

THE COST OF CAPTURE:

HOW THE PHARMACEUTICAL INDUSTRY HAS CORRUPTED POLICYMAKERS AND HARMED PATIENTS

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Introduction

In July of 2010, cardiologist Jonathan Halperin voted to approve a new drug to treat heart attacks called Brilinta. He and the other panelists working on behalf of the Food and Drug Administration (FDA) cleared Brilinta of one of the final regulatory hurdles, and not long after the drug was being prescribed in doctors' offices and generating billions of dollars in revenue for its manufacturer, AstraZeneca. Halperin and the other panel members followed the FDA's conflict of interest rules and had no financial conflicts to disclose.

After the drug was approved, however, Halperin was the beneficiary of over \$200,000 from AstraZeneca (Piller & You 2018). The pharmaceutical company compensated Halperin and other panelists over the next several years for travel, consulting, research, and sitting on industry-sponsored committees. A 2018 Science Magazine investigation found this was just one instance of a repeated pattern—of the 107 physician advisors examined, 40 had received over \$10,000 from the maker of the drug they had voted on (Piller & You). Offering post-hoc gifts that create conflicts of interest is just one of the many strategies deployed by the pharmaceutical industry to corrupt the regulation and legislation of our prescription drug markets. This pattern of corruption is not just unsavory—it's endangering patient health and preventing affordable access to lifesaving treatments.

This issue brief, one of a series on the pharmaceutical industry, explores what drug companies do to influence policymakers, and what this means for patients, our health care system, and our economy. Prior briefs in this series discuss the problems plaguing the industry—like lagging innovation and unsustainable costs—and how the rules of our economy incentivize extractive behavior and connect to the poor patient outcomes and high drug prices evident today. Fixing these problems requires understanding why the rules of our economy and the pharmaceutical industry are written and enforced the way they are. One essential reason is *corporate capture*: a form of corruption in which industry exerts undue influence over policymakers in regulatory and legislative bodies, often at the expense of the public interest or in contravention of democratic will. Section 1 will discuss corporate capture in more depth, detailing the mechanisms through which pharmaceutical firms are able to skew policymaking outcomes in their favor. Section 2 then analyzes the consequences of capture by showing how capture



directly compromises patient safety, raises drug prices, reduces innovation, and contributes to the misallocation of health care resources. Section 3 considers legislative solutions to prevent pharmaceutical industry capture and corporate capture more broadly. Together, these sections map out how underhanded industry tactics plague our health care system and endanger patients—and what policymakers can do to fix it.

Section 1: How the Pharmaceutical Industry Captures the Regulatory Apparatus and the Political Process

Most Americans intuitively understand the power that corporate interests have over our institutions. Public opinion research consistently shows that a majority of voters are dissatisfied with the size and influence of major corporations (Riffkin 2016) and support rewriting campaign finance laws (Jackson 2017). And many Americans are particularly attuned to the power of the pharmaceutical lobby; a March 2018 poll found 72% of respondents agreed the drug industry has too much influence in Washington (Groppe). Yet how, precisely, industry is able to capture policymakers—in what ways, and with what consequences—may be less understood. It is crucial to explore the implications of the pharmaceutical industry’s influence, as they point to the need for policy interventions beyond the well-established need for lobbying or campaign finance reforms. This section will discuss four tactics employed by industry: lobbying and campaign contributions, moving through the revolving door, funding medical research, and funneling industry priorities through seemingly independent organizations.¹

Lobbying and Campaign Contributions

Lobbying is the institutionalized avenue through which corporations most directly communicate their preferences to policymakers. Corporations and other entities are required by law to disclose their expenditures on lobbying, which can include salaries of lobbyists and resources spent on work in the service of influencing a policy or piece of legislation. These disclosures only represent a fraction of industry spending on capture, however, as loopholes in the definition of “lobbying” and weak enforcement have allowed certain behaviors that are meant to manipulate policy to go unreported (Fang 2014).

The pharmaceutical lobby is prolific. Over the last decade, the industry has spent over \$2 billion lobbying Congress (Chon 2016). The biggest contributor to that figure has been the industry trade group Pharmaceutical Research and Manufacturers of America (PhRMA), an advocacy and lobbying organization representing the interests of its member companies. PhRMA’s 2017 lobbying outpaced all oil and gas, Wall Street, telecommunications, and defense organizations

¹ Much of this discussion draws from the 2018 Roosevelt Institute report *Unstacking the Deck: A New Agenda to Tame Corruption in Washington* by Rohit Chopra and Julie Margetta Morgan.



(Wilson 2017), and their efforts only seem to be increasing. In July of 2018, PhRMA disclosed \$15.5 million in lobbying expenditures since January, the highest total they have ever recorded in a six-month period (Robbins 2018). This lobbying blitz has been accompanied by generous spending on Members of Congress. The industry as a whole is “consistently near the top when it comes to federal campaign contributions,” according to the lobbying disclosure database OpenSecrets (Pharmaceuticals / Health Products 2019).

Measuring the influence of lobbying is difficult. It is not feasible to judge efficacy or credibly assign causation just by looking at vote totals and disclosure forms. Elected officials across the ideological spectrum claim they are unaffected by their meetings and correspondences with lobbyists. Research, however, shows otherwise—one study from academics at the University of Mississippi estimated for an individual firm the “market value contribution of an additional dollar of lobbying is roughly \$200” (Hill, Kelly, & Van Ness 2013). Even more tellingly, a 2011 study found that firms across industries that lobby were 38 percent less likely to be detected for fraud by regulatory agencies compared with firms that did not lobby, and managed to evade fraud detection by regulators for an average of 117 days longer (Yu & Yu).

Corporations and industry groups typically combine lobbying efforts with contributions to reelection campaigns, which—to varying degrees—rely upon the financial support to stay in power. The fact that these funding relationships can create a pay-for-play arrangement is the uneasy backdrop to the policymaking process in Washington. After Sen. Cory Booker voted against legalizing the purchase of prescription drugs from Canada—a proposal opposed by the pharmaceutical industry—he faced criticism that he was “doing the industry’s bidding” (Carter and Grim 2017). In response, Sen. Booker announced he had put a “pause” on accepting money from the pharmaceutical industry as a display of independence. His announcement underscored inherent tensions between lawmakers’ pledges of political autonomy and their traditional practices of accepting industry contributions.

The Revolving Door

The revolving door between government service and pharmaceutical industry positions presents another opportunity for influence. The revolving door generally refers to “an institutionalized system or culture of integration between government officials and regulated economic interests” (Chopra & Margetta Morgan 2018). When individuals “revolve” back and forth between regulatory agencies and the firms they regulate, it can create both actual and perceived perverse incentive structures and conflicts of interest. Corporate executives leaving their companies for public service, for instance, are often given million-dollar payouts—known as “golden parachutes”—that are available if the executive leaves the firm for a high-level government position.



For sitting government officials, the prospect of a lucrative industry position may provide an incentive to avoid conflict with regulated entities. Further, the expertise and contacts that government officials accrue during public service can be highly valuable to regulated companies; by offering lucrative post-government positions, big companies are able to buy up influence and knowledge about the inner workings of government agencies. This provides both an advantage to these companies as well as a disadvantage to smaller competitors and non-profit or policy organizations that cannot compete in attracting talent from the government.

An active and sizeable revolving door exists between the pharmaceutical industry and government, creating opportunities to influence the policymaking of FDA regulators, Congressional staffers, and agency heads. One analysis of the employment paths of all FDA drug reviewers in hematology-oncology over a ten-year period found that over half of the reviewers who left the agency went on to work in some capacity for biopharmaceutical firms (Bien & Prasad 2016). The study's author states, "...If you know a major post-employment opportunity is on the other side of the table, you give them the benefit of the doubt, maybe, make things a little easier on the companies" (Kaplan 2016).

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The revolving door extends to the halls of Congress, as well. A 2018 analysis from *Kaiser Health News* found nearly 340 former Congressional staffers work for drug companies or their lobbying firms, many from key committees (Lupkin), and that dozens of former employees of drug companies worked as Congressional staffers as of January 2018. An investigation from the Sunlight Foundation found the average chief of staff increases their salary by 40 percent when they move to the private sector (Keeping Congress Competent 2010). Lobbyists with backgrounds on Capitol Hill can often leverage their personal relationships and knowledge of political landscapes for outsized access and influence. Diana Zuckerman, president of a health care non-profit and longtime staffer on the Hill, explained the dynamic: "You'll take the call because you've got a friendly relationship. You'll take the call because these people are going to help you in your future career [and] get you a job making three times as much" (Lupkin 2018). While it is often difficult to say with certainty whether there is any specific improper conduct that results from these revolving door relationships, even the appearance of impropriety can itself undermine the regulatory and policymaking process, as well as citizens' trust in government.



Funding Medical Research and Medical Researchers

The pharmaceutical industry's spending often aims to influence the FDA drug approval process, including by funding medical research and the researchers involved in the drug review process.

Both pharmaceutical companies and the National Institute of Health (NIH) fund clinical trials testing new drugs. While the industry claims their spending on research is necessary for innovation, the evidence suggests industry-funded research can skew results in ways that are misleading, deceptive, or otherwise harmful to patients. Research funded by a drug company usually supports their drug: one comparison of industry-funded and government-funded clinical trials found that 85 percent of industry research reported positive outcomes for their trials, compared to just a 50 percent rate of positive outcomes in government research (Bourgeois et. al 2010).

Industry representatives insist they have no control over the clinical trials they fund. John Lechleiter, CEO of Eli Lilly at the time, wrote in a *Forbes* column about the “tension of waiting to be ‘unblinded’ on the results” of his company's trials (Lechleiter 2015). The industry's practice of funding research, however, creates financial incentives that may influence results. A 2012 study published in the Public Library of Science looked at the growing industry of private medical researchers, particularly the principal investigators (PIs) tasked with overseeing trials and upholding the integrity of the research. Through interviews and observation of PIs at clinical trials, researchers found PIs are more likely to see themselves as businesspeople motivated by profit than scientists conducting independent research (Fisher & Kalbaugh). The researchers concluded PIs generally adopted an “industry-based approach to research ethics” (Fisher & Kalbaugh).

Pharmaceutical companies are also more likely to suppress trials finding negative results, a practice known as publication bias, which can have a direct impact on health outcomes (Ghaemi et. al 2008). Companies might suppress trial results they know could jeopardize their drug's likelihood of winning FDA approval, even at the cost of broader medical and scientific knowledge. Publication bias can result in doctors prescribing medication without a complete understanding of a drug and its side effects, posing a clear risk to patient safety. Despite these problems with industry-funded trials, they have risen dramatically in the last decade, especially as budget cuts to the NIH have reduced government funded trials. A 2015 study by researchers at John Hopkins found the pharmaceutical industry funds six times more clinical trials than the NIH (Ehrhardt et. al).

Pharmaceutical companies also give money to the editors of prestigious medical journals that publish clinical trials and other medical research. The public may assume that medical journals are objective about the research they publish, but a study on payments to medical journal editors



found over 50 percent received payment from either the pharmaceutical industry or medical device manufacturers in 2014 (Liu et. al 2017). The average editor compensated by industry received \$175,239, usually as consulting fees, royalties, or travel expenses (Liu et. al 2017). Of the 52 journals studied, under a third disclosed editors' conflicts of interest on their website (Liu et. al 2017). Many medical journals themselves also have an institutional dependency on the drug industry. Advertising is an important revenue stream, and the health care industry spent a combined \$637 million in 2016 to buy advertisements in medical journals. The majority of this spending comes from pharmaceutical companies as an effort to market their drugs to doctors (Sinha et. al). Taken together, this creates a financial incentive for editors and medical journals to publish industry-funded research that at times may run counter to the public interest.

Public vs. Private Research: The Case of Vioxx

Vioxx, an arthritis drug developed by Merck, was approved by the FDA in 1999 and recalled in 2004 for contributing to heart attacks and strokes. Clinical trials funded by Merck caused the company internal concern about the safety of their drug. In May of 2000, top executives met to consider directly studying how Vioxx affected cardiovascular health. They decided against it. “The implied message is not favorable,” read a slide from the meeting in reference to the proposed study (Berenson et al. 2004). This type of decision—and who has the power to make it—underscores differences between private and public research on prescription drugs. Many of the subsequent research articles on Vioxx published in medical journals were either funded by Merck or actually ghost-written by Merck employees themselves and credited to external scientists (Grifo et al. 2012).

Funding Independent Organizations

In the interest of capturing legislators and other policymakers, the pharmaceutical industry funds seemingly independent organizations like think tanks and patient advocacy groups. These organizations can inform and influence how legislators understand policy.

Think tanks have developed into powerful influencers of political parties and their legislative agendas. The pharmaceutical industry, like others, has capitalized on a shift to privately funded policy development by using think tanks as a vehicle for capture. By funding think tanks and underwriting relevant research, the industry can steer findings and recommendations of the reports upon which elected officials so often rely by influencing what think tanks research, how they frame or describe their research, or which individuals develop research portfolios that may be of interest to policymakers. Experts employed by industry-funded think tanks often claim their research is unaffected by the funding. In some cases, this may be true—industry groups



may fund think tanks not to pay experts to change their minds, but to elevate the voices of those experts already inclined to agree with industry positions. The ability to use wealth to elevate like-minded experts over other voices is similarly corrosive to objective, evidence-based policy making.

Although think tanks have limited disclosure requirements, some industry spending can be traced. A 2013 report from media watchdog FAIR examined the funding of 25 think tanks and found nine were recipients of pharmaceutical industry money (Carp). PhRMA's tax forms disclose funding to a variety of think tanks, including hundreds of thousands of dollars to the American Enterprise Institute, Third Way, the Progressive Policy Institute, and the Manhattan Institute (Form 990 2016). The Competitive Enterprise Institute also received a contribution—CEI's sudden interest in drug reimportation policy was the subject of a *Mother Jones* article, as the Institute's previous research was comprised mostly of climate skepticism and contrarian reports on the risks posed by second-hand smoke (Mencimer 2015). And a 2016 *New York Times* investigation found dozens of fellows and scholars at a variety of think tanks are simultaneously employed or otherwise compensated by corporations or their lobbying firms (Lipton et. al). When Dr. Mark McClellan testified on the pharmaceutical industry's valuable innovations during a 2016 Congressional hearing on drug prices, he did so on behalf of the Brookings Institution. He did not disclose his membership on Johnson & Johnson's board of directors, a position that netted him over half a million dollars in the last two years (Lipton et. al).

In addition to think tanks, the industry invests heavily in funding *patient advocacy groups*. These organizations are “nonprofit groups whose primary mission is to combat a particular disease or disability or to work toward improving the health and well-being of a particular patient population,” often through political organization (McCoy et al. 2017). While patient groups were once a modest field of advocacy, their size and power has grown. Industry contributions typically comprise of 20 to 50 percent of a patient group's annual revenue (Kopp, Lupkin, et al. 2018). Disclosures from a *Kaiser Health News* database show that 14 pharmaceutical companies contributed (at least) \$116 million to patient advocacy groups in 2015. In comparison, lobbying expenditures from those 14 companies combined to only \$63 million in the same time period. Often, this money was going to groups who represent users of the companies' drugs (Kopp, Lupkin, et al. 2018). While in some instances funding patient organizations may simply reflect an alignment of interests, the rise in this form of financial support nonetheless creates opportunities for the pharmaceutical industry to use its resources to influence policy outcomes, often with little knowledge on the part of policymakers.



Section 2: Consequences of the Pharmaceutical Industry's Capture of the Policymaking and Regulatory System

The undue influence the pharmaceutical industry exerts over government officials is so pervasive and commonplace that many accounts of corruption fail to describe its real-world consequences. When we broaden our view of corruption to include the common yet deeply troubling influence the pharmaceutical industry exerts over nearly every part of our regulatory and policymaking apparatus, it becomes clear that industry capture has consequences for patients, public health, and the broader social welfare. This section describes how corporate and regulatory capture affects patient safety, drug price, drug innovation, health care costs, and the general distribution of resources and services in our society.

Patient safety and drug risks

The influence of the pharmaceutical industry in the drug approval process may have consequences for patient safety. Both empirical and anecdotal data indicate that prescription drugs are needlessly—even fatally—dangerous, as regulators fail to uncover safety risks of new drugs at alarming rates. A 2017 Yale study published in the *Journal of the American Medical Association* found new safety issues emerged in nearly 1 in 3 FDA-approved drugs between 2001-2010 (Downing et al.). These safety issues and side effects ranged in seriousness, with some leading to safety communications and others resulting in mandatory recalls and withdrawal from the market (Downing et al.).

When regulators approve drugs without a complete knowledge of their risks, side effects, and interactions—as can be the case when researchers choose not to publish certain data—patients have a greater likelihood of experiencing an adverse drug reaction (ADR). Estimates of patient deaths in hospitals caused by ADRs range from 100,000 to over 200,000 annually (Light 2014). A 1998 study found ADRs were between the 4th and 6th leading cause of death in America—counting only ADRs from prescriptions drugs *that had been used and prescribed appropriately* (Lazarou, Pomeranz, et al.). A 2011 analysis found that ADRs were responsible for 2.1 million serious injuries in a single year (Moore, Cohen, et al.).

Big Pharma's Revolving Door

Between Vioxx's approval in 1999 and recall in 2004, it generated Merck billions of dollars in revenue and it caused or contributed to hundreds of thousands of deaths from heart attack and stroke (Berenson et al. 2004). Despite internal FDA research linking Vioxx and heart attacks, the FDA's senior officials chose not to challenge Merck, even intervening in the work of their medical researchers to protect the pharmaceutical company. Dr. David Graham testified that after he authored an internal FDA study on the dangers of Vioxx, he faced pushback from senior FDA officials who asked him to change his conclusions and threatened to prevent him from



presenting at a conference (Graham 2004). The agency is “not contemplating” action against Vioxx, explained one official (Graham 2004). When Graham refused to revise the study, senior FDA official Steven Galson took the “unusual step” of calling the editor of a medical journal days before publication to urge them against publishing Graham’s findings (Rubin 2004). Acting FDA Commissioner Lester Crawford defended the move, explaining the call was made “out of respect for the scientific process” (Rubin 2004).

In September of 2004, Merck acknowledged Vioxx’s increased heart attack risk and announced a worldwide, voluntary recall of the drug effective immediately (Merck 2004). In following litigation, Merck was held liable in wrongful death trials of heart attack victims who had been prescribed Vioxx. Internal Merck documents turned over during courtroom proceedings suggest that the FDA’s inaction stems not simply from negligence but from—in the words of one Senator—“conspiracy” (Grassley 2006). Emails and handwritten notes appear to show that an FDA director coordinated with Merck employees on talking points meant to discredit Dr. Graham’s Vioxx research (Klatell 2006). While it is difficult to attribute any particular decisions made by a regulator to the revolving door, many FDA senior officials such as Lester Crawford and Steven Galson went on to work in lobbying and government affairs for private industry (Galson 2019) (Crawford 2019), creating at a minimum the appearance of impropriety. Vioxx was just one drug, but its effects on public health were massive. The estimated number of Americans who died from excess heart attacks while taking Vioxx is roughly comparable to the number of American soldiers who died in Vietnam (Herper 2005).

Professor Donald Light of the Center for Bioethics at University of Pennsylvania notes that while all new drugs carry some inherent risk, very few of the drugs being approved are beneficial or significantly improve patient outcomes (Light 2014). The majority of the drugs entering the U.S. market are therapeutically similar to existing medicines. Independent reviews of 946 new drugs from 2002-2011 found that only 8 percent were “clinically superior,” and only 15 drugs total represented a medical breakthrough or significant therapeutic advance (Light 2014). This is not to say that any specific ADRs are a result of industry capture or corruption. Yet while it is difficult to demonstrate specific causality, it is nonetheless important to note that, when the industry aims to influence regulators, it is doing so with the goal of getting a drug reviewed more quickly, perhaps more cursorily, or based on potentially biased research.

Higher Drug Prices for Patients

Today, pharmaceutical drugs are exceptionally expensive in the United States, in part because of the industry’s opposition to legislative and regulatory interventions that would lower prices. As detailed in accompanying issue brief *Profit over Patients*, the United States has the highest



drug prices in the world (Milani and Duffy 2019). Americans pay up to six times more for their prescriptions than patients in other countries (Kounang 2015). Voter frustration with these rising costs is mounting. Proposed solutions—like government price controls on lifesaving drugs, or allowing patients to purchase drugs from Canada—are remarkably popular, enjoying majority support from both Democrats and Republicans (Singh and Paloski 2017). Yet Congress has failed to respond with meaningful action. A report from Citizens for Responsibility and Ethics in Washington (CREW) found industry lobbying and campaign contributions have increased in recent years as policymakers face more pressure to grapple with the high costs of prescription drugs (Morgan 2018). And while it is often difficult to show that industry influence has caused Congressional inaction, evidence of the industry’s efforts to exert influence over the policymaking process described in Part I suggest that such influence is at least among the causes.

High drug costs have an extraordinary impact on patients. According to a nationally representative poll, nearly one-third of people experienced a price hike in the last year on at least one of their medications; paying an average \$63 extra for a drug they routinely take. (Skinner 2016). These increases affect patients’ health. As drug prices increase, patients are more likely to stop taking prescribed medications, take less than prescribed dosages, split pills in half, use expired medications, or cut back on other essentials like groceries (Skinner 2016). They also influence the day-to-day spending choices made by families, which in turn affects the economy as a whole. Thirty eight percent of adults whose medication costs have increased in the past year reported spending less on entertainment and dining out in order to afford their medicines; 31 percent reported spending less on groceries; 25 percent reported using their credit card more often; and 19 percent reported postponing paying for other bills (Skinner 2016). Industry capture has material effects on patients’ expenses.

Less Innovation

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The capture of government by the pharmaceutical industry not only affects drug price; it also has implications for drug innovation. This works in several different ways. Most notably, the extraordinary amount spent by drug manufacturers on lobbying and other capture-related costs creates an advantage for incumbent firms, and a barrier to entry for smaller, innovative firms that are unable to afford such costs. The old adage in Washington, “If you’re not at the table, you’re probably on the menu,” reflects the degree to which access to decision-makers influences policy outcomes. And, since being “at the table” comes at a price, today’s capture and corruption benefit profitable incumbent firms and impose an often insurmountable barrier to newer firms without such resources.



Drug innovation is harmed by the corruption of the policymaking process in another way: as described in *Profits Over Patients*, much of the industry’s business model revolves around marketing to doctors, renewing patents, and suppressing competition, rather than through new drug innovations. These business choices are facilitated by a series of laws that allow drug manufacturers to profit off of extractive practices, rather than through the development of innovative new products. And efforts to amend these laws, even modest bipartisan reforms, face an onslaught of industry lobbying and other “captured” tactics described above that prevent government action.

Misallocated Resources, Both Within the Health Care System and Beyond

Corporate capture in the pharmaceutical industry has societal consequences beyond drug price and health safety. As rising costs of prescription drugs have forced state and local governments to spend more on health care and health programs, some governments have made spending cuts in areas like education, infrastructure, and other social services (Healthcare Finance 2014). A recent study by the Center for Public Integrity and NPR found that drug makers were using a variety of tactics to influence—and ultimately profit off—the Medicaid system, from funding the researchers, doctors, and patient advocates who serve on advisory committees, to circumventing state agencies’ preapproval requirements (Whyte et al. 2018). Medicaid-related corruption is particularly troubling. Because states are required to balance their budgets, a costlier-than-necessary Medicaid program often results in states making trade-offs either within the system—by, for example, capping the number of eligible beneficiaries—or cutting other necessary state services. Overpaying for drug costs due to industry influence often results in fewer resources available for other needed services, which shapes the health care system generally as well as social conditions beyond just health outcomes.

The Government’s Inability to Negotiate Drug Prices

One of the reasons why health care costs remain so high today is because the federal government is, by law, not allowed to negotiate for lower drug prices when insuring Medicare beneficiaries. This is the result of a provision in the 2003 Medicare Prescription Drug Improvement and Modernization Act, a comprehensive restructuring of the Medicare program championed by Rep. Billy Tauzin, who worked closely with industry pharmaceutical lobbyists in the bill’s drafting (Potter and Penniman 2016). A report from Public Citizen found the pharmaceutical and insurance industries collectively deployed an “army of nearly 1,000 lobbyists” that year to influence and advocate for the Medicare reform (Drug Industry...2004).

The vote for the Medicare Modernization Act was held at 3:00 a.m. When it was initially voted down, Speaker of the House Dennis Hastert added two minutes to the voting clock, and after that expired, moved to keep the vote open indefinitely (Potter and Penniman 2016). Pharmaceutical



industry lobbyists petitioned members on the House floor to change their votes, and C-SPAN cameras were frozen, reportedly at the request of House leadership (Potter and Penniman 2016) (Investigative Subcommittee 2004). Hours passed until Rep. Ernest Istook changed his vote to yes. Other Republicans began to follow, and when Hastert closed the vote, the bill had passed. The time was 5:53 a.m. It was by far the longest roll call in recorded history (Oliver et al. 2004).

Billy Tauzin declined to seek reelection in the following Congressional term. The day after his term ended, Tauzin became the president and CEO of PhRMA, where he was reportedly paid \$2 million annually (Stuckey 2006). The high-profile move made headlines, but Tauzin was not the only one to move through the revolving door in the aftermath of the reform. A 2009 ProPublica investigation details 25 key players in the drafting and passage of the Medicare Part D legislation who left Congress or other governmental positions to lobby on behalf of the pharmaceutical industry (Pierce 2009).

Today, the government is unable to negotiate prices with drug companies, despite a 2017 Kaiser Health Tracking Survey that found 92 percent of Americans would favor such a proposal (Singh and Paloski 2017). A steady stream of reports and publications from industry-funded think tanks have advised policymakers not to adopt the cost cutting measure. The reasons vary: both a 2005 Heritage Foundation report and a 2006 Manhattan Institute report conclude government negotiation would cut into industry profits so severely it would lower research and development expenditures and the creation of new drugs (Hunter 2005) (Zycher 2006), while a 2004 Heritage Foundation blog and 2007 American Enterprise Institute report found that, actually, the government's lack of experience in price negotiation would end up making drugs even more expensive (Haislmaier 2004) (Medicare Part D 2007). If those positions seem inconsistent, consider this defense of the status quo articulated in a 2011 Heritage Foundation report: "the government would get involved in the conversation, and that spells trouble" (Capretta 2011).

Finally, the billions of dollars the pharmaceutical industry collectively spends on influencing outcomes and capturing policymakers represents an immense opportunity cost to patients. The money to medical journal editors, FDA regulators, think tanks, as well as the money spent on lobbying and campaign contributions, could instead be used for new drug innovation, expanding access, or lowering drug costs for patients. If our political system were redesigned with strict laws preventing capture, pharmaceutical companies would be less inclined to invest so heavily in these areas and might instead turn toward spending in ways more productive for patient outcomes.



Section 3: Proposals to Curb Corporate Capture and Areas for Future Research

Corporate capture has unfortunately become a standing feature of American democracy, and it will continue so long as the rules that govern private influence in the public sector remain unchanged. While it has been the focus of this brief, capture is not unique to the pharmaceutical industry. Corporate influence distorts legislative and regulatory functions across many industries so a robust solution requires generally applicable legislative interventions, and may require additional, targeted, industry-specific solutions. This section will outline policies designed to tackle the revolving door between industry and government and conflicts of interest, and expand the public's role in rulemaking, and will suggest a few solutions specific to the pharmaceutical industry and point to additional avenues for future research.

Across Industries

The 2018 Roosevelt Institute report *Unstacking the Deck: A New Agenda to Tame Corruption in Washington* (Chopra and Margetta Morgan) describes in detail a series of reforms to end corporate capture, including:

- *Establishing an anti-corruption agency.* Similar to how the Consumer Financial Protection Bureau protects against financial fraud, a new government agency such as the Public Integrity Protection Agency could protect the public against blatant conflicts of interest, violations of ethics, or scandals of corruption that happen within government.
- *Implementing stronger conflict of interest rules for public servants.* This includes establishing legal fiduciary duties that government officials act in the best interest of citizens as well as rules banning stock trading by Members of Congress, their staff, and other senior government officials with inside information.
- *Slowing down the revolving door.* Existing rules prevent some lobbyists from moving directly between public service and registered lobbying. These restrictions could be greatly expanded to, for example, enact a lifetime ban on lobbying for senior executive brand officials, ban golden parachutes, and restrict lobbyists from working in the agencies their organizations lobby.
- *Empowering the public's influence over rulemaking.* Companies and lobbying groups have clear legal standing to challenge agency rulemaking, but no such standing exists for individuals and public interest groups. Agencies could amend their rulemaking processes to more overtly include the input of consumers and public interest groups, like by amending the Administrative Procedure Act to give them legal standing or holding hearings on rulemakings if enough citizens petition together to demand it.



- *Creating new mechanisms for the public to detect and deter conflicts of interest.*
This includes more routine transparency and disclosures from agencies on their communications with Congress, visitor logs, travel expenses, and other topics that are frequently inquired about in Freedom of Information Act (FOIA) requests.

Within the Pharmaceutical Industry

The broad reforms described above to limit capture would go a long way in preventing the worst of the pharmaceutical industry abuses discussed in this brief. To more thoroughly solve for capture, however, policymakers need to implement a set of specific interventions to address the unique conflicts of interest within the pharmaceutical industry. Possible reforms could include banning or limiting the amount of money that physicians or researchers serving on FDA review panels can accept from the pharmaceutical industry after reviewing a particular drug; imposing greater disclosure and transparency requirements on medical journals and their sources of funding; and requiring greater disclosure and transparency of patient advocacy groups and their sources of funding. While more research is needed to determine how best to achieve these and other goals, these proposals are an important step toward developing a robust agenda to root out corruption by the pharmaceutical industry that is harming the health and safety of patients.

Conclusion

This capture may be deeply entrenched, but it is neither inevitable nor insuperable.

While it may seem self-evident that conflicts of interest or appearances of conflict would undermine the credibility of expert recommendations and advice, much of today's governance of the pharmaceutical industry revolves around the authority of experts, regulators, legislators, and other policymakers with hidden or even open connections to the industry. This capture may be deeply entrenched, but it is neither inevitable nor insuperable. Just ask Dr. David Graham, who saw firsthand the power of the pharmaceutical industry and corporate capture. Reflecting on the lessons of the Vioxx scandal, he told *Forbes Magazine*, "People should turn to Congress and demand a drug safety system that is free from corporate influence—and a distinct center for drug safety" (Herper 2005). With enough organization, energy, and advocacy, Americans can reclaim their political system and demand policymakers represent the interests of patients and public health.



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