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Bright Lights and Dark Money: How States Can De-Energize an Electric Utility's Corrupting Power

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"No people is wholly civilized where a distinction is drawn between stealing an office and stealing a purse." -Theodore Roosevelt, President of the United States

I. INTRODUCTION

On June 15th, 2021, the Ohio State House of Representatives voted to expel their colleague, and former Speaker of the House, Larry Householder.[1] It was an historic event, not only because it was the first expulsion from the Ohio House in 164 years, but because Householder was at the center of the largest bribery scandal in Ohio's history.[2] The basic idea of the scheme was as follows: FirstEnergy (the electric utility that supplies electricity to more than 6,000,000 people in Maryland, New Jersey, Ohio, Pennsylvania, West Virginia, and Virginia[3]) paid Householder over $60 million through Generation Now, a nonprofit 501(c)(4) organization.[4] In return, Householder used his position in the Ohio House to pass legislation that was friendly to FirstEnergy including a bill referred to as HB6, which gave the utility a bailout of its two nuclear plants, a bailout of its two coal plants, and a rollback of Ohio's renewable and energy efficiency standards.[5] The immediate cost of HB6 amounted to $1.3 billion (the combined total of the bailouts and a rate

[1] Michael Levenson, *Ohio House Expels Ex-Speaker Charged in $60 Million Corruption Scheme*, THE NEW YORK TIMES (June 16, 2021), https://www.nytimes.com/2021/06/16/us/larry-householder-expelled-ohio-house.html.
[2] *Id*.
[3] *About Us*, FIRST ENERGY, https://www.firstenergycorp.com/about.html (last visited Apr. 12, 2022).
[4] USA Today Network Ohio Bureau, *Selling Out in the Statehouse*, CINCINNATI.COM (June 3, 2021), https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/.
[5] David Roberts, *Ohio Just Passed the Worst Energy Bill of the 21st Century*, VOX (July 27, 2019), https://www.vox.com/energy-and-environment/2019/7/27/8910804/ohio-gop-nuclear-coal-plants-renewables-efficiency-hb6.

increase), with the total cost to ratepayers estimated as high as $2 billion in excess utility bills.[6] Additional healthcare costs are to be expected as much as $7 billion due to increased pollution from the continued operation of the coal plants and the other changes due to the bill.[7] Furthermore, FirstEnergy also paid Sam Randazzo (at the time of the scandal a member of the Public Utilities Commission of Ohio, the regulatory body that governs FirstEnergy) $22 million over the previous 10 years for his work assisting FirstEnergy's efforts in influencing legislation including writing and passing HB6. When the campaign to repeal HB6 began, he also worked to ensure the failure of the repeal process.[8]

Similarly, Illinois is also recovering from its own utility corruption scandal involving Michael Madigan (the longest serving Speaker of the House in U.S. history[9]) and Commonwealth Edison (the self-proclaimed largest electric utility provider in the state).[10] According to the 22-count federal indictment brought against Madigan on March 2, 2022, Commonwealth Edison (ComEd) gave jobs (that required little to no work), contracts, and monetary payments to individuals associated with Madigan in exchange for favorable legislative decisions between 2011 and 2019.[11] Legislation passed during the timeframe of the scheme includes 2011's "smart grid" law which allows the utility to increase its rates to consumers while also limiting the Illinois

[6] Jena Brooker, *Ohio's Utility Bribery Scandal Could Cost the Public Billions More Than Previously Thought*, GRIST (Apr. 2, 2021), https://grist.org/energy/ohio-hb6-utility-bribery-scandal-cost-ratepayers/.
[7] *Id*.
[8] USA Today Network Ohio Bureau, *Selling Out in the Statehouse*, CINCINNATI.COM (June 3, 2021), https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/.
[9] Austin Berg, *Madigan's Reign Ends as Longest Serving Legislative Leader in U.S. History*, ILLINOIS POLICY (Jan. 13, 2021), https://www.illinoispolicy.org/madigans-reign-ends-as-longest-serving-legislative-leader-in-u-s-history/.
[10] *Company Information*, COMED – AN EXELON COMPANY, https://www.comed.com/AboutUs/Pages/CompanyInformation.aspx (last visited Apr. 12, 2022).
[11] Jeff St. John, *ComEd Agreed to $200M Fine on Federal Bribery Charge*, GREENTECH MEDIA (July 17, 2020), https://www.greentechmedia.com/articles/read/comed-agrees-to-200m-fine-on-federal-bribery-charge.

Commerce Commission's ability to change them and 2016's Future Energy Jobs Act which gave ComEd a $2.3 billion subsidy for its two nuclear plants.[12]

While the financial aspects of the Ohio and Illinois scandals are striking, the corrupt actions of FirstEnergy and ComEd are far from unique. In 2014, the utility Arizona Public Service (APS) funneled more than $3 million through Save Our Future Now and the Arizona Free Enterprise Club, both 501(c)(4) organizations, to the campaigns of Tom Forese and Doug Little, both of whom were running for seats on the Arizona Corporate Commission (Arizona's Public Utility Commission).[13] Both Forese and Little won their elections and five months later voted in favor of hearing the utility's proposal for increasing the monthly fee paid by customers with solar panels from $5 to $21.[14] While the fee increase proposal was eventually dropped,[15] the following year the Commission voted four-to-one in favor of altering the compensation schemes for solar power by treating residential solar power separate from utility solar power, which was hugely beneficial to APS.[16] Little went to serve on the Commission until 2017 (when he was appointed as a deputy assistant secretary for intergovernmental and external affairs in the Trump Administration's Department of Energy)[17] and Forese continued to serve on the Commission until 2019.[18]

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[12] *Id.*; *see, also, Gress v. Commonwealth Edison Co.*, No. 20 C 4405, 2021 WL 4125085 (N.D. Ill. Sept. 9, 2021).
[13] Ryan Randazzo, *APS Acknowledges Spending Millions to Elect Corporation Commission Members, After Years of Questions*, AZCENTRAL (Mar. 29, 2019), https://www.azcentral.com/story/money/business/energy/2019/03/29/arizona-public-service-admits-spending-millions-2014-corporation-commission-races/3317121002/.
[14] Rachel Leingang, *APS Expected to Seek 400% Solar Fee Increase*, ARIZONA CAPITOL TIMES (Mar. 13, 2015), https://azcapitoltimes.com/news/2015/03/13/arizona-public-service-expected-to-seek-400-solar-fee-increase/.
[15] Rachel Leingang, *APS Drops Bid for Solar Fee Increase, Blames "Political Gamesmanship"*, ARIZONA CAPITOL TIMES (Sept. 25, 2015), https://azcapitoltimes.com/news/2015/09/25/aps-drops-bid-for-solar-fee-increase/.
[16] Herman Trabish, *The Lurking Surprise for Solar in Arizona's Recent Ruling to end Net Metering*, UTILITY DIVE (Jan. 26, 2017), https://www.utilitydive.com/news/the-lurking-surprise-for-solar-in-arizonas-recent-ruling-to-end-net-meteri/433555/.
[17] Ryan Randazzo, *Arizona Corporation Commission Member Appointed to Energy Department*, AZCENTRAL (Sept. 13, 2017), https://www.azcentral.com/story/money/business/energy/2017/09/13/arizona-corporation-commission-doug-little-appointed-energy-department/662759001/.
[18] *Tom Forese*, BALLOTPEDIA, https://ballotpedia.org/Tom_Forese (last visited Apr. 12, 2022).

These instances are demonstrative of a larger attack on the modern system of utility regulation by the utilities meant to be regulated. In addition to the scandals discussed above, utilities are paying actors to skew the appearance of public support for renewable energy by trying to demonstrate a majority is against renewables and for natural gas when the opposite is true,[19] crafting misleading ballot measures,[20] and lying to authorities about the construction progress of publicly funded power stations.[21] These utilities are motivated by new threats to their profits and are exploiting weaknesses in the regulatory system created by recent Supreme Court cases such as *Citizens United*[22] and astonishingly low penalties should a quid pro quo scheme even be proven.

The closest existing term to describe the actions of utilities detailed above is utility corruption. Utility corruption has been defined as "the illicit sale of political influence" and has many variations including patronage arrangements, political extortion, and regulatory capture.[23] That term, however, is too broad to describe the specific issue of this paper, as only regulatory capture is instigated by the utility.[24] Regulatory capture is defined as when a market actor expends resources on those in regulatory positions in exchange for favorable policies.[25] That is not to say that all forms of regulatory capture are examples of quid pro quo corruption; the revolving door phenomenon is an example of regulatory capture without quid pro quo.[26] Additionally, regulatory

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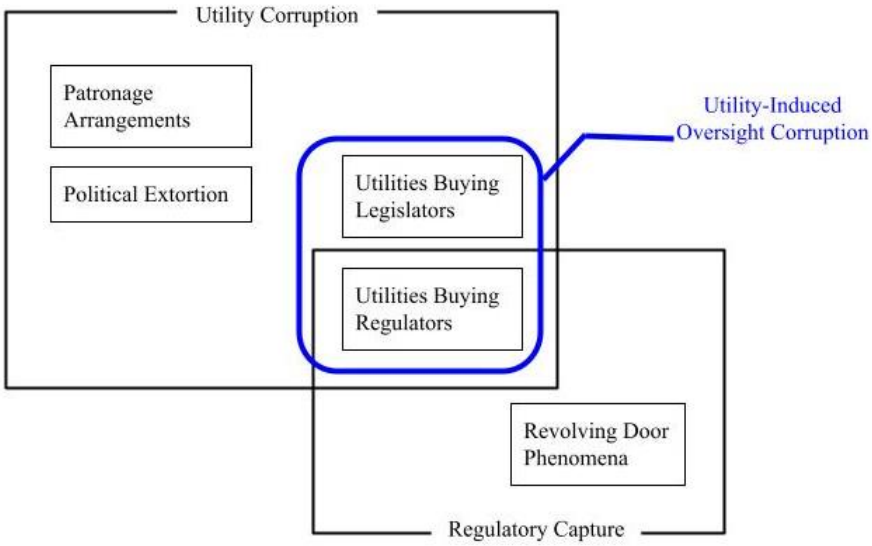
[19] Michael Isaac Stein, *Actors Were Paid to Support Entergy's Power Plant at New Orleans City Council Meetings*, THE LENS (May 4, 2018), https://thelensnola.org/2018/05/04/actors-were-paid-to-support-entergys-power-plant-at-new-orleans-city-council-meetings/.
[20] David Roberts, *Florida's Outrageously Deceptive Solar Ballot Initiative, Explained*, VOX (Nov. 8, 2016), https://www.vox.com/science-and-health/2016/11/4/13485164/florida-amendment-1-explained.
[21] Jeffery Collins, *Ex-CEO Who Oversaw Doomed Nuclear Project Sentenced*, ABC News (Oct. 7, 2021), https://abcnews.go.com/Business/wireStory/ceo-oversaw-doomed-nuclear-project-sentenced-80449331.
[22] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).
[23] Werner Troesken, *Regime Change and Corruption: A History of Public Utility Regulation*, *in* CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY 259, 263 (Edward Glaeser and Claudia Goldin eds., 2006).
[24] Patronage arrangements are when "politicians buy votes by offering plum jobs at above-market wages" and political extortion is when politicians "extract bribes from private utility companies by threatening to impose confiscatory regulations and taxes. *Id*.
[25] *Id*.
[26] The revolving door phenomenon is a form of regulatory capture in which those who worked in the regulated industry go on to work in the regulation of the industry and vice versa. This results in the values of the industry

capture only refers to the utility's effects on *regulatory* positions, meaning that the corruption of *legislators* is not covered by the definition. This paper focuses on the concept of utilities corrupting legislators and regulators with the intention of having favorable laws, rules, and regulations passed, and terms that phenomenon "Utility-Induced Oversight Corruption." This distinction is visualized below.



This paper asserts that states have the power to prevent and dissuade electric utilities from corrupting the legislative and regulatory bodies that exist to govern them. Part II discusses both the history and current status quo of electrical utility regulation. Part III explains what regulatory capture is and how it is handled in the modern system. Part IV posits that states have the ability to change the system to better deal with the issue of utility-induced oversight corruption by increasing the difficulty for its facilitation and by further deterring utilities from attempting it.

being used as the goal of legislation and the "capture" of the regulators. *See*, Heather Payne, *Game Over: Regulatory Capture, Negotiation, and Utility Rate Cases in an Age of Disruption*, 52 U. S.F. L. Rev. 75, 83 (2018).

II. UNDERSTANDING REGULATORY STRUCTURE

In order to discuss the ways in which utility-induced oversight corruption can be confronted, the current regulatory regime's structure must be understood. Part A explains the core concepts behind the regulation of utilities and its historical variations while Part B details some key aspects of the modern system including the current status of state deregulation of the energy system, detailing the ratemaking process, and how members of a PUC obtain their positions.

A. The Regulatory Compact Over Time

The American electricity system is generally broken up into three sections: generation,[27] transmission,[28] and distribution.[29] For the majority of the existence of electric utilities, all three were considered to be natural monopolies.[30] Because of this, legislatures in the late 1800s and early 1900s thought that it would be economically inefficient for there to be multiple electric utilities in the same geographical area, and relied on monopoly franchise agreements[31] to ensure that there was a minimal amount of capital wasted on redundant infrastructure.[32] This grant of monopoly status brought with it its own concern, one well known to legislatures of the turn of the century: the threat of monopoly pricing.[33]

In order to avoid the abuse of power that was so well demonstrated by Standard Oil, US Steel, and their ilk, state legislatures subjected utilities granted these monopoly licenses to price

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[27] Electricity generation is defined as the process by which electricity is produced from sources of primary energy. *See*, EISEN HAMMOND ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT: CASES AND MATERIALS, 67 (Saul Levmore et al. eds., 5th ed. 2020).
[28] Electricity transmission is defined as the process by which the newly made electricity is transported from the location of generation to the location of distribution. *Id*.
[29] Electricity distribution is the process by which the electricity is partitioned from the long-distance line to the consumer. *Id*.
[30] A natural monopoly is a term of art used to describe when, due to economies of scale, a single market actor can meet the total demand for a good at a lower cost than if there were competing actors. *Id*. at 73.
[31] A Monopoly franchise agreement is a contract given by the state to the utility, conveying exclusive rights to operate within a geographic area. *Id.* at 83.
[32] *Id*. at 71.
[33] This is when, due to the complete control of the supply given to the market, the firm in question would be able to charge whatever rate they want to a captive consumer base. *Id*.

regulation in the form of Public Utility Commissions (PUCs).[34] PUCs set the rates charged so that the utility still recovered enough to recoup their costs and make enough profit to secure investors while ensuring that the utility was not abusing its granted monopoly status by charging offensively high prices.[35]

The rationale for this exchange between states and utility companies is known as the "regulatory compact."[36] Explained by the U.S. Supreme Court in *Munn v. Illinois*, the basic idea is "when private property is devoted to a public use, it is subject to public regulation."[37] While *Munn* was about the regulation of storage fees for a grain silo, the issue the case centered on was if an agent with monopoly power could legally charge unreasonably high prices.[38] The Court's support of government regulation in the holding of *Munn* is often attributed as the source of the legality of regulating electric utilities.[39]

This basic regulatory regime was altered over the next century in order to meet the demands of the day. During the New Deal era and immediately after World War II, it was changed to ensure that electricity could be as accessible as possible to as many people as possible through the enaction of the Federal Power Act and the Atomic Energy Act.[40] Then, in the 1960s and 1970s, the federal government became more involved in order to regulate the environmental impacts of the energy system through the passage of the National Environmental Policy Act, Clean Water Act, Clean Air Act, the Resource Control and Reclamation Act, and the Oil Pollution Act.[41] During the 1970s, 80s, and 90s, the focus was on deregulation and Congress passed laws such as the Public Utilities

[34] Monopoly franchise agreements are given to the firm in question by the state in which it operates. *Id*. at 82.
[35] *Id*. at 84.
[36] *See, e.g.*, Heather Payne, *Private (Utility) Regulators*, 50 Envtl L. 999, at 1001 (2020).
[37] *Munn v. Illinois*, 94 U.S. 113, 130 (1876).
[38] *Id*.
[39] *See, e.g.*, RICHARD F HIRSH, POWER LOSS : THE ORIGINS OF DEREGULATION AND RESTRUCTURING IN THE AMERICAN ELECTRIC UTILITY SYSTEM, 6 (MIT Press) (1999).
[40] EISEN HAMMOND ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT: CASES AND MATERIALS, 8 (Saul Levmore et al. eds., 5th ed. 2020).
[41] *Id*. at 9.

Regulatory Policy Act (PURPA) which required utilities to transmit electricity generated by entities other than themselves without discrimination.[42] To continue this deregulatory trend, the Federal Energy Regulatory Commission (FERC) passed orders like 888, which had the effects of separating a utility's sale of electricity over its transmission network and prohibiting discriminatory charges for using the transmission network.[43]

B. Modern Utility Regulation

The modern era of utility regulation sees two current variations of the regulatory system, depending on which state the utility operates in. Thirty states have deregulated at least some of their electricity generation.[44] In the remaining twenty states, however, the traditional vertically integrated model in which generation, transmission, and distribution are considered natural monopolies is still in effect.[45]

The centerpiece of state regulatory power, one which PUCs and utilities must deal with no matter what regulatory regime the state uses, is the ratemaking equation. This is a literal, mathematical equation that determines how much profit the utility can make each year. In its simplest form, the rate making equation is: R=(r*b)+O. The revenue requirement, R, is the total amount that may be recovered from the utility's customers. The rate of return, r, is the rate at which the utility may profit; this is to be set consistent with the risk the utility's investors are taking to provide the capital necessary to fund the utility. The ratebase, b, is the total amount of undepreciated capital that has been invested that is used and useful. This is the amount that the

[42] 18 C.F.R. § 35.28 (2022).
[43] EISEN HAMMOND ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT: CASES AND MATERIALS, 9 (Saul Levmore et al. eds., 5th ed. 2020).
[44] Oregon and Delaware have deregulated markets for electricity; Florida, Georgia, Tennessee, Kentucky, West Virginia, Indiana, Wisconsin, Kansas, Nebraska, South Dakota, Wyoming, and Nevada have deregulated gas markets; and California, Montana, Texas, Illinois, Michigan, Ohio, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine have deregulated both electricity and gas. *Deregulated Energy States*, ELECTRICITY RATES, https://electricityrates.com/how-to-compare/deregulated-energy-states/ (last visited Apr. 4, 2022).
[45] *Id*.

utility is allowed to profit from, and is essentially the amount of money invested in the generation and distribution of energy. The operating costs, O, are all other costs not in the ratebase that are necessary for the utility to stay in operation.[46] While the utility may recover these operational costs, the equation is set so that they do not make a profit from them. There are a litany of cases in which utilities challenge the determinations of the PUC regarding what is and is not a reasonable rate of return as well as what is and is not considered a capital expense (and therefore capable of inclusion in the ratebase).[47] This demonstrates how crucial PUC members are to the utility, as the PUC makes the initial -and often final- determinations around rate of return and whether a specific expenditure can return a profit for the utility.

Those who sit on the PUCs are also appointed via differing means depending on the state. The most common method, followed in thirty-seven states, is through appointment by the governor.[48] Next most common, followed in eleven states, see members elected by popular vote.[49] By far the least common method, only practiced in two states, has members of the PUC appointed by the state legislature.[50] No method is immune from utility interference.

III. ISSUES IN THE REGULATORY REGIME

While the regulatory system is designed to prevent the utilities' abuse of their state granted monopoly power, there are ways the utilities can still take advantage of the system, such as utility-induced oversight corruption. Part A explains how and why utility-induced oversight corruption

[46] Some examples include fuel used to generate steam, cost of maintenance, and salaries of employees. EISEN HAMMOND ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT: CASES AND MATERIALS, 521 (Saul Levmore et al. eds., 5th ed. 2020).
[47] *See, e.g.*, *Jersey Central Power & Light Co. v. FERC*, 589 F.2d 142 (3d Cir. 1978); *Duquesne Light Company v. Barasch*, 488 U.S. 299 (1989).
[48] Sass Byrnett and Daniel Shea, *Engagement between Public Utility Commissions and State Legislatures*, NATIONAL COUNCIL ON ELECTRICITY POLICY, 2 (2019), https://www.ncsl.org/Portals/1/Documents/energy/NCSL_NARUC_Engage_Leg_PUCs_34251.pdf.
[49] *Id*.
[50] *Id*.

occurs. Part B details how the current regulatory regime is attempting to prevent it and why those attempts are largely unsuccessful.

A. Utility-Induced Oversight Corruption Explained

Utilities are motivated to effectuate oversight corruption for one relatively straightforward reason: the regulators and legislators determine the utilities' profits. First, as mentioned above, the PUC directly determines what the utility can charge its customers in the ratemaking process. Second, utilities are concerned about the expansion of renewable energy portfolios[51] adopted by state legislatures, as the transition from fossil fuels to renewables increases the possibility that the utility will see stranded costs. A stranded cost is when a market participant expends money on an asset under the assumption that they will see a return on that investment but, due to outside forces, they are no longer able to.[52] By influencing the legislators who make the policy, utilities can roll back the audaciousness of these plans and ensure that they can continue to profit off outdated and polluting sources of energy. Third, utilities are concerned with the deregulation of the generation markets. In 1978, PURPA mandated that utilities buy electricity that was produced by outside parties so long as the cost of such electricity was lower than the cost the utility would have incurred to produce it themselves.[53] In 1996, FERC passed order 888, which unbundled the generation and transmission markets, allowing more entrants into the generation market, and required that the utilities who operate the transmission lines transport all generated electricity regardless of who generated it.[54] These laws, combined with the newfound feasibility of solar and wind energy,[55]

[51] A renewable portfolio standard is a state created standard requiring a specified amount of utility sold electricity to be generated from renewable sources by a certain date. *See*, *State Renewable Portfolio Standards and Goals*, NATIONAL COUNCIL ON ELECTRICITY POLICY, (2021), https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx#:~:text=Renewable%20Portfolio%20Standards%20(RPS)%20require,production%20and%20encourage%20economic%20development (last visited Apr. 14, 2022).
[52]. EISEN HAMMOND ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT: CASES AND MATERIALS, 774 (Saul Levmore et al. eds., 5th ed. 2020).
[53] *Id*. at 690.
[54] 18 C.F.R. § 35.28 (2022).
[55] As of 2019, renewable energy is often the cheapest source of electricity. *See*, James Ellsmoor, *Renewable Energy Is Now the Cheapest Option – Even Without Subsidies*, FORBES (June 15, 2019),

means that competition is fiercer than ever to have the energy utilities generate be sold to the grid. The economics of rooftop solar are also largely determined by policies adopted at the state PUC.[56] More electricity generated by customers using rooftop solar also decreases sales by the utility, which in turn causes the utility to raise its rates per unit of energy sold to cover their fixed costs, which further drives individuals toward generating their own electricity, further increasing the problem in what is termed a "Utility Death Spiral".[57] Therefore, regulators also determine how much of a threat to the utility business model self-generation by customers is. By capturing the regulators and legislators, utilities can attempt to keep the barriers to entry into the generation markets high and minimize the competition that they would otherwise face, ensuring that the old system of the utility having monopoly power over the entire electric utility industry remains – from a practical standpoint – in place.

In all the instances of utility-induced oversight corruption discussed in the introduction, the utility's resources were given to 501(c)(4) nonprofit organizations which then donated to the campaigns of the individuals the utility sought to corrupt. This method became especially popular in the immediate aftermath of the Supreme Court's holding in *Citizens United v. Federal Election Commission* for two reasons. First, the holding of the case was that there can be no limit on how much an individual or corporation can donate to one of these organizations.[58] Second, 501(c)(4) organizations are not required to disclose the donors of the money that is used on the campaigns.[59]

https://www.forbes.com/sites/jamesellsmoor/2019/06/15/renewable-energy-is-now-the-cheapest-option-even-without-subsidies/?sh=338647ed5a6b.

[56] *See*, Heather Payne, *A Tale of Two Solar Installations: How Electricity Regulations Impact Distributed Generation*, 38 U. HAW. L. REV. 135, 140 (2016).

[57] Eric Hopf, Mitigating an Energy Utility Death Spiral in the United States: Applying Lessons from Germany (May, 2017), 2 (Masters Paper, Clark University).

[58] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).

[59] *Dark Money Basics*, OPEN SECRETS, https://www.opensecrets.org/darkmoney/dark-money-basics.php (last visited Apr. 12, 2022).

This allows the utilities an air of plausible deniability and makes it more difficult to identify if those who perform an oversight function of the utilities have even been corrupted.

B. Current Roadblocks to Utility-Induced Oversight Corruption

The issue discussed in this paper is not unforeseeable. Legislatures and regulatory bodies have long been aware that regulation of utilities is fraught with the possibility that the utilities may attempt to influence that regulation.[60] There are two general ways to prevent utility-induced oversight corruption from occurring: 1) make it harder for utilities to capture regulators and legislators; and 2) make the penalties more significant for the parties involved when they get caught in order to deter them from committing the act in the first place. When talking about the issue of utility-induced oversight corruption, the former is generally accomplished through campaign finance restrictions, as utilities are using campaign funds as the way to bribe regulators and legislators,[61] while the latter is seen in the ramifications that happen after the fraud and corruption are uncovered.

1. Current Campaign Finance Restrictions

In Justice Kennedy's majority opinion in *Citizens United v. Federal Election Commission*, the Court stated that the only governmental interest sufficient enough to justify a limitation on political campaign contributions was to prevent the existence or appearance of quid pro quo corruption.[62] In doing so, the holding overruled *Austin v. Michigan Chamber of Commerce*,[63]

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[60] *See, generally*, Werner Troesken, *Regime Change and Corruption: A History of Public Utility Regulation*, *in* CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY (Edward Glaeser and Claudia Goldin eds., 2006) (discussing how legislators have attempted to counteract the corruption of the regulation of utilities throughout American history).

[61] See, USA Today Network Ohio Bureau, *Selling Out in the Statehouse*, CINCINNATI.COM (June 3, 2021), https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/, and Anderson et. al., *Strings Attached: How Utilities Use Charitable Giving to Influence Politics and Increase Investor Profits*, ENERGY AND POLICY INSTITUTE (Dec. 2019), https://www.energyandpolicy.org/wp-content/uploads/2019/12/Strings-Attached-how-utilities-use-charitable-giving-to-influence-politics-and-increase-investor-profits.pdf.

[62] *Citizens United*, 558 U.S. at 365.

[63] *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

which had stated that the government also had a sufficiently justifiable interest in preventing the "distortion effects" that a corporation's mass accumulation of wealth had on the political process.[64] At the same time, the *Citizens United* holding reaffirmed that there can be no "restrict[ion] [of] political speech based on the speaker's corporate identity."[65] *Citizens United* also ruled all independent expenditure bans[66] unconstitutional by reasoning that, because there is no coordination between campaigns and those who expend money on behalf of the campaign, there is no risk of quid pro quo corruption or its appearance.[67]

Four years after *Citizens United*, the Court once again entered the campaign finance fray in *McCutcheon v. Federal Election Commission*.[68] In *McCutcheon*, the Court was tasked with determining if aggregate campaign contribution limits[69] were a constitutionally supported method of combatting corruption and its appearance given the prevalence of base limits,[70] which had the same stated purpose.[71] In their holding, the Court held that all aggregate campaign contribution limits unconstitutional, stating that they were "poorly tailored to the Government's interest in preventing circumvention of the base limits" and therefore "impermissibly restrict[ed] participation in the political process."[72]

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[64] *Citizens United*, 558 U.S. at 348, and 365.
[65] *Citizens United*, 558 U.S. at 347.
[66] An independent expenditure limit is a restriction on how much money an individual can spend on a "communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents." 11 C.F.R. §d100.16 (2022). For example, if one were to take out ads in a newspaper advocating for the election of a specific candidate, and neither the candidate nor their campaign had any knowledge of the ads, then the money spent on them would be considered an independent political expenditure.
[67] *Citizens United*, 558 U.S. at 361.
[68] *McCutcheon v. Federal Election Commission*, 572 U.S. 185 (2014).
[69] An aggregate campaign contribution limit is a restriction on the total amount of monetary donations that an individual can give to all campaigns in an election cycle combined, regardless of the number of campaigns. *Id.* at 193.
[70] Contrary to an aggregate limit, a base limit is a restriction on the amount of donations that an individual is allowed to give to each campaign in an election cycle, but allows the individual to donate that amount to as many campaigns as they wish. *Id.*
[71] *Id.* at 192-193.
[72] *Id.*, at 218.

Although the trend in recent Supreme Court jurisprudence is to roll back the reach of campaign finance restrictions, it is not yet a complete free for all. One form of campaign finance restriction widely accepted by the Court is mandatory disclosure. The Court explicitly supported the idea of mandatory disclosures in *Citizens United*,[73] upheld their constitutionality in *John Doe v. Reed*,[74] and touted disclosure requirements as a valid alternative to the aggregate limits in *McCutcheon*.[75] Additionally, the Court has upheld base limits as a constitutional method of serving the government's anti-corruption interest discussed ad nauseum in all campaign finance cases.[76]

While the campaign finance free for all is not yet a reality, the recent trend of Supreme Court holdings has had an impact. Since *Citizens United* was published in 2010, the amount of money spent in political campaigns has ballooned from $5.2 billion spent in the combined Congressional and Presidential races of 2008 to $14.4 billion in the combined Congressional and Presidential races of 2020.[77] Another impact of the rollback is in the total of small donations compared to large donations. In 2010, large donations amounted to 62.6% of all donations but had risen to 71% by 2018.[78] Viewed from the perspective of a utility company with concerns of longevity with the constant profit margin of a regulated monopoly, the recent changes in campaign finance law would without a doubt open a door to allow the utility to project their opinions into the political arena.

2. Current Deterrents

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[73] *Citizens United*, 558 U.S. at 366 (2010), (citing *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) and *McConnell v. Federal Election Com'n*, 540 U.S. 93, 201 (2003)).
[74] *John Doe No. 1 v. Reed*, 561 U.S. 186, 191 (2010).
[75] *McCutcheon*, 572 U.S. at 223.
[76] *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 85 (1976), *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 201 (2003), *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 371 (2010), and *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 224 (2014).
[77] These numbers are not adjusted for inflation. Inflation adjusted numbers are $6.3 billion in 2008 and 14.4 billion in 2020. *Total Cost of Election (1998-2020)*, OPEN SECRETS, https://www.opensecrets.org/elections-overview/cost-of-election?cycle=2020&display=T&infl=N (last visited Apr. 18, 2022).
[78] William Horncastle, *The Scale of US Election Spending Explained in Five Graphs*, THE CONVERSATION (Oct. 5, 2020), https://theconversation.com/the-scale-of-us-election-spending-explained-in-five-graphs-130651.

The flipside of the prevention of utility-induced oversight corruption is its deterrence. There are multiple ways a utility *could* be deterred from attempting to corrupt legislators or regulators. However, the deterrents as they currently stand are rather insufficient. First, there could be remedies in civil court which would see the disgorgement of ill-gotten gains back to the ratepayers who were harmed in the corruption, thus removing any benefit the utility realized from the scheme. As discussed below, this option is severely limited by other doctrines, and therefore rarely acts as a meaningful deterrent. Second, there could be criminal charges that make those at the head of the utilities consider the penalties of being found guilty not worth the risk of making more money. As with the civil penalties, the current potential criminal sanctions are also too weak to act as a viable deterrent.

a. Deterrents in Civil Law

On the civil side, even if a clear quid quo pro is established, methods for recourse are almost nonexistent under current law. This issue is best exemplified in *Gress v. Commonwealth Edison Company* in which ratepayers brought suit in an attempt to rectify the wrongs committed in the Illinois ComEd corruption scheme.[79] Prior to the complaint being filed, ComEd had entered into a deferred prosecution agreement with federal prosecutors in which the company's former Senior Vice President for Legislative Affairs admitted to the bribery scheme, the company agreed to pay a fine of $200 million, and all agreed that the fraud and corruption gave the company "reasonably foreseeable anticipated benefits" of at least $150 million.[80] Given this admittance of guilt, plaintiffs – customers of the regulated utility – sued the company under the doctrine of unjust enrichment, stating that ComEd actually benefitted to an amount of more than $5 billion taken from ratepayers due to legislation passed in accordance with the scheme.[81] However, even with

[79] *Gress v. Commonwealth Edison Company*, No. 20 C 4405, 2021 WL 4125085 (N.D. Ill. Sept. 9, 2021).
[80] *Id.* at 4-5.
[81] *Id.* at 5.

the company's admission of guilt, the clear demonstration of how much money they acquired, and who they acquired it from, the case was dismissed for failure to state a claim.[82]

First, while the District Court in *Gress* declined to consider the issue in the motion to dismiss, they stated that the affirmative defense of the filed-rate doctrine would "be a slam dunk" for the defense and would preclude any damages from being paid out to ratepayers for financial harm caused by the corruption scheme.[83] Created by the Supreme Court in the 1922 case *Keogh v. Chicago & N.W. Ry. Co.*,[84] the filed-rate doctrine states that once the new rate is filed with the appropriate regulatory body, no court can award damages for an alleged overcharge.[85] Originally intended to "preserve the regulating agency's authority to determine the reasonableness of the rates" and "insure that regulated entities charge only those rates that the agency has approved or been made aware of,"[86] the filed-rate doctrine has also consistently been used to prevent the collection of damages by customers of the regulated entity.[87] Furthermore, there is no fraud exception to the filed-rate doctrine.[88] This means that even if the rate is any amount higher than it would be in a competitive market and it is proven to only be that high due to the bribery of the regulatory officials who make the rate by the entities meant to be regulated, there is no judicial recourse for ratepayers to reclaim the entities' ill-gotten profit.

The District Court in *Gress* also found that because the rate increases were in the passage of legislation,[89] the Supreme Court case *Fletcher v. Peck*[90] prohibited the contemplation of the

[82] *Id.* at 13.
[83] *Id.* at 6.
[84] *Keogh v. Chicago & N. W. RY. Co.*, 260 U.S. 156 (1922).
[85] *Id.* at 162.
[86] *Sancom, Inc. v. Qwest Communications Corp.*, 643 F.Supp.2d 1117, 1124 (2009)
[87] *See, e.g., Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981), *Central Office Tel., Inc. v. AT&T Corp.*, 524 U.S. 214 (1998).
[88] *See, Coll v. First American Title Ins, Co.*, 642 F.3d 876, 889 n.10 (2011)
[89] *See, Gress*, at 3-4, stating that in exchange for the money obtained from ComEd, Former Speaker Madigan "stewarded" the 2011 Energy Infrastructure and Modernization Act (EIMA), the 2013 Amendments to the EIMA, and the 2016 Future Energy Jobs Act, each of which gave ComEd economic benefits.
[90] *Fletcher v. Peck*, 10 U.S. 87 (1810).

motives legislators had when they voted for the bill, thus preempting any claim brought by the plaintiffs under the Racketeer Influenced and Corrupt Organizations (RICO) Act.[91] In order for a plaintiff to successfully state a RICO claim, they must prove that the defendant's actions were not only the actual, "but-for" cause of the harm felt by the plaintiff, but that it was the proximate cause of the harm as well.[92] While the former was properly alleged in the complaint, the latter would have needed a claim that former Speaker of the House Michael Madigan put "improper pressure on lawmakers" in garnering support for the bills in question, which the plaintiffs did not allege.[93] Normally, the lack of pleading a necessary element of a claim would not be an issue as the plaintiffs could just amend the complaint; however, the Court in *Gress* stated that they were prohibited from interpreting the motives of the individual legislators when they voted to pass the three bills at issue.[94]

Decided by the Supreme Court in 1810, *Fletcher v. Peck* concerned itself with a transfer of land from Peck to Fletcher, which the former had obtained due in part to a bill that had passed largely because of corruption and had since been voided by the state legislature.[95] Fletcher argued that the sale of the land was then invalid, as the original claim to the land was not good law when the contract between Fletcher and Peck was made.[96] The Supreme Court decided that the contract was still good, and that even though the original bill was only passed due to corruption and was since repealed, it had been passed under lawful means and any contract that was lawfully made under the bill was valid.[97] In applying that core concept to the increased payments the ratepayers

[91] *Gress*, at 12.
[92] *See, Gress*, at 7.
[93] *Gress*, at 9-10. It is currently unclear whether or not the facts would have supported a claim of Madigan asserting "undue pressure" on the other lawmakers. *See*, Brenden Moore, *How Mike Madigan Maintained an Iron Grip on Lawmakers for Four Decades*, THE PANTAGRAPH (Mar. 9, 2022), https://pantagraph.com/news/state-and-regional/govt-and-politics/how-mike-madigan-maintained-an-iron-grip-on-lawmakers-for-four-decades/article_a9c558cb-8ccc-5aa9-9802-8c1953892276.html.
[94] *Gress*, at 12.
[95] *Fletcher*, at 128.
[96] *Id*., at 129.
[97] *Id*., at 131.

made, the District Court in *Gress* stated that the rates were essentially the contract in *Fletcher*, even if the law was only in effect due to bribery, it didn't matter as the bill and the rates were put into effect under the legal method that is used for all bills and rates.[98]

Looking at the combined effect of the filed-rate doctrine and *Fletcher*, there are no realistic remedies for those harmed by increased rates due to corruption under civil law. If the rate was decided in a normal ratemaking proceeding overseen by the PUC of the state, then it is precluded from being rectified by the filed-rate doctrine. If the rate was decided in legislation passed due to corruption, then it is precluded from being rectified by the lack of proximate cause, as courts are prohibited from ascertaining the motives of individual legislators under *Fletcher*.

b. Deterrents in Criminal Law

Unlike civil law, criminal law does consistently deal with acts of corruption; the penalties are just woefully inadequate. First, there are almost no crimes guaranteed to always apply to quid pro quo schemes. Honest services wire fraud[99] seems a good fit at first glance, but at the end of the day it is still a wire fraud crime and requires the use of instrumentalities of the mail in order to apply.[100] This is an issue as instances of utility-induced oversight corruption have demonstrated that utilities will avoid the use of the mail in an effort to avoid charges. In Louisiana, when the utility company Entergy paid actors to feign support for a natural gas plant instead of renewables in order to sway a decision, the actors were literally paid in cash under the table.[101] Additionally, the Supreme Court has "substantially limit[ed] the breath of honest-services fraud."[102] Thus, the

[98] *Gress*, at 12.
[99] Honest services wire fraud is "a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. §1346 (2022).
[100] *See*, *Skilling v. U.S.*, 561 U.S. 358, 399 (2010).
[101] Michael Stein, *Actors Were Paid to Support Entergy's Power Plant at New Orleans City Council Meetings*, THE LENS (May 4, 2018), https://thelensnola.org/2018/05/04/actors-were-paid-to-support-entergys-power-plant-at-new-orleans-city-council-meetings/.
[102] *See*, Mark Sweet, *Honest-Services Fraud – The Supreme Court Whittles away Prosecutors' Big Stick*, WILEY (July 2010) (summarizing the history of honest-services fraud and stating that "the statute can no longer be used to

only consistently applicable crime would be bribery. In fact, this was the very idea that the Court in *Citizens United* referred to when they struck down expenditure limits as unconstitutional; stating that "with regard to large direct contributions, *Buckley* reasoned that they could be given 'to secure a political *quid pro quo*'" and these practices if proven "would be covered by bribery laws."[103]

Federal law defines bribery as (in relevant part) when someone:

> "directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent . . . to influence any official act"[104]

This definition would apply to every instance of regulatory or legislative corruption undertaken by a utility. In the instance of corrupting a regulator, the utility is attempting to influence the regulator's official act of determining the correct result of the ratemaking procedure. In the instance of corrupting a legislator, they are attempting to influence their official act of passing legislation. While the charge of bribery would apply to every instance of bribery, the punishment for being found guilty is an insufficient deterrent to stop utilities (and their executives) from attempting it anyway.

Given that information in a vacuum is often useless, the penalties for a similar crime should be used as a comparison. For the purposes of this paper, larceny serves as a comparable crime because when a utility successfully alters the rate at which consumers pay for electricity through bribery (rather than the utility rate being set reasonably based on publicly-available evidence admitted in the ratemaking process) it is essentially theft from those consumers. When comparing the penalties of the two crimes, this paper only looks at the maximum incarceration and fines for

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prosecute executives, fiduciaries and public officials merely for undisclosed self-dealing, or taking official action to further their own interests while purporting to act in the interests of those owed a fiduciary duty").

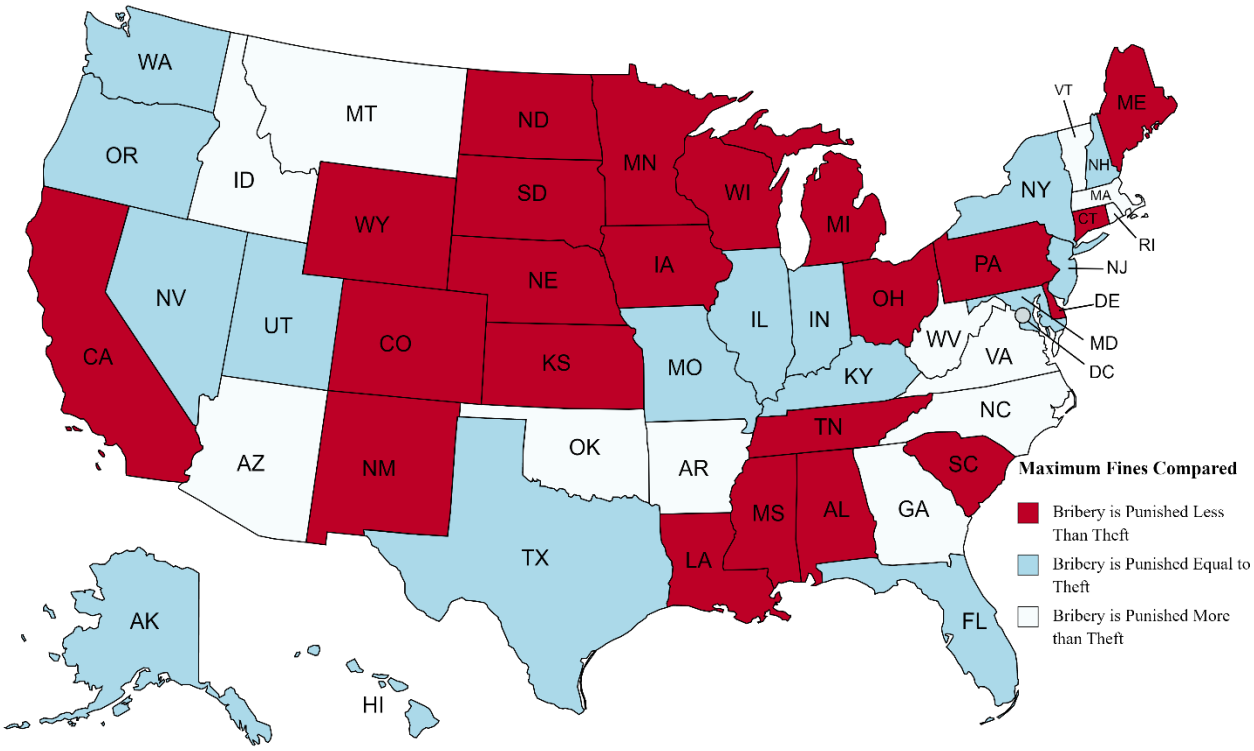
[103] *Citizens United*, 558 U.S. at 357.

[104] 18 U.S. Code § 201(b)(1)(A) (2022).

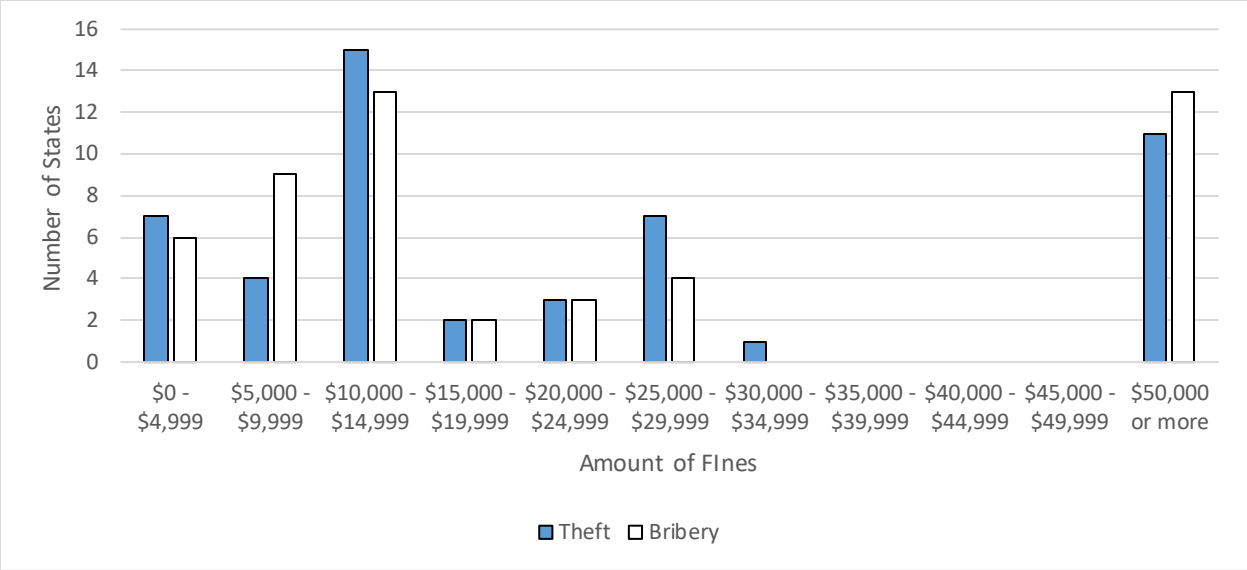
larceny,[105] as the threshold amounts for even those are miniscule in comparison to the amount of money that utilities can make through these corruption schemes.[106] Additionally, there are two punitive aspects of criminal punishments: fines and incarceration. By comparing each of these individually, one can get a clear idea of the differences in the ways states treat the theft from an individual and the way they treat theft from ratepayers via a corruption scheme.

On average, compared to theft, the average maximum fine for bribery is punished 11.68% less, with the national average maximum fine for theft being $52,708.33 and the national average maximum fine for bribery being $46,546.93. A plurality of states - twenty-two - treat theft more harshly than bribery, sixteen treat bribery and theft the same, and only twelve treat bribery more harshly than theft. A visualization of this state by state breakdown is as follows:

[105] This paper does not consider certain aggravating factors that often increase the penalties of theft (such as the theft of livestock valued at more than $100 in Georgia) partly because they just increase the punishment up a degree and partly because basic theft and bribery are the most apt for comparison. *See*, Ga. Code Ann. § 16-8-20 (West 2022).
[106] The highest state larceny threshold is in Ohio, with $1.5 million or more being considered the highest offense. Cite. Keeping in mind that $1.3 billion was given to FirstEnergy in the corruption scandal in the same state (solely through a single bill, it becomes clear that the threshold amounts of the highest degree of theft is easily met. *See*, Ohio Rev. Code Ann. § 2913.02 (West 2022) (detailing Ohio's theft statute); and Jena Brooker, *Ohio's Utility Bribery Scandal Could Cost the Public Billions More Than Previously Thought*, GRIST (Apr. 2, 2021), https://grist.org/energy/ohio-hb6-utility-bribery-scandal-cost-ratepayers/ (for the cost of the Ohio scandal).

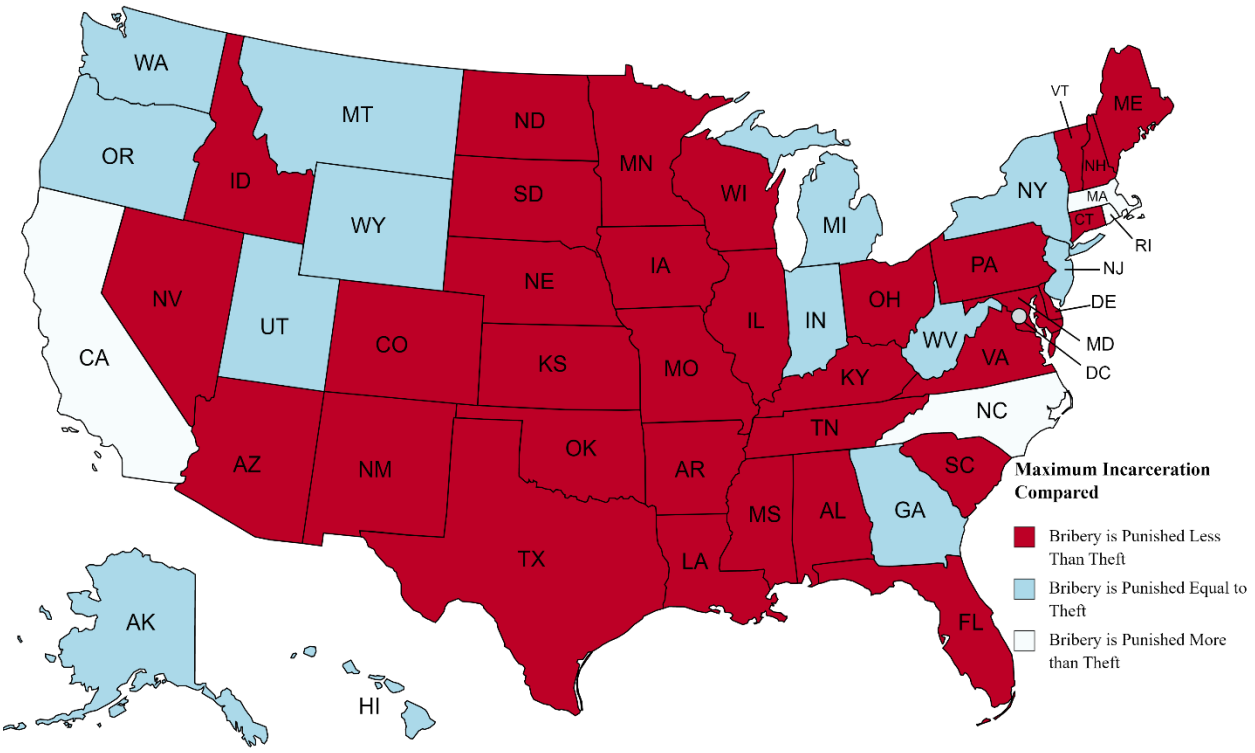


But simply demonstrating that states fine bribery less than theft is not the end of the story. Hypothetically, if a state fined theft an unreasonably large amount and fined bribery slightly less, they would be characterized the same in the map above as if they were to fine bribery an unreasonably low amount. Therefore, a more detailed examination of the penalties is in order. The chart below examines the fines for bribery and theft, where the states are grouped by how much the maximum fine for each crime is and sectioned off into groups in increments of $5,000. The fine penalties for each state's theft and bribery laws are as follows:

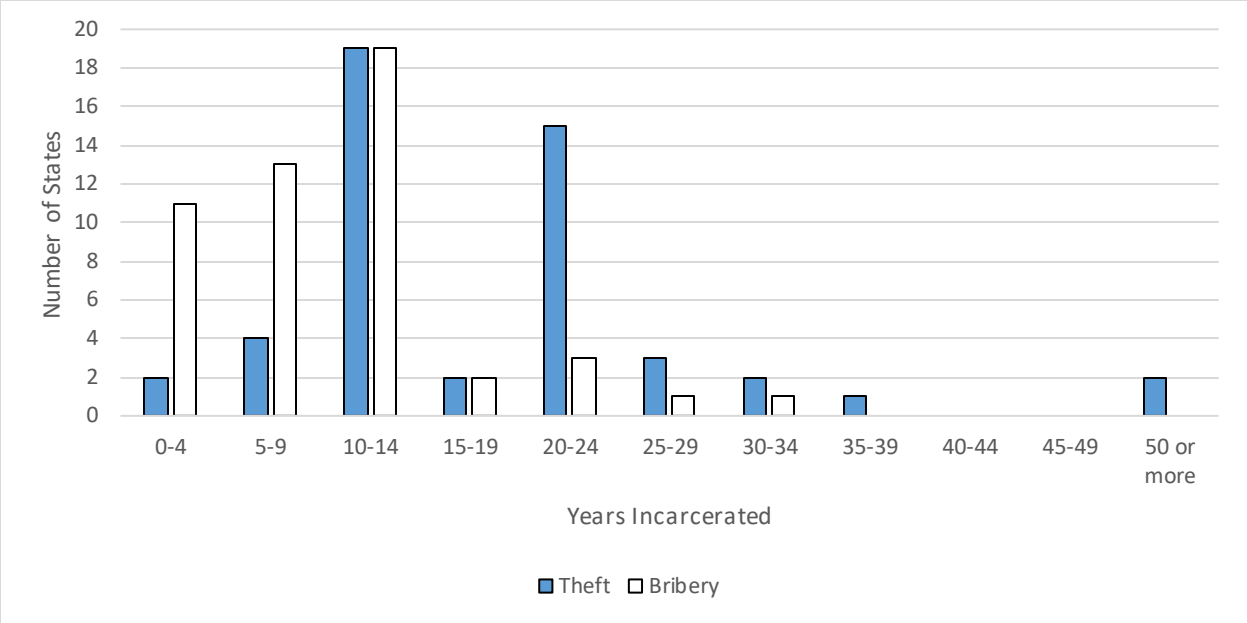


While the chart above does appear to have the bribery and theft on similar footing (in fact there are even more states in the "$50,000 or more" category for bribery rather than theft) there are a few points of note regarding the differences. For instance, while the nationwide average fine for bribery is at $43,985.71, twenty-eight states punish bribery with a maximum fine of less than $15,000 compared to twenty-six states for theft. Additionally, only nine states have maximum fines between $15,000 and $49,999 for bribery, compared to thirteen for theft.

Although the fine penalties for bribery and theft open the door to the idea that bribery is punished less than theft, looking at the maximum periods of incarceration removes all doubt. Taken as a whole, the maximum periods of incarceration for bribery are a whopping 49.4% lower than their theft counterparts, with the average maximum for bribery standing at 8.8 years as opposed to theft's average maximum at 17.8. The graphic below shows just how many states have longer maximum incarceration periods for theft than bribery:



Only four states have longer periods of incarceration for bribery, another thirteen have them equal, while the remainder - thirty-three states - have the maximum incarceration for bribery lower than the maximum incarceration for theft. Again, as with fines, this does not tell the entire story. If the state has an unreasonably long punishment for theft, or if the difference was miniscule, it would be potentially mischaracterized by the graphic. However, when the data is displayed in a different way, such as grouping the states by the years of incarceration in the next graph, the theme of under penalizing bribery holds true.



As demonstrated above, twenty-four states have the maximum period of incarceration at less than ten years, compared to six states for theft. Additionally, while both crimes have the highest concentration of states between ten and fourteen years, there are only seven states that punish bribery with a longer period of incarceration, compared with twenty-five states for theft. Also, the longest period of incarceration for bribery is only thirty years, less than one-third of the ninety-nine-year maximum for theft. Viewed as a whole, states punish theft with far more vigor than they punish bribery.

When examining the state maximums for both fines and incarceration without the filter of a graphic, the discrepancies between the treatments have some rather striking scenarios. For example, the maximum periods of incarceration for theft both South Carolina and Delaware are ten and twenty-five years respectively, and the maximum fine in either state is only limited by judicial discretion. The punishment for bribery, however, is at most a fine of $2,300 in Delaware and merely $500 in South Carolina, with a maximum period of incarceration of one year both states. In Texas, should an individual steal $300,000 or more from one person and be charged with

theft, they could be sentenced to ninety-nine years of incarceration. But should that individual steal $300,000 from ratepayers through a corruption scheme and be charged with bribery, the maximum sentence is twenty years. In Louisiana, theft could be penalized with twenty years' incarceration and a fine of $50,000, whereas bribery can only be penalized with five years' incarceration and a fine of $1,000. Arkansas has the maximum penalty for theft at twenty years' incarceration and a $1,500 fine, but bribery is only at one year incarcerated and a $2,500 fine. Nebraska has the maximum penalties for theft at twenty years' incarceration and a $25,000 fine, but for bribery they drop to two years and $10,000.

All told, there are only three states that have longer incarceration periods and higher fines for bribery than theft, there are only seven states that punish bribery and theft equally, but there are twenty states that have both lower incarceration and lower fines for bribery than theft. Keeping in mind that this is the only charge that will reliably be brought upon utilities (and their executives and employees) when they attempt to corrupt regulators and legislators, that there is no civil law recourse for ratepayers, and that – as a representative example – the utility in the Ohio is on track to net billions of dollars over the next decade from the favorable treatment they received from legislation secured through bribery, the penalties for being found guilty of corruption are irrelevant compared to the possible rewards for successfully capturing legislators and regulators.

IV. How States Can Prevent and Deter Utility-Induced Oversight Corruption

While the current state of utility-induced oversight corruption is grim, it is not without hope. There are two paths that states could take to rectify the situation. Due to both the long history of states being the main regulatory force keeping the utilities in line and the relative speed at which they could enact these proposed changes, this paper's arguments are focused towards the states as they are more prepared to act and those actions are more likely to be found constitutional than the same actions undertaken by the federal government. First, states should enact laws that alter their

campaign finance regulations so that it is harder for the utilities to induce oversight corruption. Second, laws and regulations serving as methods of deterrence should be altered, so that the cost of being found guilty of attempting to corrupt regulatory and legislative officials (or actually corrupting them) will offset the benefits gained from doing so. If states are serious about preventing and deterring utility-induced oversight manipulation they should act on at least one of these proposals, with them ideally enacting both.

A. Campaign Finance Laws Should be Altered.

The first way states could combat the bribing of public officials by public utilities would be to alter their campaign finance laws and hinder the favored method by which the utilities effectuate the bribery. The proposals here are broken into three tiers. At the bare minimum, states should require the disclosure of donations to regulatory campaigns should they have elections for members of their PUC. A step more stringent in hindering bribery, states should set universal base limits for both regulatory and legislative donations while also mandating their disclosure. Ideally, states should altogether prohibit utilities from contributing to political campaigns of legislators or regulators as well as 501(c)(4) organizations.

1. The Minimum: The Disclosure of Campaign Donations

As stated previously when detailing the campaign finance restrictions currently found to be constitutional, mandating the disclosure of campaign contributions is fully supported by the Supreme Court.[107] This would effectively remove the curtain from which utilities hide behind when they give the *quid* for the *quo* in some of their corruption schemes. By putting on display the transfer of money in support of a certain candidates, government officials or the public can then

[107] *Buckley v. Valeo*, 424 U.S. 1, 85 (1976), *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 201 (2003), *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 371 (2010), and *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 224 (2014).

raise the necessary alarms to investigate the transaction, and possibly even gather enough incriminating material to bring a bribery case. This option also gives states flexibility in that they could apply it to regulatory campaigns or legislative campaigns, or both.

That is not to say that this would solve the issue, or even put a sizeable dent in it. First and foremost, this solution is exceptionally limited in scope. As mentioned above, only eleven states elect the members of their PUC[108] so if states only elect to apply this to regulatory campaigns, this leaves the utilities to continue to donate to all legislative and gubernatorial campaigns, which in the remaining thirty-nine states have the power to appoint the members of the PUC. Also, even if legislators choose to disclose their own campaign contributions, just because something is disclosed does not mean that it will effectuate change or even be picked up on by the public. If no one notices that something is wrong, then it is as if nothing has changed. Even if someone does pick up on a pattern that corroborates corruption, it is not absolute that the information will be largely disseminated. More importantly, even if the information is largely disseminated, that does not guarantee that anything will be done. For example, even after APS was caught funding the campaigns of Tom Forese and Doug Little, nothing happened.[109] The only punishments that the utility had (the disclosure of their books in the future and the abandonment of the practice) were self-inflicted.[110]

Mandating the disclosure of contributions to regulatory and legislative campaigns would be a start for states. That is without a doubt better than nothing. But if the only action to dissuade utilities from attempting oversight manipulation was disclosure it would largely be ineffective. If

[108] Sass Byrnett and Daniel Shea, *Engagement between Public Utility Commissions and State Legislatures*, NATIONAL COUNCIL ON ELECTRICITY POLICY, 2 (2019), https://www.ncsl.org/Portals/1/Documents/energy/NCSL_NARUC_Engage_Leg_PUCs_34251.pdf.
[109] Elizabeth Witman, *APS Documents Revealing Millions in Spending Leave Many Questions Unanswered*, PHOENIX NEW TIMES (Apr. 4, 2019), https://www.phoenixnewtimes.com/news/dark-money-disclosures-aps-questions-utility-spending-forese-little-11263984.
[110] *Id*.

states want to be more effective in preventing the transfer of bribe money from utilities to regulators and legislators, they would do one of the next two proposals.

2. The Intermediate: Universal Base Limits for Regulatory and Legislative Donations and Their Mandatory Disclosure

Sitting between the minimum and the ideal proposals is the idea that states should impose universal base limits for regulatory and legislative campaign contributions and mandate their disclosure. This would have not only the effect of putting the support for candidates into the public sphere as in the previous proposal, but would amplify it, and limit the effectiveness of campaign contributions as bribes. The reason that universal base limits are proposed, and not simply a limitation on utility donations, is that discriminating based off who is donating the money would invite a strict scrutiny analysis instead of the otherwise used intermediate scrutiny analysis.[111]

Base limits, as mentioned above, are limits on the amount of money that an individual can donate to a single candidate in an election cycle.[112] They have also been repeatedly found constitutional by the Supreme Court.[113] By limiting the amount of money that a utility can inject into a campaign, the states would be limiting their corrupting power. The Court has held that state limits on political contributions as low as $1,600 are constitutional.[114] This is quite the leap down in buying power from the $63 million in the Ohio scandal and would possibly decrease the temptation that a public official would have to take the bribe. It may also decrease the vigor by which the official would attempt to effectuate the change that the utility is bribing for.

There are issues with this strategy, however. First, as demonstrated with the Louisiana "cash under the table" scheme, utilities are rather resourceful and it is entirely possible that they

[111] *Citizens United v. Federal Election Comm'n,* 558 U.S. 310 (2010).
[112] *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 192 (2014).
[113] *Id.* at 226.
[114] *See, Thompson v. Hebdon*, 140 S.Ct. 348, 351 (2019).

would simply create multiple entities to funnel money through to the campaign of the public official. Utilities could also simply support the campaign in the form of an independent expenditure. Without the proof that a utility has made a deal with an official sufficient to bring a bribery charge, under this proposal there is nothing stopping the utility from saying that they will expend the $63 million in campaign ads in exchange for favorable actions. With those issues in mind, states would ideally act in accordance with the next proposal.

3. The Ideal: Prohibiting Utilities from Making Political Donations

Ideally, states should prohibit utilities from making any political contributions to the campaigns of candidates and 501(c)(4) organizations. While this sounds like an unrealistic idea (especially given the recent trend of campaign finance cases) it is not as far-fetched as it may seem. The main reason for this is public utilities are entirely different entities than the average, modern corporation. With that distinction in mind, it would more than likely pass the Court's strict scrutiny analysis.

When there is governmental activity in the industry a firm engages in, the Court applies a different First Amendment analysis than if there was not governmental activity. In *Red Lion Broadcasting Co. v. F.C.C.*, the Supreme Court upheld a statute that required those who broadcast news to cover both sides of an issue covered on the program.[115] The Court reasoned this was a necessary restriction to ensure fairness given the scarcity of the frequencies available to broadcast, the government's role in handing out those frequencies, and the lack of access for outside parties to the frequencies.[116] This rationale of allowing heightened restrictions when there is an

[115] *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969).
[116] *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 400 (1969).

uncommon level of governmental involvement has also been recognized by the Court in schools,[117] prisons,[118] the military,[119] and the federal government in general.[120]

The type of corporation subjected to the limitations in *Citizens United* are of a different breed altogether than a public utility. While laws passed by state legislatures undoubtably influence the business of normal corporations, the CEO of Apple, Inc. does not need to go before a regulatory board in order to justify why they should make more money in the next year. Amazon does not need to acquire a license from each municipality in order to deliver packages to houses in it. Nor do state governments divide up their municipalities to ensure McDonalds, Burger King, and Wendy's all service distinct areas with no overlap. There are also foundational discrepancies. For example, more than DoorDash can deliver items to your house; UberEATS and the local pizza chain can deliver there just fine without wasting resources. These differences not only show how much interaction occurs between a given utility and its regulatory oversight but demonstrate how critical these regulatory bodies are.

The difference between most modern corporations and the nature of corporations that provide utilities is not unnoticed by the Court. In *Central Hudson Gas v. Public Service Commission*, the Court determined whether a public utility could be restricted in its advertisements due to the then ongoing oil crisis.[121] While the case was decided on commercial speech grounds (the statute in question blocked speech which had nothing to do with the governmental justification), Justice Rehnquist's dissent asserts that the first amendment should be applied differently to public utilities than general corporations.[122]

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[117] *See*, *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
[118] *See*, *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119 (1977).
[119] *See*, *Parker v. Levy*, 417 U.S. 733 (1974).
[120] *See*, *U.S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO*, 413 U.S. 548 (1973).
[121] *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980).
[122] *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 587 (1980) (Rehnquist, J., dissenting).

> Extensive regulations governing decision making by public utilities suggest that for purposes of first amendment analysis, a utility is far closer to a state-controlled enterprise than is an ordinary corporation. Accordingly, I think a state has broad discretion in determining the statements that a utility may make in that such statements emanate from the entity created by the state to provide important and unique services.[123]

This distinction between the utility corporation and the modern corporation has also been applied to the discussion on limitations of political speech. In his concurrence to *Citizens United*, countering the dissenting opinion's argument that the founders would not have thought corporations should not be given the same First Amendment protections that are given to natural citizens,[124] Justice Scalia pointed out that the corporations of old and their modern counterparts are two exceptionally different entities.[125] Harnessing his powers of interpreting original intent, he stated "the Founders' resentment towards corporations was directed at the state-granted monopoly privileges that individually chartered corporations enjoyed."[126] He went on to reason that the lack of those privileges implies that the Founders would in fact not have supported restrictions on the modern day corporations proposed in the law at issue in the case.[127] It is not unreasonable, to extrapolate from his concurrence, that if the statute in *Citizens United* has been restricting the political speech of a substantially regulated corporation such as a utility the outcome would have gone the other way as Justice Scalia would have been the deciding vote on the side to uphold the restriction.[128]

Having established that campaign finance precedent would likely not apply to public utilities, a discussion of how the Court would examine the restriction is necessary. Strict scrutiny would no doubt apply, as the restriction is still on political speech and discriminates based upon

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[123] *Id*.
[124] *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 427-428 (2010) (Stevens, J., dissenting).
[125] *Id.* at 387 (Scalia, J., concurring).
[126] *Id*.
[127] *Id.* at 388 (Scalia, J., concurring).
[128] *Citizens United* was a 5-4 decision. *Id*. at 318.

who is speaking.[129] In order for a restriction to pass strict scrutiny it must: 1) be justified by a compelling governmental interest; and 2) be narrowly tailored to that interest.[130] While this is the highest degree of scrutiny the Court could use to examine a restriction, there is reason to believe that this proposal would be found constitutional.

The Supreme Court stated in *Buckley v. Valeo* that the avoidance of corruption, or the avoidance of the appearance of corruption, is a sufficiently compelling governmental interest for limitations on political speech.[131] Then, in *Citizens United*, they clarified that this only extends to quid pro quo corruption.[132] Quid pro quo corruption is defined as "a direct exchange of an official act for money"[133] or, more succinctly put, "dollars for political favors."[134] In all the instances of utility corruption discussed in this paper there is *at least* the appearance of and potentially actual quid pro quo corruption.

In the Ohio scandal, FirstEnergy gave money to then-Speaker Householder in exchange for his support in passing favorable legislation.[135] Money was also given to *other* members of the legislative body in exchange for the further benefit of FirstEnergy.[136] In Arizona, Arizona Public Service (APS) donated to the campaigns of two PUC members who ended up winning and subsequently voted in favor of hearing the argument that the fee APS was paid by individuals who

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[129] *Id.* at 340.
[130] *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 451 (2007).
[131] *Buckley v. Valeo*, 424 U.S. 1 (1976).
[132] *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 359 (2010).
[133] *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 192 (2014) citing *McCormick v. United States*, 500 U.S. 257, 266 (1991).
[134] *Federal Election Comm'n v. National Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).
[135] This is probably the most definitive example, as FirstEnergy admitted to that being the purpose. *See*, Jessie Balmert and Jackie Borchardt, *Ohio Bribery Probe: FirstEnergy Corp. Says Subsidiary Gave $56.6 Million to Nonprofit that Pleaded Guilty*, CINCINNATI ENQUIRER (Mar. 13, 2021), https://www.cincinnati.com/story/news/politics/2021/03/12/ohio-bribery-probe-firstenergy-admits-gave-millions-generation-now-pleaded-guilty/4673740001/.
[136] USA Today Network Ohio Bureau, *Selling Out in the Statehouse*, CINCINNATI.COM (June 3, 2021), https://www.cincinnati.com/in-depth/news/politics/2021/06/03/ohio-corruption-house-bill-6-bribery-timeline-larry-householder/5248218001/.

installed rooftop solar by 400% outside of a ratemaking proceeding.[137] In both of these cases, there is at least the appearance of quid pro quo corruption.

A law is narrowly tailored when it is the least restrictive means to serve the compelling governmental interest, while still preventing the harm that it was designed to do.[138] In *McCutcheon v. Federal Election Commission*, the Court examined if aggregate limits to campaign donations were violations of the First Amendment. While the stated governmental interest of avoiding corruption or its appearance was recognized, the rule on aggregate limits was not sufficiently tailored to serve that interest in that the restriction affected donations that were not corrupting and were therefore overbroad in scope.[139]

By wording the statute so that only utilities are affected, the restriction would not be overbroad in scope in that it would only affect the donations to campaigns that would have the appearance of corrupting the regulation of the donor. Additionally, no other entities would be restricted in their political speech, only those who stand to gain from the corruption of the current regulatory regime.

In further support of the validity of this proposal, one could also look at the Public Utilities Holding Company Act of 1935 (PUHCA). Passed after the disclosure of reports from the Federal Trade Commission and the House of Representatives' Committee on Interstate and Foreign Commerce, the foundational theory of the act was that, when left unregulated, public utilities and their holding companies were a detriment to U.S. society.[140] Specifically concerning campaign finance, Section 12(h) states (in relevant part):

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[137] Rachel Leingang, *APS Expected to Seek 400% Solar Fee Increase*, ARIZONA CAPITOL TIMES (Mar. 13, 2015), https://azcapitoltimes.com/news/2015/03/13/arizona-public-service-expected-to-seek-400-solar-fee-increase/.
[138] *Buckley v. Valeo*, 424 U.S. 1, 44 (1976).
[139] *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 227 (2014).
[140] Public Utility Holding Company Act of 1935, ch. 687, Title 1, 49 Stat. 803, § 1(b), (c), *repealed by* Energy Policy Act of 2005, 42 U.S.C. § 13201 et seq.

> It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly . . . to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one of more of the foregoing; or . . . to make any contribution to or in support of any political party or any committee or agency thereof.[141]

It cannot be overstated how sweeping this legislation was. Not only did it affect utility companies, but Section 2(7) defined a holding company as any company that controls 10% or more of a utility company, as well as any *person* that the Commission deemed to exercise a "controlling influence over the management or policies of any public-utility."[142] Furthermore, PUHCA was in effect until 2005, when the Energy Policy Act of 2005 repealed and replaced it.[143] The longstanding status of PUHCA is a testament to its constitutionality.[144] Should states enact similar legislation prohibiting the ability of utilities to contribute to political campaigns and 501(c)(4)s, they would severely inhibit the ways in which they corrupt legislators and regulators.

B. Laws and Regulations that Deter Corruption Should be Altered.

The second way states could combat the bribing of public officials by utilities would be to increase the ramifications of a utility being caught to deter the action in the first place. Unlike the proposals for campaign finance reform, these proposals could both be implemented at the same time. On one hand, states should raise the maximum penalties for bribery so that they match the maximum penalties for theft. On the other, states should rectify the fact that there is no fraud exception to the filed-rate doctrine.

1. The Minimum: Raising the Penalties to Bribery So They Match the Highest Level of Theft

[141] *Id*.
[142] *Id*., at §2(7)(A)-(B).
[143] Energy Policy Act of 2005, P.L. 109-58, at §§ 1261-1277.
[144] While there were multiple challenges to the act, none concerned themselves with this section of the act.

At the minimum, states should alter their statutes so that bribery has matching maximum penalties to theft. This is simply a rectification of the current system. By having the state maximums for bribery so much lower than the maximums for theft, states are essentially saying that the more people you steal from, the more ambitious your scheme, the less you will be punished. By raising the maximums, states would instead be recognizing the reality on the ground: that the theft of money through a successful bribery scheme potentially effecting millions of people is the same as the theft of money from a single individual, if not worse since corruption also erodes public confidence in the democratic system.

By having a state raise the maximum punishments of bribery to match that of the maximum state punishment for theft, the real change is in the maximum period of incarceration. As previously discussed, there is only a drop of 11.68% from the average maximum fine for theft to the average maximum fine for bribery ($52,708.33 for theft and $46,546.93 for bribery).[145] The discrepancy for the average maximum period of incarceration, however, drops 49.4% from theft to bribery (17.8 years for theft to 8.8 for bribery). The focus of this change to current law then, is not on deterring corruption due to any harm the corporation itself might feel, but is directed towards the individuals within those corporations and the individuals serving in public office who would be involved in the corruption personally. By risking nearly an additional decade of imprisonment, individuals who would otherwise be tempted to commit bribery may second guess that decision more than if the average maximum sentence were to remain as is.

While this would be a step in the right direction, however, it does not in and of itself fix the lack of deterrents preventing utilities from attempting the corruption of regulatory or legislative officials. The plausible deniability that those in charge of the utilities have could potentially shield

[145] *See* discussion *supra* Section III.B.2.b.

them from any bribery charge. For example, in the Ohio scandal, it was not until March 23, 2022 (nearly two years after the scandal initially broke) that the CEO of FirstEnergy was implicated to have played a criminal role in the scheme.[146] Just because the maximum penalty is raised and the scandal is in the open does not necessitate that there will be enough evidence to convict. Additionally, even if there was to be a guilty verdict in a bribery case, the utility itself would not be harmed in that they continue to keep the profits of the scheme.[147] That issue is where the following proposal comes into play.

2. Fixing the Filed-Rate Doctrine

Perhaps the most effective method to deter a utility from attempting to corrupt public officials and alter the ratebase in the hopes of a significant increase in profits would be to have each state pass a law that creates a fraud exception for the filed-rate doctrine. As it currently stands, there is no such exception and once the rate is filed with the relevant agency, no lawsuit brought by a ratepayer harmed by the bribery can disgorge those profits.[148] This stands in stark contrast to if a utility disagrees on the decided rate, in which case it can simply appeal the decision.[149] Given that the doctrine is court made, there is no reason as to why the states would be precluded from modifying it to have this outcome.[150] By adopting a fraud exception, states would remove the vast majority of the incentive utilities have to attempt to corrupt public officials as they would be aware

[146] John Seewer, *Attorneys: FirstEnergy ex-CEO Planned Payments in Bribery Scandal*, WKYC STUDIOS (Mar. 23, 2022), https://www.wkyc.com/article/news/local/ohio/firstenergy-ex-ceo-planned-payments-in-ohio-scandal/95-2b4b0399-63e0-4fd6-9b03-35fa43b4053a#:~:text=Attorneys%3A%20FirstEnergy%20ex%2DCEO%20planned%20payments%20in%20Ohio%20scandal,role%20in%20the%20bribery%20scheme.

[147] *Id*.

[148] *See*, *Coll v. First American Title Ins, Co.*, 642 F.3d 876, 889 n.10 (2011) (detailing that there is no fraud exception to the filed rate doctrine).

[149] *See*, *e.g.*, *Jersey Central Power & Light Co. v. FERC*, 589 F.2d 142 (3d Cir. 1978); *Duquesne Light Company v. Barasch*, 488 U.S. 299 (1989).

[150] *See generally*, U.S. CONST. art. VI, cl. 2; *see*, *also*, Rachel Cohen and Marcia Brown, *Court Order: Congress Has the Power to Override Supreme Court Rulings. Here's How.*, THE INTERCEPT (Nov. 24, 2020), https://theintercept.com/2020/11/24/congress-override-supreme-court/.

of the fact that if they are caught, they could lose all that they have gained. This would be contrary to the current status quo, which amounts to a slap on the wrist and the ability to keep basically all the ill-gotten gains.

V. CONCLUSION

When utility companies successfully corrupt the public servants who regulate them, the democratic system is threatened. By paying for favorable legislation or PUC decisions, the utility is not only upending the regulatory compact that exists in exchange for its government sanctioned monopoly power, in many cases it is stealing from those they are supposed to serve. Under the modern system, there is more reason than ever for utilities to attempt utility-induced oversight manipulation, a curtain in front of how they can corrupt legislative and regulatory bodies, and there are laughably inadequate penalties for utilities should they be caught.

However, states are not powerless to fester in the dimly lit status quo. States could alter their campaign finance laws so that there are mandatory disclosure requirements, base limits, or prohibit utilities from contributing to political campaigns; all of which would have the effect of lessening their ability to corrupt public officials. States could also increase the punishment for bribery to the maximum amount recognized by that state's theft statute, require independent monitors or require the publication of statements of guilt after a guilty bribery verdict, or create a fraud exception to the filed-rate doctrine to attempt to deter utilities from attempting corrupt acts. Should states take these actions, there may yet be hope for a brighter future without the worry of utilities corrupting the political system.

Appendix 1:

Theft

	Maximum Incarceration (Years)	Maximum Fine	Citation
Alabama	20	$ 30,000.00	ALA. CODE § 13A-8-3 (2022).
Alaska	10	$ 100,000.00	ALASKA STAT. ANN. § 11.45.120 (West 2022).
Arizona	35	$ 2,500.00	ARIZ. REV. STAT. ANN. § 13-1802 (2022).
Arkansas	20	$ 1,500.00	ARK. CODE ANN. § 5-36-103 (West 2022).
California	1.33	$ 10,000.00	CAL. PENAL CODE § 487 (West 2022).
Colorado	24	$ 1,000,000.00	COLO. REV. STAT. ANN. § 18-1.3-401 (West 2022).
Connecticut	20	$ 15,000.00	CONN. GEN. STAT. ANN. § 53a-122 (West 2022).
Delaware	25	Judicial Discretion	DEL. CODE ANN. tit. 11, § 841 (West 2022).
Florida	30	$ 10,000.00	FLA. STAT. ANN. § 812.014 (West 2022).
Georgia	20	$ 1,000.00	GA. CODE ANN. § 16-8-12 (West 2022).
Hawaii	10	$ 25,000.00	HAW. REV. STAT. ANN. § 708-830.5 (West 2020).
Idaho	14	$ 5,000.00	IDAHO CODE ANN. § 18-2403 (West 2020).
Illinois	30	$ 25,000.00	720 ILL. COMP. STAT. ANN. 5/16-1 (West 2022).
Indiana	6	$ 10,000.00	IND. CODE ANN. § 35-43-4-2 (West 2022).
Iowa	10	$ 10,000.00	IOWA CODE ANN. § 714.2 (West 2022).
Kansas	11	$ 300,000.00	KAN. STAT. ANN. § 21-5801 (West 2022).
Kentucky	20	$ 10,000.00	KY. REV. STAT. ANN. § 514.030 (West 2022).
Louisiana	20	$ 50,000.00	LA. STAT. ANN. § 14:67 (West 2022).
Maine	10	$ 10,000.00	ME. REV. STAT. ANN. tit. 17-A, § 353 (West 2022).
Maryland	20	$ 25,000.00	MD. CODE ANN. CRIM. LAW § 7-104 (West 2022).

Massachusetts	5	$	25,000.00	MASS. GEN. LAWS ANN. ch. 266, § 30 (West 2022).
Michigan	10	$	15,000.00	MICH. COMP. LAWS ANN. § 750.356 (West 2022).
Minnesota	20	$	100,000.00	MINN. STAT. ANN. § 609.52 (West 2022).
Mississippi	20	$	10,000.00	MISS. CODE ANN. § 97-17-41 (West 2022).
Missouri	10	$	10,000.00	MO. ANN. STAT. § 570.030 (West 2022).
Montana	10	$	10,000.00	MONT. CODE ANN. § 45-6-301 (West 2022).
Nebraska	20	$	25,000.00	NEB. REV. STAT. ANN. § 28-518 (West 2022).
Nevada	20	$	10,000.00	NEV. REV. STAT. ANN. § 205.0835 (West 2022).
New Hampshire	15	$	4,000.00	N.H. REV. STAT. ANN. § 637:11 (2022).
New Jersey	10	$	150,000.00	N.J. STAT. ANN. § 2C:20-2 (West 2022).
New Mexico	9	$	10,000.00	N.M. STAT. ANN. § 30-16-1 (West 2022).
New York	25	$	5,000.00	N.Y. PENAL LAW § 155.42 (McKinney 2022).
North Carolina	0.66	$	10,000.00	N.C. GEN. STAT. ANN. § 14-70 (West 2022).
North Dakota	20	$	20,000.00	N.D. CENT. CODE ANN. § 12.1-23-05 (West 2022).
Ohio	11	$	20,000.00	OHIO REV. CODE ANN. § 2913.02 (West 2022).
Oklahoma	8	$	1,000.00	OKLA. STAT. ANN. tit. 21, § 1705 (West 2022).
Oregon	10	$	250,000.00	OR. REV. STAT. ANN. § 164.055 (West 2022).
Pennsylvania	20	$	25,000.00	18 PA. STAT. AND CONS. STAT. ANN. § 3903 (West 2022).
Rhode Island	10	$	5,000.00	11 R.I. Gen Laws Ann. § 11-41-5 (West 2022).
South Carolina	10	Judicial Discretion		S.C. CODE ANN. § 16-13-30 (2020).
South Dakota	25	$	50,000.00	S.D. CODIFIED LAWS § 22-30A-17.1 (2022).
Tennessee	60	$	50,000.00	TENN. CODE ANN. § 39-14-105 (West 2022).
Texas	99	$	10,000.00	TEX. PENAL CODE ANN. § 31.03 (West 2022).

Utah	15	$	10,000.00	UTAH CODE ANN. § 76-6-412 (West 2022).
Vermont	10	$	5,000.00	VT. STAT. ANN. tit. 13, § 2501 (West 2022).
Virginia	20	$	2,500.00	VA. CODE ANN. § 18.2-95 (West 2022).
Washington	10	$	20,000.00	WASH. REV. CODE ANN. § 9A.56.030 (West 2022).
West Virginia	10	$	2,500.00	W.VA. CODE ANN. § 61-3-13 (West 2022).
Wisconsin	12.5	$	25,000.00	WIS. STAT. ANN. § 943.20 (West 2022).
Wyoming	10	$	10,000.00	WYO. STAT. ANN. § 6-3-411 (West 2022).

Appendix 2:

	Bribery		
	Maximum Incarceration (Years)	Maximum Fine	Citation
Alabama	10	$ 15,000.00	ALA. CODE § 13A-10-61 (2022).
Alaska	10	$ 100,000.00	ALASKA STAT. ANN. § 11.56.100 (West 2022).
Arizona	3.75	$ 150,000.00	ARIZ. REV. STAT. ANN. § 13-2602 (2022).
Arkansas	1	$ 2,500.00	ARK. CODE ANN. § 5-52-105 (West 2022).
California	4	$ 5,000.00	CAL. PENAL CODE § 67.5 (West 2022).
Colorado	12	$ 750,000.00	COLO. REV. STAT. ANN. §18-8-302 (West 2022).
Connecticut	10	$ 10,000.00	CONN. GEN. STAT. ANN. § 53a-147 (West 2022).
Delaware	1	$ 2,300.00	DEL. CODE ANN. tit. 11, § 1102 (West 2022).
Florida	15	$ 10,000.00	FLA. STAT. ANN. § 838.015 (West 2022).
Georgia	20	$ 5,000.00	GA. CODE ANN. § 16-10-2 (West 2022).
Hawaii	10	$ 25,000.00	HAW. REV. STAT. ANN. § 710-1040 (West 2022).
Idaho	5	$ 50,000.00	IDAHO CODE ANN. § 18-1352 (West 2022).
Illinois	7	$ 25,000.00	720 ILL. COMP. STAT. ANN. 5/33-1 (West 2022).
Indiana	6	$ 10,000.00	IND. CODE ANN. § 35-44.1-1-2 (West 2022).
Iowa	5	$ 7,500.00	IOWA CODE ANN. § 722.2 (West 2022).
Kansas	2.83	$ 100,000.00	KAN. STAT. ANN. § 21-6001 (West 2022).
Kentucky	10	$ 10,000.00	KY. REV. STAT. ANN. § 521.020 (West 2022).
Louisiana	5	$ 1,000.00	LA. STAT. ANN. § 14:118 (West 2022).
Maine	5	$ 5,000.00	ME. REV. STAT. ANN. tit. 17 § 602 (West 2022).
Maryland	12	$ 25,000.00	MD. CODE ANN. CRIM. LAW § 9-201 (West 2022).

Massachusetts	10	$	100,000.00	MASS. GEN. LAWS ANN. ch. 268A, § 2 (West 2022).
Michigan	10	$	5,000.00	MICH. COMP. LAWS ANN. § 750.117 (West 2022).
Minnesota	10	$	20,000.00	MINN. STAT. ANN. § 609.42 (West 2022).
Mississippi	10	$	5,000.00	MISS. CODE ANN. § 97-11-11 (West 2022).
Missouri	4	$	10,000.00	MO. ANN. STAT. § 576.010 (West 2022).
Montana	10	$	50,000.00	MONT. CODE ANN. § 45-7-101 (West 2022).
Nebraska	2	$	10,000.00	NEB. REV. STAT. ANN. § 28-918 (West 2022).
Nevada	5	$	10,000.00	NEV. REV. STAT. ANN. § 197.010 (West 2022).
New Hampshire	7	$	4,000.00	N.H. REV. STAT. ANN. § 640:2 (2022).
New Jersey	10	$	150,000.00	N.J. STAT. ANN. § 2C:27-2 (West 2022).
New Mexico	3	$	5,000.00	N.M. Stat. Ann. § 30-24-3 (West 2022).
New York	25	$	5,000.00	N.Y. PENAL LAW § 200.04 (McKinney 2022).
North Carolina	3.416	Judicial Discretion		N.C. GEN. STAT. ANN. § 14-217 (West 2022).
North Dakota	5	$	10,000.00	N.D. CENT. CODE ANN. § 12.1-12-01 (West 2022).
Ohio	3	$	10,000.00	OHIO REV. CODE ANN. § 2921.02 (West 2022).
Oklahoma	5	$	3,000.00	OKLA. STAT. ANN. tit. 21 § 381 (West 2022).
Oregon	10	$	250,000.00	OR. REV. STAT. ANN. § 162.015 (West 2022).
Pennsylvania	7	$	15,000.00	18 PA. STAT. AND CONS. STAT. ANN. §4701 (West 2022).
Rhode Island	20	$	50,000.00	11 R.H. GEN. LAWS. ANN. § 11-7-5 (West 2022).
South Carolina	1	$	500.00	S.C. CODE ANN. § 16-17-540 (2022).
South Dakota	10	$	20,000.00	S.D. CODIFIED LAWS § 22-12A-6 (2022).
Tennessee	30	$	25,000.00	TENN. CODE ANN. § 39-16-102 (West 2022).
Texas	20	$	10,000.00	TEX. PENAL CODE ANN. § 36.02 (West 2022).

Utah	15	$	10,000.00	UTAH CODE ANN. § 76-8-103 (West 2022).
Vermont	5	$	10,000.00	VT. STAT. ANN. tit. 13, § 1101 (West 2022).
Virginia	10	$	100,000.00	VA. CODE ANN. § 18.2-449 (West 2022).
Washington	10	$	20,000.00	WASH. REV. CODE ANN. § 9A.68.010 (West 2022).
West Virginia	10	$	50,000.00	W. VA. CODE ANN. § 61-5-4 (West 2022).
Wisconsin	6	$	10,000.00	WIS. STAT. ANN. § 946.10 (West 2022).
Wyoming	10	$	5,000.00	WYO. STAT. ANN. § 6-5-102 (West 2022).