

States With Anti-Corruption Measures for Public Officials [S.W.A.M.P.] Index Report 2020

Coalition for Integrity





About Us

The Coalition for Integrity is a non-profit, non-partisan 501(c)(3) organization. We work in coalition with a wide range of individuals and organizations to combat corruption and promote integrity in the public and private sectors.

www.coalitionforintegrity.org

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**States With Anti-
Corruption Measures
For Public Officials
[S.W.A.M.P.]
Index Report 2020**

Researched and Produced By
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I. Introduction

The Index of States With Anti-corruption Measures for Public officials [S.W.A.M.P.] analyzes the laws of the 50 States and District of Columbia relating to the scope, independence and powers of ethics agencies, whether ethics agencies accept and act on anonymous complaints, acceptance and disclosure of gifts by public officials, transparency of funding of independent expenditures, transparency of political advertisements and client disclosure by legislators. It is an objective analysis, based on current state laws and regulations governing ethics and transparency in both the executive and legislative branches.

It goes without saying that 2020 has been an unprecedented year in more ways than one. In the midst of a contentious and divisive presidential election, we are dealing with the fight against the worst global pandemic in years and the dire health and economic consequences that flow from it. This fight has been accompanied by a truly exorbitant amount of spending by the federal government, even by recent standards.¹

However, it is not only Congress appropriating vast amounts of money. State governments are having to reach deep into their pockets to respond to the crisis, including with purchases of additional ventilators and Personal Protective Equipment. Many states have had to restructure funding to ensure health departments have the necessary resources. This has been accompanied, in many cases, by transfers from rainy day and reserve funds to offset large losses in tax revenue. For example, New York State has had to transfer up to \$3 billion to local governments to combat the virus.²

Large sums of government spending can increase the possibility of corruption and self-dealing. It is more important than ever that each state has strong ethics laws to ensure this money reaches those who truly need it. Weak ethics laws can allow unscrupulous actors to profit off of a catastrophe and that will only compound the medical and economic misery currently being experienced by millions across the country.

¹ The \$2 trillion CARES Act, a response to COVID-19, is equivalent to 45% of all 2019 federal spending, USA FACTS (April 5, 2020), <https://usafacts.org/articles/what-will-cares-act-and-other-congressional-coronavirus-bills-do-how-big-are-they/>

² Tom Brune, *NYS has spent \$1.9B to directly combat coronavirus pandemic*, NEWSDAY (June 7, 2020), <https://www.newsday.com/news/health/coronavirus/congress-stimulus-new-york-spending-1.45363429>

A discussion of ethics laws is particularly important in an election year. While elections for the presidency, House and Senate are governed by federal ethics laws and receive most media coverage, 86 of the country's 99 state legislative chambers also held elections this year, along with 11 gubernatorial elections.³ Legislative sessions will start in these states early next year. It is important that state elected officials understand how the ethics framework in their state compares with that of other states and what a strong legal framework consists of. This report can act as a guide to identify current holes in their states' ethics laws and examples of how to fill those holes. Additionally, voters and constituents will be able to access our information and demand reforms from their legislature.

We began our work on the [S.W.A.M.P. Index](#) in 2018.⁴ We said then, and still believe now, that state ethics laws are the first line of defense against corruption in the United States. After a tremendous response from state ethics agencies and the general public, we released a companion report in 2019 entitled [Enforcement of Ethics Rules by State Ethics Agencies: Unpacking the S.W.A.M.P. Index](#).⁵ Rather than grading states on their ethics laws themselves, the enforcement report examined how robustly ethics agencies enforced their mandates and how transparent they were with the public regarding that enforcement. We concluded broadly that state ethics agencies must improve both enforcement of ethics rules and transparency of ethics enforcement.

We have continued our work in 2020 for two reasons. First, we have seen improvement in the ethical framework in many states, as a result of our advocacy and that of state-based organizations. In spite of these improvements, there are still gaps in ethics laws that need to be addressed. It is important to recognize that some states have improved their ethics regime and to update our report to give the most accurate picture of ethics laws across the country. This will give policymakers and constituents the best information available to bring their state ethics regimes to the ideal level.

Additionally, this year we have had greater engagement from ethics agencies, showing greater interest in our report and findings. As part of our methodology, we sent the 51 reports to the

³ *State Elections 2020*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/ncsl-state-elections-2020.aspx>.

⁴ *The S.W.A.M.P. Index 2018*, COALITION FOR INTEGRITY (2018), <https://swamp.coalitionforintegrity.org/>.

⁵ *Enforcement of Ethics Rules by State Ethics Agencies: Unpacking the S.W.A.M.P. Index*, COALITION FOR INTEGRITY (2019), <http://unpacktheswamp.coalitionforintegrity.org/>.

relevant agencies in each jurisdiction.⁶ Each agency was given the opportunity to comment on the report to provide clarifications. This year we received comments back from 34 states as compared to 24 in 2018.

The 2020 report addresses two additional areas that are essential to promoting ethical and transparent government. The past two years demonstrated the importance that anonymous tips can play in fostering a culture of ethical compliance. This year's report adds a question on how states address this issue. We have also added an additional question on campaign finance transparency to reflect the billions spent in the recent election, much of which was spent on advertising on social media.⁷

A strong legal framework will not prevent all ethical lapses. Our index's scores do not necessarily mean that one state is more or less corrupt than another. Enforcement is a key element in curbing unethical practices. Another very important element, which we have not addressed, is the source and adequacy of funding of the ethics agency. Strong ethics laws are a critical part of preventing corruption, and our report demonstrates that there is still a long way to go to bring state ethics regimes in line with best practices.

Additionally, it is impossible to legislate morality. There will always be a temptation to provide favors to "friends," such as was the case with Virginia Gov. Bob McDonnell, who was accused of providing favors to a businessman in exchange for expensive gifts, or to abuse power to punish political opponents, as was seen with the Fort Lee traffic lane closure scandal, better known as Bridgegate.⁸ Both of these cases were prosecuted by federal prosecutors and ended up with convictions being overturned by the U.S. Supreme Court.⁹ However, a strong ethics regime can do two things. First, it can swiftly identify and punish ethical violations. State ethics statutes and rules can be more expansive than current federal law which is

⁶ This procedure was followed in 2018 as well.

⁷ 2020 election to cost \$14 billion, blowing away spending records, OPEN SECRETS, <https://www.opensecrets.org/news/2020/10/cost-of-2020-election-14billion-update/>.

⁸ Jim Nolan, Olympia Meola, and Michael Martz, *McDonnell, wife indicted in corruption probe*, RICHMOND TIMES-DISPATCH (Jan 22, 2014), https://richmond.com/news/virginia/mcdonnell-wife-indicted-in-corruption-probe/article_100796e8-82d4-11e3-8369-001a4bcf6878.html; Ted Sherman and Matt Arco, *Bridgegate Verdict: Bill Baroni and Bridget Kelly guilty on all counts*, NJ.COM (Nov 4, 2016), <https://www.nj.com/news/2016/11/bridgegate-verdict-bill-baroni-and-bridget-kelly-g.html>.

⁹ Robert Barnes, *Supreme Court overturns corruption conviction of former Va. governor McDonnell*, WASHINGTON POST (June 27, 2016), https://www.washingtonpost.com/politics/supreme-court-rules-unanimously-in-favor-of-former-va-robert-f-mcdonnell-in-corruption-case/2016/06/27/38526a94-3c75-11e6-a66f-aa6c1883b6b1_story.html; Nina Totenberg, *Supreme Court Overturns Convictions in 'Bridgegate' Scandal*, NPR (May 7, 2020), <https://www.npr.org/2020/05/07/851858598/supreme-court-overturns-convictions-in-bridgegate-scandal>.

limited by the Supreme Court's interpretation.¹⁰ Second, and more broadly, it can create a culture of ethical compliance, sending the message that the highest ethical standards are expected, and bad actors will be punished.

Our report found some improvement from 2018. Most notably, two states which had lacked ethics agencies have since established operational agencies – as discussed below. There are still significant gaps across the country in ethics laws. No state receives a perfect score. Four states cannot sanction ethics violations, and two cannot even investigate wrongdoing. A majority do not accept anonymous complaints, or protect the identity of the complainant. These are just a few examples of shortcomings that must continue to be addressed.

WHAT HAS CHANGED FROM 2018 AND C4I ADVOCACY

As part of our commitment to improving state ethics regimes, the Coalition for Integrity engaged in advocacy work along with several state-based non-profits in several states between these two reports. This advocacy bore fruit in two states. In New Mexico, a constitutional amendment in 2018 created the New Mexico State Ethics Commission.¹¹ Enabling legislation, setting out the commission's jurisdiction and powers, was later passed by the state legislature.¹² We provided comments on best practices for the new ethics commission. In particular, we argued that it was imperative for the commission to have subpoena power, and to have the ability to sanction wrongdoers.¹³ Some of our recommendations were followed, as the commission has the power to issue fines.

In North Dakota, voters passed a constitutional amendment in 2018 as well, followed by enabling legislation in 2019.¹⁴ We provided comments to the North Dakota legislature as

¹⁰ Jason Kohn, *The Case for State-Level Anticorruption Prosecutions in the U.S.*, THE GLOBAL ANTICORRUPTION BLOG (Jan 14, 2019), <https://globalanticorruptionblog.com/2019/01/14/the-case-for-state-level-anticorruption-prosecutions-in-the-u-s/>.

¹¹ *New Mexico voters approve constitutional amendment to form state ethics commission*, ASSOCIATED PRESS (Nov 6, 2018), <https://www.lcsun-news.com/story/news/politics/elections/2018/11/06/new-mexico-voters-approve-constitutional-amendment-ethics-commission/1914218002/>.

¹² Andrew Oxford, *Governor signs bill for ethics commission*, SANTA FE NEW MEXICAN (Mar 28, 2019), https://www.santafenewmexican.com/news/local_news/governor-signs-bill-for-ethics-commission/article_e2d1d1cd-dedd-5b79-8e52-8aef37d4e87c.html.

¹³ *Comments on Proposed Ethics Legislation*, COALITION FOR INTEGRITY, <https://www.coalitionforintegrity.org/wp-content/uploads/2019/03/C4I-Comments-on-Proposed-Ethics-Legislation-Senate.pdf>.

¹⁴ North Dakota Legislative Branch, HB 1521, <https://www.legis.nd.gov/assembly/66-2019/bill-actions/ba1521.html>.

they considered this legislation.¹⁵ Specifically, we urged them to follow the best practices we identified – an independent ethics agency, with full powers including subpoena and sanctioning, and a requirement to hold public hearings.¹⁶ Unfortunately, as of the drafting of this report, very few of these recommendations have been adopted.

Our advocacy continues in states which still have major shortcomings in ethics laws. In Virginia, one of a handful of states whose agencies cannot sanction any misconduct, we conducted the Virginia Integrity Challenge in the 2019 General Assembly elections.¹⁷ This challenge urged candidates for the General Assembly to post their campaign finance reports, financial disclosure reports and gift disclosures on their campaign websites and to support legislation giving enforcement authority to state ethics agencies. Twenty-five candidates, of all political stripes, accepted the challenge. Our advocacy in Virginia continues as we provide advice and suggestions to legislators for ethics enforcement in the upcoming General Assembly session.

Vermont is another state with an ethics agency that cannot enforce its ethics laws. In 2020, the state legislature considered a statutory proposal that would codify a Code of Ethics on issues such as conflicts of interest, gift acceptance and whistleblower protections – as the current code drafted by the state ethics agency is not legally enforceable.¹⁸ The Coalition provided comments on best practices to consider, citing our 2018 S.W.A.M.P. Index. In particular, we argued to the legislature that while a code of conduct for state officials was helpful, the most effective way to improve the state ethics regime would be to address the lack of enforcement authority and give the ethics agency full power to sanction violations.¹⁹

Pennsylvania's legislature considered a bipartisan bill in 2019 that would amend the state gift laws by prohibiting acceptance from certain sources and lowering the disclosure requirements for gifts.²⁰ We provided comments to the state legislature arguing to expand

¹⁵ *House and Senate Letter Comments*, COALITION FOR INTEGRITY, <https://www.coalitionforintegrity.org/wp-content/uploads/2019/02/Senate-Letter-C4I-Comments.pdf>, <https://www.coalitionforintegrity.org/wp-content/uploads/2019/02/House-Letter-C4I-Comments.pdf>.

¹⁶ *Id.*

¹⁷ *Candidates who have accepted the 2019 Virginia Integrity Challenge*, COALITION FOR INTEGRITY, <https://www.coalitionforintegrity.org/candidates-who-have-accepted-the-2019-virginia-integrity-challenge/>.

¹⁸ Vermont Ethics Commission, *State Ethics Commission Works Toward a Statutory Code of Ethics: Draft to be Submitted to Legislature in November*, <https://ethicscommission.vermont.gov/new-ethics-code-enacted-law>.

¹⁹ *Comments of Coalition for Integrity on Vermont State Ethics Commission 2020 Statutory Proposal: Draft Code of Ethics*, COALITION FOR INTEGRITY, <https://www.coalitionforintegrity.org/wp-content/uploads/2020/11/Comments-of-Coalition-for-Integrity-on-VT-State-Ethics-Commission.pdf>.

²⁰ Pennsylvania General Assembly, House Bill 1291, <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&kind=0&body=H&type=B&bn=1291>.

the bill to cover all sources, not merely high-risk sources – that is, lobbyists, lobbyists’ principals and government contractors.²¹ Additionally, we recommended that the bill cover immediate family of state officials and to add new prohibited sources. As of the writing of this report, the bill has not been passed.

NEW QUESTIONS IN 2020

This is the second installment of our S.W.A.M.P. Index. We regraded states on the eight questions from the 2018 report.²² They are numbered as they appear in this year’s report:

- ▶ **Question 1:** Is there an ethics agency, with the authority to conduct its own investigations, including public hearings and subpoena power?
- ▶ **Question 3:** Does the ethics agency have the ability to sanction, including personnel actions, injunctions and fines?
- ▶ **Question 4:** Are the members of the ethics agency protected from removal without cause?
- ▶ **Question 5:** Are elected and appointed executive branch officials and legislators prohibited from accepting gifts from high-risk sources (lobbyists, lobbyists’ principals, government contractors) in an aggregate of \$250 or more?
- ▶ **Question 6:** Are elected and appointed executive branch officials and legislators prohibited from accepting gifts from persons other than high-risk sources in an aggregate of \$250 or more?
- ▶ **Question 7:** Are elected and appointed executive branch officials and legislators required to publicly disclose gifts that they receive?
- ▶ **Question 8:** Does the state require reporting of contributors to independent spenders?
- ▶ **Question 10:** Do legislators have to disclose client names as part of their financial disclosure reports?

²¹ *Comments on proposed gift legislation*, COALITION FOR INTEGRITY (June 19, 2019), <https://www.coalitionforintegrity.org/wp-content/uploads/2019/06/Coalition-comments-on-proposed-gift-legislation-PA.pdf>.

²² In a number of cases, scores changed based on additional information from the state or analysis of the underlying statute. In a few cases, we found that we had not scored the state accurately and have corrected that. These changes are noted in the report.

In addition, we added two new questions to better address issues that we believe are important to promote ethical and transparent government:

- ▶ **Question 2:** Will the ethics agency accept anonymous complaints and is the ethics agency required to reveal the name of the complainant to the respondent?

Encouraging anonymous reporting is important, as employees and others who fear retaliation will have more confidence in coming forward with evidence of wrongdoing. If there is a risk of their identity being exposed, many people will rightly fear losing their jobs or being placed in a hostile work environment. One of the simplest ways to encourage people to come forward with information about ethical violations is to allow for anonymous complaints, or at the very least keep the identity of the complainant confidential. If people are aware of wrongdoing but fear retaliation as a result of their identity becoming known, that creates a chilling effect that discourages coming forward with information.

- ▶ **Question 9:** Does the state require disclosure of the payors of political advertisements or other electioneering communications to appear directly on the communication made through print media, broadcast media (TV, radio, etc.) and Internet-based media (Facebook, Twitter, Google, other online platforms)?

This question is important for several reasons. First, federal law on the subject of advertisement transparency is outdated, governed by the Federal Election Campaign Act, which has not been meaningfully updated since the 1970s. That law only covers advertisements in traditional print and broadcast media – not those on the Internet. This is a glaring blind spot in transparency laws. Some large tech companies have attempted to address this issue with self-policing measures. Facebook requires funders of ads to supply their identity (though not that of their donors);²³ Google bans political advertisers from microtargeting; and Twitter has announced a wholesale ban on political advertising.²⁴ However, the lack of a standard, coherent approach, combined with the tenuous nature of corporate policies, as opposed to statutory requirements, necessitate state action on political

²³ Tony Romm, *Facebook to require buyers of political ads to provide more information about who paid for them*, WASHINGTON POST (August 28, 2019), <https://www.washingtonpost.com/technology/2019/08/28/facebook-require-political-campaigns-say-who-paid-their-ads-new-transparency-push/>.

²⁴ Julia Carrie Wong, *Google latest tech giant to crack down on political ads as pressure on Facebook grows*, THE GUARDIAN (November 20, 2019), <https://www.theguardian.com/technology/2019/nov/20/google-political-ad-policy-facebook-twitter>; Emily Stewart, *Twitter is walking into a minefield with its political ads ban*, VOX (November 15, 2019), <https://www.vox.com/recode/2019/11/15/20966908/twitter-political-ad-ban-policies-issue-ads-jack-dorsey>.

advertisement transparency. Additionally, this is an issue of election integrity. Without disclosure requirements, foreign adversaries can easily purchase advertisements with those seeing them being none the wiser. Some of this was seen with the Russian government in the 2016 presidential election.²⁵

A federal law, the Honest Ads Act, has been introduced in Congress to address many of these issues.²⁶ However, this bill would amend the Federal Election Campaign Act, which only regulates candidates for federal office.²⁷ It would not affect state or local races, which are governed by state law only. There are thousands of state and local elected positions, from governors to judges to mayors and town council members. These races involve millions of dollars and social media is a key advertising medium for them. This past election, nearly \$3 billion was raised for state elections.²⁸ While federal law should be changed, changing state law is equally imperative – and why we have provided a comprehensive list of state laws on political advertisement disclosure.

Our research and analysis provide a blueprint for an effective legal framework to promote ethics and transparency at the state level. The laws we suggest will not prevent all wrongdoing. There will always be politicians and government officials who do favors for friends or acquaintances and relatives of these politicians and officials who trade on their connections. In addition, the existence of the laws per se is not sufficient. As we demonstrated in our 2019 Enforcement Report, enforcement is a key part of the ethical framework and it is important that the ethics agencies actively and robustly enforce ethics laws. However, the framework we present will advance ethical and transparent government.

²⁵Nicholas Thompson and Izzie Lapowsky, *How Russian Trolls Used Meme Warfare to Divide America*, WIRED MAGAZINE (December 17, 2018), <https://www.wired.com/story/russia-ira-propaganda-senate-report/>.

²⁶ Honest Ads Act, S. 1356, 116th Congress (2019-2020) <https://www.congress.gov/bill/116th-congress/senate-bill/1356>.

²⁷ *Id.*

²⁸ FollowTheMoney.org, NATIONAL INSTITUTE ON MONEY IN POLITICS, <https://www.followthemoney.org/>.

II. Our Findings

The Index of States With Anti-Corruption Measures for Public officials (S.W.A.M.P.) scores the 50 states and the District of Columbia based on answers to the categories described above:

▶ **Ethics Agencies**

- ▶ Scope and independence of ethics agencies
- ▶ Powers of ethics agencies
- ▶ Acceptance of anonymous complaints by ethics agencies and whether the name of the complainant is revealed to the respondent

▶ **Gifts**

- ▶ Gift acceptance rules for public officials
- ▶ Gift disclosure rules for public officials

▶ **Campaign Finance**

- ▶ Transparency of funding independent expenditures
- ▶ Transparency of funders of political advertisements

▶ **Client Disclosure**

- ▶ Disclosure of client names by legislators

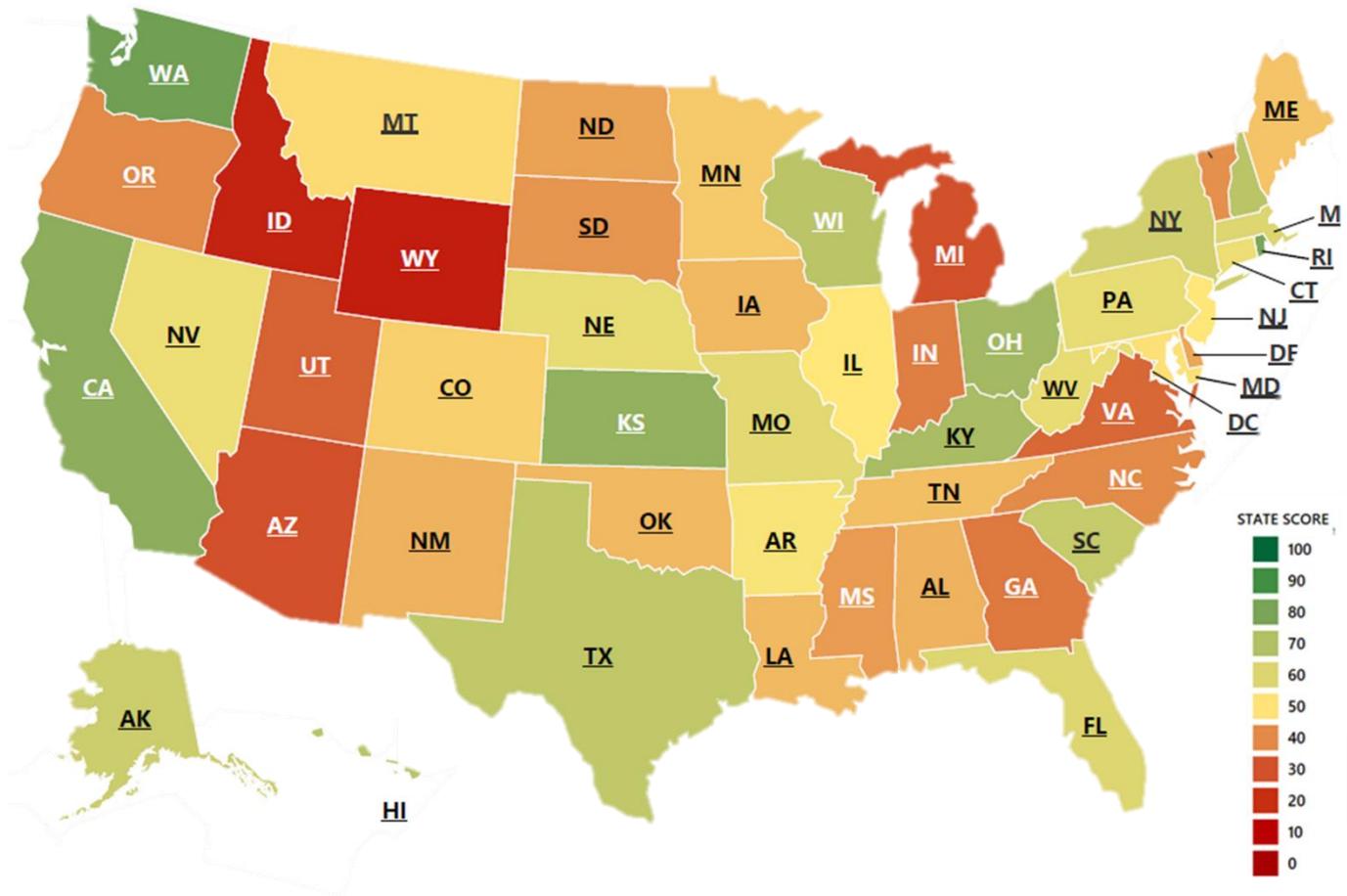
The answers to each question are graded on a scale from 0 to 10. The overall index uses a scale of 0 to 100, where 100 is a perfect score.²⁹ There is wide variation in state laws and regulations governing ethics and transparency in the executive and legislative branches and the questions are answered and scored separately with respect to each branch. The chart on the next page illustrates the number of states in the five scoring ranges: 0-20, 21-40, 41-60, 61-80 and 81-100.

²⁹ S.W.A.M.P. Index 2020 Scoring Rubric, COALITION FOR INTEGRITY
http://coalitionforintegrity.org/swamp2020/docs/2020_scoring_rubric.pdf.



2020 S.W.A.M.P. Index Scoring Map

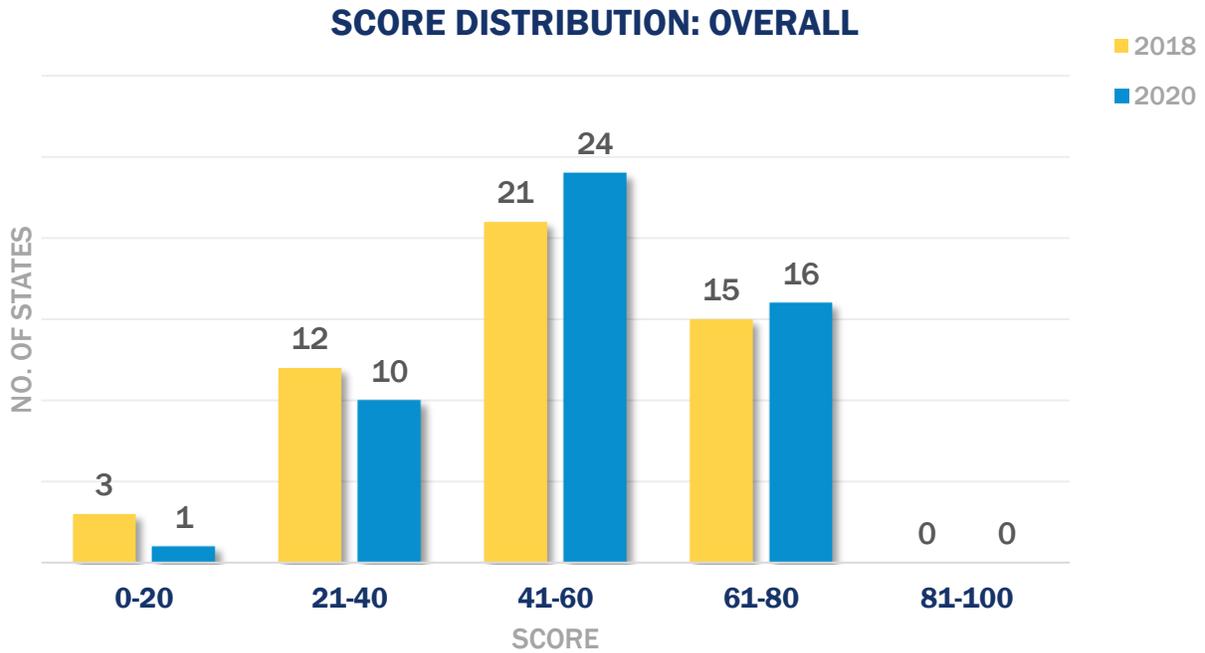
The States With Anti-Corruption Measures for Public Officials (S.W.A.M.P.) Index is a comparative scorecard which rates 50 states and the District of Columbia based on the laws and regulations governing ethics and transparency in the executive and legislative branches.



2020 State Scores

Rank	State	Score
1	Washington	80
2	Rhode Island	78
3	District of Columbia	76
4	California	75
5	Kansas	74
6	Ohio	71
7	Kentucky	70
8	New Hampshire	67
9	Hawaii	67
10	Wisconsin	67
11	Texas	66
12	South Carolina	65
13	Alaska	64
14	New York	63
15	Massachusetts	61
16	Florida	61
17	Missouri	60
18	Nebraska	59
19	Pennsylvania	59
20	West Virginia	59
21	Nevada	58
22	Connecticut	58
23	Arkansas	56
24	Illinois	55
25	New Jersey	55
26	Maryland	54
27	Montana	53
28	Colorado	51
29	Minnesota	50
30	Maine	49
31	Tennessee	48
32	Oklahoma	47
33	Iowa	47
33	Louisiana	47
35	Alabama	46
36	New Mexico	46
37	Delaware	44
38	North Dakota	43
39	Mississippi	42
40	South Dakota	41
41	Vermont	40
42	Oregon	39
43	North Carolina	39
44	Indiana	37
45	Georgia	36
46	Virginia	33
47	Utah	32
48	Michigan	29
49	Arizona	29
50	Idaho	21
51	Wyoming	20

OVERALL SCORE DISTRIBUTION



- ▶ No state achieved a perfect score and in fact, no state scored above 80. This is the same result as 2018.
- ▶ 35 states scored below 60; in 2018, the number was the same.
- ▶ 10 states scored below 40; in 2018, the number was 12 states.
- ▶ Three states, Washington (80), Rhode Island (78) and the District of Columbia (76) land at the top of the score chart. While Washington (78 in 2018) and Rhode Island (75 in 2018) were in the top three in 2018, the District of Columbia replaced California as a result of the addition of the new questions. DC’s protection of anonymous complainants was stronger than California’s, so it scored higher.
- ▶ Washington remains the top scorer. It has an Executive Ethics Board and a Legislative Ethics Board, both of which have the authority to independently investigate, hold public hearings, issue reprimands and impose fines. The state also has strong gift rules which prohibit elected and appointed executive branch officials and legislators from accepting more than \$50 worth of gifts, in aggregate, in a calendar year or in a single

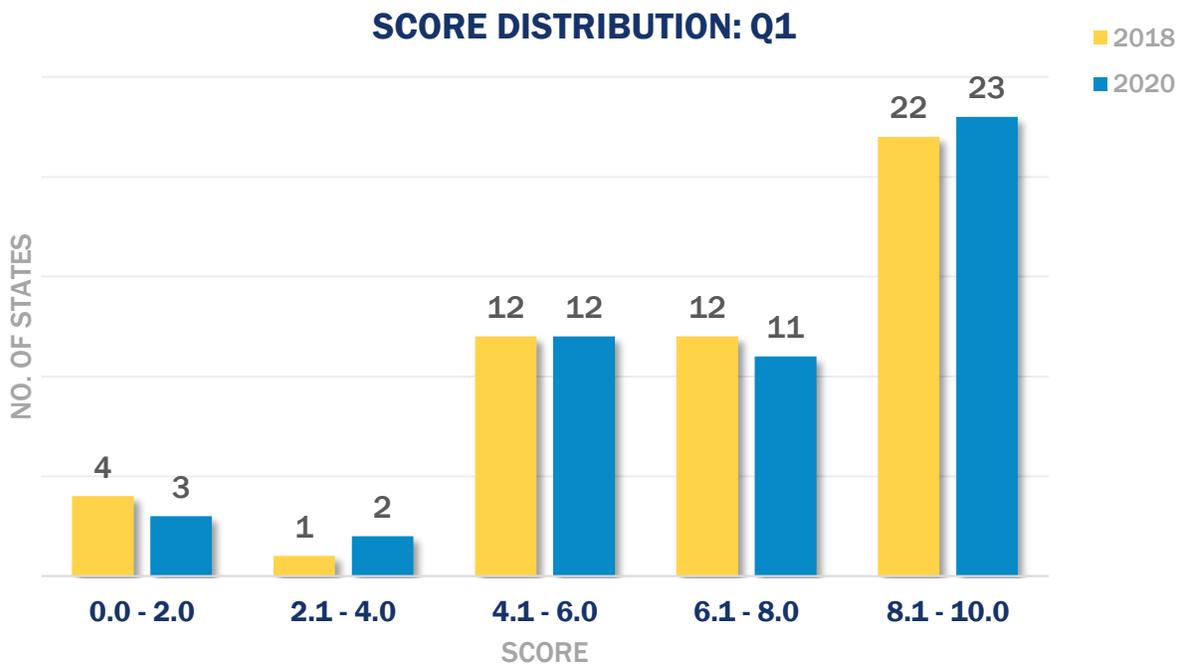
gift from multiple sources. State law also provides an avenue to protect the anonymity of an ethics complainant. Finally, disclosure of payors of political advertisements is required across all media.

- ▶ We have seen improvement in the ethical framework in many states since 2018, as a result of our advocacy and that of other state-based organizations. The most significant change from 2018 is that two states (North Dakota and New Mexico) which did not have an independent ethics agency now have one. Despite these improvements, there are still gaps in ethics laws that need to be addressed.

The following pages break down the scoring distribution and summarizes our findings for each question.³⁰

ETHICS AGENCIES

Question 1: Is there an ethics agency with the authority to conduct its own investigations, including public hearings and subpoena power?



³⁰ Note: The 2020 and 2018 SWAMP Index have eight questions in common. Accordingly, scores of those common eight questions are comparable. Please refer to the section of this report entitled “What has Changed from 2018 – New Questions in 2020” for details.

15 states received full credit on Question 1 in 2020. They have one or more ethics agency with jurisdiction over the executive branch (appointed and elected officials and employees) and legislators. In addition, these agencies have the powers necessary to conduct independent investigations and compel testimony and documents through subpoenas.

- ▶ While 15 states also received full credit in 2018, the composition of the states has changed.
 - ▶ Two of those states (Florida and Texas) did not receive full credit in 2020 – Texas due to additional correspondence and clarification from state officials, Florida due to a more accurate interpretation of the state statute.
- ▶ Additionally, two states (Connecticut and the District of Columbia) did not receive full credit in 2018 but did in 2020.
 - ▶ Other sources of Connecticut law were reviewed in 2020, which led to full credit being awarded.
 - ▶ The statutes in the District of Columbia changed, giving their ethics agency authority to initiate investigations, which they did not have in 2018, giving them full credit in 2020.³¹

Scope of Coverage of Independent Ethics Agencies

- Three states (Arizona, Idaho and Wyoming) have no independent ethics agencies, so they received no credit for Question 1. In 2018, five states fit this category, but in the interim, New Mexico and North Dakota established operational ethics agencies.
- ▶ The scope of jurisdiction varies from state to state, though in a narrow majority of states (26), all executive branch officials, employees and legislators are covered by an independent ethics agency. While 29 states received full credit for this question in 2018, additional details that were added to the 2020 state reports have led to three of those states not receiving full credit in 2020.

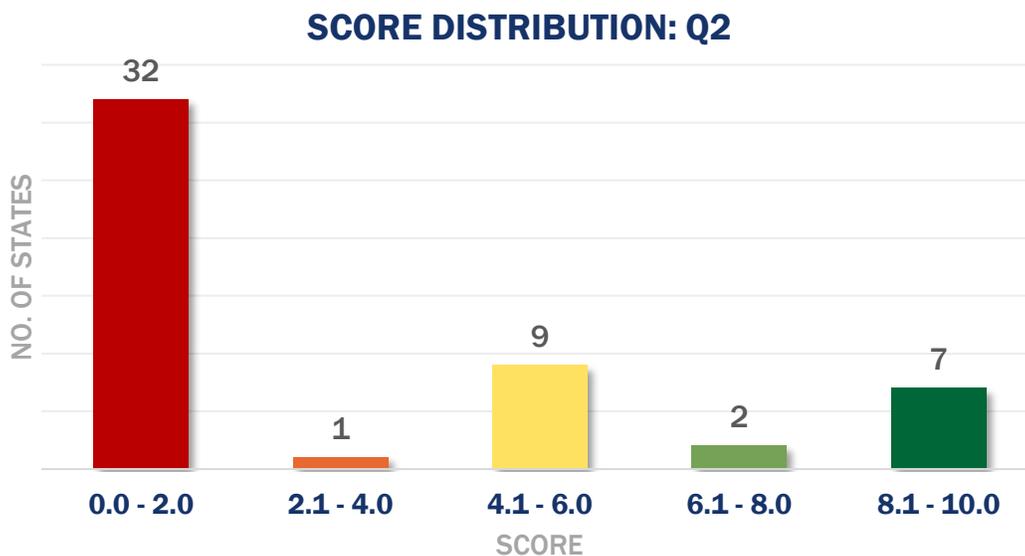
³¹ D.C. Code § 1-1162.01a, <https://code.dccouncil.us/dc/council/code/sections/1-1162.02.html>.

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- ▶ Four states (Delaware, Maryland, Montana and Nevada) have full jurisdiction over the executive branch, but limited jurisdiction over legislators. For example, Delaware and Maryland have jurisdiction over the members of the General Assembly solely regarding financial disclosure, while in Montana the ethics agency cannot investigate if a complaint involves a “legislative act.” Only three states fell into this category in 2018, but the Nevada Commission on Ethics clarified that it had full jurisdiction over the executive branch, but limited jurisdiction over legislators.
 - ▶ Six states (Illinois, Indiana, Iowa, Michigan, Ohio and South Dakota) have full jurisdiction over the executive branch, but no jurisdiction over legislators. Only four of these states fell into this category in 2018, but after closer review of the statute and composition of the agencies, the ethics agencies in Illinois and Ohio were found to have full jurisdiction over the executive branch, but no jurisdiction over legislators. The legislative ethics agency in both states is not independent and therefore got no credit.
 - ▶ The remaining 12 states have independent ethics agencies with mixed jurisdictions. For example, Utah’s ethics agency has authority over elected officials and members of the legislature, but not over appointed executive branch officials or executive branch employees.

Authority to Conduct Investigations, Hold Public Hearings and Issue Subpoena

- ▶ Of the 48 states with independent ethics agencies with jurisdiction over all or most executive branch officials and employees:
 - ▶ 39 can initiate and conduct their own investigations
 - ▶ 29 are required to hold public hearings
 - ▶ 42 have subpoena power
- ▶ Of the 42 states with independent ethics agencies with jurisdiction over legislators for at least some rules:
 - ▶ 34 states have the full authority to conduct investigations
 - ▶ 26 are required to hold public hearings
 - ▶ 36 states have the authority to issue subpoenas

Question 2: Will the ethics agency accept anonymous complaints and is the ethics agency required to reveal the name of the complainant to the respondent? (New to 2020)



- ▶ Five states (Illinois, Indiana, Massachusetts, New York and Ohio) got full credit for Question 2. These states accept anonymous complaints for both the executive and legislative branch and also keep the name of the complainant confidential from the respondent.
- ▶ Three states (Alabama, Arkansas and Pennsylvania) keep the complainant's name confidential from the respondent, but do not accept anonymous complaints.
- ▶ 17 states received partial credit for one of the following reasons: the agency accepts anonymous information as a tip but will not launch a formal investigation without a sworn complaint, anonymous complaints are accepted for one branch but not the other, the complainant's name is kept confidential in certain circumstances, or the complainant's name is only kept confidential from the respondent for one branch but not the other.
- ▶ Of the 29 states which received no credit, 26 do not accept anonymous complaints and do not keep the complainant's name confidential from the respondent, while the remaining three are those without an independent ethics agency.

Question 3: Does the ethics agency have the ability to sanction, including personnel actions, injunctions and fines?

Having an independent ethics agency is crucial but an ethics agency without the ability to act on its findings and sanction offenders is meaningless. States that received full credit for this question have one or more ethics agencies with jurisdiction over the executive and legislative branch and the power to take personnel actions (including termination of an official not subject to impeachment), enjoin an official and impose fines.

- ▶ Only two states (Louisiana and Rhode Island) received full credit on question three because their sanctioning power extends to legislators and that power includes all forms of sanction (other than termination for elected officials). In 2018, three states received full credit, but New Jersey received partial credit in 2020 due to a more accurate interpretation of the state statute.
- ▶ Another three states (Illinois, Indiana and Iowa) have robust powers, but only with respect to the executive branch.
- ▶ Of the seven states which received no credit, four state agencies have no ability to sanction or impose fines (Michigan, Utah, Vermont and Virginia), while the other three have no independent ethics agency. The number of states with ethics agencies that have no ability to sanction is unchanged from 2018.

Question 4: Are members of the ethics agency protected from removal from cause?

To receive full credit for this question the members of the independent ethics agency must be protected from removal without cause through statutory language.

- ▶ 30 states statutorily protect the members of their ethics agencies which have jurisdiction over both the executive and legislative branch from removal without cause and received full credit. 28 states were given credit in 2018 for statutorily protecting members of their ethics agencies from removal without cause. With the creation of ethics agencies in New Mexico and North Dakota, this total is now 30.

- ▶ 10 states (Alaska, Delaware, Illinois, Iowa, Louisiana, Maryland, Michigan, New Jersey, New York and North Carolina) only protect ethics agency members of a particular branch and received partial credit. For example, there is statutory language relating to the removal of members of two of the three ethics agencies in Alaska and none protecting the members of the third agency.
- ▶ Eight states with independent ethics agencies did not have statutory protections from removal without cause for their members (Alabama, Colorado, Connecticut, Georgia, Indiana, Nevada, Oregon and Virginia).

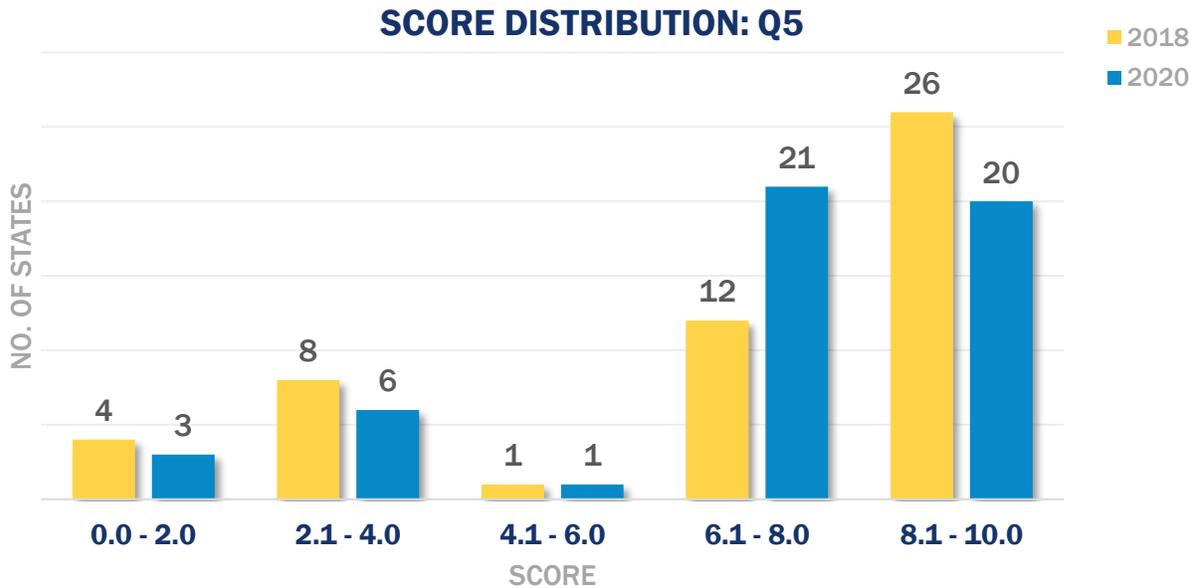
GIFTS

Our questions ask about two classes of rules – rules pertaining to gifts from high-risk sources (lobbyists, lobbyists’ principals and government contractors) and rules pertaining to gifts from all others.

In order to receive full points for Questions 5 and 6, states need to have a prohibition on all gifts regardless of the source or a cap on aggregate receipts of \$250 or more. In addition, there should be no loopholes in the gift definition beyond fairly standard exceptions. (Standard exceptions include gifts from family members, tea or coffee at meetings, or travel expenses for speeches).

- ▶ 2 states (New Hampshire and Washington) got full credit for both Questions 5 and 6. New Mexico received full credit in 2018, but the 2020 report was amended after a closer review of the statute, as the state does not any meaningful gift restrictions on gifts received from non-high-risk sources.
- ▶ Overall, with a few exceptions, the laws prohibiting or limiting gifts to executive branch officials are stronger than those applied to legislators.
- ▶ Gift rules for those received from high-risk sources are much stronger.

Question 5: Are elected and appointed executive branch officials and legislators prohibited from accepting gifts from high-risk sources (lobbyists, lobbyist’s principals, government contractors) in an aggregate of \$250 or more?

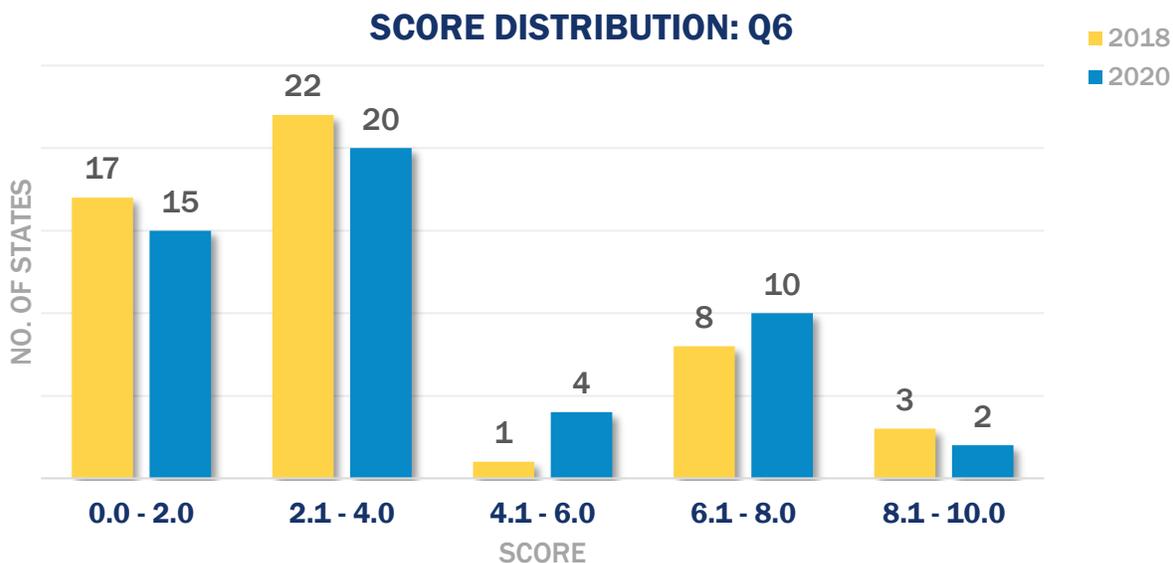


- ▶ 15 states received full credit because they prohibit or cap aggregate receipts for gifts at \$250 for legislators and executive branch officials and the laws have only standard exceptions. 16 states received a perfect score in 2018. However, the scores of a few states changed after reviewing additional sources of law and reviewing additional information received from state ethics agencies, which resulted in a reduction in the number of states receiving full credit in 2020.
- ▶ Five states (Georgia, Kentucky, Minnesota, North Carolina and Virginia) got full credit for their laws pertaining to executive branch officials, but only received a Moderate score for their treatment of legislators. This means that either the acceptance of gifts for legislators is conditioned on an objective test – a reasonable person’s perception of the tendency to influence – or that gifts are permitted from some high-risk sources, but not others. Six states received full credit in 2018, but New Jersey no longer falls into this category. New Jersey does not impose a complete prohibition on gifts but rather an accurate interpretation of their statute shows that no elected or appointed

executive branch official or legislator may accept anything of value if they know, or have reason to believe, it is being offered “with intent to influence him in the performance of his public duties and responsibilities.” This gives them a Moderate score.

- ▶ Two states (Oklahoma and Pennsylvania) received full credit for their laws pertaining to executive branch officials, but received a Minimal score for gift rules for legislators. For Oklahoma legislators, there are significant exceptions to a prohibition on gifts from high-risk sources and the annual limit for those exceptions is above \$500. For Pennsylvania, there is a similar array of exceptions and no monetary limit. Rather, legislators may not accept a gift with the understanding that it is to influence their vote.
- ▶ Two states (Ohio and Texas) got full credit for prohibition of gifts from high-risk sources for legislators, but received a Minimal score for the executive branch. In Texas, the annual monetary limit for gifts from high-risk sources is above \$250. In Ohio, there is no monetary limit, but executive branch officials are prohibited from accepting gifts if they would improperly influence them in their duties.
- ▶ One state (Mississippi) received no credit because they have no explicit prohibition on gifts. In 2018, North Dakota also fell into this category, but the state legislature enacted a statute prohibiting public officials from accepting gifts from some high-risk sources.
- ▶ 17 states scored Moderate for both executive officials and legislators.
- ▶ Six states scored Minimal for both executive officials and legislators. This is a decrease from seven states in 2018, due to a score change for Texas after closer review of the state’s gift statute.

Question 6: Are elected and appointed executive branch officials and legislators prohibited from accepting gifts from persons other than high-risk sources in an aggregate of \$250 or more?



There is a large amount of variation among state gift restrictions and often the state has different requirements for the executive and legislative branches. In order to receive full credit for this question, states must have a complete prohibition on gifts from persons other than high-risk sources, or there is a cap on gifts of \$250 in the aggregate. In addition, there cannot be any loopholes in the gift definition beyond standard exceptions.

- ▶ Two states (New Hampshire and Washington) got full credit for both the legislative and executive branches.
- ▶ 20 states either base elected officials' gift prohibition on the gift-giver's "intent to influence," or have an annual limit above \$250, or exclude gifts of \$250 or less, or do not apply the gift prohibition to all covered officials. They received a score of Minimal for both legislative and executive branches.
- ▶ Seven states either base elected officials' gift prohibition on an objective test – a reasonable person's understanding of a tendency to influence – or have a broad category of exceptions. They received a score of Moderate for both legislative and executive branches.

Question 7: Are elected and appointed executive branch officials and legislators required to publicly disclose gifts that they receive?

There is a large amount of variation among state gift disclosure requirements. In order to receive full credit for this question, states must require full public disclosure of every gift below \$250 in aggregate value.

- ▶ 15 states received full credit.³²
- ▶ 17 states received no credit. This means that these states do not require public disclosure of any gift received by a member of the executive or legislative branch.³³
- ▶ Some states had high reporting thresholds, such as Arizona (\$500), Illinois (\$500), Kansas (\$500), New York (\$1,000), or Pennsylvania (\$650 for entertainment and meals accepted by legislators).
- ▶ Other states only require reporting gifts from lobbyists or high-risk sources (Maryland, North Carolina, Rhode Island, South Carolina, Virginia and West Virginia), or only related to certain gifts (New Hampshire and Washington).

CAMPAIGN FINANCE

Question 8: Does the state require reporting of contributors to independent spenders?

The question has two levels of inquiry. The first part asks if “independent spenders” must reveal the identity of contributors who donated to them. These spenders may be individuals, corporations, PACs, LLCs, SuperPACs, or 501(c) organizations. States got full credit if they required disclosure of name, address, occupation (if an individual), amount and date of contribution for those contributing more than \$250. The second level asks more narrowly about “dark money” in the independent expenditure context: if a 501(c) group or an LLC contributes to the entity making independent expenditures, must the 501(c) group’s funders

³² Two additional states, Connecticut and South Carolina, received full credit in 2020 after reviewing additional information.

³³ Two states, Alabama and Connecticut and South Carolina, changed from no credit after reviewing additional information.

be disclosed as well, or the beneficial owners of the LLC? On this level, we have found very few states with piercing disclosure requirements.

Reporting of Donors to Independent Expenditure Committees

- ▶ Most states received full credit on information about top-level contributors.
- ▶ North Dakota and Virginia scored zero because they do not require entities making independent expenditures to report any information about their contributors.

Reporting of Donors to 501(c) Groups

- ▶ Alaska, California and Ohio are the only three states that received full credit for reporting requirements for funders of 501(c) groups. Entities making independent expenditures must disclose the funders of the 501(c) organization which made contributions to the PAC, or 501(c)s are prohibited from making contributions to PACS.
 - ▶ California requires 501(c) organizations that contribute to “SuperPACs” to file disclosure reports. Those reports must contain the name of any person who has made over \$1000 in donations to the 501(c) (unless it was specifically earmarked not to be a part of political contributions or expenditures).
 - ▶ Ohio prohibits 501(c) organizations from contributing to PACs.
 - ▶ Alaska requires 501(c) organizations to disclose their contributors if they engage in activity to influence an election, including making contributions.
- ▶ Connecticut, Delaware, Hawaii, Idaho, Maryland, Minnesota, Nebraska and Washington have partial additional reporting requirements for donors to 501(c) organizations that contribute to independent spenders. In these states, funders of 501(c)s are required to be disclosed under limited circumstances, such as if the 501(c) has fewer than 100 contributors, or if a single contributor has given more than a statutorily prescribed percentage of the total amount received by the organization.

Reporting of Beneficial Owners of LLCs

- ▶ The District of Columbia Office of Campaign Finance can require a business contributor, including an LLC, to provide information about its individual owners, the identity of affiliated entities, the individual owners of affiliated entities, the contributions or expenditures made by such entities and any other information deemed relevant to enforcing campaign finance rules.
- ▶ In Delaware and Ohio, there is minimal additional reporting of owners of LLCs which contribute to independent spenders.
- ▶ No state received full credit for the reporting of beneficial owners of LLCs and the majority of states received no credit.

Question 9: Does the state require the disclosure of the payors of political advertisements or other electioneering communications to appear directly on the communication made through print media, broadcast media (TV, radio, etc.) and Internet-based media (Facebook, Twitter, Google and other online platforms)? (New to 2020)

This is one of the two new questions included in the 2020 report. In order to receive full credit, states must require the disclosure of payors of political advertisements or other electioneering communications on certain media types, with *de minimus* dollar exceptions of \$500 or less. For each category of media, full points are given to states that require the disclosure of the name of the payor on the advertisement, states that require the disclosure of the name, address and phone number of the payor on the advertisement, states that require the disclosure of the identity of the payor and the “Top Contributors” to the payor to be listed on the advertisement and to states that have even more robust disclosure requirements.

- ▶ 32 states received full credit for each category of media.
- ▶ Arkansas, Georgia and Oregon do not require the disclosure of payors of political advertisements or other electioneering communications on any type of media.

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- ▶ 9 states received credit for print media and broadcast media but have no disclosure requirements for political advertisement or other electioneering communications on Internet-based media.

CLIENT DISCLOSURE

Question 10: Do legislators have to disclose client names as part of their financial disclosure reports?

Client disclosure is an important way to determine whether a legislator has a conflict of interest in matters on which he or she acts or refrains from acting. It is not sufficient to list the name of the employer, such as a consulting firm. The potential conflict arises from the clients for whom the legislator provides services, as an employee of that firm.

- ▶ No state received full credit, meaning no state requires legislators to disclose all client names as part of their financial disclosure report.
- ▶ 19 states received partial credit for the disclosure requirements because they require some level of disclosure of client names, but do not require full disclosure. This could encompass: (1) Some clients must always be disclosed, but not others, (2) a very narrow class of clients must be disclosed, or (3) very specific and narrowly defined conditions trigger disclosure (as opposed to disclosure being a routine reporting requirement).
- ▶ All other states received a score of 0 because they have no disclosure requirements for legislators regarding their client names.
- ▶ Oregon's score changed from full credit in 2018 to a score of partial credit. Legislators must disclose the identity of each person for whom the person has performed services for a fee greater than \$1,000 if that person has a "legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority."

III. Summary of Findings and Recommendations

- ▶ All states should have an independent ethics agency with jurisdiction over elected and appointed executive branch officials, legislators and executive and legislative branch employees.
 - ▶ Arizona, Idaho and Wyoming still do not have an independent ethics agency.
 - ▶ An ethics agency which can only provide advice can be ignored. Whether there are one or two agencies with jurisdiction over all elected officials and public servants, the agency needs wide powers to investigate and sanction all government personnel.
 - ▶ Michigan, Utah, Vermont and Virginia have no power to sanction ethical violations.
 - ▶ Vermont and Virginia do not even have the power to investigate complaints.
 - ▶ Proceedings of the ethics agency should be open to the public once there is a determination that probable cause exists to indicate that a violation has occurred.
 - ▶ Twenty-two ethics agencies cannot hold public hearings.
 - ▶ Legislators should be subject to the same treatment as elected executive branch officials and employees. In states where legislatures have a separate ethics entity, it should be independent of the legislature, composed of members of the public and not legislators.
 - ▶ The ethics agency must provide an avenue to accept anonymous complaints and keep the identity of named complainants confidential from the respondent.
 - ▶ Twenty-six states with ethics agencies do not accept anonymous complaints and do not keep the identity of the complainant confidential.
 - ▶ Members of an ethics agency should be statutorily protected from removal without cause.
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- ▶ Eight states do not statutorily protect the members of their ethics agencies from removal without cause (Alabama, Colorado, Connecticut, Georgia, Indiana, Nevada, Oregon and Virginia).
 - ▶ Gift rules should apply equally to all government officials and should prohibit all gifts above a reasonable threshold, regardless of the source and regardless of the intent of the recipient or the gift-giver.
 - ▶ Mississippi has no explicit prohibition on gifts at any level.
 - ▶ Six states (Hawaii, Idaho, Maine, Massachusetts, Michigan and Wyoming) use a subjective test to determine whether a gift is prohibited – that is, a gift is prohibited if the gift-giver intended to influence the recipient.
 - ▶ Reporting all gifts above a reasonable threshold should apply equally to all government officials.
 - ▶ Seventeen states require no gift disclosure.
 - ▶ Legislators should disclose the names of all clients for whom they work, whether the client directly hires the legislator or hires the entity which employs the legislator.
 - ▶ No state currently requires legislators to disclose the names of all their clients.
 - ▶ Nineteen states require limited disclosure, either for certain types of clients or under certain circumstances.
 - ▶ States should mandate comprehensive disclosure about donors to independent political spenders, as well as information about the beneficial owners of LLCs and donors to 501(c) organizations which contribute to those independent spenders.
 - ▶ Currently, no state requires full disclosure – reporting 1) name, address, date and amount of contributions above a reasonable level by all contributors to independent spenders and 2) the underlying sources of funding for these contributions made by LLCs and 501(c) organizations.
 - ▶ North Dakota and Virginia do not require independent spenders to report any information about their contributors.
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- ▶ Political advertisements across all forms of media – print, television/radio and Internet – should be transparent about their underlying funding.
 - ▶ Arkansas, Georgia and Oregon do not require disclosure of the funders of political advertisements across any media.

Nine states (Arizona, Idaho, Kentucky, Michigan, Missouri, North Carolina, Virginia, West Virginia and Wisconsin) require disclosure of funders of political advertisements in print media, radio and television, but not over the Internet.

IV. Conclusion

- ▶ Constituents should demand commitments to address the shortcomings in their state ethical legal framework identified in this report.
- ▶ In states without an independent ethics agency or ones with limited jurisdiction or power, citizens should advocate for constitutional or legislative changes to create or expand the authority of an ethics agency.
- ▶ States with a stronger legal framework should focus on adequate funding of their ethics agencies, effective enforcement of the rules and enhanced transparency.
- ▶ Legislators should hold themselves to high standards and not be subject to less stringent rules than those applied to the executive branch.
- ▶ States should work to create a culture of ethical compliance. In part, this means, that there should be avenues for anonymous reporting of ethics violations, so that complainants may come forward without worry of reprisal.
- ▶ Laws should be enacted that encourage transparency in election spending, such as requiring disclosure of contributors to 501(c) organizations and beneficial owners of LLCs that engage in election spending.
- ▶ State law should provide disclosure requirements for political ads, regardless of whether they are in print, on television or radio, or online.

Appendix A: 2020 State Rankings

RANKING	STATE	STATE SCORE
1.	Washington	79.52
2.	Rhode Island	78.48
3.	District of Columbia	76.19
4.	California	75.24
5.	Kansas	73.64
6.	Ohio	70.66
7.	Kentucky	69.81
8.	New Hampshire	67.35
9.	Hawaii	67.19
10.	Wisconsin	67.08
11.	Texas	65.56
12.	South Carolina	65.48
13.	Alaska	64.45
14.	New York	63.40
15.	Massachusetts	61.24
16.	Florida	60.74
17.	Missouri	59.64
18.	Nebraska	59.02
19.	Pennsylvania	59.00
20.	West Virginia	58.81
21.	Nevada	58.09
22.	Connecticut	57.52
23.	Arkansas	56.31
24.	Illinois	55.27
24.	New Jersey	54.95
26.	Maryland	54.31
27.	Montana	52.91
28.	Colorado	50.90
29.	Minnesota	49.99

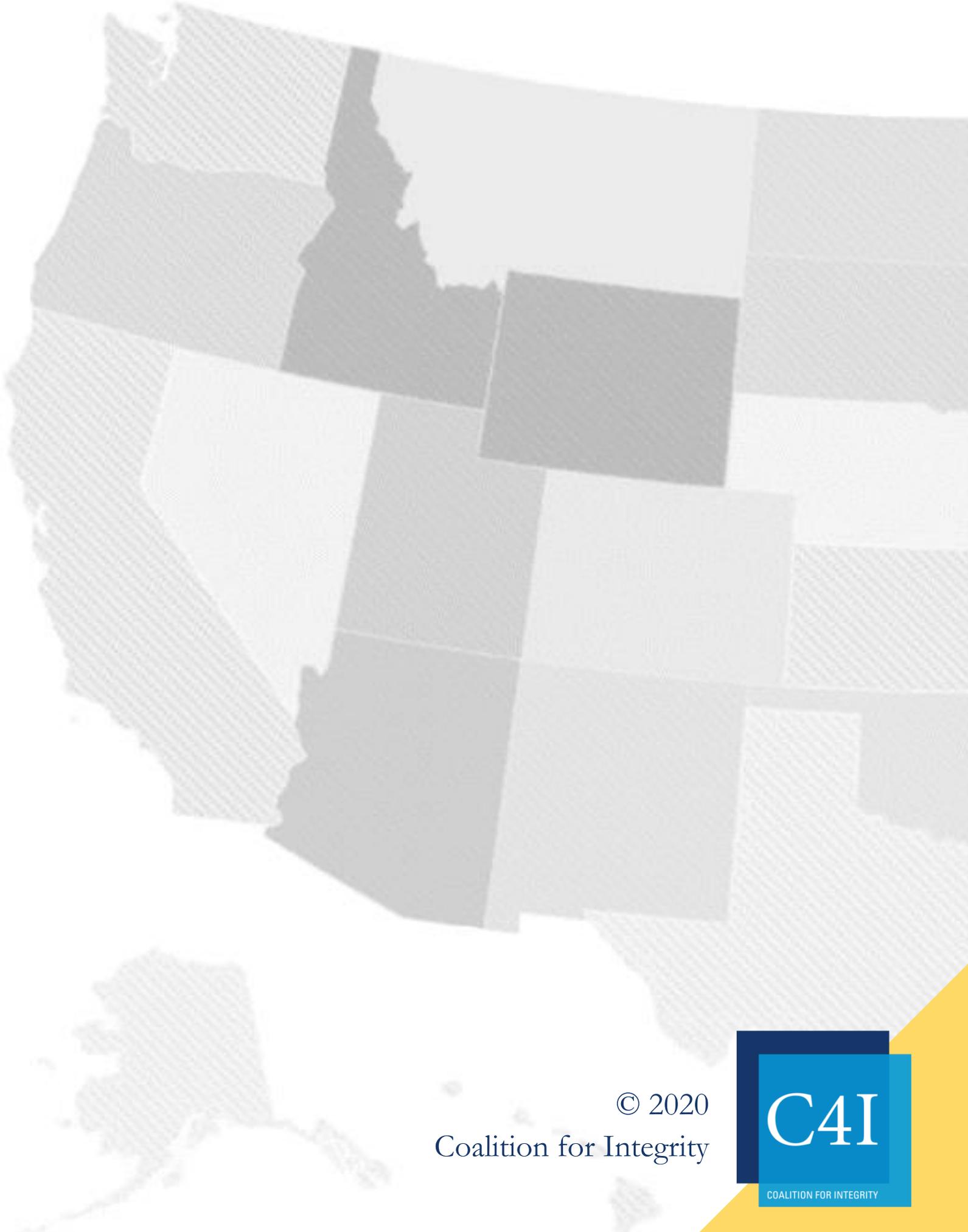
RANKING	STATE	STATE SCORE
30.	Maine	48.98
31.	Tennessee	48.18
32.	Oklahoma	47.49
33.	Iowa	47.43
33.	Louisiana	46.90
35.	Alabama	46.31
36.	New Mexico	45.65
37.	Delaware	43.93
38.	North Dakota	42.71
39.	Mississippi	42.14
40.	South Dakota	40.60
41.	Vermont	39.64
42.	Oregon	38.81
43.	North Carolina	38.51
44.	Indiana	36.60
45.	Georgia	35.75
46.	Virginia	32.79
47.	Utah	31.57
48.	Michigan	29.18
49.	Arizona	28.81
50.	Idaho	21.24
51.	Wyoming	19.57



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