF THE BOEING 737 MAX].

192 *Id.* at 18. For example, during the development stage of the 737 MAX in 2013, Boeing's management rejected a suggestion by a company engineer to implement a computer-based airspeed indicator to supplement the aircraft's external speed sensor. The engineer's suggestion was denied due to "cost concerns" and that such an implementation "could have jeopardized" the 737 MAX's ability to avoid pilot simulator training requirements. *Id.* In other words, implementing the engineer's suggestion would require pilots to be retrained to fly the aircrafts, something Boeing feared would cause airlines to be less interested in ordering them. *Id.*

193 *Id.* at 19–20; Jack Nicas, David Gelles & James Glanz, *Changes to Flight Software on 737 Max Escaped F.A.A. Scrutiny*, N.Y. TIMES (Apr. 11, 2019), https://www.nytimes.com/2019/04/11/business/boeing-faa-mcas.html.

194 In this statement, the company deemed the sudden activation of the MCAS that resulted

subsequent discoveries indicate Boeing leadership was aware of the MCAS problem well before the crashes.[195] Furthermore, Boeing failed to bring any attention to the MCAS in any pilot guide manuals or supplemental instructions after the first MAX 8 crash.[196]

How does this mean the FAA was captured? The House Committee's report also allocated responsibility to the FAA, finding the agency had severely failed its oversight responsibilities during the 737 MAX production, and even explicitly citing "regulatory capture" as a cause for the shortcomings.[197] In particular, the report found multiple instances where FAA management had overruled determinations made by technical and safety experts within the FAA, siding with Boeing instead; the report concluded these instances had a detrimental impact and compromised "the integrity and independence of the FAA's oversight abilities and the safety of airline passengers."[198] Additionally, the report documented four instances where Boeing's Authorized Representatives (ARs), delegates of the FAA within the company, failed to "represent the interests of the FAA in carrying out their FAA-delegated functions."[199] Furthermore, Boeing spent over $15 million in lobbying the FAA each year between the company's decision to develop the 737 MAX aircraft in 2011 and the FAA's approval of it in 2017.[200]

---

in the crashes as "unintended," providing assurance that it had developed and planned to release a software update to MCAS to address the problem, accompanied with "an associated comprehensive pilot training and supplementary education program for the 737 MAX." Press Release, Boeing, Statement on Ethiopian Airlines Flight 302 Investigation Preliminary Report (April 4, 2019), https://investors.boeing.com/investors/news/press-release-details/2019/Boeing-Statement-On-Ethiopian-Airlines-Flight-302-Investigation-Preliminary-Report/default.aspx.

[195] For example, in 2016, a Boeing test pilot for the 737 program voiced concerns about the MCAS, pointing to various issues with the system, specifically that the MCAS was unintentionally activating (which is what caused the subsequent crashes to occur). Nonetheless, production of the aircraft continued without material renditions made to the MCAS. *See* Shreesh Chary, *Employee Grievance Redressal and Corporate Ethics: Lessons From the Boeing 737-MAX Crashes*, SCI. & ENG'G ETHICS, April 2024, at 13–14.

[196] In other words, it took not one—but two—crashes involving mass fatalities, along with the ensuing public criticisms, for Boeing to address a deadly issue it was already aware of.

[197] COMMITTEE REPORT ON THE DESIGN, DEVELOPMENT & CERTIFICATION OF THE BOEING 737 MAX, *supra* note 191, at 6 ("[G]rossly insufficient oversight by the FAA—the pernicious result of *regulatory capture* on the part of the FAA with respect to its responsibilities to perform robust oversight of Boeing and to ensure the safety of the flying public." (emphasis added)).

[198] *Id.* at 14–17. The report went on to discuss how many employees of the FAA's Aviation Safety Organization (AVS) believed "'that AVS senior leaders are overly concerned with achieving the business-oriented outcomes of industry stakeholders and are not held accountable for safety-related decisions.'"

[199] Additionally, the report noted a 2016 survey that found 39% of Boeing ARs perceived "undue pressure" from the company and 29% "were concerned about consequences if they reported potential 'undue pressure.'" *Id.* at 15.

[200] *Client Profile: Boeing Co.*, OPENSECRETS, https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2023&id=d000000100 (Feb. 19, 2025).

Ultimately, Boeing's influence over the FAA was determined to significantly contribute to these problematic aircraft being able to take flight in the first place.

2. The FAA's Continued Capture Today

The FAA's alleged role in the 737 MAX's shortcomings is far from the first time the agency has been accused of having too close of a relationship with the industries it regulates. Between 1998 and 2024, the air travel industry has spent over $2 billion in lobbying the U.S. government, and has given over $200 million to congressional candidates since 1990.[201] In 1995, an extensive article published by The Seattle Times noted a consensus that "the FAA stands aside while the industry charges ahead."[202] Nevertheless, no material changes have been made to regain regulatory integrity within the agency. Instead, we live in a world where the entity responsible for ensuring the safety of machines that carry millions of Americans at high speeds while thousands of feet in the air is notoriously compromised by the machines' producers, therefore continuing to allow the public to bear the associated risks and consequences.[203]

C. The Bottom Line

The scenarios previously discussed serve as examples of extreme forms of capture; where a specific agency's inappropriate engagements with the industry it regulates played a role in creating public catastrophes. However, while it would be nearly impossible to encapsulate in a single paper, many more examples of capture and its resulting consequences nonetheless exist. Capture unavoidably impacts the integrity of U.S. governance, giving rise to significant ethical concerns throughout nearly all aspects of our existing system. Not only has this created significant public distrust of the government, but the public has faced actual harm resulting from government "errors" in situations where capture was apparent.[204] Nonetheless, despite changes becoming increasingly necessary, our system continues to exist as-is.

---

[201] *See Air Transport Summary*, OPENSECRETS, https://www.opensecrets.org/industries/indus?ind=M01 (Feb. 6, 2025).

[202] David B. Carmichael, Mary N. Kutz & Dovie M. Brown, *FAA "Captured?" Is the Federal Aviation Administration Subject to "Capture" by the Aviation Industry?*, 21 COLLEGIATE AVIATION REV. 9, 12–13 (2003). The article, which primarily covered the certification process of the Boeing 777, went on to raise questions about whether the FAA is too removed from aviation industry operations to be able to know "when something goes wrong and the safety of airplanes is compromised." *Id.*

[203] For example, in January of 2024, an Alaska Airlines flight had a door fall off midair shortly after departing from Portland International Airport. This plane was a 737 MAX 9, and it was later discovered that bolts had not been installed on the door plug. Jay Blackman & Phil Helsel, *Alaska Airlines Plane Whose Door Panel Blew Off Midair Was Scheduled For Maintenance*, NBC NEWS (Mar. 12, 2024, 9:02 PM), https://www.nbcnews.com/news/us-news/alaska-airlines-plane-whose-door-panel-blew-midair-was-scheduled-maint-rcna143107.

[204] Carpenter & Moss, *supra* note 32, at 2; *see* Carmichael, Kutz & Brown, *supra* note 202, at 12–13; COMMITTEE REPORT ON THE DESIGN, DEVELOPMENT & CERTIFICATION OF THE BOEING 737 MAX, *supra* note 191, at 6.

III. HOW CAN WE REDUCE FUTURE CAPTURE RISK?

Given that capture has seemingly always existed, and even expanded, throughout U.S. history, it is reasonable to assume that wholly addressing this issue is insurmountable. Such an assumption may be correct to some degree; reaching a scenario whereby the threat of capture is completely irradiated from all aspects of U.S. governance is unrealistic.[205] However, there are various independent ways to have impacts in combatting capture. Of course, these types of recommendations are rather difficult to implement because they typically involve making substantial changes to long-established legal frameworks and governance processes.[206] Nonetheless, continued public discourse is becoming an increasingly essential prerequisite for implementing policy changes of this variety. Thus, to continue the discussion, this Note will explore some specific potential changes.

A. *Implement Greater Enforcement and Accountability Measures*

A viable way to minimize capture risk in our system is implementing additional accountability and transparency mechanisms within both the government and private spheres. For example, some have proposed creating a non-regulatory and independent agency to oversee regulators and policymakers—effectively an investigator of the government.[207] This agency could issue regular public reports identifying policy or regulation rationales that present capture risks within the government and whether actions are being taken to address these risks, as well as an analysis of the reasoning for specific policy or regulation decisions. If the agency discovered clear evidence of capture, it could possess enforcement powers to allow it to remove or penalize the respective public officials.[208] Not only could an independent government accountability agency serve as an enforcement mechanism, and therefore a deterrent, but it could also likely improve public trust in the existing governance structure.

However, such an agency could also present challenges congruent with those already present in our existing system. Some form of capture, whether intentional

---

[205] For example, it is likely some form of a revolving door between private and public sectors will be inevitable to some degree. However, what is needed does not have to result in a "perfect" world.

[206] *See* Carl Hulse, *History Shows Big Changes in 'Big Government' are Hard to Achieve*, N.Y. TIMES (Dec. 24, 2024), https://www.nytimes.com/2024/12/24/us/trump-america-government-republicans.html.

[207] Gerard Caprio, *Regulatory Capture: Why it Occurs, How to Minimize it*, 18 N.C. BANKING INST. 39, 48 (2013). ("This agency would have no regulatory authority whatsoever, but rather resembles the post-airplane crash teams that investigate the accident: the only power is to produce a report, whose credibility relies on the skills of the team and their access to all information.").

[208] For example, if this agency existed before 1995, it could have conducted an independent investigation into the FDA's special treatment of OxyContin in its approval process, potentially even removing specific personnel such as Curtis Wright IV.

or inadvertent, would likely still exist.[209] Furthermore, instituting an agency with such broad responsibilities could invariably be costly. Nonetheless, implementing an agency to provide greater government oversight remains one of many novel ideas to address capture issues within our current system, and is worth continued discussion. Anything implementing greater means of enforcement against manifestations of capture would presumptively make a substantial difference.

At the same time, for-profit companies today are seemingly driven to capture government officials by their fiduciary duties of maximizing shareholder value, which has become known as "shareholder primacy."[210] Thus, greater corporate culture changes and public accountability measures could be implemented to deter companies from seeking to influence public officials without regard to the general public. For example, many have proposed "benefit corporation" status that would allow companies to opt out of shareholder primacy and instead prioritize positively impacting the general society.[211]

By becoming a benefit corporation, directors and executives of corporations are obligated to consider environmental and societal factors in addition to their shareholders, while enjoying legal protection for actions taken in "good faith" towards the best interests of the corporation.[212] For example, corporations would be incentivized to invest in more research and development to improve product safety and emissions instead of using those funds to create shortcuts by seeking to lower related regulation standards, or attack market competition through lobbyists and political expenditures. However, the impact of the benefit corporation concept hinges on companies deciding to opt-in, which presently seems unlikely given that many corporate decision-makers are compensated through increased company share value.[213] Nonetheless, benefit corporations serve as a novel example of ways to hinder capture-creating cultures among corporations and warrant further consideration.

---

209 For example, this agency would likely be limited to assessing only the information provided or disclosed to it, an issue that has been described as "information capture." Furthermore, some form of a revolving door would have to exist, as the agency would have to consist of personnel possessing various industry-specific knowledge (which would likely be derived from prior experience within the private sectors). *See* Caprio, *supra* note 207, at 47–49.

210 *Benefit Corporations*, B LAB, https://usca.bcorporation.net/benefit-corporation/ (last visited May 28, 2025). "Due to law and culture, directors of traditional for-profit companies must maximize the financial returns to shareholders. This single focus is called shareholder primacy. This inflexible legal framework does not accommodate for-profit entities whose mission and impact is central to their business model." *Id.*; *see also* MODEL BUS. CORP. ACT § 8.30 (AM. BAR ASS'N. 2002).

211 *Benefit Corporations*, *supra* note 210.

212 William H. Clark Jr. & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations*, 38 WM. MITCHELL L. REV. 817, 818, 848–50 (2012). Operating as a benefit corporation "allows corporations to opt-out of shareholder primacy and opt-into stakeholder governance," which requires the company to "take into consideration anyone that is materially affected by that company's decision-making, like workers, customers, local communities, wider society and the environment." *Benefit Corporations*, *supra* note 210.

213 Clark Jr. & Babson, *supra* note 212, at 825–27.

B. *The Ideal: Significant Constitutional Changes*

As previously noted, the current capture-creating environment existing today in the United States is largely attributable to pivotal Supreme Court decisions, many of which were based on interpretations of the U.S. Constitution.[214] Overturning these Supreme Court decisions would be monumental to combatting capture. For example, overturning a decision such as *Citizens United,* and thereby ceasing to allow unlimited political campaign contributions by corporations, would have an immediate and profound impact. That being said, overriding Supreme Court precedent is obviously not a small feat.[215]

Supreme Court decisions regarding constitutional issues can only be altered two ways. The first is by the Court issuing a new decision overturning prior precedent, which is significantly rare.[216] Alternatively, prior Supreme Court decisions could be overridden via constitutional amendment.[217] However, making an amendment to the Constitution is even more rare.[218] Furthermore, it should be expected that parties currently holding disproportionate influence over the government will challenge any attempts to circumvent these Supreme Court decisions. Nonetheless, although implementing constitutional and other precedential changes may be difficult, it is not impossible.

The successful implementation of necessary constitutional changes hinges upon zealous initiation and advocacy from the people of the United States. A

---

[214] *See* discussion *supra* pp. 338–42.

[215] Furthermore, Supreme Court decisions regarding constitutional issues, which include practically all of the pivotal decisions discussed earlier, are "virtually final." *The Court and Constitutional Interpretation*, SUPREME CT. OF THE U. S., https://www.supremecourt.gov/about/constitutional.aspx (last visited May 28, 2025).

[216] Scott Bomboy, *A Short List of Overturned Supreme Court Landmark Decisions*, NAT'L CONST. CTR. (June 24, 2022), https://constitutioncenter.org/blog/a-short-list-of-overturned-supreme-court-landmark-decisions. The Supreme Court overturned 53 prior holdings between 1990 and 2023, which amounts to less than two cases per year on average. *See, e.g.*, *Table of Supreme Court Decisions Overruled By Subsequent Decisions*, CONST. ANNOTATED, https://constitution.congress.gov/resources/decisions-overruled/ (last visited May 28, 2025). The Supreme Court has shown less reluctance to overrule its decisions on constitutional questions than its decisions on statutory questions, but even getting an issue before the Supreme Court is statistically improbable because plenary review is granted in less than 2% of cases filed in the Court each term. *The Supreme Court at Work*, SUPREME CT. OF THE U. S., https://www.supremecourt. gov/about/courtatwork.aspx (last visited May 28, 2025).

[217] *The Constitution*, BIDEN WHITE HOUSE, https://bidenwhitehouse.archives.gov/about-the-white-house/our-government/the-constitution/ (last visited May 28, 2025).

[218] The U.S. Constitution has only been amended 27 times in the 237 years since being enacted. Furthermore, the amendment process is burdensome. For example, one way of amending the Constitution is by two-thirds of both houses of Congress—the members of which are among those in the government currently bearing capture risk—voting in favor of a proposed amendment. *See id.*

majority of U.S. citizens appear to acknowledge the end results of capture, as evidenced by recent data indicating that the majority of the American public disapproves of and distrusts existing government and political structures.[219] However, at the same time, Americans today are significantly divided based on political ideologies, and tend to consider "corruption" as being predicated on specific individuals engaging in quid pro quo exchanges.[220] Merely believing that one group or individual is less likely to engage in capture or corruptive behavior than the other overlooks the actual issue. Instead, the American public should focus more on how the *system itself* presents capture and corruption risks irrespective of political ideology or branch of government.

To truly address capture and corruption risks within our government, it is important for the general public to understand the context and realities of our present situation while setting aside ideological differences to collectively focus on systematic change. This begins by collectively acknowledging that some of our nation's most traditional laws are either outdated or misinterpreted. For example, some may be unaware that "corruption" has a much narrower connotation today than it did to the Framers of the Constitution.[221] Prior to the end of the eighteenth century, the term referred broadly to *institutions*.[222] The Framers of the U.S.

---

219 "Public trust in the federal government, which has been low for decades, has returned to near record lows following a modest uptick in 2020 and 2021." *Public Trust in Government: 1958–2023*, PEW RSCH. CTR. (Sept. 19, 2023), https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023 [https://web.archive.org/web/20240105052248/https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023]; *see also* Richard Wike, Laura Silver, Shannon Schumacher & Aidan Connaughton, *Many in U.S., Western Europe Say Their Political System Needs Major Reform*, PEW RSCH. CTR. (March 31, 2021), https://www.pewresearch.org/global/2021/03/31/many-in-us-western-europe-say-their-political-system-needs-major-reform/ (showing 65% of Americans surveyed believe some form of changes are needed to the existing political system).

220 *See* Lawrence Lessig, *What an Originalist Would Understand "Corruption" to Mean*, 102 CALIF. L. REV. 1, 6, 11 (2014); Will Kenton, *Regulatory Capture Definition with Examples*, INVESTOPEDIA (Aug. 1, 2024), https://www.investopedia.com/terms/r/regulatory-capture.asp. In other words, many today view capture and corruption in the government as a partisan issue—categorizing individuals and groups as "good" or "bad." For example, some believe President Donald Trump is corrupt. At the same time, others believe President Joe Biden is corrupt. *See, e.g.*, Peter Stone, *Trump's $1bn Pitch to Oil Bosses 'The Definition of Corruption', Top Democrat Says*, THE GUARDIAN (June 3, 2024, 2:28 PM), https://www.theguardian.com/us-news/article/2024/jun/03/trump-big-oil-campaign-pitch-corruption; Gregg Jarrett, *Bidens Mocked Hunter's Laptop to Hide Evidence of Possibly Largest US Corruption Scandal Ever*, FOX NEWS (June 7, 2024, 9:00 AM), https://www.foxnews.com/opinion/bidens-mocked-hunters-laptop-hide-evidence-possibly-largest-us-corruption-scandal-ever.

221 Lessig, *supra* note 220, at 6–8.

222 Specifically in regard to general societal health judged according to "distributions of wealth and power, relationships between leaders and followers, the sources of power and the moral right of rulers to rule." Lisa Hill, *Adam Smith and the Theme of Corruption*, 68 REV. OF POL. 636, 636–38 (2006).

Constitution viewed the British Parliament as a corrupt institution, largely because of its general dependence upon the King.[223] Seeking to avoid the same in America, the Framers drafted the Constitution whereby Congress was to be dependent strictly "on the people."[224] Ironically, the manner in which the Constitution has been interpreted since has created a system contrary to what the Framers intended: those in government are now primarily dependent upon some—not all—of the people. Today, Congress and other government members generally depend on a different type of king: money.

Thus, a growing public awareness of how these types of issues have primarily resulted from textualist interpretations of the Constitution, effectively diverging from how it was intended to be understood, could result in a stronger likelihood of amending it.[225] However, the difficulty of achieving these types of solutions is substantial. These solutions require a very divided populace to unite against a complex and broad issue calling for nuanced and radical solutions. Nevertheless, taking constitutional action would significantly remove capture and corruption risks from current and future governance in the United States. Amending the Constitution to, for example, prohibit corporate contributions toward political causes would begin to shift the U.S. government to being dependent upon and considerate of all people, not just those possessing an abundance of resources (such as corporations).

CONCLUSION

Capture risk continues to grow as a threat to the integrity of U.S. governance; perpetuating an environment where governmental agencies can be influenced to further the agendas of corporations and other resource-abundant players over the interests of the public. From Shemia Fagan's entanglement with La Mota, to the FDA's enabling role in the opioid crisis and the FAA's deference to Boeing despite fatal consequences, this Note has illustrated that capture is not a theoretical risk, but a recurring and tangible force in U.S. governance. Each case study demonstrates how private actors with sufficient financial means can systematically bend public institutions away from their mandate and toward the goal of maximizing private gain. These are not isolated lapses in judgment; they are symptoms of a deeper institutional vulnerability. Elected officials are now more reliant than ever on campaign funds and can receive contributions from undisclosed donors. Former government employees can commoditize their prior government experience, which

[223] Lessig, *supra* note 220, at 7 (discussing how the British king could appoint members of parliament to offices and effectively select members from "rotten boroughs," which were districts with small populations that the king could control).

[224] *Id.* at 8.

[225] We have seen throughout history that public protest can lead to necessary changes. In other words, I believe public protest—at a grand and peaceful scale—has been shown to lead to change.

corporations and other players can purchase to leverage against existing public officials. Everyday Americans no longer have an equal voice in our government because those possessing financial means can be much louder. Instead, the general populace is left to navigate an ecosystem that has evolved without considering them—only being left to deal with the associated consequences.

Despite it being seemingly impossible to achieve a world where the integrity of the government is completely uncompromisable, the circumstances existing today have swayed far from what our forefathers originally intended. Capture is a significant driver of this, and although it is a complex issue requiring complex solutions, it must nonetheless be addressed. Minimizing the reach of capture within our government today means returning to some of the primary fundamentals of our intended democratic system: for the government to be dependent upon all Americans and not "the rich more than the poor."[226]

[226] In Federalist No. 57, James Madison or Alexander Hamilton wrote that the House was to be dependent on "the great body of the people of the United States" and "not the rich more than the poor." THE FEDERALIST NO. 57, at 1 (Alexander Hamilton or James Madison) (Jacob E. Cooke ed., 1961).

APPENDIX A: SHEMIA FAGAN AND LA MOTA CONSULTING AGREEMENT[227]

CONSULTING AGREEMENT

This Consulting Agreement (this "**Agreement**") is entered into as of February 20, 2023 by Shemia Fagan (the "**Consultant**") and between Veriede Holding LLC an Oregon Limited Liability Company (the "**Company**").

Statement of Purpose

WHEREAS the Company believes that Consultant possesses the necessary qualifications and abilities to serve as a Consultant of the Company and perform the functions associated with such service.

WHEREAS Consultant is an Oregon public official. Company and Consultant must at all times abide by guidelines for public officials published by the Oregon Government Ethics Commission and ORS 244.120.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Service as Consultant.** Consultant will serve as a Consultant of the Company and perform all duties as a Consultant of the Company.

2. **Limitations on Consultant.** Consultant and Company will at all times abide by guidelines for public officials published by the Oregon Government Ethics Commission. Consultant will not use Consultant's public position to create the opportunity for additional personal income for Consultant or Company. Consultant will not use a government agency's supplies, facilities, equipment, employees, records or any other public resources to engage in their Company's business. Consultant will not engage in Company business on Consultant's government agency's time. Confidential information Consultant gains as a public official will not be used to obtain a financial benefit for Consultant or Company.

3. **Term; Termination.** This Agreement will take effect on upon signing and will continue in effect until terminated as described herein. This Agreement may be terminated by either party on thirty (30) days' written notice for any reason or no reason.

4. **Reimbursement of Reasonable Expenses.** Upon submission of appropriate receipts, invoices, or other documentation as may be reasonably required by the Company, the Company will reimburse Consultant for all reasonable out-of-pocket expenses incurred in connection with the performance of Consultant's duties under this Agreement, including but not limited to travel expenses incurred in furtherance of the Company's business, Oregon State Bar Association annual dues and professional liability insurance coverage.

5. **Compensation and Bonuses.**
    a. As compensation for the services to be rendered by Consultant under this Agreement, the Company will provide the following compensation and benefits to Consultant. The Company will pay Consultant the amount of Ten Thousand Dollars ($10,000) per month with payment received not later than the 10th day of each month.
    b. As compensation for successful acquisition of license(s) for Veriede Holding LLC or any affiliated companies into any state other than Oregon or New Mexico, Consultant will receive a bonus of Thirty Thousand Dollars ($30,000) with payment received not later than the 30th day after acquisition of the license.

6. **Status of Consultant.**
    a. The Consultant will be an independent contractor with respect to the services to be rendered to the Company hereunder. The Consultant will not be considered an employee of the Company for any purpose, and will not be eligible to participate in any of the employee benefit and/or welfare plans maintained by the Company, its subsidiaries or its affiliates.

---

[227] CONSULTING AGREEMENT BETWEEN VERIEDE HOLDING, LLC AND SHEMIA FAGAN (Feb. 24, 2023).

b. The Consultant understands and agrees that the Company will not be responsible for withholding or paying any federal or state income, social security or other taxes in connection with any compensation paid under this Agreement, and Consultant agrees that he is solely responsible for any such tax payments.

7. Miscellaneous

a. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral and whether express or implied) between the parties relating to such subject matter.

b. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Agreement.

c. **Notices.** Any notice pursuant to this Agreement must be in writing and will be deemed effectively given to the other party on the date it is actually delivered by (i) certified or registered U.S. mail, return receipt requested; (ii) overnight courier service (such as FedEx); or (iii) personal delivery of such notice in person; in each case to the appropriate address shown below (or to such other address as a party may designate by notice to the other party):

d. **Amendments and Waivers.** No amendment of any provision of this Agreement will be valid unless the amendment is in writing and signed by the Company and Consultant. No waiver of any provision of this Agreement on a particular occasion will be deemed or will constitute a waiver of that provision on a subsequent occasion or a waiver of any other provision of this Agreement.

e. **Severability.** Each provision of this Agreement is severable from every other provision of this Agreement. Any provision of this Agreement that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

f. **Construction.** The section headings in this Agreement are inserted for convenience only and are not intended to affect the interpretation of this Agreement. Any reference in this Agreement to any "Section" refers to the corresponding Section of this Agreement. The word "including" in this Agreement means "including without limitation." All words in this Agreement will be construed to be of such gender or number as the circumstances require.

///

///

///

///

///

///

///

g. **Governing Law.** This Agreement will be governed by the laws of the State of Oregon without giving effect to any choice or conflict of law principles of any jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

VERIEDE HOLDING LLC

By: ____________________
(signature)

Aaron Mitchell
(print name)

Title: Member

Date: ____________________

By: ____________________
(signature)

Rosa Cazares
(print name)

Title: Manager

Date: ____________________

CONSULTANT

____
(signature)

Shemia Fagan
(print name)

Date: February 24, 2023

APPENDIX B: SOFT MONEY CONTRIBUTIONS TO U.S. NATIONAL PARTY COMMITTEES: 1991–2002[228]

ELECTION CYCLE:	CUMULATIVE SOFT MONEY CONTRIBUTIONS:		SOFT MONEY CONTRIBUTIONS FROM INDIVIDUALS:			SOFT MONEY CONTRIBUTIONS FROM ORGANIZATIONS:		
	Total Contributions ($):	YoY Change (%):	Total Contributions ($):	YoY Change (%):	Share of Total Contributions (%):	Total Contributions ($):	YoY Change (%):	Share of Total Contributions (%):
1992	**$ 88,067,088**		$ 27,159,577		31%	$ 60,907,511		69%
1994	**$ 88,708,478**	**1%**	$ 21,555,929	-21%	24%	$ 67,152,549	10%	76%
1996	**$ 243,625,940**	**175%**	$ 71,483,574	232%	29%	$ 172,142,366	156%	71%
1998	**$ 191,271,915**	**-21%**	$ 53,618,019	-25%	28%	$ 137,653,896	-20%	72%
2000	**$ 456,878,202**	**139%**	$ 172,902,252	222%	38%	$ 283,975,950	106%	62%
2002	**$ 457,582,326**	**0%**	$ 159,792,850	-8%	35%	$ 297,789,476	5%	65%

Total Contributions (1992-1994):	$ 176,775,566
Total Contributions (1996):	$ 243,625,940
Difference ($):	**$ 66,850,374**
Difference (%):	**37.82%**

[228] *Soft Money Backgrounder*, OPENSECRETS, https://www.opensecrets.org/political-parties/soft-money-backgrounder (last visited May 28, 2025)

APPENDIX C: THE BOEING COMPANY LOBBYIST DATA: 2008–2023[229]

Year:	Lobbyists Employed		Lobbying Expenditures		Timeline / Event Notes:
	# Lobbyists:	YoY Change (%):	Total Lobbying Spend ($):	YoY Change (%):	
2008	98	14%	$ 17,845,000	68%	
2009	144	47%	$ 17,265,000	-3%	
2010	143	-1%	$ 18,254,000	6%	
2011	95	-34%	$ 16,200,000	-11%	*Boeing's BOD Approves Development of 737 MAX*
2012	111	17%	$ 15,640,000	-3%	
2013	100	-10%	$ 15,230,000	-3%	*Boeing Engineer's Request for Installing Computer-Based Speed Indicator Rejected*
2014	92	-8%	$ 16,800,000	10%	
2015	95	3%	$ 21,921,000	30%	
2016	88	-7%	$ 17,020,000	-22%	
2017	96	9%	$ 16,740,000	-2%	*FAA Certification of 737 MAX 8 (March 9, 2017)*
2018	101	5%	$ 15,185,000	-9%	*First 737 MAX 8 Crash (Lion Air Flight JT610 - October 28, 2018)*
2019	106	5%	$ 13,810,000	-9%	*Second 737 MAX 8 Crash (Ethiopian Airlines Flight ET302 - March 10, 2019)*
2020	111	5%	$ 12,630,000	-9%	
2021	115	4%	$ 13,450,000	6%	
2022	107	-7%	$ 13,170,000	-2%	
2023	111	4%	$ 14,490,000	10%	

Time Period:	Amount ($):	% Change:	Timeline / Event Notes:
Avg. Annual Lobbying Expenditures (2008-2023):	**$ 15,978,125**		*Cumulative sample period average*
Avg. Annual Lobbying Expenditures (2011-2017):	**$ 17,078,714**	**7%**	*From Commencement of 737 MAX Development to FAA Approval*
Avg. Annual Lobbying Expenditures (2017-2021):	**$ 14,363,000**	**-10%**	*From FAA Approval to 2 Years After Second 737 MAX 8 Crash*

[229] *Client Profile: Boeing Co.*, OPENSECRETS, https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2023&id=d000000100 (Feb. 19, 2025)