

The CAPS Act: Enacting New Barriers Between Elected Officials and Interest Groups

Elizabeth Kim

Code Sections Affected

Government Code § 82015 (amended).
SB 1441 (Lara); 2014 STAT. Ch. 930.
SB 1442 (Lara).
SB 1443 (De León).

TABLE OF CONTENTS

I. INTRODUCTION	1
II. LEGAL BACKGROUND	4
III. CHAPTER 930, SB 1442, AND SB 1443	5
IV. ANALYSIS.....	6
A. Closing the Fundraiser Loophole.....	7
B. Increased Reporting: Burden or Benefit?	8
C. Does the Disclosure of Gifts Mitigate their Corrupting Influence?	10
D. Shortcomings of the CAPS Act	11
V. CONCLUSION	12

“Elected officials must owe their allegiance to the people, not to their own wealth or to the wealth of interest groups who speak only for the selfish fringes of the whole community.”¹

I. INTRODUCTION

Over four decades ago, the people of California, through the initiative process, enacted the Political Reform Act (the PRA) in support of the proposition that “[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”² California’s Office of the Attorney General referred to the PRA as the single most important conflict

1. Fred Wertheimer & Susan Weiss Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 COLUM. L. REV. 1126, 1127 (1994) (quoting Senator Barry Goldwater).

2. CAL. GOV’T CODE § 81001(b) (West 2005).

2015 / Conflict of Interest Issues for Elected Officials?

of interest law in the state.³ Under the PRA, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”⁴

Although the Legislature has made many substantive amendments to the PRA, a report conducted by the Fair Political Practices Commission (FPPC) showed that in 2013, conflict of interest violations involving political campaigns and lobbying were at the “highest level ever” and that “conflict of interest prosecutions continued at record high levels.”⁵ In January 2014, a jury found Senator Ron Wright guilty of eight felony counts of perjury and voter fraud for fraudulently claiming that he lived in his district.⁶ In February, Senator Ron Calderon and former Assemblymember Tom Calderon, his brother, were indicted on federal public corruption charges including allegations of mail and wire fraud, bribery, money laundering, and tax fraud.⁷ In March, Senator Leland Yee was arrested for firearm trafficking and accepting a bribe from undercover FBI agents.⁸ In April, the FPPC fined Senator Tom Berryhill \$40,000 for “serious and deliberate violations” of campaign-finance rules.⁹

In the midst of these corruption scandals, the FPPC issued two record setting fines for violations of the PRA’s lobbying regulations.¹⁰ First, in September 2013 the lobbying firm California Strategies and three of its partners agreed to pay a \$40,500 fine for failing to register as lobbyists.¹¹ Then, in early 2014, lobbyist Kevin Sloat paid a \$133,500 fine, the highest fine ever issued for a violation of

3. See GOV’T LAW SECTION CIVIL DIV., OFFICE OF THE ATTORNEY GEN., CONFLICTS OF INTEREST 6 (2010), available at <http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf> (on file with the *McGeorge Law Review*) (discussing the PRA as “the starting point in any consideration of conflict-of-interest laws in California”).

4. GOV’T § 87100.

5. John Howard, *FPPC: ‘Worst Ever’ Violations in 2013*, CAPITOL WEEKLY (Feb. 5, 2014), <http://capitolweekly.net/fppc-worst-ever-violations-2013/> (on file with the *McGeorge Law Review*).

6. Jean Merl, *Wright is Guilty of Voter Fraud*, L.A. TIMES (Jan. 29, 2014), <http://articles.latimes.com/2014/jan/29/local/la-me-rod-wright-verdict-20140129> (on file with the *McGeorge Law Review*).

7. Melody Gutierrez, *State Sen. Ron Calderon, Brother Indicted*, S.F. GATE (Feb. 22, 2014), <http://www.sfgate.com/crime/article/State-Sen-Ron-Calderon-brother-indicted-5256860.php> (on file with the *McGeorge Law Review*).

8. Marisa Lagos et al., *California State Sen. Yee Arrested in Corruption Case*, S.F. GATE (Mar. 28, 2014), <http://www.sfgate.com/politics/article/California-state-Sen-Yee-arrested-in-corruption-5350602.php> (on file with the *McGeorge Law Review*).

9. Jim Miller, *FPPC Upholds \$40,000 Penalty Against Sen. Tom Berryhill*, SACRAMENTO BEE (Apr. 24, 2014), <http://blogs.sacbee.com/capitolalertlatest/fair-political-1/> (on file with the *McGeorge Law Review*).

10. See Laurel Rosenhall, *California Senate Democrats Propose New Limits on Gifts, Fundraising*, MERCED SUN-STAR (Mar. 7, 2014), <http://www.mercedsunstar.com/2014/03/07/3533744/california-senate-democrats-propose.html> (on file with the *McGeorge Law Review*) (reporting the criminal charges filed against Senator Rod Wright for lying about living inside his district and the federal corruption charges filed against Senators Ron Calderon and Leland Yee).

11. *Id.*

the PRA's lobbying regulations.¹² Sloat violated the PRA by making campaign contributions to candidates and arranging gifts for candidates.¹³ Furthermore, the FPPC sent warning letters to nearly forty elected officials who had decadent fundraisers at Sloat's home.¹⁴ The FPPC found that the alcohol and cigars supplied by Sloat at these events were gifts and that their value exceeded the PRA's gift limit.¹⁵

In the aftermath of these scandals, Senate President pro Tempore Steinberg and Senators Lara, De León, Corbett, Hill, Monning, Roth, and Torres established the Senate Working Group on Ethics and introduced the California Accountability in Public Service Act (the CAPS Act) to increase transparency and accountability.¹⁶ The bill package proposed to end the free use of the homes and offices of registered lobbyists and lobbying firms for campaign fundraisers, increase the frequency of lobbying report filing, improve electronic access to campaign and lobbying reports, and ban gifts from lobbyists to public officials.¹⁷ Non-partisan groups supporting greater political transparency applauded the Senators' efforts for taking action to regulate themselves and earn back the public's trust.¹⁸ Anthony Williams, Policy Director and Special Counsel to Senator Steinberg, noted, "The American and California system of governance is a model for the world yet any system needs a periodic review to ensure we are maintaining, achieving, and enhancing our goals."¹⁹ The Senators who worked on these bills worked closely with the FPPC for the first time in more than two decades to identify conflict of interest loopholes in the PRA and sought to close them in order to regain the public's trust.²⁰

Dan Schnur, director of the Jesse M. Unruh Institute of Politics at USC, former Chairperson of the FPPC, and recent candidate for California Secretary of State (SOS), expressed that while the CAPS Act represented progress, it did not

12. *Id.*

13. Stipulation, Decision, and Order at 2, Kevin Sloat v. FPPC, No. 13/1201 (Cal. 2014) (on file with the *McGeorge Law Review*).

14. Rosenhall, *supra*, note 10.

15. *Id.*

16. *Senate Elections Committee Advances CA Accountability in Public Service Act (CAPS) Bills*, OFFICE OF SENATOR RICARDO LARA (Apr. 22, 2014), <http://sd33.senate.ca.gov/news/2014-04-22-senate-elections-committee-advances-ca-accountability-public-service-act-caps-bills> (on file with the *McGeorge Law Review*).

17. *Id.*

18. See Christopher Nelson & Alexandra Bjerg, *California Legislators Regulating Themselves with New Transparency Bills*, CAFWD.ORG REPORTING (Mar. 12, 2014), <http://www.cafwd.org/reporting/entry/california-legislators-regulating-themselves-with-new-transparency-bills> (on file with the *McGeorge Law Review*) (explaining that organizations such as California Fwd and other non-partisan groups supporting greater transparency and improving government trust have endorsed the Senators' efforts).

19. E-mail from Anthony Williams, Policy Director and Special Counsel to the Senate President pro Tempore, to Elizabeth Kim, *Greensheets* Staff Writer, *McGeorge Law Review* (July 16, 2014, 11:19 PST) (on file with the *McGeorge Law Review*).

20. Telephone Interview with Dan Schnur, Director, Jesse M. Unruh Institute of Politics, USC (July 10, 2014) (notes on file with the *McGeorge Law Review*).

2015 / Conflict of Interest Issues for Elected Officials?

accomplish what he considered “broader, more necessary steps.”²¹ Sarah Swanbeck, Policy and Legislative Affairs Advocate for Common Cause, stated, “Oftentimes what we’ll see is sort of reactionary legislation to a particular scandal of the day.”²²

Despite the collaboration and compromises that went into constructing the CAPS Act, Governor Brown vetoed Senate Bills 1442 and 1443, two of the three bills in the ethics package.²³

II. LEGAL BACKGROUND

Existing law heavily regulates campaign finances.²⁴ The PRA requires public officials to disclose the contributions they receive.²⁵ Current law defines a contribution, subject to some specified exceptions, as payments, loans, or the forgiveness of loans to candidates.²⁶ Under a prior exception, if the cost of a fundraising event, including the market value of the use of the property, to the occupant of the home or office where the fundraising event occurred was less than \$500, those costs incurred by the occupant were not considered a contribution.²⁷ Although registered lobbyists are prohibited from making contributions,²⁸ this exception enabled lobbyists to, in effect, contribute up to \$500 per fundraising event to elected officials by hosting the event in their homes or offices.²⁹

21. *Id.*

22. Fenit Nirappil, *California Lawmakers Propose Reforms to Regain Public Trust After Series of Scandals*, L.A. DAILY NEWS (Apr. 6, 2014), <http://www.dailynews.com/government-and-politics/20140406/california-lawmakers-propose-reforms-to-regain-public-trust-after-series-of-scandals> (on file with the *McGeorge Law Review*) (raising the concern that legislators are not placing a high priority on political reform as a long-term goal, but rather treating it as an immediate problem that needs to be addressed in order to move on to other issue areas so that the public is not disgruntled).

23. Letter from Governor Edmund G. Brown Jr. to Members of the Cal. State Senate (Sept. 30, 2014) [hereinafter SB 1442 Veto Message], available at http://gov.ca.gov/docs/SB_1442_Veto_Message.pdf; Letter from Governor Edmund G. Brown Jr. to Members of the Cal. State Senate (Sept. 30, 2014) [hereinafter SB 1443 Veto Message], available at http://gov.ca.gov/docs/SB_1443_Veto_Message.pdf.

24. CAL. GOV’T CODE §§ 84100–85802 (West 2005).

25. GOV’T § 81002.

26. *Id.* § 82015(a) (“‘Contribution’ means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.”).

27. *Id.* § 82015(f) (“‘Contribution’ does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant’s home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.”).

28. *Id.* § 85702 (“An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.”).

29. Telephone Interview with Dan Schnur, *supra* note 20.

The PRA also imposes comprehensive reporting requirements on political entities.³⁰ During the ninety days preceding an election, candidates and committees must report contributions of at least \$1,000 within twenty-four hours of receiving them.³¹ Similarly, committees making independent expenditures of at least \$1,000 within ninety days of an election are also required to report that expenditure within twenty-four hours.³² Additionally, elected officers, candidates, and committees receiving at least \$1,000 in a calendar year must report the contributions they receive on semi-annual statements.³³ Failure to report contributions properly may subject political entities to administrative, civil, or criminal penalties.³⁴

Furthermore, the PRA establishes rules regulating the lobbying industry and lobbyist interactions with public officials.³⁵ It prohibits a lobbyist from making gifts in aggregate of more than ten dollars per month to any single person.³⁶ Public officials, including state and local elected officials or candidates, may not accept gifts worth more than \$440 from any source per year.³⁷

III. CHAPTER 930, SB 1442, AND SB 1443

With the enactment of three Senate bills, the CAPS Act would have barred lobbyists from paying for public officials' fundraising events, increased the frequency of committee reporting, expanded online reporting and disclosure, and prohibited lobbyists from giving public officials gifts.³⁸

Chapter 930 amended the definition of a "contribution" to close a loophole that allowed lobbyists to host fundraising events and bear up to \$500 of the cost of the event.³⁹ A contribution now "includes a payment made by a lobbyist or a

30. GOV'T §§ 84100–84511. The PRA specifies a large number of political entities including elected officers, candidates, candidate controlled committees, committees formed primarily to oppose or support a candidates or ballot measures, and general purpose committees. *See id.* §§ 82007, 82013, 82016, 82021, 82027.5, 82047.5, 82047.7 (defining the enumerated entities).

31. *Id.* §§ 82036, 84203.

32. *Id.* §§ 82036.5, 84203.5. "Independent expenditure" is "an expenditure made by any person . . . in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee." *Id.* § 82031.

33. *Id.* § 84200.

34. *Id.* §§ 91000, 91001.

35. *Id.* §§ 86100–86300. "'Public official' means every member, officer, employee or consultant of a state or local government agency." *Id.* § 82048(a).

36. *Id.* § 86203. A notable exception allows lobbyists to make gifts to family members. *Id.* § 82028(b)(3).

37. *Id.* § 89503. The FPPC adjusts this amount in accordance with the Consumer Price Index. *Id.*

38. CAL. GOV'T CODE § 82015(f) (amended by Chapter 930); SB 1442, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 5, 2014, but not enacted); SB 1443, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 3, 2014, but not enacted).

39. GOV'T § 82015(f) (amended by Chapter 930).

2015 / Conflict of Interest Issues for Elected Officials?

cohabitant of a lobbyist for costs related to a fundraising event held at the home [or office] of the lobbyist, including the value of the use of the home [or office] as a fundraising event venue.”⁴⁰ Lobbyists remain entirely barred from making contributions to elected state officials or candidates for state office.⁴¹

SB 1442, if Governor Brown had not vetoed it, would have required elected officers and candidates for state office and committees receiving at least \$1,000 in a calendar year to file campaign finance reports quarterly, twice as often as previously required.⁴² It would have also subjected contributions or independent expenditures over \$1,000 to a twenty-four hour reporting requirement.⁴³ Furthermore, SB 1442 required the SOS to work with the FPPC to develop a statewide electronic filing system that would provide the public with all records filed by specified entities with SOS.⁴⁴ The other changes offered by SB 1442, including the switch to quarterly reporting requirements, would not have become operative until after SOS implemented this electronic filing system.⁴⁵

If Governor Brown had not vetoed SB 1443 it would have prohibited lobbyists from giving any gifts to elected officials.⁴⁶ Additionally, the bill would have reduced the aggregate value of gifts the PRA allowed public officials to receive from a single source from \$440 to \$200.⁴⁷ The bill also prohibited elected officials, candidates, and legislative officials from accepting enumerated gifts, including spa services, green fees, recreational trips, gift cards, and tickets to concerts, sporting events, and theme parks.⁴⁸

IV. ANALYSIS

Robert Stern, the coauthor of the PRA, praised the CAPS Act as “the most meaningful [group of] reform bills in two decades.”⁴⁹ He also stated that he was

40. *Id.* § 82015(f)(2), (3) (amended by Chapter 930).

41. CAL. GOV'T CODE § 85702 (West 2005).

42. SB 1442 § 7, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 5, 2014, but not enacted).

43. *Id.* at §§ 1, 2.

44. *Id.* at § 19. Specified entities include committees, candidates, slate mailer organizations, multipurpose organizations, and lobbyists. *Id.*

45. *Id.* at § 21.

46. SB 1443 § 1, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 3, 2014, but not enacted).

47. *Id.* Four-hundred-forty dollars is the adjusted gift value based on changes to the Consumer Price Index. CAL. GOV'T CODE § 89503(f) (West 2005); *Gift Limits and Honoraria*, CAL. FAIR POLITICAL PRACTICES COMM'N, <http://www.fppc.ca.gov/index.php?id=31> (last visited Nov. 18, 2014). Under both current law and the amendments proposed by SB 1443, gift restrictions only apply to local officials if they made a decision having a “material financial effect” on the donor of the gift within twelve months of receiving the gift. GOV'T § 87103; SB 1443 § 2, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 3, 2014, but not enacted).

48. *Id.* at § 3(g), (h), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 3, 2014, but not enacted).

49. Robert M. Stern, *What Happened to Jerry Brown, the Reformer We Once Knew?*, S.F. GATE (Oct. 9, 2014, 8:32 AM), www.sfgate.com/opinion/openforum/article/What-happened-to-Jerry-Brown-the-reformer-we-5810178.php?cmpid=email-desktop#photo-6970668 (on file with the *McGeorge Law Review*).

“extremely impressed that the Legislature had passed far-reaching legislation . . . [and t]hat these bills would have vaulted California into the leadership of state and federal lobbyist regulation.”⁵⁰ However, Governor Brown vetoed two of the three CAPS Act bills, citing, respectively, the technological infeasibility of SB 1442 and an imbalance between the “complexity” and the “commensurate benefit” of SB 1443.⁵¹

Part A discusses the impact of the closure of the fundraiser loophole, which allowed a lobbyist to incur up to \$500 in expenses for each fundraiser held for an elected official if it occurred at the lobbyist’s home or office.⁵² Part B analyzes the prospective consequences of more frequent reporting and upgrading the current electronic database available to the public.⁵³ Part C examines the potential effect of a complete ban on lobbyist gifts to legislators.⁵⁴ Part D offers potential similar expansions to the PRA that were not addressed by the CAPS Act.⁵⁵

A. Closing the Fundraiser Loophole

Scholars have long concerned themselves with the potential corrupting influence of the lobbying process, especially when the exchange of money as a gift or contribution occurs.⁵⁶ Chapter 930 targeted the potential corrupting influence of a monetary exchange between lobbyists and elected officials by closing the loophole that allowed lobbyists who host fundraisers to donate up to \$500 of the cost of the fundraiser to the candidate.⁵⁷ Speaking on behalf of her own similar bill, Assemblymember Cristina Garcia explained, “It really makes no sense that a lobbyist can’t buy lunch for a legislator for over \$10, but can provide elaborate, exclusive dinner parties simply by stating that it is under the \$500 limit . . . , [a]s we’ve seen these in-home lobbyist events fly under the legal radar.”⁵⁸ As a result, the FPPC and Common Cause, a political reform watchdog organization, applauded these changes to the PRA as much-needed and long

50. *Id.*

51. SB 1442 Veto Message, *supra* note 23; SB 1443 Veto Message, *supra* note 23.

52. *Infra* Part VI.A.

53. *Infra* Part VI.B.

54. *Infra* Part VI.C.

55. *Infra* Part VI.D.

56. Wertheimer, *supra* note 1, at 1127. Former Senator Paul Douglas observed, “What happens is a gradual shifting of a man’s loyalties from the community to those who have been doing his favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than the public good.” PAUL H. DOUGLAS, *ETHICS IN GOVERNMENT* 44 (1952).

57. CAL. GOV’T CODE § 82015(f) (amended by Chapter 930).

58. Press Release, Office of Assemblymember Cristina Garcia, Assemblymember Garcia Introduces Bill to Ban In-Home Lobbyist Fundraisers (Feb. 12, 2014) (on file with the *McGeorge Law Review*), available at <http://asmdc.org/members/a58/news-room/press-releases/assemblymember-garcia-introduces-bill-to-ban-in-home-lobbyist-fundraisers>.

2015 / Conflict of Interest Issues for Elected Officials?

overdue reforms.⁵⁹ Additionally, Chapter 930 simplifies the law, enabling elected officials and lobbyists alike to avoid inadvertent violations of the PRA caused by lobbyist hosts failing to notify legislators when the \$500 threshold was crossed.⁶⁰

While Chapter 930 may be a common-sense clarification of the law, it is not clear that it addresses a significant problem.⁶¹ While the loophole allowed lobbyists to effectively give candidates or elected officials the equivalent of \$500, individuals, businesses, and committees may give each candidate for the State Assembly or Senate \$4,100 per election, each candidate for a statewide elected office \$6,800 per election, and candidates for governor \$27,200 per election.⁶² As such, even if money does extoll a corrupting influence on politics, \$500 from a lobbyist is unlikely to have any significant impact compared to contributors.⁶³

Rather than directly addressing the potential corrupting influence of money in politics, Chapter 930 may be the type of legislation that is “aimed at restoring the public’s confidence in the political system and ending the coverage of the story in the media.”⁶⁴ Thus, as public distrust of the government discourages civic participation and creates a negative view of the democratic system, Chapter 930 may serve an important democratic purpose by restoring, in part, the public’s faith in state government.⁶⁵

B. Increased Reporting: Burden or Benefit?

Senate Bill 1442 would have increased access to timely campaign information by increasing the frequency of mandated reporting and improving

59. See Rosenhall, *supra* note 10 (noting that supporters such as Common Cause and the FPPC have issued statements applauding the Legislators for enacting substantive changes to the PRA and explaining that Chapter 930 will clarify for elected officials and lobbyists what is allowed by the law).

60. E-mail from Anthony Williams, *supra* note 19 (explaining that the warning letters sent by the FPPC to Legislators and the Governor were the result of a lobbyist failing to notify the elected officials that the \$500 threshold was crossed).

61. Telephone Interview with Dan Schnur, *supra* note 20.

62. CAL. GOV’T CODE § 85301 (West 2005); CAL. FAIR POLITICAL PRACTICES COMM’N, CALIFORNIA STATE CONTRIBUTION LIMITS 1 (2012), available at <http://www.fppc.ca.gov/bulletin/007-Dec-2012StateContributionLimitsChart.pdf>.

63. NAT’L INST. OF MONEY IN STATE POLITICS, <http://www.followthemoney.org/election-overview?s=CA&y=2014>, (last updated Nov. 20, 2014) (finding that “[i]n the California 2014 elections, candidates and committees raised a total of \$401,911, 756,” or the equivalent of 803,823 \$500 exploitations of the fundraiser loophole).

64. E-mail from Alex Barrios, Communications Director in the State Senate, to Elizabeth Kim, *Greensheets* Staff Writer, *McGeorge Law Review* (July 18, 2014, 5:17 PST) (on file with the *McGeorge Law Review*).

65. Wertheimer, *supra* note 1, at 1130; see E-mail from Alex Barrios, *supra* note 64 (noting that the attention of the public and the media dissipates once legislation is passed that purports to address a problem, regardless of the efficacy of that legislation).

electronic access to reports.⁶⁶ Currently, California's campaign and lobbying disclosure system, known as "Cal-Access," is severely outdated and considered one of the most antiquated transparency systems in the country.⁶⁷ In a May 2014 letter to Governor Brown and the State Legislature, the California Forward Action Fund, California Common Cause, the Institute of Governmental Advocates, the California Newspaper Publishers Association, the Sunlight Foundation, and the League of Women Voters of California requested the Governor and SOS prioritize the modernizing of the inefficient system.⁶⁸ Critics complain the system is difficult to navigate, lessening the public's access to important campaign information and, in effect, reducing the efficacy of disclosure requirements.⁶⁹ In 2013, Governor Brown said, "There is no doubt the current system—widely viewed as outdated and cumbersome—needs upgrading."⁷⁰

In September 2014, SOS urged Governor Brown to sign SB 1442, emphasizing the need to improve the "obsolete operating and database management systems that are no longer supported by the information technology community."⁷¹ Further, SOS acknowledged that the current system, at times, has acted as "an obstacle to enhanced campaign disclosure."⁷²

Despite the widely recognized need for this system upgrade, Governor Brown vetoed SB 1442.⁷³ The Governor's veto message initially states, "While the goal of reducing reports is laudable, until we have the technology in place, it is premature to make adjustments to the reporting schedule."⁷⁴ Although SB 1442 would eliminate some supplemental reporting requirements, SB 1442 would

66. SB 1442 §§ 7, 19, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 5, 2014, but not enacted); Dominic Munoz, *Several Bills Aim to Improve Transparency and Confidence in CA Elections*, CAFWD.ORG (June 25, 2014), <http://www.cafwd.org/reporting/entry/several-bills-aim-to-improve-transparency-and-confidence-in-ca-elections> (on file with the *McGeorge Law Review*).

67. Letter from The Cal. Forward Action Fund et al. to the Governor and Legislature of California (May 20, 2014) (on file with the *McGeorge Law Review*), available at <http://www.scribd.com/doc/225669250/Cal-Access-FPPC-Joint-Letter>. Because increased filing requirements would not become operative until after the electronic reporting system is improved, those requirements will not further harm the already outdated system. SB 1442 § 21, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 5, 2014, but not enacted).

68. Letter from The Cal. Forward Action Fund et al. to the Governor and Legislature of California, *supra* note 67.

69. Alisha Green, *It's Time to Improve Access to Influence Data in California*, SUNLIGHT FOUNDATION (May 22, 2014), <http://sunlightfoundation.com/blog/2014/05/22/its-time-to-improve-access-to-influence-data-in-california/> (on file with the *McGeorge Law Review*).

70. Alexandra Bjerg, *Cal-Access Upgrades Shelved with Governor Brown's Veto of Campaign Finance Bill*, CAL. FORWARD ACTION FUND (OCT. 9, 2013), <http://www.cafwd.org/reporting/entry/cal-access-upgrade-shelved-with-governor-browns-veto-of-campaign-finan>.

71. Letter from Debra Bowen, California Secretary of State, to Governor Edmund G. Brown (Sept. 3, 2014) (on file with the *McGeorge Law Review*).

72. *Id.*

73. SB 1442 Veto Message, *supra* note 23.

74. *Id.*

2015 / Conflict of Interest Issues for Elected Officials?

likely increase aggregate reporting by moving from semiannual to quarterly reporting requirements.⁷⁵ Additionally, as SB 1442 would require that SOS complete the technology upgrade prior to the reporting changes becoming operative, it is unclear why SB 1442 would make *premature* adjustments to reporting requirements.⁷⁶

The veto message also explains, “Before an additional information technology project is authorized, SOS should complete the two substantial projects currently underway.”⁷⁷ The first of these projects is a \$98,000,000 project to create a centralized voter registration database, projected for completion in 2016.⁷⁸ The second project is a \$26,000,000 project to develop and consolidate automated systems currently used by SOS and is also projected for completion in 2016.⁷⁹ As SOS urged Governor Brown to sign SB 1442, they likely believed that the assignment of a third project would be manageable.⁸⁰

C. Does the Disclosure of Gifts Mitigate their Corrupting Influence?

SB 1443, if enacted, would have completely barred lobbyists from giving Legislators gifts and significantly reduced the value of gifts each legislator could receive from a single source.⁸¹ However, SB 1443 was also vetoed by the Governor, who stated, “Proper disclosure, as already provided by law, should be sufficient to guard against undue influence.”⁸² However, this relies on the premise that gift disclosure reports are readily available to the public—a premise challenged by the currently poor state of Cal-Access.⁸³

75. See SB 1442 §§ 3–18, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 5, 2014, but not enacted) (removing less used supplemental reports while mandating that most entities currently reporting semiannually begin reporting quarterly).

76. See *id.* (The new reporting requirements “shall become operative on January 1 of the year following the year in which the statewide Internet-based system established [by section 19 of SB 1442] becomes operational, as certified by the Secretary of State.”).

77. SB 1442 Veto Message, *supra* note 23.

78. *Reportable IT Projects—Project Number 0890-046*, CAL. DEP’T OF TECH., http://www.ocio.ca.gov/Government/IT_Policy/IT_Projects/ProjectDetails.html?work_guid=0x999BB70A3653B74CBC94B0666A2EB758&WorkItem=0x999BB70A3653B74CBC94B0666A2EB758, (last visited Nov. 25, 2014).

79. *Reportable IT Projects—Project Number 0890-047*, CAL. DEP’T OF TECH., http://www.ocio.ca.gov/Government/IT_Policy/IT_Projects/ProjectDetails.html?work_guid=0xAD5FD8A19BE15440A03EE53C7226CCA7&WorkItem=0xAD5FD8A19BE15440A03EE53C7226CCA7, (last visited Nov. 25, 2014).

80. Letter from Debra Bowen to Governor Edmund G. Brown, *supra* note 71.

81. SB 1443 § 1, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sept. 3, 2014, but not enacted).

82. SB 1443 Veto Message, *supra* note 23. In support of this argument, Governor Brown referenced *The Purity Potlatch: An Essay on Conflicts of Interest, American Government, and Moral Escalation*, by Bayless Manning, written in 1964. *Id.*

83. See Letter from Debra Bowen to Governor Edmund G. Brown, *supra* note 71 (explaining that Cal-Access in its current state has acted as an obstacle to disclosure); see also *supra* Part VI.B.

The Governor's veto message also ignores the importance of promoting the public's trust in its government.⁸⁴ Even if Governor Brown's premise that disclosure is a sufficient tool with which to deter undue influence is true, the common practice of giving elected officials tickets to sold-out shows and sporting events has raised significant concerns from the public.⁸⁵ In 2013, state elected officials received over \$32,000 in entertainment and sports tickets.⁸⁶ While Governor Brown believed that SB 1443 would add unnecessary complexity to reporting requirements that would fail to justify the minimal, if any, gained protection against undue influence, it is unclear what impact SB 1443 would have had on the public's trust in their government.⁸⁷ Ultimately, the veto of SB 1443 disappointed many who believed the gift ban was a necessary step in combating undue influence from interest groups and increasing public trust in government.⁸⁸

D. Shortcomings of the CAPS Act

Even before Governor Brown's vetoes, commentators criticized the CAPS Act for failing to impose a limit on gifts of travel given to legislators, gifts those commentators argue create significant conflicts of interest.⁸⁹ Foreign governments, nonprofits, and interest groups gave California lawmakers more than \$550,000 in free travel in 2013.⁹⁰ Payments for a legislator's travel expenses are not considered gifts if they meet two requirements.⁹¹ First, the travel must be "reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy."⁹² Secondly, the travel expenses must be associated with a speech given by the public official and limited to expenses incurred the day before, day of, and day after the speech, or, if a federally recognized nonprofit organization or an equivalent party pays the travel

84. Wertheimer, *supra* note 1, at 1131 ("[P]ublic mistrust of government discourages citizen participation and leads individuals to believe they have no voice in government.").

85. See David Zahniser, *Most L.A. Ethics Commissioners Say City Officials Should Report the Value of Gift Tickets*, L.A. TIMES (July 14, 2010), <http://articles.latimes.com/2010/jul/14/local/la-me-gifts-20100714> (on file with the *McGeorge Law Review*) (noting that in 2010 the Los Angeles Ethics Commission began requiring local officials to disclose the value of the free tickets they receive).

86. PHILLIP UNG, CAL. COMMON CAUSE, GIFTS, INFLUENCE, & POWER 6 (Dec. 2013).

87. SB 1443 Veto Message, *supra* note 23.

88. See Stern, *supra* note 49 (noting the public's overwhelming support for political reform and sharing his own disappointment in the bills' vetoes).

89. Jeremy White, *Lawmakers Enjoyed \$550,000 Worth of Paid Travel in 2013*, SACRAMENTO BEE (Mar. 5, 2014), <http://www.sacbee.com/2014/03/04/6209174/California-lawmakers-enjoyed-550000.html> (on file with the *McGeorge Law Review*) (raising concerns over other types of unregulated gifts); Telephone Interview with Dan Schnur, *supra* note 20 (stating that the CAPS Act did not fully address gifts that may give rise to conflict of interests problems and often times this kind of legislation is used to placate the press and the public).

90. White, *supra* note 89.

91. CAL. GOV'T CODE § 89506(a) (West 2005).

92. *Id.*

2015 / Conflict of Interest Issues for Elected Officials?

expenses.⁹³ Exempt travel expenses include airfare, hotels, meals, and cultural excursions that may last for weeks.⁹⁴ Critics claim that interest groups fund nonprofits who then sponsor events and trips that meet the requirements above.⁹⁵ Additionally, these trips provide lobbyists with full access to public officials.⁹⁶

However, Robert Stern, a coauthor of the PRA, explained that if the trips are important, the state should pay for them because conflicts of interest may arise when interest groups give money to nonprofits who pay for legislator travel costs without disclosure.⁹⁷

However, lawmakers have justified the trips as educational ventures that help them serve their constituencies better and enrich their understandings of public policies.⁹⁸ Senator Lara, who introduced two of the CAPS Act bills, explained, “As we conduct business as the eighth largest economy in the world, we have to see what other countries are doing, especially in the issues of energy and environmental innovation.”⁹⁹ At the press conference to announce the introduction of the CAPS Act, reporters asked the members of the Senate Working Group on Ethics to distinguish between what gifts are appropriate and what are not.¹⁰⁰ Senator De León responded, “We do not live in a world of absolutes. The reality is that we have to participate in community activities as a State Senator. No one should have to pay for meals out of pocket, just to participate in their work duties that they have to perform, day in and day out.”¹⁰¹ Senator De León further stated that he and his fellow Legislators worked closely with the FPPC to identify the gifts that are the “most egregious and indefensible” and to target those gifts with the CAPS Act.¹⁰²

V. CONCLUSION

In the wake of the scandals that rocked the Senate in 2014, the state Legislature passed meaningful political reform bills that could have reestablished some of the public’s trust in government.¹⁰³ However, in July 2014 an editorial in

93. *Id.*

94. UNG, *supra* note 86, at 9; see Rosenhall, *supra*, note 10 (noting that lawmakers visited Hawaii, Switzerland, Brazil, Poland, Norway, Taiwan, Israel, China, Armenia, Sweden, and South Korea).

95. UNG, *supra* note 86, at 9.

96. *Id.*

97. White, *supra* note 89 (“If the trip is important, the state should pay for it. But I have a problem with the travel if it’s not disclosed where money is coming from, and that special interests that are giving to nonprofits are paying for travel.”).

98. Ricardo Lara, Press Conference Announcing CAPS Act (Mar. 6, 2014), <https://www.youtube.com/watch?v=MUP2rT7DNvo> (transcript on file with the *McGeorge Law Review*).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Stern, *supra* note 49.

the San Jose Mercury News noted that public interest in political reform had already faded.¹⁰⁴ Alex Barrios, a Communications Director in the State Senate, explained, “From the perspective of the media, a problem was uncovered and a solution was passed into law From the perspective of the [L]egislature, resolution was achieved and the press will then focus on covering other issues.”¹⁰⁵ With little remaining interest from the public, the media, or the Legislature, Governor Brown vetoed two of the three bills comprising the CAPS Act.¹⁰⁶

Legal misconduct by public officials erodes the trust the public has in its government.¹⁰⁷ Public trust is vital for good governance.¹⁰⁸ Chapter 930 should increase the public’s trust in government as it closes a loophole exploited by lobbyists.¹⁰⁹ However, Governor Brown’s vetoes, if noticed by the public, would only serve to erode the public’s trust further.¹¹⁰ Barrios observed, “Until the public pays closer attention to what goes on in the Capitol and whether bills that are passed into law actually solve real problems, this is the type of governance we can expect in these kinds of situations.”¹¹¹ Therefore, increasing the public’s trust of government may first require increasing public scrutiny of the legislative process to ensure reform bills both are effective and eventually become law.¹¹²

104. Editorial, *California Legislature Financial Reforms Fall Way Short*, SAN JOSE MERCURY NEWS (July 7, 2014), http://www.mercurynews.com/opinion/ci_26102969/mercury-news-editorial-california-legislature-financial-reforms-fall (on file with the *McGeorge Law Review*).

105. Email from Alex Barrios, *supra* note 64.

106. SB 1442 Veto Message, *supra* note 23; SB 1443 Veto Message, *supra* note 23.

107. Ed Coghlan, *CA Fwd to Legislators: Act Now to Restore Public Trust in Government*, CAL FORWARD, (April 8, 2014), <http://www.cafwd.org/reporting/entry/ca-fwd-to-legislators-act-now-to-restore-public-trust-in-government> (on file with the *McGeorge Law Review*).

108. *See id.* (discussing the critical importance of trust in effective governance).

109. E-mail from Alex Barrios, *supra* note 64.

110. *See* Coghlan, *supra* note 107 (explaining the importance of reform to establishing public trust in government).

111. *Id.*

112. *Id.*