

January 9, 2017

Betsy DeVos  
Secretary-Designate, U.S. Department of Education  
Trump-Pence Transition Team  
1717 Pennsylvania Ave, NW  
Washington, DC 20006

Dear Mrs. DeVos,

Congratulations on your nomination to serve as Secretary of Education. I look forward to your upcoming testimony before the Senate Committee on Health, Education, Labor, and Pensions.

The Secretary of Education is responsible for enforcing critical laws and protections for PreK-12 and college students, overseeing a trillion-dollar student loan program, and developing regulations to assure school accountability, improve education outcomes, and protect students and taxpayers. The Secretary's actions can make a real difference in whether or not Americans can get a fair shot in reaching the American Dream. Given that you have virtually no experience with these important responsibilities, your testimony before the Senate Committee on Health, Education, Labor, and Pensions will be critical to assessing your readiness for the position.

Despite requests for more time to examine your views about education, the Committee Chairman has determined that there will be only one hearing to consider your nomination, and members will have limited time to ask you the many questions we have about your record and your qualifications to serve as Secretary of Education. To ensure that the Senate and the public can obtain clear answers about your experience, positions, and priorities, I write to outline what I expect to learn from you during your confirmation hearing based on my concerns with your record, and to share with you my priorities for the next Secretary of Education. I ask that you carefully review this letter and come prepared to fully answer my questions.

There is no precedent for an Education Department Secretary nominee with your lack of experience in public education. While past nominees for Secretary of Education have served as teachers, school system leaders, and governors, and came to the Department of Education with deep executive experience in public education, you have held no such position. As such, your nomination provides the Senate and the public with few clues about your actual policy positions on a host of critical issues.

A review of your record by my staff reveals that you have largely advanced your policy agenda through others—often through your use of large political and other donations. You have made no secret of the fact that you think of political spending as a way of “buying influence.”<sup>1</sup> You once wrote, “[m]y family is the biggest contributor of soft money to the Republican National Committee,” and “[w]e expect a return on our investment.”<sup>2</sup> You wrote, “[w]e expect to foster a conservative governing philosophy consisting of limited government and respect for traditional American virtues.”<sup>3</sup> By some reports, you and your family have invested at least \$200 million in “a host of right-wing causes” from think tanks to political committees.<sup>4</sup>

You are, of course, free to spend your fortune however you choose, but making large political contributions to “buy influence” does not qualify you to help set policy for the education of America’s school children. To the contrary, your history of support for policies that would drain valuable taxpayer resources from our public schools and funnel those funds to unaccountable private and for-profit education operators may well disqualify you from such a central role in public education.

I am also troubled by your seemingly nonexistent record on higher education. The United States Department of Education oversees a trillion-dollar student loan portfolio amid a growing student debt crisis.<sup>5</sup> President-elect Trump and I both agree that student loan debt should not be “an albatross around [the necks of students] for the rest of their lives,” and that the government should not be making a profit off the backs of hardworking students.<sup>6</sup> The need for a Secretary of Education who shares those values is urgent. And, as student loan and for-profit college industry stocks surge in response to the election of Mr. Trump, it is equally urgent that America has a Secretary of Education who will always administer the student loan program with the best interest of students in mind.<sup>7</sup> This requires a Secretary of Education with the necessary expertise

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<sup>1</sup> Mayer, J. “Betsy DeVos, Trump’s Big-Donor Education Secretary.” *The New Yorker* (November 23, 2016). Online at: <http://www.newyorker.com/news/news-desk/betsy-devos-trumps-big-donor-education-secretary>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Kroll, A. “Meet the New Kochs: The DeVos Clan’s Plan to Defund the Left.” *Mother Jones* (February 2014). Online at: <http://www.motherjones.com/politics/2014/01/devos-michigan-labor-politics-gop>; Mayer, J. “Betsy DeVos, Trump’s Big-Donor Education Secretary.” *The New Yorker* (November 23, 2016). Online at: <http://www.newyorker.com/news/news-desk/betsy-devos-trumps-big-donor-education-secretary>.

<sup>5</sup> “Investing in Higher Education: Benefits, Challenges, and the State of Student Debt.” *Executive Office of the President of the United States*. July 2016. Online at: [https://www.whitehouse.gov/sites/default/files/page/files/20160718\\_cca\\_student\\_debt.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20160718_cca_student_debt.pdf).

<sup>6</sup> Douglas-Gabriel, Danielle. “Trump just laid out a pretty radical student debt plan.” *The Washington Post* (October 13, 2016). Online at: <https://www.washingtonpost.com/news/grade-point/wp/2016/10/13/trump-just-laid-out-a-pretty-radical-student-debt-plan/>.

<sup>7</sup> Eule, Alex. “Election 2016: And Now for the Winning Stocks.” *Barron’s* (November 9, 2016). Online at: <http://www.barrons.com/articles/election-2016-and-now-for-the-winning-stocks-1478712975>; Dynarski, S. The Upshot. *The New York Times* (November 18, 2016). Online at: [http://www.nytimes.com/2016/11/19/upshot/with-trump-investors-see-profits-again-in-for-profit-colleges.html?\\_r=0](http://www.nytimes.com/2016/11/19/upshot/with-trump-investors-see-profits-again-in-for-profit-colleges.html?_r=0); Lobosco, K. “Another election winner: For-profit colleges.” *CNN Money* (November 17, 2016). Online at: <http://money.cnn.com/2016/11/17/pf/college/for-profit-college-stock-trump/>.

and experience to be fully committed to – and fully engaged in – helping students afford college and manage their loan burdens.

### **K-12 Education**

Your only experience related to elementary and secondary education is a deep record of activism, bankrolling, and lobbying for policies that would privatize public education, send more taxpayer dollars to private institutions, and expand access to for-profit charter schools without meaningful accountability for how public dollars are spent.

While there is an extensive record of your millions of dollars in political spending to support privatizing elementary and secondary schools and sending public education funds to private and religious schools through voucher schemes, there is little evidence that these efforts have improved public education or have helped students learn and achieve. This raises questions about what kind of Secretary of Education you will be – one who is focused on results for students or one who is focused on gambling with our children’s education in support of your radical political ideology.

You and the organizations you led have also spent millions to promote policies that send more public funds to for-profit and virtual charter schools with no accountability for how well these schools serve students or how these taxpayer dollars are spent. In fact, you have worked to aggressively expand unaccountable for-profit and virtual charter schools in Michigan, while using your political influence to kill meaningful efforts to hold these schools accountable to delivering a decent education to their students.<sup>8</sup> This is particularly troubling because the Secretary of Education is the chief enforcer of the important accountability provisions in federal education law, and your record raises questions about whether you would meaningfully enforce federal accountability provisions in the *Elementary and Secondary Education Act*.

### ***Privatizing and Defunding K-12 Education***

For decades, you have been one of the nation’s strongest advocates for radically transforming the public education system through the use of taxpayer-funded vouchers that steer public dollars away from traditional public schools to private and religious schools. You have personally funded private school voucher initiatives in your home state of Michigan, as well as other states. And you have founded and funded organizations to advocate for these policies. Great Lakes Education Project, an organization you founded, gave more than \$1.3 million in contributions to conservative candidates in Michigan.<sup>9</sup> And in one year alone, another

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<sup>8</sup> Zernike, K. “How Trump’s Education Nominee Bent Detroit to Her Will on Charter Schools.” *The New York Times* (December 12, 2016). Online at: <http://www.nytimes.com/2016/12/12/us/politics/betsy-devos-how-trumps-education-nominee-bent-detroit-to-her-will-on-charter-schools.html>.

<sup>9</sup> Jesse, D. “Pro-charter lobby shows its clout in Legislature.” *Detroit Free Press* (June 25, 2014). Online at: <http://www.freep.com/story/news/local/michigan/2014/06/25/procharter-lobby-shows-its-clout-in-legislature/77155448/>.

organization that you founded, All Children Matter, spent \$7.6 million “directly impacting statewide and state legislative elections in 10 targeted states.”<sup>10</sup>

As Chairman of the American Federation for Children, you led an organization that nationally advocates for taxpayer-funded vouchers that students can use at private schools and aggressively funnels donations through its political arm to candidates who support these privatization policies.<sup>11</sup> Another organization you and your husband founded, the Great Lakes Education Project, also promotes private school voucher policies and supports candidates who commit to pursuing more conservative privatization policies in Michigan.<sup>12</sup> Through these and other organizations with which you are affiliated, like Advocates for School Choice, you and your husband have personally directed an estimated \$200 million towards privatizing American public education.<sup>13</sup>

But the actual evidence on how private voucher programs affect educational outcomes is mixed at best, and in many cases reveals these programs to be expensive and dangerous failures that cost taxpayers billions of dollars while destroying public education systems. In 2012, Louisiana expanded its private school voucher program from New Orleans to cover the whole state. Three years later, a study by economists at Duke, the University of California in Berkeley, and MIT found that participation in the program “substantially reduces academic achievement,” increasing the likelihood of failing at math by 50%.<sup>14</sup> An Ohio study yielded similar results.<sup>15</sup>

These private voucher programs also have a racially-charged history. Historically, private school vouchers have been used by some states to further racial and socioeconomic segregation. After *Brown v. Board of Education* and the court-ordered desegregation of public schools, many Southern states established voucher schemes to allow white students to leave the public education system and take taxpayer public education dollars with them, decimating the budgets of public school districts.<sup>16</sup> Today’s voucher schemes can be just as harmful to public

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<sup>10</sup> “All Children Matter Media Kit.” *All Children Matter* (May 7, 2009). Online at: <http://web.archive.org/web/20090507235854/http://www.allchildrenmatter.org/mediakit.php>.

<sup>11</sup> “Types of Educational Choice.” *American Federation for Children*. Online at: <http://www.federationforchildren.org/ed-choice-101/types-educational-choice/>.

<sup>12</sup> “Mission & Priorities.” *Great Lakes Education Project*. Online at: <http://www.glep.org/glep-mission/>; “2016 Campaign.” *Great Lakes Education Project*. Online at: <http://www.glep.org/2016-campaign>.

<sup>13</sup> Andy Kroll, *Meet the New Kochs: The DeVos Clan's Plan to Defund the Left*, Mother Jones, Feb. 2014, available at <http://www.motherjones.com/politics/2014/01/devos-michigan-labor-politics-gop>.

<sup>14</sup> “Free to Choose: Can School Choice Reduce Student Achievement?” *National Bureau of Economic Research* (December 2015): Cambridge, MA. Online at: <http://eml.berkeley.edu/~crwalters/papers/LSP.pdf>.

<sup>15</sup> Figlio, D. and Karbownik, K. “Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects.” *Thomas B. Fordham Institute* (July 2016): Washington, DC. Online at: [https://edex.s3-us-west-2.amazonaws.com/publication/pdfs/FORDHAM%20Ed%20Choice%20Evaluation%20Report\\_online%20edition.pdf](https://edex.s3-us-west-2.amazonaws.com/publication/pdfs/FORDHAM%20Ed%20Choice%20Evaluation%20Report_online%20edition.pdf).

<sup>16</sup> Gooden, M. A. “Race and School Vouchers: Legal, Historical, and Political Contexts.” *Peabody Journal of Education*, 91(4) (June 29, 2016). Pp. 522-536. Online at: <http://www.tandfonline.com/doi/abs/10.1080/0161956X.2016.1207445?journalCode=hpje20>.

school district budgets, because they often leave school districts with less funding to teach the most disadvantaged students,<sup>17</sup> while funneling public dollars to unaccountable private schools that are not held to the same academic or civil rights standards as public schools.

Based on this evidence, I am extremely concerned about your staunch support for voucher schemes that siphon away much-needed public education funds with no strings attached, sidestepping standards and protections from discrimination. The next Secretary of Education must rely on evidence, not ideological views, to make K-12 policy decisions.

I have the following questions on this subject:

*Will you commit to pursuing only education policy initiatives that have a solid, reliable, and rigorous basis in actual peer-reviewed evidence of improved student outcomes? What specific evidence do you believe should be considered as part of these decisions about education policy initiatives?*

*If confirmed, would you use your position as Secretary of Education to promote the expansion of private school voucher programs in public education? If so, which states, regions, or types of school systems do you intend to include in this expansion?*

*The Every Student Succeeds Act of 2015 explicitly prohibits the Department of Education from mandating, prescribing, directing, or incentivizing the allocation of State or district resources, which includes a prohibition on policies that would mandate private voucher programs.<sup>18</sup> Will you commit to adhering to ESSA by not using your position as Secretary of Education to mandate, prescribe, direct, or incentivize any private school voucher programs in any state or school district?*

*Will you commit to opposing any private school voucher program that results in a net funding cut for any public education system? If yes, how will you ensure that private school voucher programs do not result in public school funding cuts?*

*Will you commit to opposing any private school voucher program using federal taxpayer dollars if that program results in increased racial or socioeconomic segregation? If yes, how will you ensure that private school voucher programs do not further segregate our schools?*

### ***Opposition to Accountability in K-12 Education***

A 2016 audit by the Department of Education's Inspector General found that the relationships between charter schools and charter management organizations, including for-profit management companies in Michigan, are often too close and lack internal controls to prevent

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<sup>17</sup> McEachin, A., Stecher, B., & Evans, G. "Not Everyone Has a Choice." *U.S. News & World Report* (August 31, 2015). Online at: <http://www.usnews.com/opinion/knowledge-bank/2015/08/31/how-school-choice-could-disadvantage-low-income-students>.

<sup>18</sup> 20 U.S.C. § 6311.

conflicts of interest, opening the door to waste, fraud, and abuse of federal money.<sup>19</sup> Yet many of your advocacy efforts in Michigan have contributed to a system with too many poorly performing for-profit charter schools where, despite more “choice,” many parents are still left without good options for their children’s education.<sup>20</sup>

For example, you advocated for a 2011 law that completely lifted the state of Michigan’s cap on charter schools, and, just this year, you vigorously opposed bipartisan legislation to fix the chaotic mix of poor performing schools in Detroit with meaningful oversight and standards for how to open new schools and close bad ones.<sup>21</sup> Today, Michigan taxpayers annually spend almost \$1 billion on charter schools, 80% of which are run completely by for-profit companies seeking to make money off of students.<sup>22</sup> There is alarming evidence of waste, fraud, and abuse in these schools, such as huge contracts for the family members of founders. In another case, one charter school board gave an administrator a severance package totaling \$520,000 in taxpayer money.<sup>23</sup>

Most importantly, this system of minimal accountability has failed its students.<sup>24</sup> A 2015 federal review of the Michigan system found an “unreasonably high” number of Michigan charter schools among the worst performing 5% of schools nationwide, and that number had doubled in just five years.<sup>25</sup> Despite these results, you have continued to oppose reasonable and bipartisan accountability proposals for for-profit charter schools.<sup>26</sup>

Your record as a staunch opponent of strengthening school accountability even in instances where it is clearly necessary to improve outcomes for students is deeply concerning and leads me to question whether you would take seriously the important responsibility of

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<sup>19</sup> “FINAL AUDIT REPORT, Nationwide Assessment of Charter and Education Management Organizations.” *Office of Inspector General, U.S. Department of Education* (September 2016). Online at: <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2016/a02m0012.pdf>.

<sup>20</sup> Zernike, K. “A Sea of Charter Schools in Detroit Leaves Students Adrift.” *The New York Times* (June 28, 2016). Online at: <http://www.nytimes.com/2016/06/29/us/for-detroits-children-more-school-choice-but-not-better-schools.html>.

<sup>21</sup> Zernike, K. “How Trump’s Education Nominee Bent Detroit to Her Will on Charter Schools.” *The New York Times* (December 12, 2016). Online at: <http://www.nytimes.com/2016/12/12/us/politics/betsy-devos-how-trumps-education-nominee-bent-detroit-to-her-will-on-charter-schools.html>.

<sup>22</sup> Zernike, K. “A Sea of Charter Schools in Detroit Leaves Students Adrift.” *The New York Times* (June 28, 2016). Online at: <http://www.nytimes.com/2016/06/29/us/for-detroits-children-more-school-choice-but-not-better-schools.html>.

<sup>23</sup> Dixon, J. “Michigan spends \$1B on charter schools but fails to hold them accountable.” *Detroit Free Press* (August 24, 2016). Online at: <http://www.freep.com/story/news/local/michigan/2014/06/22/michigan-spends-1b-on-charter-schools-but-fails-to-hold/77155074/>.

<sup>24</sup> *Id.*

<sup>25</sup> Zernike, K. “A Sea of Charter Schools in Detroit Leaves Students Adrift.” *The New York Times* (June 28, 2016). Online at: <http://www.nytimes.com/2016/06/29/us/for-detroits-children-more-school-choice-but-not-better-schools.html>.

<sup>26</sup> Zernike, K. “How Trump’s Education Nominee Bent Detroit to Her Will on Charter Schools.” *The New York Times* (December 12, 2016). Online at: <http://www.nytimes.com/2016/12/12/us/politics/betsy-devos-how-trumps-education-nominee-bent-detroit-to-her-will-on-charter-schools.html>.

enforcing the critical school accountability provisions that Congress has recently written into the *Elementary and Secondary Education Act*.

In 2015, Congress reauthorized the *Elementary and Secondary Education Act* as the *Every Student Succeeds Act (ESSA)* on a bipartisan basis. I fought hard with other Senate Democrats to include critical accountability provisions in this law to ensure that federal education dollars go to support the schools and students who need those resources the most, and that these schools use these funds wisely. The Department of Education now must implement this law and enforce its fiscal and academic accountability provisions as states begin to write plans for how they will administer the programs in ESSA.

In November 2016, the current Education Secretary, John King, issued strong new rules to enforce the accountability provisions in this law and to ensure that the law retains its civil rights legacy and protects equal access to a high-quality public education.<sup>27</sup> The next Secretary of Education will be responsible for implementing and enforcing the accountability provisions in this law and in the new rules to ensure that states and districts are not shortchanging students of color, low-income students, English learners, students with disabilities, and other historically marginalized groups of students.

The next Secretary of Education must follow the law and diligently enforce the accountability and civil rights provisions in ESSA, which include ensuring that states and districts are a) holding all schools accountable if they are unable to deliver a quality education for their students, and b) sending federal education resources to public schools and students where they are truly needed.

I have the following questions on this subject:

*Will you commit to rejecting state plans for implementing ESSA that fail to meet accountability and reporting requirements set forth in the law?*

*Will you commit to implementing and enforcing the new ESSA regulations finalized by the Education Department in 2016, without amendment or delay? What specific goals or timelines do you have for enforcing these provisions?*

*What are your specific plans for ensuring that states and districts hold schools – particularly for-profit charter schools – accountable if they are discriminating against or failing to educate students? What specific measures will you use to identify discrimination or failure to appropriately educate students?*

*Will you commit to vigorously enforcing the fiscal accountability provisions of ESSA, including the critical 'maintenance of effort' and 'supplement, not supplant' provisions,<sup>28</sup> which are intended to prevent states and school districts from using the arrival of federal*

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<sup>27</sup> 81 CFR 87076. Online at: <https://www.federalregister.gov/documents/2016/11/29/2016-27985/elementary-and-secondary-education-act-of-1965-as-amended-by-the-every-student-succeeds>.

<sup>28</sup> 20 U.S.C. § 6321.



*dollars as an excuse to cut back their funding to low-income public schools? Will you penalize states that are not in compliance with these provisions?*

*Will you commit to implementing and enforcing ESSA provisions<sup>29</sup> that ensure additional federal resources for struggling public schools that are in need of improvement? Will you penalize states that are not in compliance with these provisions?*

### **Higher Education**

I am particularly concerned about your paper-thin record on higher education and student debt. America's students and their families are currently grappling with critical higher education challenges: making college more affordable, improving college completion, increasing college quality and accountability, and addressing our country's growing student debt burden.

The Secretary of Education has an enormous impact on higher education policy. The United States Department of Education distributes \$30 billion in Pell Grants annually to students,<sup>30</sup> oversees over 6,000 colleges and universities,<sup>31</sup> and administers a trillion-dollar student loan portfolio, which includes overseeing banks, student loan servicers, debt collectors, and other Department contractors.<sup>32</sup>

Experts are sounding the alarm that the nation's growing student debt burden is placing a drag on the economy and hindering the financial lives of young people by forcing them to delay buying homes, saving for retirement, or starting businesses.<sup>33</sup> Currently, due to artificially high interest rates set by Congress, the federal government is overcharging borrowers on their student loans, and, according to an analysis of Congressional Budget Office projections by the Institute for College Access and Success, will make \$81 billion in profit over the next decade off of student loans.<sup>34</sup> This is fundamentally unfair, and even President-elect Trump agrees that the

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<sup>29</sup> *Id.*

<sup>30</sup> "The Federal Pell Grant Program: Recent Growth and Policy Options." *Congressional Budget Office* (September 2013). Online at: [https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44448\\_PellGrants\\_onecolumn.pdf](https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44448_PellGrants_onecolumn.pdf).

<sup>31</sup> "Fast Facts: Educational Institutions." *National Center for Education Statistics*. Online at: <https://nces.ed.gov/fastfacts/display.asp?id=84>.

<sup>32</sup> "Federal Student Loan Portfolio." *Federal Student Aid, U.S. Department of Education*. Online at: <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>.

<sup>33</sup> Consumer Financial Protection Bureau (2013). "Student Debt Domino Effect?" available at <http://www.consumerfinance.gov/newsroom/student-debt-domino-effect/>; Brown, M. & Caldwell, S.; Busted, B. "Student Loan Debt: Major Barrier to Entrepreneurship." *Gallup* (October 14, 2015). Online at: <http://www.gallup.com/businessjournal/186179/student-loan-debt-major-barrier-entrepreneurship.aspx>.

<sup>34</sup> "What no one noticed about CBO's recent projection: \$80 billion in student loan profits." *The Institute for College Access & Success* (September 27, 2016). Online at: <http://ticas.org/blog/what-no-one-noticed-about-cbos-recent-projection-81-billion-student-loan-profits>.



federal government should not be making a profit off the backs of students trying to get an education.<sup>35</sup>

The next Secretary of Education must have the experience and expertise to effectively manage the student loan program with the best interests of students in mind. This means advocating for policies that protect students from Wall Street's and the federal government's attempts to profit off them, and for policies that push down college costs for students and cut the cost of borrowing from the federal government for new and existing borrowers.

### *The Department's Student Loan Program*

The Secretary of Education is responsible for a trillion-dollar enterprise that administers student loans for over 40 million Americans. The Secretary of Education is also responsible for overseeing dozens of contractors that administer the program and act as middlemen between the Department and borrowers. With more than 1,300 employees across the country, the Office of Federal Student Aid – the Department's student loan bank – represents a significant and rapidly expanding share of the Department's workforce and responsibilities.<sup>36</sup>

In 2010, Congress dramatically improved the federal student loan program by ending the old bank-based student lending system and allowing the Department of Education to lend directly to all students and families who need more money to attend college. This change has been projected to save the federal government \$61 billion between 2010 and 2019 by cutting out the private banks and putting the taxpayer subsidies banks received to make loans toward increasing Pell Grants for low-income students.<sup>37</sup> Under the previous expensive and scandal-prone<sup>38</sup> program, banks hauled in billions in profits from federal student loans while the taxpayers assumed all of the risk.

This was a sweet deal for Wall Street, which is why many banks and other private student lenders are eager to reenter the federal student loan program. Student loan industry lobbyists have already used the election of Donald Trump to call on his transition team to auction off pieces of the federal student loan portfolio to Wall Street banks and private student loan companies so that they can make more money off the backs of hardworking students.<sup>39</sup> And the 2016 platform of the Republican Party included an expensive proposal to restore “private sector financing” in the federal student loan program. This would be great for banks but terrible for

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<sup>35</sup> Cirilli, K. “Trump: Why is federal government making money on student loans?” *The Hill* (July 23, 2015). Online at: <http://thehill.com/policy/finance/248913-trump-why-is-federal-government-making-money-on-student-loans>.

<sup>36</sup> “2016 Annual Report.” *Federal Student Aid, U.S. Department of Education* (November 14, 2016). Online at: <https://studentaid.ed.gov/sa/sites/default/files/FY-2016-Annual-Report.pdf>.

<sup>37</sup> Elmendorf, D. [Letter to Speaker Pelosi]. *Congressional Budget Office* (March 20, 2010). Online at: <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/amendreconprop.pdf>.

<sup>38</sup> Dillon, S. “Whistle-Blower on Student Aid Is Vindicated.” *The New York Times* (May 7, 2007). Online at: <http://www.nytimes.com/2007/05/07/washington/07loans.html>.

<sup>39</sup> Bergeron, J. [Open Letter to President-Elect Trump]. *National Council of Higher Education Resources* (December 7, 2016). Online at: [http://c.yimcdn.com/sites/www.ncher.us/resource/resmgr/images/12-07-16\\_NCHER\\_Letter\\_to\\_the.pdf](http://c.yimcdn.com/sites/www.ncher.us/resource/resmgr/images/12-07-16_NCHER_Letter_to_the.pdf).

students and taxpayers.<sup>40</sup> The next Secretary of Education must fight against these policies that would enrich big banks while harming students and taxpayers.

It is also critical that the next Secretary of Education strengthen the federal Direct Loan program and ensure that the program operation and administration focuses on helping – not harming – student loan borrowers. There are currently over eight million federal student loan borrowers in default, and the Consumer Financial Protection Bureau estimates that one in four borrowers are struggling to repay their federal student loans.<sup>41</sup> The number of borrowers in distress is growing, despite the universal availability of repayment plans that allow borrowers to lower their monthly payments to more affordable levels.<sup>42</sup> Much of the failure to take advantage of these plans is due to shoddy student loan servicing and harsh debt collection practices that do not help keep borrowers out of default.

The Department of Education pays millions of dollars annually to private contractors, including giant student loan servicers like Navient (formerly Sallie Mae), to administer the federal student loan program. Student loan servicers are principally responsible for collecting loan payments from borrowers, keeping borrowers out of delinquency and default, and helping struggling borrowers find the repayment or forgiveness programs that are best for them. But the next Secretary of Education will inherit a student loan servicing ecosystem riddled with widespread failures identified by the Consumer Financial Protection Bureau,<sup>43</sup> the Government Accountability Office,<sup>44</sup> and the Department of Education's own Inspector General.<sup>45</sup>

Borrowers and servicemembers have suffered at the hands of the Department of Education's student loan servicers, particularly Navient,<sup>46</sup> and it is imperative that the next

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<sup>40</sup> "Republican Platform 2016." *Republican National Convention* (July 18, 2016). Online at: [https://prod-cdn-static.gop.com/media/documents/DRAFT\\_12\\_FINAL\[1\]-ben\\_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf).

<sup>41</sup> "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." *Consumer Financial Protection Bureau* (September 29, 2015). Online at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/>.

<sup>42</sup> "Investing in Higher Education: Benefits, Challenges, and the State of Student Debt." *Executive Office of the President of the United States* (July 2016). Online at: [https://www.whitehouse.gov/sites/default/files/page/files/20160718\\_cea\\_student\\_debt.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20160718_cea_student_debt.pdf).

<sup>43</sup> "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." *Consumer Financial Protection Bureau* (September 29, 2015). Online at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers>.

<sup>44</sup> "Education Could Improve Direct Loan Program Customer Service and Oversight." *U.S. Government Accountability Office* (May 16, 2016). Online at: <http://www.gao.gov/products/GAO-16-523>.

<sup>45</sup> Tighe, K. [Letter to Senators Murray, Warren & Blumenthal]. *Office of Inspector General, United States Department of Education* (February 29, 2016). Online at: <https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>.

<sup>46</sup> "Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans." *The United States Department of Justice* (May 13, 2014). Online at: <http://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>; "FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices in Violation of the Servicemembers Civil Relief Act." *Federal Deposit Insurance Corporation* (May 13, 2014). Online at: <https://www.fdic.gov/news/news/press/2014/pr14033.html>.

Secretary of Education commit to cleaning up this entire sector for students. This means holding all student loan servicers and debt collectors accountable when they break the law or mistreat borrowers, rewriting the loan servicing contracts to better align financial incentives, ensuring that servicers provide borrowers with consistent and high-quality customer service, and granting borrowers the legal tools to go after servicers that violate their rights.

The next Secretary will also inherit a slate of private debt collector contractors with a troubling history of federal consumer protection law violations.<sup>47</sup> The Consumer Financial Protection Bureau estimates that one in three rehabilitated student loan borrowers will re-default within two years despite likely qualifying for zero-dollar monthly payments under an income-driven plan due to the Department's current debt collection policies.<sup>48</sup> There are also tens of thousands of borrowers in debt collections despite their eligibility for loan cancellation due to disability, school closure, or fraud,<sup>49</sup> which makes the debt invalid. The next Secretary of Education must also ensure that the Department of Education's debt collection practices, policies, and private debt collector contracts are structured to help get borrowers out of default and to keep them out of default, hold private debt collectors accountable for violations of federal consumer protection laws, and stop sending invalid debt into collections in the first place.

In addition, the next Secretary of Education must explore other ways to protect student loan borrowers, including increasing data transparency in the student loan portfolio for policy makers and the public, ensuring that students have a meaningful complaint system that is public and searchable for when schools or contractors mistreat them, and reevaluating how the Department responds to borrowers in bankruptcy seeking an "undue hardship" discharge.

I have the following questions on this subject:

*Do you agree with me and with President-elect Trump that it is fundamentally unfair for the federal government to be making a profit off the backs of students? Will you support reducing the interest rates on federal student loan? Do you support my Bank on Students Emergency Loan Refinancing Act?*

*Do you believe there is statutory authority to re-privatize the student loan program? If so, where is this authority? If not, will you oppose efforts by Wall Street lobbyists to pass legislation that privatizes the student loan program? Do you support calls from student loan industry lobbyists to auction off the federally-held student loan portfolio? If so, why?*

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<sup>47</sup> "Handling of Borrower Complaints Against Private Collection Agencies." *Office of Inspector General, United States Department of Education* (July 2015). Online at: <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/a06m0012.pdf>.

<sup>48</sup> "CFPB Projects that One-in-Three Rehabilitated Student Loan Borrowers Will Re-default Within Two Years." *Consumer Financial Protection Bureau* (October 17, 2016). Online at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-projects-one-three-rehabilitated-student-loan-borrowers-will-re-default-within-two-years/>.

<sup>49</sup> "In Light of Troubling New Data, Sen. Warren Demands Education Department Halt Collection of Former Corinthian Students' Debt and Discharge Their Loans." *Office of Senator Elizabeth Warren* (September 29, 2016). Online at: [https://www.warren.senate.gov/?p=press\\_release&id=1266](https://www.warren.senate.gov/?p=press_release&id=1266).

*Will you commit to establishing specific metrics by which you will evaluate how well student loan servicers are keeping borrowers out of delinquency and default, and to holding them accountable to such metrics? Will you establish a transparent process for evaluating the quality of customer service that student loan servicer provide borrowers, which includes evaluating how well servicers are getting student loan borrowers into the repayment and forgiveness programs that are best for them?*

*Will you commit to holding accountable Department of Education student loan servicers, debt collectors, and other contractors that break the law, abuse students, or otherwise provide poor service to borrowers, including through sanctions, fines, contract terminations and other penalties?*

*Will you commit to increasing data transparency in the student loan portfolio as outlined in the Education Department's July 2016 Policy Direction on Federal Student Loan Servicing?<sup>50</sup> Will you commit to ensuring that students have a meaningful complaint system that is public and searchable? Will you commit to prohibiting the Department of Education from opposing borrowers in bankruptcy seeking a discharge on their student loans due to an undue hardship?*

### ***Oversight of Public, Non-Profit, and For-Profit Colleges and Universities***

One of the most important functions of the Department of Education is oversight of public, non-profit, and for-profit colleges and universities that are eligible for the federal student aid program. The Department administers billions of dollars in student aid and loans; in return, it has a legal responsibility to ensure that every institution of higher education that participates in the federal student aid program meets minimal standards to ensure that students receive the education they are promised and that taxpayer dollars are not wasted on loans to students who attend bogus schools.

The failure to meet these responsibilities can have catastrophic consequences for students and taxpayers. For example, in fiscal year 2015, the Department of Education shoveled \$8.1 billion into student loans at fraudulent, for-profit institutions under investigation or being sued for outright fraud,<sup>51</sup> including billions to Corinthian Colleges before the company went bankrupt – the largest collapse of an institution of higher education in American history. When Corinthian collapsed, it left hundreds of thousands of students with useless degrees and billions of dollars in student loans they could not pay back.

In recent years, the Obama Administration has made significant progress in protecting students and taxpayers by holding for-profit colleges accountable for delivering a quality, affordable education to their students. Under Education Secretary King, the Department has cut

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<sup>50</sup> Mitchell, T. "Policy Direction on Federal Student Loan Servicing." *U.S. Department of Education* (July 20, 2016). Online at: <https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf>.

<sup>51</sup> Cohen, P. "For-Profit Colleges Accused of Fraud Still Receive U.S. Funds." *The New York Times* (October 12, 2015). Online at: <http://www.nytimes.com/2015/10/13/business/for-profit-colleges-accused-of-fraud-still-receive-us-funds.html>.

off or limited federal student aid to institutions when there is clear evidence that those schools are ripping off students and taxpayers.<sup>52</sup> The Department has terminated federal recognition for the Accrediting Council for Independent Colleges and Schools, the negligent college accreditor that rubber-stamped approvals worth billions in taxpayer dollars to Corinthian, ITT Tech, and many other for-profit colleges that were cheating students.<sup>53</sup>

The Education Department has also issued new rules to make colleges accountable for the cost of their fraud,<sup>54</sup> to encourage states to improve how they hold schools accountable,<sup>55</sup> and to use outcomes data and earnings evidence to ensure that career colleges are adequately preparing their students for gainful employment that allows them to repay their federal student loans.<sup>56</sup>

This critical progress was hard-fought, and President-elect Trump and congressional Republicans have threatened to reverse these gains.<sup>57</sup> President-elect Trump's only real foray into higher education was his own predatory sham "university," for which he paid \$25 million for cheating students.<sup>58</sup> And you have no record or stated position on these higher education issues. In fact, the very policies you have spent decades advocating for in elementary and secondary education – more free taxpayer money for private and for-profit education operators with virtually no strings attached – are the exact policies that have caused so many problems and harmed so many students in higher education. As such, I have questions about whether you and the Trump Administration will continue the Education Department's recent record of protecting students and taxpayers from fraudulent for-profit colleges.

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<sup>52</sup> "Department of Education Bans ITT from Enrolling New Title IV Students, Adds Tough New Financial Oversight." *U.S. Department of Education* (August 25, 2016). Online at: <http://www.ed.gov/news/press-releases/department-education-bans-itt-enrolling-new-title-iv-students-adds-tough-new-financial-oversight>.

<sup>53</sup> "Rubber Stamps: ACICS and the Troubled Oversight of College Accreditors." *Office of Senator Elizabeth Warren* (June 10, 2016). Online at: [http://www.warren.senate.gov/files/documents/2016-6-10\\_ACICS\\_Report.pdf](http://www.warren.senate.gov/files/documents/2016-6-10_ACICS_Report.pdf).

<sup>54</sup> "Education Department Proposes New Regulations to Protect Students and Taxpayers from Predatory Institutions." *U.S. Department of Education* (June 13, 2016). Online at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2016/bd-unofficialfinalregs-102716.pdf>.

<sup>55</sup> "Education Department Announced Final Rule on State Authorization of Postsecondary Distance Education, Foreign Locations." *U.S. Department of Education* (December 16, 2016). Online at: <https://www.ed.gov/news/press-releases/education-department-announces-final-rule-state-authorization-postsecondary-distance-education-foreign-locations>.

<sup>56</sup> "Obama Administration Announces Final Rules to Protect Students from Poor-Performing Career College Programs." *U.S. Department of Education* (October 30, 2014). Online at: <https://www.ed.gov/news/press-releases/obama-administration-announces-final-rules-protect-students-poor-performing-career-college-programs>.

<sup>57</sup> Mitchell, J. "For-Profit Colleges Look to Donald Trump for a Pass." *The Wall Street Journal* (December 2, 2016). Online at: <http://www.wsj.com/articles/for-profit-colleges-look-to-donald-trump-for-a-pass-1480680001>.

<sup>58</sup> Eder, S. "Donald Trump Agrees to Pay \$25 Million in Trump University Settlement." *The New York Times* (November 18, 2016). Online at: <http://www.nytimes.com/2016/11/19/us/politics/trump-university.html>.

Given the troubling history of for-profit colleges in this country,<sup>59</sup> it is critical that federal student aid dollars come with strong accountability mechanisms to ensure that students and taxpayers are receiving a return on their investment. It is also critical that any expansion of access to federal aid to alternative education providers comes with appropriate accountability safeguards to protect students against greedy bad actors looking to make money off of hard-working students. And when colleges do break federal or state laws by cheating students with deceptive or misleading advertisements, or when they aggressively recruit students with false promises leaving students beneath a mountain of debt and crushed dreams with little to show for their efforts, those students must receive the debt relief from the Department of Education that they are entitled to by law.

The *Higher Education Act* includes an important provision – known as “borrower defense to repayment”<sup>60</sup> – that allows students who have been cheated by fraudulent schools to have their federal student loans discharged. The Secretary of Education has broad authority to discharge the loans of students if their school has broken the law, and, in many cases, this provision is the only avenue for relief that students have after they have been defrauded. The Obama Administration has used this authority to cancel the loans of some students who were caught up in Corinthian College’s scams,<sup>61</sup> but there are still tens of thousands of students from Corinthian and other schools who are eligible for this relief but have not received it.<sup>62</sup>

The Obama Administration has also written new borrower defense rules that could – if properly implemented – make it easier for defrauded students to receive debt relief and for the Department of Education to put colleges, rather than taxpayers, on the hook for the costs of their own fraud. These rules can save the government billions of dollars and serve as a deterrent to illegal or risky behavior if properly implemented. The new borrower defense rules also allow students to have their day in court after they have been defrauded by banning forced arbitration clauses that prevent students from suing after they have been victimized by a school’s unfair, deceptive, or abusive practices.<sup>63</sup>

The next Secretary of Education must enforce the new borrower defense rules, safeguard taxpayer funds, cut off colleges that break the law or leave students with worthless degrees while enriching their executives and shareholders, and rigorously enforce the laws on the books to

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<sup>59</sup> “For Profit Higher Education: The Failure to Safeguard the Federal Investment And Ensure Success.” Health, Education, Labor and Pensions Committee, *United States Senate* (July 30, 2012). Online at: [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf).

<sup>60</sup> 20 U.S.C. § 1087(a).

<sup>61</sup> “U.S. Department of Education Announces Path for Debt Relief for Students at 91 Additional Corinthian Campuses.” *U.S. Department of Education* (March 25, 2016). Online at: <https://www.ed.gov/news/press-releases/us-department-education-announces-path-debt-relief-students-91-additional-corinthian-campuses>.

<sup>62</sup> “In Light of Troubling New Data, Sen. Warren Demands Education Department Halt Collection of Former Corinthian Students’ Debt and Discharge Their Loans.” *Office of Senator Elizabeth Warren* (September 29, 2016). Online at: [https://www.warren.senate.gov/?p=press\\_release&id=1266](https://www.warren.senate.gov/?p=press_release&id=1266).

<sup>63</sup> “U.S. Department of Education Announces Final Regulations to Protect Students and Taxpayers from Predatory Institutions.” *U.S. Department of Education* (October 28, 2016). Online at: <https://www.ed.gov/news/press-releases/us-department-education-announces-final-regulations-protect-students-and-taxpayers-predatory-institutions>.

protect students from predatory schools – including laws that prevent recruiters from being paid based on how many students they enroll,<sup>64</sup> laws that cut off aid to schools with excessively high loan default rates,<sup>65</sup> laws that prevent schools from relying on the federal government for over 90% of their revenue,<sup>66</sup> and other laws that ensure that schools generally are fiscally responsible with taxpayer dollars.

I have the following questions on this subject:

*What are your specific plans for enforcing the Gainful Employment rules as finalized in July 2015 without amendment or delay? Will you enforce the rule as written by cutting off aid to schools that are leaving their students with unaffordable debts and without meaningful prospects in the job market?*

*Will you expand resources for enforcement and oversight of predatory colleges that defraud students or leave them with expensive and useless degrees? What other specific actions will you take as Secretary to hold these schools accountable?*

*What are your specific plans for improving performance of accreditors and for holding accreditors accountable for failures? Secretary King eliminated the charter of the Accrediting Council for Independent Colleges and Schools due to a series of failures by the company. Do you believe this action was justified?*

*Will you seek any changes to the new Borrower Defense to Repayment or arbitration rules as issued in November 2016? Will you commit to aggressively enforcing these new rules without amendment or delay to protect students and taxpayers from fraudulent schools?*

*Will you grant automatic group relief of student loan debts in instances of widespread fraud uncovered by other federal or state law enforcement agencies, including fraud uncovered by state attorneys general? What will your specific criteria be for allowing such relief?*

*Can you guarantee that every student who is defrauded by a school during your tenure will see every penny of debt relief they are entitled to under the law? Will you commit to granting full debt relief to students who were defrauded by Corinthian Colleges?*

### **Conclusion**

Education is how we build a future for our economy and for our country. A good education is still the surest path into the middle class for most Americans, and it is one of our strongest tools to break cycles of poverty and inequality that grip too many of our communities.

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<sup>64</sup> 20 U.S.C. § 487(a)(20).

<sup>65</sup> 20 U.S.C. § 435(a)(7).

<sup>66</sup> 20 U.S.C. § 1094(a).



America's students and their families need a Secretary of Education who will support public education, hold states and schools accountable for providing quality programs, protect the civil rights of all students, and meaningfully address the student debt and college affordability crisis. The next Secretary of Education must support adequate and equitable federal funding for public education, hold accountable all schools that receive taxpayer dollars – from charter schools to for-profit colleges – and ensure that they are delivering a world-class education for our students. These are the qualities I will be looking for in the next Secretary of Education, and I look forward to hearing from you and receiving your answers to my questions during your confirmation hearing.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Warren". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elizabeth Warren

United States Senator