



# City Management Ethics in an Era of Division

2024 MME Winter Institute  
January 30, 2024  
Lansing Center, Lansing Michigan

Michael P. McGee  
Senior Counsel, Public Finance  
Miller, Canfield, Paddock and Stone, PLC  
email: [mcgee@millercanfield.com](mailto:mcgee@millercanfield.com)





Ethics?

Why do we care?



# Reason #1: The Three Ghostly Laws



**1973 PA 196 – Ethical standards**

**1968 PA 317 – Conflicts in contracts**

**1978 PA 566 – Incompatible offices**

**ICMA Code of Ethics**

**Local charters and ethics ordinances**



# P.A. 196, State Ethics Act

("Standards of Conduct for Public Officers and Employees")



Local official\* shall not --

- 1) Divulge confidential information.
- 2) Represent own opinion as government's opinion.
- 3) Use governmental personnel, property or funds for personal gain.
- 4) Solicit or accept a gift, loan or thing of value *tending to influence* performance of official duties.
- 5) Engage in business transaction in which he or she may profit from official position or confidential information.
- 6) Accept employment or render services in conflict with official duties.\*\*
- 7) Participate in negotiation or execution of contracts, issuing permits or other regulation of a business entity in which he or she has a financial interest.\*\*

# P.A. 317, Public Contracts



**Public servant\* shall not --**

- 1) Be a party, directly or indirectly, to a contract between himself or herself and the official's governmental entity.**
- 2) Directly or indirectly solicit a contract between the governmental entity and himself/herself, business entity in which he/she has an interest, or trust of which he/she is a beneficiary.\*\***
- 3) Take part in negotiation or renegotiation of any such contract or representing either party in the transaction.\*\***

---

**\* "Public servant" includes "all persons serving any public entity" (except members of the legislature and state officers, who are governed by separate law)**

# P.A. 317 – The Process and Exceptions



Does not apply to (a) A public servant who is paid for working an average of 25 hours per week or less for a public entity, and (b) A public servant who is an employee of a public community college, junior college, or state college or university.

A contract involving a public entity and a public servant described in subsection (1) shall meet all the following requirements:

(a) The public servant promptly discloses any pecuniary interest in the contract to the official body that has power to approve the contract, which disclosure shall be made a matter of record in its official proceedings. Unless the public servant making the disclosure will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the public servant files a sworn affidavit to that effect with the official body or the contract is for emergency repairs or services, the disclosure shall be made in either of the following manners:

(i) The public servant promptly discloses in writing to the presiding officer, or if the presiding officer is the public servant who is a party to the contract, to the clerk, the pecuniary interest in the contract at least 7 days prior to the meeting at which a vote will be taken. The disclosure shall be made public in the same manner as a public meeting notice.

(ii) The public servant discloses the pecuniary interest at a public meeting of the official body. The vote shall be taken at a meeting of the official body held at least 7 days after the meeting at which the disclosure is made. If the amount of the direct benefit to the public servant is more than \$5,000.00, disclosure must be made as provided under this subparagraph.

(b) The contract is approved by a vote of not less than 2/3 of the full membership of the approving body in open session without the vote of the public servant making the disclosure.

(c) The official body discloses the following summary information in its official minutes:

(i) The name of each party involved in the contract.

(ii) The terms of the contract, including duration, financial consideration between parties, facilities or services of the public entity included in the contract, and the nature and degree of assignment of employees of the public entity for fulfillment of the contract.

(iii) The nature of any pecuniary interest.



# P.A. 566, Incompatible Offices



Not strictly an “ethics” statute -- but underlying notion is similar: Duty of *loyalty* to different constituencies

Prohibits “public officer or employee” from holding 2 or more “incompatible offices” at the same time

Incompatible offices where:

- (i) the *subordination* of 1 public office to another;
- (ii) the *supervision* of 1 public office by another; or
- (iii) a *breach of duty* of public office

# What's “subordinate” or “supervisory”?



- One office *sets and approves compensation* of the other
- One office *has the power of appointment or removal* over the other
- One *reviews the accounts* of the other

-- OAG 7093 (Oct 24, 2001)

# What's "*breach of duty*"?



- “Breach of duty” occurs whenever public official sits on two sides of a contract, or a contractual negotiation, and is unable to advance the competing interests of each.
- Abstaining from voting in this situation does not cure the incompatibility because abstaining from voting itself is a breach of duty under these circumstances.
- Does one constituency’s interest conflict with the other constituency’s interest?

# Many exceptions



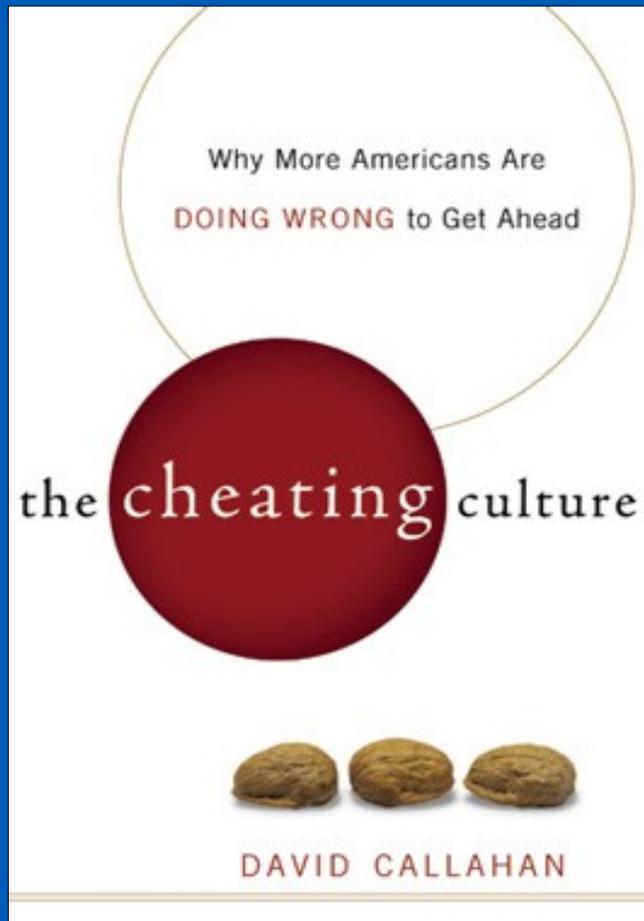
- Governing board of higher education institutions
- School board – superintendent of another district
- Membership on a board within the municipal “family” – any TIF entity, metro district, PSD, BIZ, land bank
- Small CVT exceptions (less than 40,000) for public safety (police, fire, EMT)
- Community mental health entities, ISDs, transportation authorities
- Financial review commissions, emergency managers
- Exception to the exceptions: *“This section does not allow or sanction activity constituting conflict of interest”*

# The ICMA Code of Ethics



- Largely consistent with the 3 Ghostly Laws
- Tenet 3 – ethical conduct – guideline – beware conflicting roles (PA 566)
- Tenet 12 – public trust – gifts – subjective standard, “intended to influence” (PA 196)
- Tenet 12 – Private employment – potential conflicts (PAs 196, 566)
- Tenet 12 – Investments (PA 317)

## Reason #2: The money implications



*“In reality cheating is everywhere...on Wall Street, in Major League Baseball, in journalism, politics and in college admissions.”*

*“Perhaps never before has it been accepted as way of life - an unchecked way of doing business.”*

- 2004

# U.S. High School Students Josephson Institute Survey Answers on Ethical Issues



My parents want me to do the right thing	92%
“Big” lie to parents past year	80%
“Big” lie to teachers past year	61%
Cheated on exam once+ past year	59%
Cheated in sports past year	20%
Stolen from family past year	21%
<i>Must lie / cheat to succeed</i>	<b>39%*</b>
	<i>(Boys 47%, Girls 30%)</i>
Satisfied with own ethics	92%
<i>(Admit to lying on survey</i>	<i>25%)</i>





**“Think straight, talk straight”**





***"I obstructed justice," testified David B. Duncan, then 43, the government's key witness in the Andersen trial. "I instructed people on the engagement team to follow a document-retention policy which I knew would result in the destruction of documents."***





"Was there ever an occasion when you said, 'Numbers be damned. I'm not booking it'?" Weingarten asked.



"No," Sullivan, 43, testified. "I went along with hitting the earnings per share."

"So your desire to 'hit the numbers' overtook your obligation to obey the law and loyalty to WorldCom?" Weingarten asked.

*"I knew it was wrong," Sullivan said. "I knew it was against the law, but I thought we'd make it through."*

# The Dollar Cost of Diminished Ethics



Association of Certified  
Fraud Examiners (ACFE)



Biannually since 2000

2,110 cases reviewed globally 2020-21

Estimate enterprises in US lost 5% of annual revenues to fraud

Annual global economic cost: \$4.7 trillion.

Median loss: \$117,000

Average loss: \$1.8 million

Smaller organizations had the highest median loss (\$150,000)

Governments: \$138,000 median loss

*“Additionally, local governments, which tend to be smaller in terms of staffing and resources, suffered the second-highest median loss, more than twice as much as state entities.”*

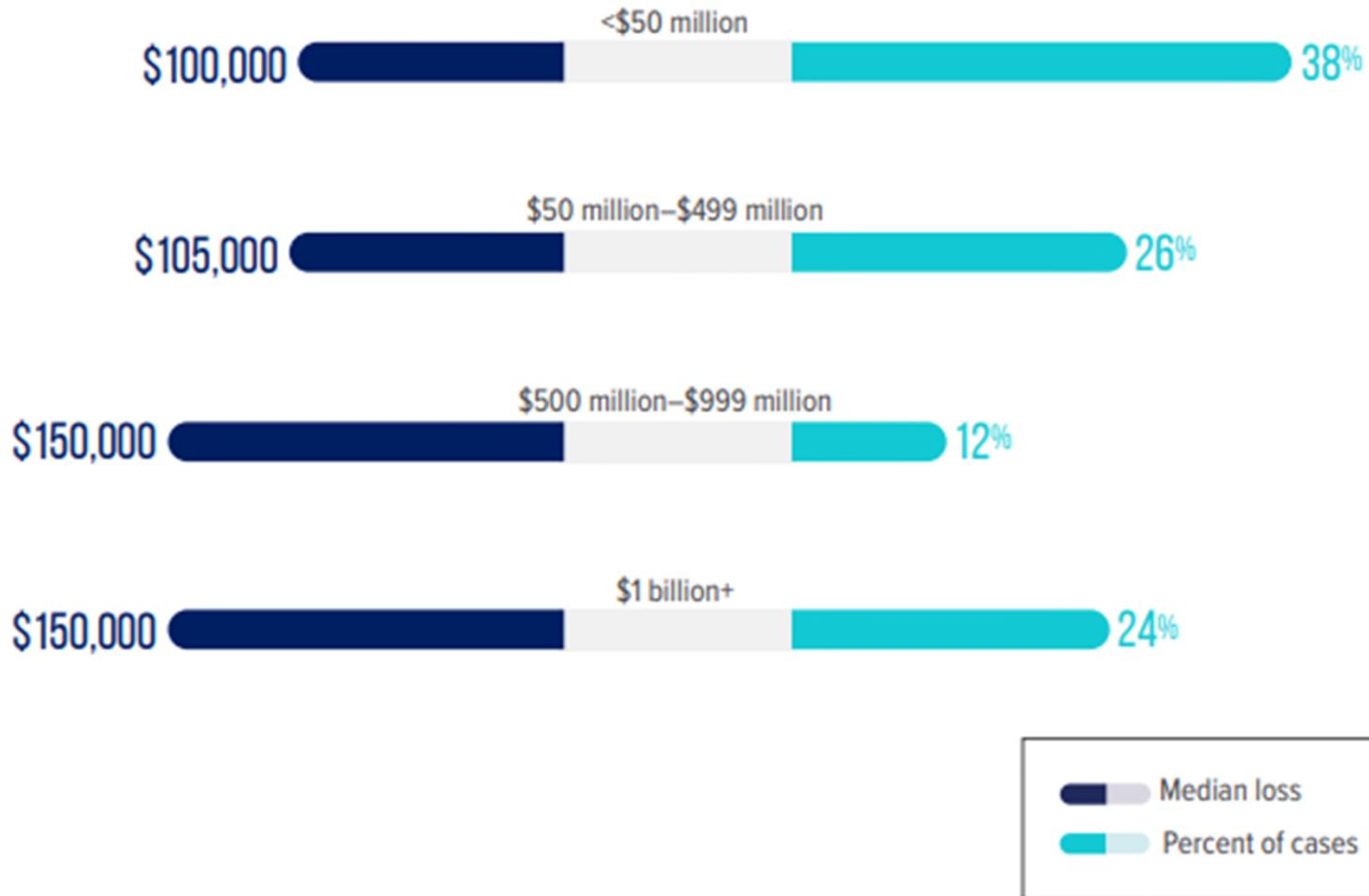
# How is Occupational Fraud Committed?



1. Financial statement fraud (“Lie”) schemes are those involving the intentional misstatement or omission of material information in the organization’s financial reports. Common methods of fraudulent financial statement manipulation include recording fictitious revenues, concealing liabilities or expenses and artificially inflating reported assets.
2. Corruption (“Cheat”) schemes involve the employee’s use of his or her influence in business transactions in a way that violates his or her duty to the employer for the purpose of obtaining a benefit for him- or herself or someone else. Examples of corruption schemes include bribery, extortion and a conflict of interest.
3. Asset misappropriations (“Steal”) are those schemes in which the perpetrator steals or misuses an organization’s resources. These frauds include schemes such as skimming cash receipts, falsifying expense reports and forging company checks.

Th

FIG. 18 HOW DOES AN ORGANIZATION'S GROSS ANNUAL REVENUE RELATE TO ITS OCCUPATIONAL FRAUD RISK?



**FIG. 2 HOW IS OCCUPATIONAL FRAUD COMMITTED?**

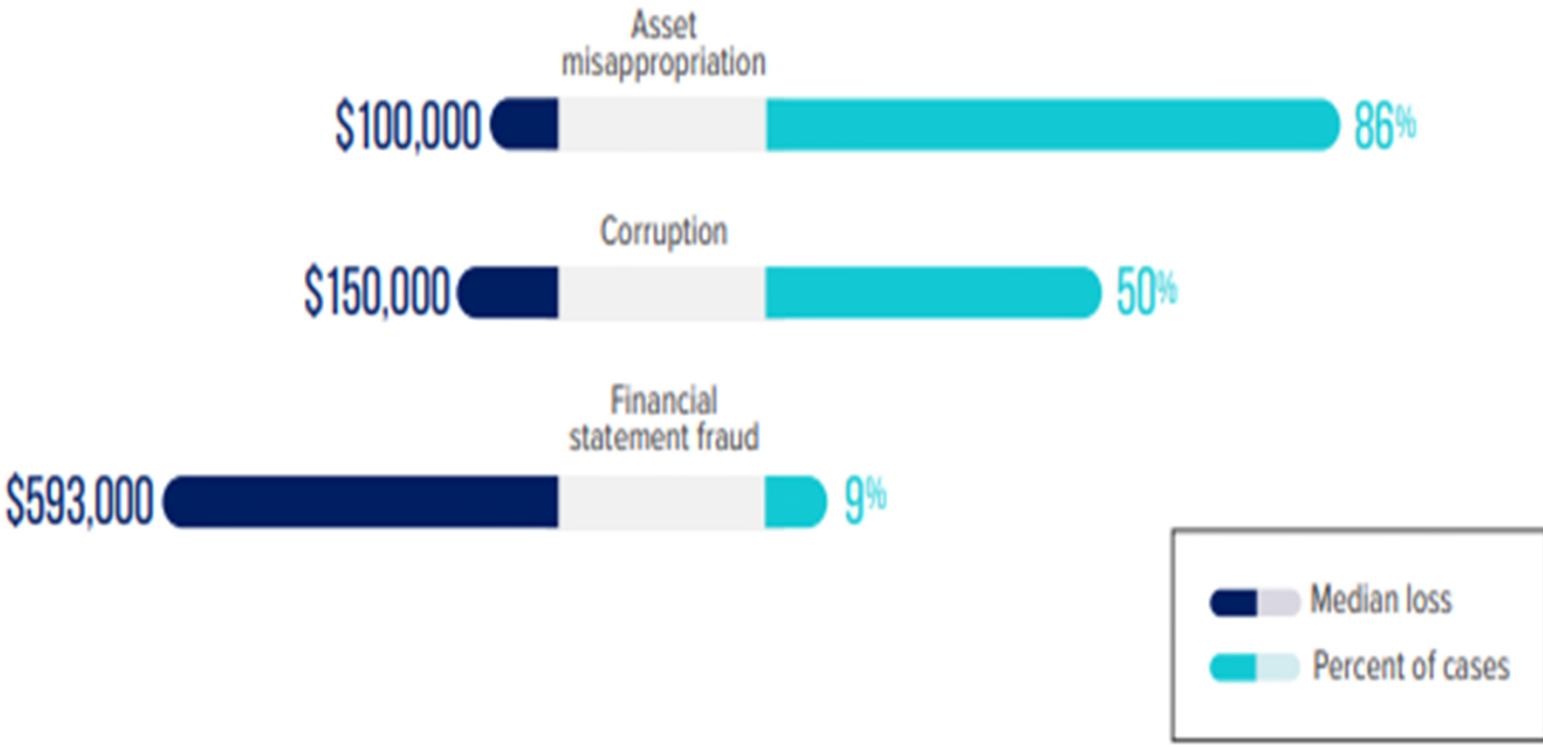
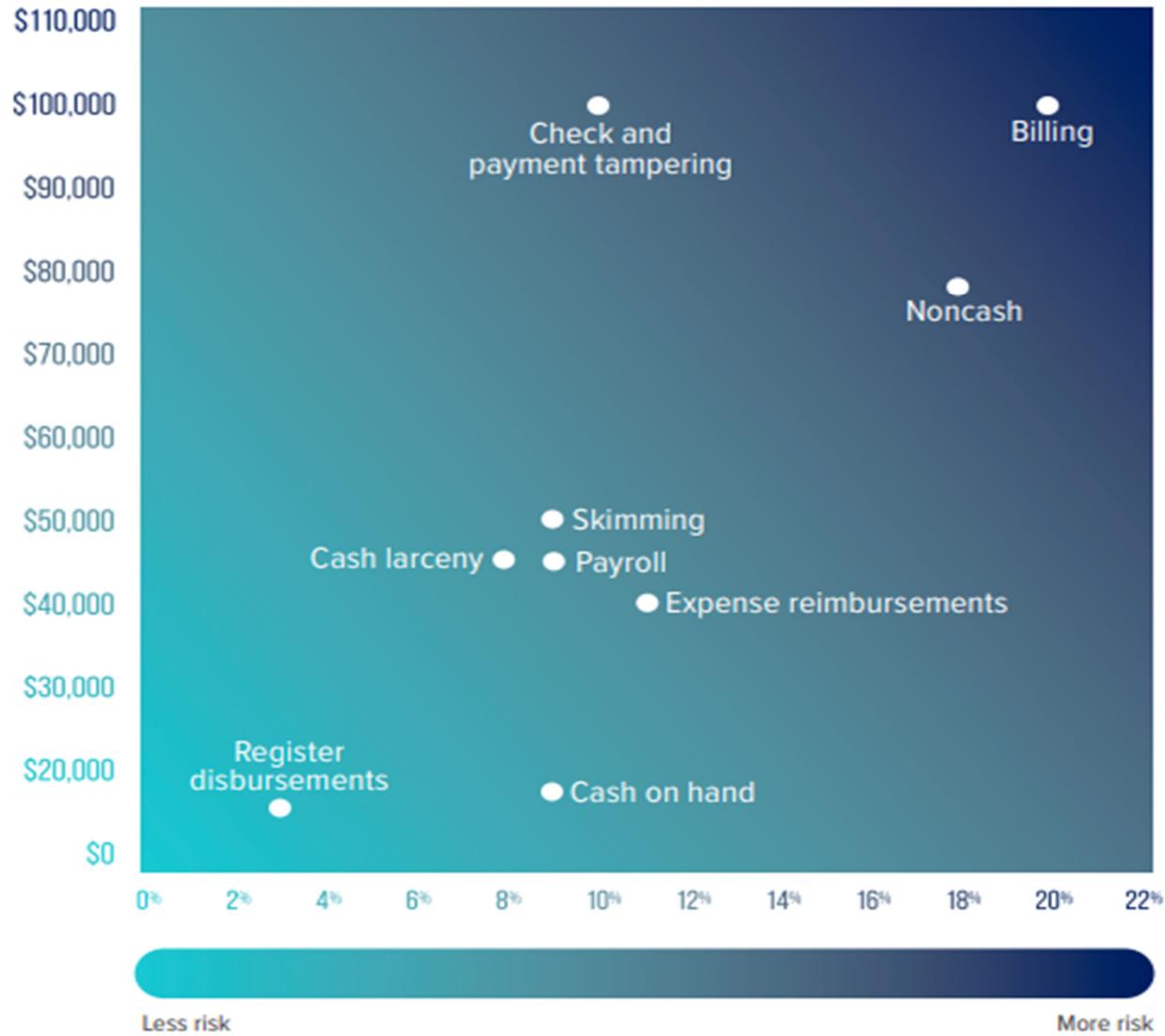


FIG. 5 WHICH ASSET MISAPPROPRIATION SCHEMES PRESENT THE GREATEST RISK?



# So What Works to Reduce Fraud?



**Strategy**

**Loss Reduction**

**Hotline**

**50%**

**Anti-fraud policy**

**45%**

**Code of Conduct**

**40%**

# Reason #3: Saving Democracy



*“A republic, if ... well, you know ...”*



# What's going on here?

*“Generally speaking, would you say that most people can be trusted, or that you can't be too careful in dealing with people?”*

	1972	2022
Can be trusted	46%	24%
Can't be too careful	50%	66%

National Opinion Research Center (NORC), University of Chicago



# *“How would you rate the honesty and ethical standards of people in these different fields?”*



	Rating
Bankers	26
Real estate agents	24
Journalists	23
Lawyers	21
Advertising	15
Business executives	14
Car salespeople	10
Members of Congress	9
Telemarketers	6

Gallup Research, annual survey, Nov-Dec 2022



POLITICS JULY 6, 2023

# Historically Low Faith in U.S. Institutions Continues

BY LYDIA SAAD



**“Confidence in four institutions now at record lows.”** *(Police, public schools, large tech companies, big business)*

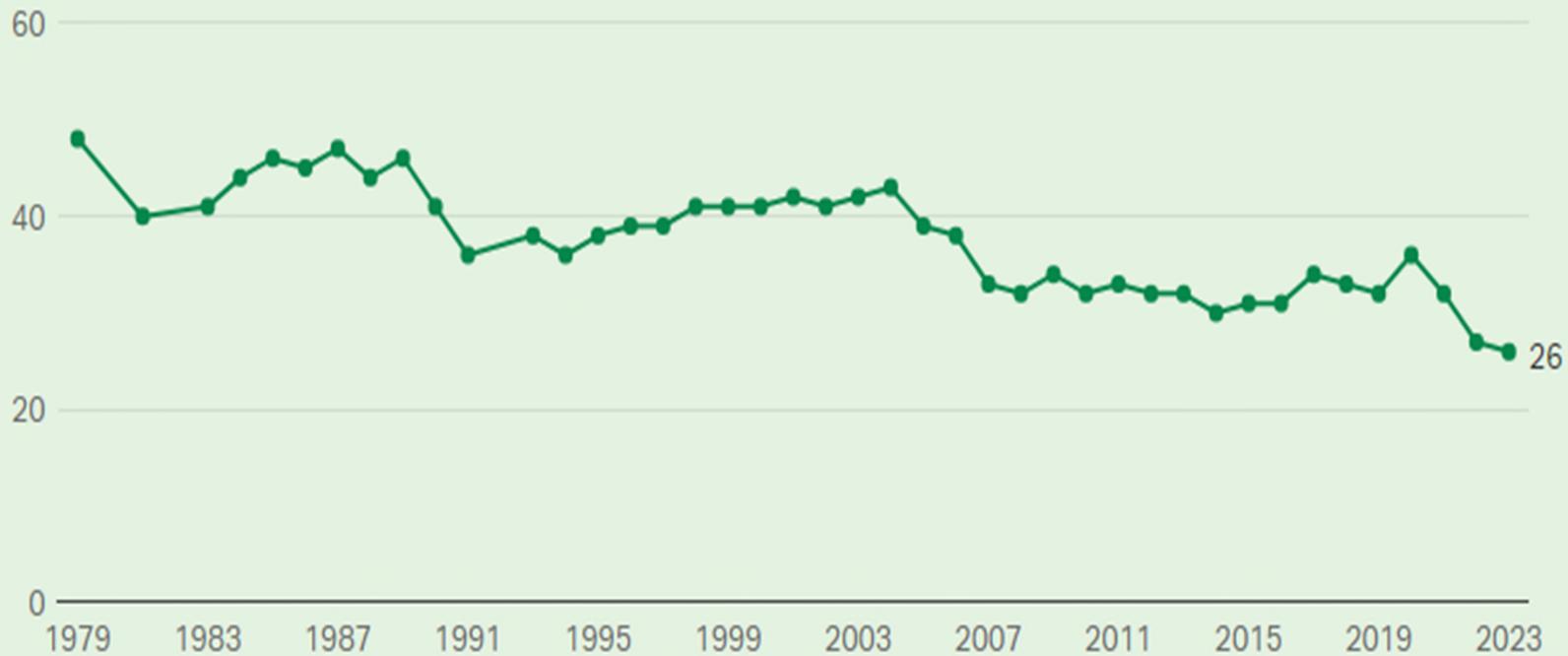
**“Last year, Gallup recorded significant declines in public confidence in 11 of the 16 institutions it tracks annually, with the presidency and Supreme Court suffering the most.”**





## Average Confidence in Major U.S. Institutions, 1979-2023

Figures are the average percentage of U.S. adults who have a great deal or quite a lot of confidence in nine institutions measured consistently by Gallup



The average includes only those institutions rated consistently by Gallup since 1979. These are the church/organized religion, the military, the Supreme Court, banks, public schools, newspapers, Congress, organized labor and big business.

[Get the data](#) • [Download image](#)

GALLUP®



<b>Military</b>	<b>60</b>
<b>Church/organized religion</b>	<b>32</b>
<b>Supreme Court</b>	<b>27</b>
<b>Banks</b>	<b>26</b>
<b>Public Schools</b>	<b>26</b>
<b>Organized labor</b>	<b>25</b>
<b>Newspapers</b>	<b>18</b>
<b>Television news</b>	<b>14</b>
<b>Big business</b>	<b>14</b>
<b>Congress</b>	<b>8</b>





POLITICS OCTOBER 13, 2023

# Americans Trust Local Government Most, Congress Least

BY JEFFREY M. JONES



# *“How much trust and confidence do you have in ... ?”*



		Difference from average	Partisan gap
Local government	67	- 3	4
State government	59	- 4	18
The American people	55	-12	3

# Review:

## Five Principles of Public Service Ethics



- Public office is a public trust to be used solely to advance the public interest.
- Decisions should be made on the merits and based upon objective judgment.
- Public officials must be accountable for their actions.
- Honor and respect democratic principles by adhering to letter and spirit of the law.
- Avoid conduct creating an appearance of impropriety.

Source: Josephson Institute of Ethics

# How to build public trust?



**Basics:**

**Deloitte: Four trust signals:**

- **Humanity**
- **Transparency**
- **Capability**
- **Reliability**



- ***Humanity:*** Do we care about the constituent experience?
  - Empathy, kindness, fairness
  - Value, respect
  
- ***Transparency:*** Do we share our thought process?
  - Openness, availability, accessibility
  - Leadership communication
  
- ***Capability:*** Are we able to reasonably meet expectations?
  
- ***Reliability:*** Are we dependable?



# American people – solutions



*Is it possible to improve the level of confidence Americans have in each other?*

**Yes – 86%**

*Is it possible to improved the level of confidence Americans have in the federal government?*

**Yes – 84%**

**Pew survey, Trust and Distrust in America, December 2018.**



# 3 top suggestions –



- Practicing more transparency, less secrecy
- Improving political leadership and government performance
- Working together to solve problems

# The Athenian Ephebic Oath (c. 420 B.C.)

*I will never bring disgrace to this our city by any act of dishonesty or cowardice, nor ever desert my comrades in the ranks;*

*I will fight for the ideals and the sacred things of the city, both alone and with many;*

*I will revere and obey the city's laws and do my best to incite to a like respect and reverence those who are prone to annul or set them at naught;*

*I will strive unceasingly to quicken the public sense of public duty;*

*That thus, in all these ways, I will transmit this city not less, but greater, better and more beautiful than when it was transmitted to us.*





**Michael McGee is Senior Counsel and past CEO of the law firm of Miller, Canfield, Paddock and Stone, PLC, where he practices public finance law. A three-time graduate of the University of Michigan, Mr. McGee earned a bachelor's degree in economics and political science in 1979, a law degree in 1982, and a master's degree in public policy studies in 1983.**

**Mr. McGee is a past Vice Chair of the Southeast Michigan Council of Governments (SEMCOG) and a contributing author to the Michigan Municipal League's handbook on ethics issues.**

