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Ethics & Transparency in Michigan: A State Falling Behind

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The United States Government and the various state governments all have laws establishing rules around government ethics and transparency. These are put in place to avoid conflicts of interest or corruption among public officials and to ensure that the public has access to information about their public servants and can hold them accountable if necessary. This paper aims to analyze the government ethics and transparency laws on the books in the state of Michigan as they relate to three areas: application of the Michigan Freedom of Information Act (FOIA), financial disclosure rules in the state, and regulations on public officials entering the lobbying or consulting industry. This paper will also recommend changes in these areas, specifically recommending that exemptions from FOIA be closed for the Governor's Office, Lieutenant Governor's Office, and State Legislature, that state lawmakers be required to file financial disclosure forms, and that some regulation be put in place prohibiting officials from entering the lobbying industry immediately after leaving office.

This area of policy is particularly relevant now due to a number of developments at both the state and federal level. In Michigan, the Flint Water Crisis garnered national attention and continues to be a salient issue among Michigan residents. Shortly after signs of a problem began to appear in 2014, journalists and activists sought to obtain records of communications between the Governor's Office and state agencies to get more information on what was going wrong in Flint, but had a difficult time doing so due to Michigan's restrictive FOIA rules. Governor Snyder eventually released thousands of emails relating to the ongoing crisis in Flint, but did so voluntarily only after intense public pressure and nearly two years after the crisis began. The Michigan State House unanimously passed a package of ethics & transparency bills in 2017, which eventually died at the hands of the Senate Majority Leader, and both major party candidates for Governor in the 2018 election voiced support for strengthening Michigan's FOIA rules, showing that ethics and transparency are firmly on the policy agenda in Michigan (Briggs-Bunting). On the national level, there are several ongoing lawsuits being brought against President

Donald Trump, from issues of financial conflicts of interest to violations of record-keeping laws. Additionally, several cabinet-level officials in the Trump Administration have resigned or been fired following reporting on activities perceived to be corrupt or self-dealing, including Health and Human Services Secretary Tom Price and Environmental Protection Agency Administrator Scott Pruitt. Issues of ethics and transparency in government have demanded a significant, and growing, portion of media attention and public concern in recent years, at both the state and national levels.

Every state in the country implements its own rules regarding ethics & transparency for public officials, and Michigan is no exception. Michigan is the only state in the country to exempt the State Legislature, Governor's Office, and Lieutenant Governor's Office from the state's FOIA. The Governor's and Lieutenant Governor's offices was granted this exemption under the original Michigan Freedom of Information Act of 1976, while the State Legislature was granted this exemption by a 1986 Attorney General opinion. Thus, Michigan has addressed transparency concerns by exempting the Legislature, Governor's, and Lieutenant Governor's offices from the state's FOIA, while all other government bodies must comply with the law, with standard exemptions for privileged communications or security purposes (Briggs-Bunting).

Michigan state law creates very few regulations on public officials' financial disclosures or their connections to lobbyists. There are no state laws requiring legislators to disclose personal financial information, including their incomes, occupations, or business connections. Additionally, legislators are not required by statute to disclose any gifts or honoraria received from individuals or lobbyists, nor are they required to disclose any business or personal connections they have with lobbyists (NCSL, "Personal"). Thus, in Michigan, there are very few ways to determine whether a legislator has potential conflicts of interest between their capacity as a public official and other business or personal connections, and it is difficult to uncover evidence of potential self-dealing by Michigan legislators.

Under Michigan state law, it is illegal for a legislator who resigns from office to engage in any lobbying activity until the term of office from which the legislator resigns ends. This is the only state law

which creates regulations on lobbying activities for former legislators, meaning that a legislator can enter the lobbying industry at any time following their exit from office.¹ Michigan does not have any “revolving door policy” or “cooling-off period” for former legislators looking to enter the lobbying industry.

Compared with other states across the country, Michigan’s laws in all three issue areas examined here are very weak. The 2015 State Integrity Report from the Center for Public Integrity (CPI) graded and ranked every state on a variety of issue areas relating to government ethics and transparency. The report ranks Michigan at 42nd in the nation for public access to information and 50th for legislative accountability, which covers both financial disclosure requirements for legislators and limits on legislators entering private sector lobbying or consulting after their time in office (Michigan Legislature, “Lobbyists”). In order to determine why Michigan got such low marks in these categories, it’s worth examining how other states legislate and implement regulations concerning public access to information, financial disclosures for legislators, and “revolving door” policies.

The Center for Public Integrity State Integrity Report ranks Iowa as 1st in the nation for public access to information. The Iowa Examination of Public Records (Open Records) Act defines public records to be any form of communications, documents, or other information kept by any entity that is supported in whole or in part by property tax revenue. The act requires that any records meeting this definition be made available to the public upon request, but includes 67 listed, specific exemptions for records which do not have to be released, including trade secrets, medical information on specific individuals, and personal information on students at public universities. The act also requires each “government body” to designate the responsibility of implementing the requirements set forth in the act to a specific person (Iowa Code, “Examination”). In addition to this, in 2012 Iowa passed the Iowa Public Information Board Act, which creates a board whose duties are to ensure compliance with Iowa’s open records rules by hearing complaints about potential failures to comply with the law, formally

investigating those complaints, and using the force of law to order compliance from public officials (Iowa Code 2018, “Public”). Utah, ranked second in the nation for public access to information, has similar definitions of records available for public access, though it does not list exemptions specifically as Iowa does, but allows opportunities for citizens to appeal a denied request in a timely and accessible manner. Additionally, Utah has a records ombudsman who negotiates for the release of records once a citizen has appealed a denial, but the ombudsman has no legal authority to order compliance or sanction offenders (Campbell).

Though the Center for Public Integrity did not specify financial disclosures by legislators as its own category, a state’s ranking in legislative accountability takes into account the strength of financial disclosure rules for state legislators. Alaska ranks 1st in the nation in this category, and does so partially due to its exhaustive disclosure requirements for its legislators. Alaska legislators must file reports detailing their own income and assets, as well as those of their immediate family members or unmarried partner. These reports are posted online and are audited annually, ensuring that citizens have immediate access to accurate information about the financial dealings of their legislators. Additionally, Alaska prohibits by statute any legislator or their family from receiving any gift or hospitality valued at or above \$250 (Baird). Colorado, which ranks 3rd in the CPI report, requires its legislators to file a personal financial disclosure statement disclosing their sources of income, properties owned, creditors to whom more than \$1,000 is owed, and business entities that do business with the state with which they are associated. Unlike Alaska, Colorado does not audit these disclosure statements, though legislators can be fined or otherwise legally sanctioned for failing to file the statements in a timely manner. Additionally, a citizen initiative passed in 2006 amends the Colorado State Constitution to prohibit legislators or their families from receiving gifts exceeding \$50 in value in a given calendar year (Hutchins).

So-called “revolving door” policies, those that prohibit legislators and other public officials from working as lobbyists for some time period after they leave office, are evaluated by the CPI report under the legislative accountability category. Although Florida ranks 2nd in the country on this broad category in

the 2015 CPI report, a ballot initiative passed this year will make Florida's revolving door regulations the strongest in the country (Harrell). Florida Amendment 12 will amend the state's constitution to bar any public officer, including local officials, state agency heads, and judges, from getting paid to lobby the state government for 6 years following their departure from office. The amendment will also bar these same public officers from using their office to get any "disproportionate benefit" for themselves or their families, with "disproportionate benefit" to be defined by Florida's Commission on Ethics (Dangerfield). All but nine states limit by law legislators' ability to go directly into the lobbying industry after leaving office, with most states, 26, setting a one-year "cooling off" period (NCSL, "Revolving").

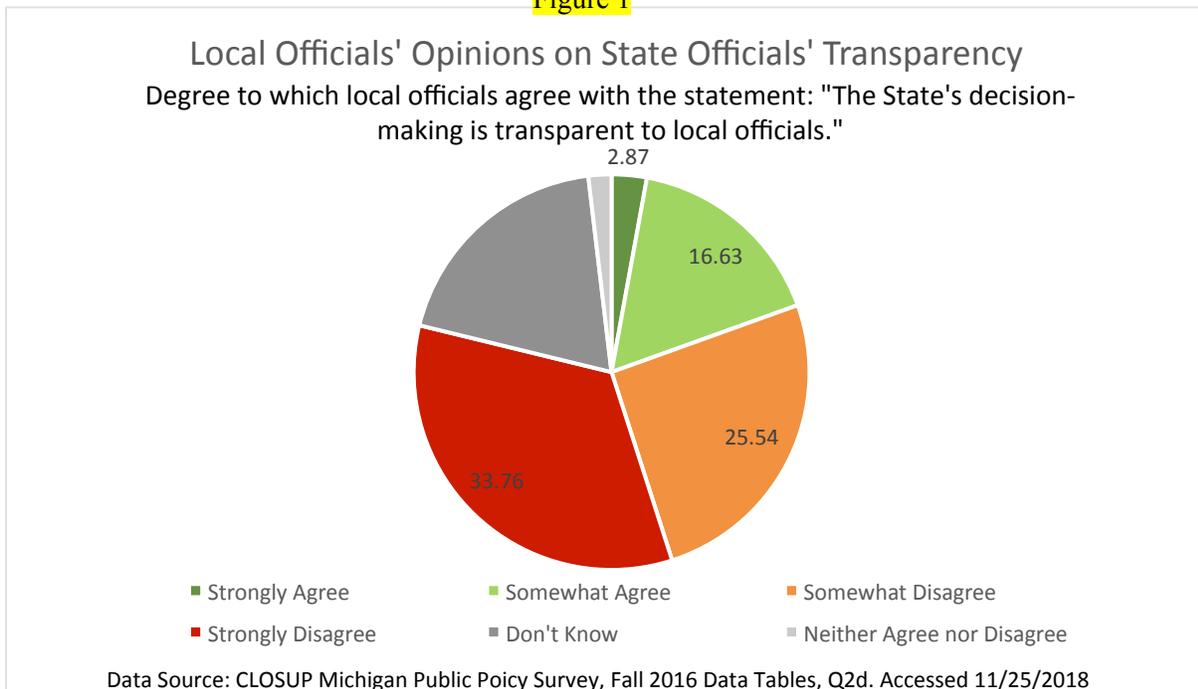
All of the laws and regulations discussed above are in stark contrast to the rules governing public access to information, financial disclosure, and the revolving door in Michigan. Though the Center for Public Integrity assesses the above policies favorably, survey data can also help to identify warranted or positive changes to be made to Michigan's ethics and transparency laws. The University of Michigan Center for Local, State, and Urban Policy administers the Michigan Public Policy Survey (MPPS), which surveys officials from all local governments in the state on a biannual basis about a variety of different policy issues. In Fall 2014, the MPPS asked officials a battery of questions on state and local government ethics, which covered issues pertaining to Michigan's FOIA, financial disclosure rules, and revolving door legislation. These data will provide insights into local officials' views on ethics and transparency in Michigan and their thoughts on potential changes to our policies.

Local officials in the state of Michigan are required to comply with FOIA requests, while the Michigan State Legislature, Governor's Office, and Lieutenant Governor's Office are all exempted from the act. The exemption for the legislature would have been ended in a package of bills, House Bills 4148-4157, that unanimously passed the State House, but the Senate Majority Leader, Sen. Arlan Meekhof (R-Grand Haven), refused to allow the package to get a vote in the Senate. Meekhof, in defending his decision, suggested that journalists are the only people who care about the issue of amending Michigan's FOIA rules (Briggs-Bunting). The MPPS can help provide insight into the frequency with which FOIA

requests are filed to local officials, giving some indication of how common FOIA requests are in the state, albeit only among local officials. Question 43a of the Fall 2014 MPPS survey wave asks respondents to identify whether they received any FOIA requests related to potential ethical concerns in the last five years. 26% of local governments during this survey wave reported having received such a FOIA request in the past year, indicating that there is at least some interest expressed by non-journalists in accessing government records, at least at the local level. In fact, when looking only at larger local governments, those whose jurisdiction populations exceed 30,000, the percentage of officials who had received a FOIA request of this kind climbs to 42%, suggesting that FOIA requests might increase in likelihood as a jurisdiction serves more people. These data suggest that Sen. Meekhof's assertion is probably not entirely accurate, and that interest in obtaining information from public officials in Michigan extends beyond the realm of journalism.

In Fall of 2016, the MPPS asked local officials a battery of questions about the relations between themselves and their counterparts at the state level. Question 2d from this survey wave asked respondents about their perceptions of the transparency of state decision making. The responses to this question are displayed in Figure 1. A majority of respondents, 59% of local officials polled, disagreed with the notion

Figure 1



that state decision making is transparent to local officials, while only 19% agreed with the statement. This shows that the decision-making processes of the state government are opaque for most local officials across the state, and considering that local officials are likely to be more familiar with governmental processes than the average citizen, this transparency issue is likely worse among the general population of Michigan residents. It's likely that much of this transparency issue could be rectified by closing the FOIA exemptions for the State Legislature, Governor's, and Lieutenant Governor's Offices; decision making would become more transparent if local officials and citizens had access to communications and records kept by the state's decision-makers.

The Fall 2014 battery of questions on state & local government ethics asked local officials specifically for their opinions on the idea of requiring state legislators to disclose their financial interests. Table 1 in the appendix reports the full set of responses to question 37a in the Fall 2014 battery, stratified by the political party identification of the respondents to show any partisan differences in support for the idea of requiring financial disclosures of state legislators. Figure 2 shows the responses from that same question, also reported by party self-identification. Here, the responses "Don't Know" and "Neither Agree nor Disagree" responses excluded

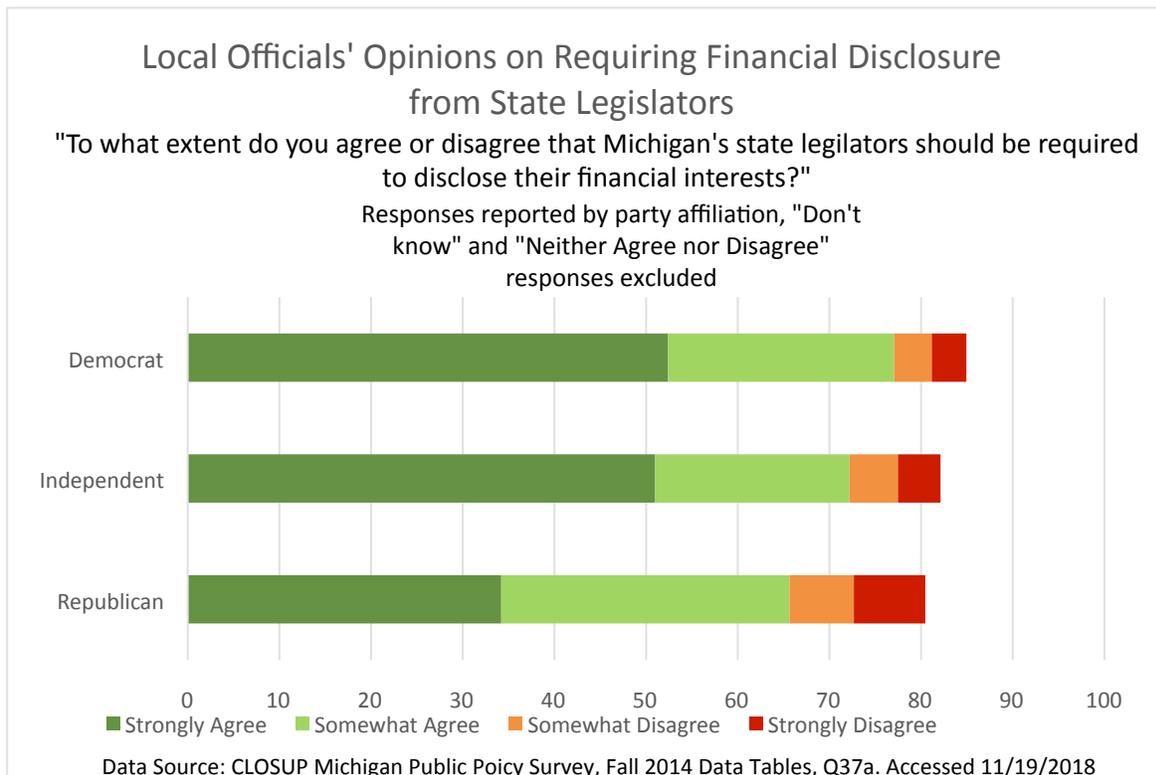
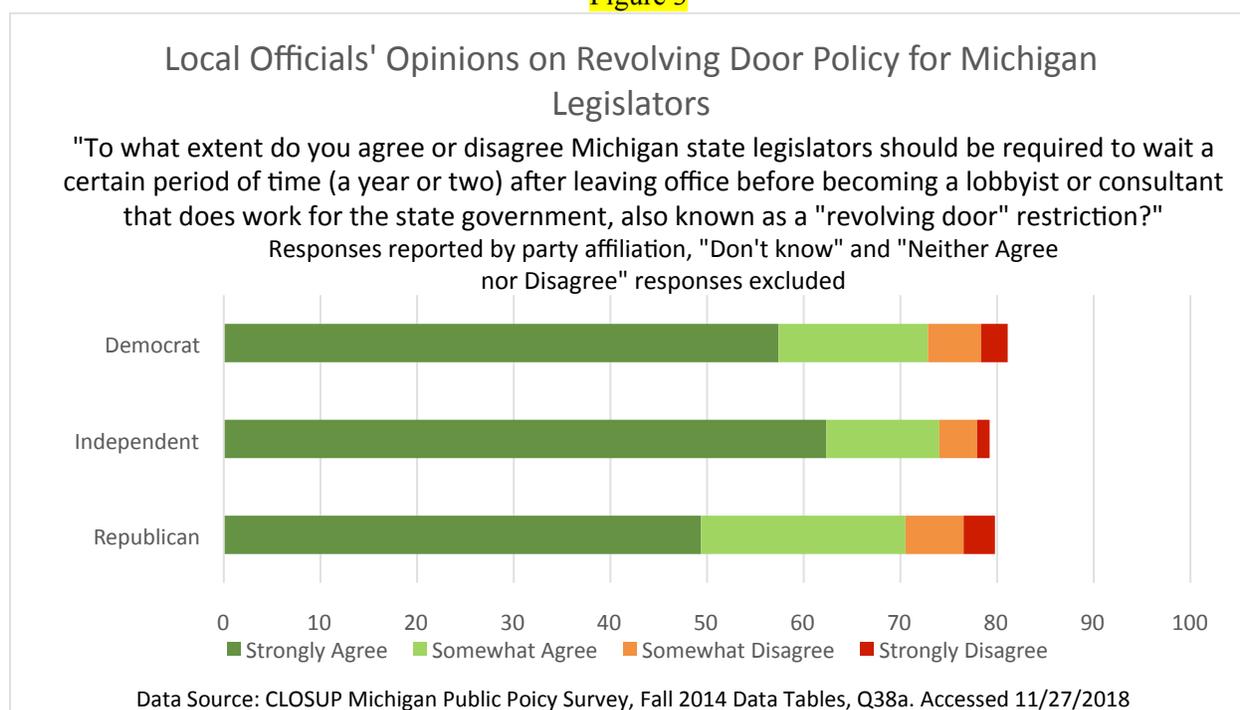


Figure 2

nor Disagree” were excluded to more clearly show levels of support or opposition to such a policy. The responses to this question show clearly that the overwhelming majority of local officials, across the political spectrum, support adopting some form of regulation requiring state legislators to disclose their financial interests when they enter office. Even among those respondents who show the lowest levels of support for requiring legislators to file financial disclosures, Republican local officials, over 65% of respondents signal agreement, with over half of that 65% (34.1%) answering that they strongly agree with the idea of stronger financial disclosure laws for Michigan legislators. Among local officials, there is widespread support for strengthening our financial disclosure rules for Michigan’s state legislators.

The MPPS questions on state & local government ethics asked local officials opinions about the idea of a revolving door policy in the state, providing insights into what local officials think about instituting a “cooling off period” for legislators looking to go into lobbying after they leave office. Question q38a from the Fall 2014 survey wave asks local officials the extent to which they agree that a waiting period of one or two years should be instituted for legislators leaving office before they can enter the lobbying industry. A full crosstabulation of responses by self-reported partisan identification can be seen in Table 2 in the appendix. Figure 3 displays the data from Table 2 visually, with the responses “Don’t Know” and “Neither Agree nor Disagree” excluded to show opinions toward revolving door legislation among those who either favor or oppose it. These results show that there is exceptionally

Figure 3



strong support for the idea of instituting some form of revolving door regulations for Michigan’s legislators, as none of the three partisan identity groups had less than 70% of respondents indicating support for the policy. In fact, more than half of all respondents identifying as Democrats or Independents indicated that they “strongly agree” with the idea of some form of revolving door policy, with nearly half (49.3%) of Republican-identifying officials answering the same. Additionally, the level of support for such a revolving door policy is highest among those officials identifying as independents, suggesting both

that this is a non-partisan issue and that this policy is politically feasible. These data show that local officials see a significant need for Michigan to implement some form of policy to stop the revolving door in Lansing between the legislature and the lobbying industry, and that such a policy is likely to enjoy broad support from the electorate.

Michigan's laws regarding government ethics and transparency are, by some metrics, some of the weakest and least effective in the country. Given Michigan's relative outlier status compared to other states and the appetite for change among local officials identified in the MPPS survey responses, Michigan's State Legislature should act to change the state's laws in the areas of Michigan's FOIA, financial disclosure requirements for legislators, and the revolving door from the legislature to the lobbying firm. A democratic institution like the Michigan State Government can only function properly when its public servants are observable by and accountable to the people they serve, and the current system of ethics rules in the state muddies the relationship between public officials and the constituents they're supposed to serve.

The Michigan state legislature should pass an act that makes several amendments to Michigan's Freedom of Information Act. This act should close the blanket exemptions from FOIA currently enjoyed by the State Legislature, Governor's, and Lieutenant Governor's Offices, and replace it with a list of specific kinds of records that would be exempted from forced public exposure, like medical records or state-administered examinations. This system of explicitly listing exemptions, employed currently by the state of Iowa, would not only prohibit public officials from blocking the release of records that should otherwise be made public, it would also introduce a sense of consistency and rationality to the FOIA process. Officials would no longer be able to create arbitrary or misleading reasons for denying a FOIA request; instead, they would be restricted only to denying requests for records that are included in the list of exemptions. In addition to listing specific exemptions, the new act should establish an independent board for implementing public records rules, investigating wrongful denials of FOIA requests, and ensuring compliance among officials with the new FOIA rules. This would help empower citizens to

access more records and prevent officials from falsely claiming that requested records qualify for one of the listed exemptions. Additionally, this independent board would lend additional legitimacy to the Michigan State Government as a whole, as it would ensure that the actions and decision making of Michigan officials can be made clear to Michigan citizens, allowing a sense of trust to grow between Michigan citizens and public servants.

Michigan should implement regulations requiring state legislators to file annual financial disclosures, detailing the income sources, assets, business dealings, and creditors of themselves and their immediate families. These disclosures could strike a balance between transparency and privacy by not requiring legislators to list the actual dollar values of their income, assets, debts, etc. but instead requiring them to indicate sources of income, identity of creditors, and identity of business connections. This would ensure that voters can see where potential conflicts of interest might arise while shielding the legislators from undue scrutiny based on their socioeconomic status. The implementation of these financial disclosure rules would make it easier for Michigan citizens to spot potential conflicts of interest and make it more difficult for legislators or their families to engage in self-dealing without fear of public scrutiny.

A revolving door policy should be implemented in Michigan to prevent conflicts of interests among legislators and other officials nearing the end of their term and looking for a job in the lobbying industry. Michigan should implement a four-year waiting period between when a public official leaves office and when they are allowed to make money from lobbying or consulting activities. This rule should apply to all Michigan legislators, all statewide elected officials, and all executive agency heads to minimize conflicts of interest across multiple branches of government. This would slow down the revolving door between Michigan state government and the Lansing lobbying corps and reduce the power and influence that lobbyists hold over public officials. This would ensure that public officials will not be tempted to give preferential treatment to lobbyists in the hopes of currying favor for future job opportunities, as they will likely have to seek alternative employment between leaving office and being

allowed to work as a lobbyist. This would cut down on perverse incentives for public officials and put more power in the hands of Michigan citizens by curbing some of the power of lobbyists in Lansing.

At the federal, state, and local levels, numerous laws and rules are put in place to make sure that government officials cannot conduct their business in shadow and voters can hold their officials accountable for bad conduct. Michigan has fallen behind in making sure our government stays open and transparent, and a package of reforms with broad bipartisan support can help the state catch up with the rest of the country. Michigan should end the exemption from FOIA enjoyed by the Legislature, Governor, and Lieutenant Governor to ensure that activists, journalists, and voters can keep an eye on the decision-making process in our state. This should be paired with the establishment of an institutional body tasked with implementing and enforcing these transparency rules and ensuring that officials cannot circumvent the law by refusing to release non-exemptible records. State legislators in Lansing should be required to file financial disclosure forms that reveal their assets and liabilities to an interested public while preserving their right to privacy. Finally, Michigan must stop the revolving door between the state government and lobbying firms by implementing a “cooling off period” between when an official leaves office and becomes a paid lobbyist. These reforms would ensure that public business remains in the public eye and that the incentives and motivations of public officials are more aligned with the constituents they serve.

Appendix

Table 1

Disclose Financial Interests: Michigan's state legislators	3-point partisanship scale			Total
	Republica	Independe	Democrat	
Strongly Agree	34.20	50.99	52.40	41.35
Somewhat Agree	31.45	21.19	24.66	28.23
Neither Agree nor Dis	17.40	13.25	12.67	15.57
Somewhat Disagree	7.02	5.30	4.11	6.01 a1
Strongly Disagree	7.79	4.64	3.77	6.28 —
Don't Know	2.14	4.64	2.40	2.55 34
				30
Ne. Total	100.00	100.00	100.00	100.00 19
Somewhat Disagree	6.02	3.90	5.50	5.58
Strongly Disagree	3.24	1.30	2.75	2.84
Don't Know	4.63	5.84	4.47	4.76

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