

SB 831: Bringing Political Reform into the Twenty-First Century

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Code Sections Affected

Government Code §§ 87106, 89515.5 (new); Government Code §§ 89506, 89513, 89515, 89516, 89517 (amended).
SB 831 (Hill) (enrolled but not enacted).

TABLE OF CONTENTS

I. INTRODUCTION	1
II. LEGAL BACKGROUND.....	3
A. <i>The History of Political Reform in California</i>	3
B. <i>The Political Reform Act of 1974</i>	3
1. <i>What is a Contribution Under the PRA?</i>	3
2. <i>How Does the PRA Treat Gifts of Travel?</i>	4
3. <i>How Does the PRA Treat Charitable Donations?</i>	5
4. <i>What Types of Campaign Fund Expenditures Does the PRA Restrict?</i>	6
III. SB 831.....	7
A. <i>Travel-Related Gifts</i>	7
B. <i>Behested Donations to Nonprofits</i>	7
C. <i>Limits on the Use of Campaign Funds</i>	8
IV. ANALYSIS.....	8
A. <i>Gifts of Travel</i>	9
B. <i>Donations to Nonprofits</i>	12
C. <i>Campaign Fund Expenditures</i>	16
D. <i>The Anatomy of a Veto: Brown’s Refusal to Sign SB 831</i>	17
V. CONCLUSION.....	18

I. INTRODUCTION

The specter of political corruption has loomed over democracy since its inception in Ancient Athens.¹ To prevent corruption, political reform in Athens

1. See John Camp, *Ostracized in Athens: Ancient Greeks Knew How to Dump Bad Pols*, N.Y. TIMES, Jul. 24, 2003, http://www.nytimes.com/2003/07/24/opinion/24iht-edcamp_ed3.html (on file with the *McGeorge Law Review*) (describing the Athenian practice of ostracizing politicians who threatened the democracy).

took a simpler form than it does today.² The people would first vote on whether they felt there was a person that posed a threat to democracy.³ If the people decided that there was, then every citizen of Athens voted for the person they perceived as the greatest threat.⁴ The Athenian that received the most votes was then exiled from Athens for a decade.⁵ The process was called ostracism, named for the *ostrakon*, or shards of pottery, on which Athenians would write the name of the man he deemed worthy of exile.⁶ It is an institution that California lawmakers may have wished was still available to them following the indictment of three California Senators in 2014.⁷

While California has traditionally eschewed the practice of ostracism, the state has proactively regulated politics, with the most prominent example being the Political Reform Act of 1974.⁸ However, the indictment of three of their own spurred California lawmakers to realize that California needed new regulations.⁹ The importance of the moment was not lost on Senator Darrel Steinberg, who declared that “[s]ometimes it takes a crisis” to pass new ethics reform bills.¹⁰ Among the pieces of legislation spawned by this crisis was SB 831, which addresses gifts of travel to Legislators, behested¹¹ payments to nonprofit organizations, and campaign fund expenditures, each of which played a role in the Senatorial indictments that began the process.¹²

Part II of this Article will address the legal history of political reform efforts in California. Part III will discuss the proposed effects of SB 831. Part IV will analyze what the impact of SB 831 would have been on California.

2. See *id.* (comparing the California recall process to Athenian ostracism).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See Norimitsu Onishi, *California Democrats Await Fallout After 3 Are Caught Up in Scandals*, N.Y. TIMES, Apr. 3, 2014, http://www.nytimes.com/2014/04/04/us/california-democrats-await-fallout-after-3-are-caught-up-in-scandals.html?_r=0 (on file with the *McGeorge Law Review*) (discussing the indictments of the California Senators).

8. See *About the Political Reform Act*, CAL. FAIR POLITICAL PRACTICES COMM’N, <http://www.fppc.ca.gov/index.php?id=221> (last visited June 18, 2014) (on file with the *McGeorge Law Review*) (describing the Political Reform Act).

9. Jessica Calefati, *Support Wanes in Sacramento for Tough Ethics Reform Following Scandal*, SAN JOSE MERCURY NEWS, July 6, 2014, http://www.mercurynews.com/california/ci_26095376/support-wanes-tough-ethics-reform-following-scandal (on file with the *McGeorge Law Review*).

10. *Id.*

11. Senate Bill 831 does not define “behested,” but Merriam-Webster defines “behest” as “an authoritative order” or “an urgent prompting.” *Behest*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/behest?show=0&t=1417208066>, (last visited Dec. 15, 2014) (on file with the *McGeorge Law Review*).

12. SB 831 §§ 1(a), 3(a), 8(a) 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 9, 2014, but not enacted); see Patrick McGreevy, *Nonprofits Tied to Legislators Collect Cash out of Public View*, L.A. TIMES, Nov. 16, 2013, <http://www.latimes.com/local/la-me-legislature-nonprofits-20131117-story.html#axzz2kwqVHG7x&page=1> (on file with the *McGeorge Law Review*) (describing Senator Calderon’s use of his brother’s nonprofit to hide contributions from special interest groups).

II. LEGAL BACKGROUND

This section will first address the history of political reform in California prior to the Political Reform Act of 1974 (PRA). It will then discuss the PRA in general and describe the areas of law affected by SB 831 in greater depth.

A. *The History of Political Reform in California*

Regulating the conduct of politicians and the multitude of special interests surrounding them has been an area of concern for the California legislature for over half a century; the legislature has passed over eighty distinct statutes in an ongoing effort to police itself.¹³ Efforts to consolidate the various regulations into a more comprehensive piece of legislation began in 1969 with an overbroad disclosure statute that the California Supreme Court deemed unconstitutionally restrictive in *City of Carmel-by-the-Sea v. Young* in 1970¹⁴ and continued with the Moscone Governmental Conflicts of Interest and Disclosure Act (Moscone Act) in 1973.¹⁵ The Moscone Act, while not found unconstitutional, was subsumed by the PRA just a year after its passage.¹⁶

B. *The Political Reform Act of 1974*

A landmark piece of political legislation was passed in 1974 when voters approved Proposition 9 by a large majority.¹⁷ “The [PRA] was . . . comprehensive, covering all areas of political reform.”¹⁸ In addition, the PRA created the Fair Political Practices Commission (FPPC) and empowered it both to enforce the title’s provisions and to create new regulations in order to further the PRA’s goals.¹⁹

1. *What is a Contribution Under the PRA?*

Section 82015 of the California Government Code, enacted by the PRA, defines the types of payments that qualify as contributions.²⁰ The statute defines a contribution as “a payment, a forgiveness of a loan, a payment of a loan by a

13. *City of Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 262, 466 P.2d 225, 227 (1970).

14. 2 Cal. 3d at 272, 466 P.2d 235.

15. Jeri McKeand, *The Political Reform Act of 1974: A Critical Look at Conflict of Interest and Disclosure Requirements*, 5 W. ST. U. L. REV. 269, 269–70 (1978).

16. *Id.* at 270.

17. *About the Political Reform Act*, *supra* note 8.

18. McKeand, *supra* note 15, at 271 (“Besides the conflict of interest and disclosure provisions, the Act regulates Campaign Disclosures, Lobbyists, Ballot Pamphlets, Incumbency, Auditing of Statements, Enforcement, and sets up the Fair Political Practices Commission to administer the Act.”) (citations omitted).

19. CAL. GOV’T CODE §§ 83100, 83111, 83112 (West 2005).

20. *Id.* § 82015.

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.”²¹ The section goes on to specify that any payment of this kind made “at the behest” of a committee or candidate also qualifies as a contribution.²² The statute lists specific circumstances in which payments are “unrelated” to political purposes and includes payments made by nonprofit organizations.²³ Thus, under section 82015, payments made by nonprofit organizations, even when at the behest of a candidate or elected officer, are not contributions.²⁴

Contributions are a small part of a broader concern about lobbying that was a major motivator for passing the PRA.²⁵ The desire for stricter and broader regulation over lobbying activities likely contributed to the overwhelming passage of Proposition 9 in 1974.²⁶ Inhibiting lobbying activities perceived as improper was the driving force behind the PRA.²⁷

2. How Does the PRA Treat Gifts of Travel?

California Government Code section 89506 deals with payments made for travel expenses that are “reasonably related to a legislative or governmental purpose.”²⁸ The statute lays out two exceptions to the normal limitations placed on gifts by Government Code section 89503.²⁹ The first exception is narrowly restricted to payment of travel expenses incurred for speeches given by candidates and elected officials.³⁰ The second, however, is much broader: it provides that travel payments made by “a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, . . . [or] a nonprofit organization” are not subject to normal gift limitations.³¹ This exception was created to allow charitable and educational entities to pay public officials to speak at their events.³² However, in

21. *Id.* § 82015(a).

22. *Id.* § 82015(b).

23. *Id.* § 82015(b)(2)(B)(ii).

24. *Id.*

25. See Stephen Landuyt, *Disclosure and Individual Rights: Influencing the Legislative Process Under the Political Form Act of 1974*, 8 PAC. L.J. 939, 955–56 (1977) (“By passing the Political Reform Act of 1974, the people of California expressed their desire to have stricter controls and additional disclosure requirements placed on lobbying activities to inhibit and uncover improper influences directed at the legislative process.”).

26. *Id.*

27. *Id.*

28. GOV’T § 89506(a).

29. *Id.* § 89506.

30. *Id.* § 89506(a)(1).

31. *Id.* § 89506(a)(2).

32. PHILLIP UNG, CAL. COMMON CAUSE, GIFTS, INFLUENCE, AND POWER: A REPORT ON GIFTS GIVEN TO CALIFORNIA’S ELECTED OFFICIALS 9 (2013), available at http://www.commoncause.org/research-reports/CA_122013_Report_Gifts_Given_to_California-s_Elected_Officials_1.pdf (on file with the *McGeorge Law*

2013 nonprofit organizations used the loophole to reimburse public officials for over \$500,000 in travel payments.³³ Concerns about gifts, including those disguised as travel expenses, were reflected in the PRA.³⁴ Indeed, some academics expressed concerns that special interest groups would use these types of gifts to unduly influence legislators.³⁵

3. *How Does the PRA Treat Charitable Donations?*

Section 89515 of the California Government Code declares that the donation of campaign funds to “bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organizations” is permissible, provided that “no substantial part” of the donation will confer a financial benefit on “the candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or member of his or her immediate family.”³⁶ It also requires that the donation “bear[] a reasonable relation to a political, legislative, or governmental purpose.”³⁷ The statute provides no definition of what constitutes a financial benefit, nor does it provide any clarity on what it means by a “substantial part of the proceeds.”³⁸ However, FPPC regulations state that a “financial effect” is material “if it is at least \$250 in any 12-month period.”³⁹ Large donations to the favorite charities of politicians are exempt from regulation as long as the donation confers no direct material benefit on the public official or his family.⁴⁰ However, the growing prevalence of these donations suggests a new trend.⁴¹ Gifts to legislators, whether directly or indirectly, were a major concern to legal commentators during the passage of the PRA.⁴²

Review).

33. Jeremy B. White, *California Lawmakers Enjoyed \$550,000 Worth of Paid Travel in 2013*, SACRAMENTO BEE, Mar. 4, 2014, <http://www.sacbee.com/2014/03/04/6209174/california-lawmakers-enjoyed-550000.html> (on file with the *McGeorge Law Review*).

34. See Landuyt, *supra* note 25, at 945–46 (discussing concerns about direct and indirect gifts).

35. See *id.* at 955–56 (noting wariness about undue influence being exerted on legislators).

36. *Id.* § 89515.

37. *Id.*

38. *Id.*

39. CAL. CODE REGS. tit. 2, § 18705.5 (2014).

40. GOV'T § 89515.

41. See Anthony York, *Jerry Brown's Charter Schools in Oakland Reap Big Donations*, L.A. TIMES, Aug. 8, 2011, <http://articles.latimes.com/print/2011/aug/08/local/la-me-brown-charities-20110808> (on file with the *McGeorge Law Review*) (noting the increasing popularity of such donations).

42. Landuyt, *supra* note 25, at 955–56.

4. *What Types of Campaign Fund Expenditures Does the PRA Restrict?*

California Government Code Section 89513 prohibits specific types of campaign fund expenditures.⁴³ The beginning of the statute deals directly with travel expenses incurred by candidates, their staff members, and their families.⁴⁴ It specifies that campaign funds may not be used to pay or reimburse a candidate or staffer for travel expenses unless those expenses are “directly related to a political, legislative, or governmental purpose”⁴⁵ and provides that the standard for determining whether travel expenses are sufficiently related will be similar to the federal income tax law standards.⁴⁶

In addition to regulating travel expenditures, this section of the PRA also prohibits a number of other specific expenditures of campaign funds.⁴⁷ Section 89513 prohibits the use of campaign funds to pay for professional services,⁴⁸ health-related expenses (including medical appointments and health club dues),⁴⁹ or clothing for the candidate (unless it is “specialty clothing . . . not suitable for everyday use . . . [that] is directly related to a political, legislative, or governmental purpose”).⁵⁰

The PRA also regulates the use of campaign funds on vehicles.⁵¹ Government Code section 89516 outlines two requirements for the permissible purchase or lease of a vehicle with campaign funds.⁵² The first requirement mandates that title to the vehicle be held by the committee, rather than by the “candidate, elected officer, campaign treasurer, or any other individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or a member of his or her immediate family.”⁵³ The second requires that the vehicle’s use “directly relate[] to a political, legislative, or governmental purpose.”⁵⁴

California Government Code section 89517 governs the use of campaign funds for the purchase and lease of real property.⁵⁵ It completely bans the use of campaign funds to purchase real property.⁵⁶ However, it permits the use of campaign funds for the lease of real property, as well as the lease and refurbishment of appliances so long as the lessor or sublessor is not “a candidate,

43. Gov’t § 89513.

44. *Id.* § 89513(a).

45. *Id.*

46. *Id.* § 89513(a)(1).

47. *Id.* § 89513(b)–(g).

48. *Id.* § 89513(b)(1).

49. *Id.* § 89513(b)(2).

50. *Id.* § 89513(d).

51. *Id.* § 89516.

52. *Id.* § 89516 (a).

53. *Id.* § 89516(a)(1).

54. *Id.* § 89516(a)(2).

55. *Id.* § 89517.

56. *Id.* § 89517(b).

elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds, or member of his or her immediate family” and the property or appliance is “directly related to a political, legislative, or governmental purpose” such that any other use is “only incidental” to that purpose.⁵⁷

III. SB 831

SB 831 would have changed campaign finance rules regarding gifts of travel,⁵⁸ behested donations to nonprofit organizations,⁵⁹ and expenditures of campaign funds.⁶⁰ All restrictions placed on nonprofit organizations by SB 831 would have applied only to 501(c)(4) organizations.⁶¹

A. *Travel-Related Gifts*

SB 831 would have increased disclosure from nonprofit organizations when they give gifts of travel.⁶² The bill would have required these groups to disclose the names of all donors who “knew or had reason to know that the donation would be used for a payment, advance, or reimbursement for travel.”⁶³ These rules would only have applied to groups who provide more than \$10,000 of total travel donations in a single year, or who give more than \$5,000 in gifts of travel to a single individual.⁶⁴

B. *Behested Donations to Nonprofits*

SB 831 outlines new restrictions regarding the solicitation of payments to nonprofit organizations owned or controlled by the elected officer, any other elected officer serving on the same elective body, or a family member of any elected officer on that body.⁶⁵ SB 831 would have prohibited making these behested payments to nonprofit organizations “owned or controlled” by a public official or a member of his family.⁶⁶ This prohibition would have stopped these types of donations from being exempted from normal restrictions on campaign contributions.⁶⁷ It also would have prohibited elected officers from soliciting

57. *Id.* § 89517.

58. SB 831 § 3(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

59. *Id.* at § 1(a).

60. *Id.* at § 4.

61. *Id.* at § 1(a).

62. *Id.* at § 3(a).

63. *Id.*

64. *Id.*

65. *Id.* at § 6.

66. *Id.* at § 1(a).

67. *Id.* at § 6.

these payments to charities from nonprofit organizations.⁶⁸ The only nonprofit groups to which these restrictions would have applied are 501(c)(4) groups.⁶⁹

C. *Limits on the Use of Campaign Funds*

Senate Bill 831 would have required that the use of any vehicle purchased with campaign funds be “related to an election campaign,”⁷⁰ a subtle change from the previous requirement that it be “related to a political, legislative, or governmental purpose.”⁷¹ It also would have forbade the use of campaign funds to make payments for personal vacations for candidates, elected officers, and their employees.⁷² In addition, SB 831 sought to prohibit the use of campaign funds to purchase or lease real property or appliances when the lessee or owner of the item in question is a candidate, elected officer, or another individual authorized to approve campaign spending.⁷³ Along the same lines, campaign funds would no longer have been allowed to be used to pay membership dues at any kind of recreational facility, including country clubs or health clubs, or to pay tuition.⁷⁴ SB 831 also would have disallowed the use of campaign funds for any clothing for a candidate or elected officer.⁷⁵

IV. ANALYSIS

This section discusses the benefits and potential insufficiencies contributing to the hypothetical impact of the passage of SB 831.⁷⁶ Part A considers the proposed restrictions and disclosure requirements for gifts of travel expenses. Part B examines the proposed changes to donations to nonprofits at the behest of an elected official. Part C explores the proposed restrictions on the use of campaign funds for what might be considered personal expenses of a candidate or elected official. Finally, Part D discusses competing rationale for Governor Brown’s veto of SB 831.

68. *Id.* at § 1(a).

69. *Id.*

70. *Id.* at § 7.

71. *Id.*

72. *Id.* at § 4.

73. *Id.* at § 8.

74. *Id.* at § 4.

75. *Id.*

76. *See* UNG, *supra* note 32 (discussing loopholes in the PRA that have been used by politicians); *see also* Calefati, *supra* note 9 (discussing the aims and potential failings of SB 831).

A. *Gifts of Travel*

One of the primary foci of SB 831 centers on gifts of travel.⁷⁷ These gifts, when made by educational institutions or nonprofit organizations are not subject to normal gift restrictions.⁷⁸ In other words, after the veto of SB 831, nonprofit organizations can still subsidize unlimited travel costs for public officials and avoid the limitations ordinarily placed on campaign contributions.⁷⁹ Watchdog groups like Common Cause have viewed gifts of travel as a potentially underhanded way for organizations to curry favor with politicians outside the confines of political regulation.⁸⁰

The Sacramento Bee reported that in 2013, politicians in California received over \$550,000 in free travel.⁸¹ That number represents a significant increase from the 2012 level of \$329,000.⁸² According to the study, these trips were funded by a variety of sources, including “foreign governments, foundations fueled by corporate and labor money[,] and nonprofits tied to specific industries.”⁸³ The trips included excursions to countries including Switzerland, Taiwan, and Israel.⁸⁴ Multiple lawmakers received over \$30,000 in gifts of travel.⁸⁵

While these isolated numbers may seem troubling, Robert Stern, a co-author of the PRA, has said that “[t]here is no inherent issue with [Legislators] travel[ing]. . . .”⁸⁶ Lawmakers can benefit in a variety of ways from seeing how other governments function.⁸⁷ However, the underlying concern is that special interests use these unlimited gifts of travel to garner undue influence over the legislators whose excursions they subsidize.⁸⁸ According to Common Cause, many special interests use, or even establish, nonprofit organizations for the specific purpose of exploiting the travel exception to normal political gift limits.⁸⁹ The report states that while the purpose of the loophole is to allow public officials to speak at legitimate philanthropic events, the reality is that the exception may afford special interests an opportunity to influence California lawmakers.⁹⁰

77. SB 831 § 3, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

78. *Id.*

79. *Id.*

80. UNG, *supra* note 32, at 13.

81. White, *supra* note 33.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. See UNG, *supra* note 32, at 9 (describing how “a number of special interest groups take advantage of the travel loophole by setting up or using non-profits” to skirt the \$440 gift limit).

89. *Id.*

90. *Id.* (“The purpose of this non-profit travel exemption was to allow 501(c)3 charities providing public services or philanthropy to invite officials to speak. The reality is the exact opposite.”).

One major trip reported by the *Los Angeles Times* was a conference in Maui attended by a number of California legislators.⁹¹ This annual Maui retreat is sponsored by nonprofit organizations that are funded by special-interest groups including the cigarette maker Altria, Southern California Edison, a pharmaceutical manufacturing association, and the California Beer and Beverage Distributors.⁹² One of the event's organizers said that the event was held to "give[] the sponsoring companies an opportunity to talk about what their business is like in California."⁹³ While these trips may create the appearance of impropriety, it is important to remember that they serve valuable purposes for legislators.⁹⁴

Despite concern regarding these travel gifts,⁹⁵ SB 831 stopped short of banning or even limiting these gifts of travel.⁹⁶ Instead, it would have only imposed disclosure requirements.⁹⁷ SB 831 would have required that nonprofits and other organizations that subsidize travel over a certain amount disclose not just the gift, but the specific donors who knew or had reason to know about it as well.⁹⁸

Senator Jerry Hill, the sponsor of SB 831, stated that this would further the goal of "increas[ing] the transparency of these travel-related gifts."⁹⁹ Indeed, requiring these nonprofits to disclose the names of the donors who made the travel gifts possible would reveal the types of special interests that Common Cause suggests are using nonprofit groups as a shield behind which they can donate to politicians anonymously.¹⁰⁰ The Supreme Court has made the state's interest in requiring political disclosure clear by indicating that disclosure is critically important to help voters better grasp the political beliefs and intentions of candidates.¹⁰¹ In *Citizens United v. Federal Elections Commission*, the court held that allowing donors to avoid disclosure was not necessary in order to protect free speech and noted the importance of transparency in helping citizens "make informed choices in the political marketplace."¹⁰²

91. Patrick McGreevy, *California Lawmakers Head to Maui for Annual Retreats*, L.A. TIMES, Nov. 8, 2013, <http://www.latimes.com/local/political/la-me-pc-california-lawmakers-head-to-maui-for-annual-retreats-20131108-story.html#axzz2mA2uiUF7> [hereinafter *Maui*] (on file with the *McGeorge Law Review*).

92. *Id.*

93. *Id.*

94. See White, *supra* note 33 (discussing the value of legislative travel).

95. *Id.*

96. SB 831 § 3, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

97. *Id.*

98. *Id.*

99. *Maui*, *supra* note 91.

100. See UNG, *supra* note 32, at 9 (describing the special-interest group practice of setting up 501(c)(3)'s for the purpose of exploiting the travel-expense loophole).

101. *Citizens United v. Fed. Elections Comm'n*, 130 S. Ct. 876, 914 (2010).

102. *Id.* (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 197 (2003), overruled by *Citizens United v. Fed. Elections Comm'n*, 130 S. Ct. 876, 914 (2010)).

Robert Stern, a co-author of the original Political Reform Act, addressed the same concern in the context of gifts of travel, stating that he had “a problem with the travel in the sense of it’s not disclosed where money is coming from. . . .”¹⁰³ However, there is a sense that the failure to provide any actual limitation on these payments represents a failure on the part of the legislation, and that it is “watered-down.”¹⁰⁴ As originally written, the bill would have instituted a \$7,000 limit on gifts of travel from a single source.¹⁰⁵ However, that provision was removed as SB 831 underwent the inevitable trimming of the legislative process.¹⁰⁶ Some commentators suggested that with the passage of time since the political scandal rocked California early in 2014, support for giving real teeth to political reform has ebbed significantly.¹⁰⁷ This diminished legislative ardor has allowed amendments limiting the reach of SB 831 to take effect.¹⁰⁸

Despite these concerns, there are indications that the bill’s lack of a limitation on the amount of gifts of travel that politicians can accept represents a compromise of legitimate interests as opposed to a waning desire to implement real reform.¹⁰⁹ Legislative travel, as mentioned earlier, does serve a legitimate purpose and has real value to both the legislators themselves and the constituency they serve.¹¹⁰ The travel costs can be significant, however, and various commentators have at times expressed outrage over the supposed waste of taxpayer dollars used to subsidize traveling politicians, including, most prominently, the President of the United States.¹¹¹ While there are valid concerns regarding the subsidization of legislative travel by special-interest groups, one author from Watchdog Wire noted that these gifts of travel prevent taxpayers from having to provide funding for legitimate travel-related expenses incurred by California lawmakers.¹¹²

103. White, *supra* note 33. While Stern agreed that lack of disclosure surrounding gifts of travel were part of the problem, he advocated going farther and requiring the state to pay for the travel expenses rather than simply increasing disclosure requirements. *Id.*

104. Patrick McGreevy, *Calif. Senate Adopts New Ethics Standards, Rejects Others*, L.A. TIMES, June 9, 2014, <http://www.latimes.com/local/political/la-me-pc-calif-senate-adopts-new-ethics-standards-20140609-story.html> [hereinafter *Senate Adopts New Ethics Standards*] (on file with the *McGeorge Law Review*).

105. *Id.*

106. *Id.*

107. Calefati, *supra* note 9.

108. *Id.*

109. *See id.* (indicating that amendments by the Appropriations Committee are typically made when a bill would be unworkable or too costly to implement).

110. White, *supra* note 33.

111. *See, e.g., Obama’s Pricey Vacations: Air Force One Operating Cost for 3 Trips. . . A Whopping \$16 Million*, GLENN BECK, Mar. 28, 2014, <http://www.glennbeck.com/2014/03/28/obamas-pricey-vacations-air-force-one-operating-cost-for-3-trips-a-whopping-16-million/> (on file with the *McGeorge Law Review*) (criticizing the cost of President Obama’s recent trips to Africa and Honolulu).

112. Josh Kaib, *California Lawmakers Travel on Special Interest Groups’ Dime, Rack Up \$550,000 Bill*, WATCHDOG WIRE, Mar. 5, 2014, <http://watchdogwire.com/California/2014/03/05/California-lawmakers-travel-on-special-interest-groups-dime-rack-up-550000-bill/> (on file with the *McGeorge Law Review*).

With the travel donations to legislators rising dramatically between 2012 and 2013, the sentiment that somewhere amongst the vast needs of the state may lay a nobler purpose for taxpayer dollars appears tenable.¹¹³ Still, the sponsor of the legislation, Senator Hill, indicated his displeasure with the softening of travel gift restrictions in SB 831, saying that “[w]hat works for the committee may not work for you, but if you want the bill to move forward, that’s how it goes.”¹¹⁴ Senator Kevin de León is the chair of the Senate Appropriations Committee, which is the group responsible for the changes made to SB 831.¹¹⁵ Senator De León’s Chief of Staff described the changes as “improvements” to the bill that would make it “more workable.”¹¹⁶ SB 831 would have represented a compromise: allowing the donations that make legislative travel possible,¹¹⁷ while preventing special-interests groups from hiding behind a shield of anonymity.¹¹⁸

B. *Donations to Nonprofits*

While the PRA revolutionized political regulation in California in an unprecedentedly broad manner, the decades that followed revealed a need for additional legislation.¹¹⁹ As part of a broader package of legislation relating to ethics, SB 831 sought to further the underlying purposes of the PRA.¹²⁰ One of the concerns SB 831 would have addressed is the substantial flow of money donated to nonprofit organizations at the behest of California politicians.¹²¹ These payments are legal and monitored by the FPPC.¹²²

However, some observers have suggested that donations to the favorite charities of various elected officials by lobbyists and special-interest groups could have the effect of currying favor with those officials while evading traditional campaign finance regulation.¹²³ A Common Cause report estimates that public officials in California have solicited \$105.5 million for a multitude of projects or charities since 2000, including a record \$33 million in 2008.¹²⁴ Phillip

113. *Id.*

114. Calefati, *supra* note 9.

115. *Id.*

116. *Id.*

117. See White, *supra* note 33 (describing the benefits and importance of travel for lawmakers).

118. See UNG, *supra* note 32, at 9 (describing the lack of public disclosure required prior to SB 831).

119. *About the Political Reform Act*, *supra* note 8; see Calefati, *supra* note 9 (describing legislative attempts at political reform).

120. See *Senate Adopts New Ethics Standards*, *supra* note 104 (describing other proposed laws and resolutions aimed at preventing unethical behavior by elected officials).

121. See SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014 but not enacted) (prohibiting the request and payment of such donations).

122. Summer Parkerperry, *Brown’s Fund-raising Prowess Targets His Favorite Charities*, CAPITOL WEEKLY, Oct. 10, 2013, <http://capitolweekly.net/browns-fund-raising-prowess-targets-favorite-charities/> (on file with the *McGeorge Law Review*).

123. *Id.*

124. UNG, *supra* note 32, at 13.

Ung, a Common Cause spokesperson, stated unequivocally in an interview with *Capitol Weekly* that “absolutely there is a hidden motive” and suggested that companies often “use behested payments to get a favor.”¹²⁵

Given the events preceding SB 831, this concern makes sense.¹²⁶ Senator Ronald Calderon, one of the California Senators whose indictment preceded the drafting of SB 831, used these behested payments to conceal bribes from film executives.¹²⁷ Calderon “accepted \$60,000 from an undercover FBI operative masquerading as a film executive.”¹²⁸ \$25,000 of that bribe was to be hidden as a donation to a nonprofit owned by his brother, Tom Calderon.¹²⁹ These types of transactions are exactly what SB 831 would have addressed, prohibiting payments to nonprofit organizations run by elected officials or their family members, such as the one operated by Senator Calderon’s brother.¹³⁰

While most behested payments to nonprofit groups will not have the criminal character of those made on behalf of Senator Calderon, the idea of unlimited payments acting as pseudo-contributions from special interest groups to public officials and evading the traditional restrictions placed upon political contributions is troubling to political watchdog groups like Common Cause.¹³¹ At the top of the list of politicians who have solicited charitable donations from special interests without facing an indictment is the governor of California, Jerry Brown.¹³² According to a Common Cause study, Brown has accumulated \$3.5 million in behested payments since taking office in 2010.¹³³ These payments consisted primarily of charitable contributions to a pair of charter schools founded by Brown in the Bay Area,¹³⁴ and the largest donors form some of the largest special-interest groups in the state.¹³⁵ The combined participation of high-level politicians and major special interests in the behested payment process has led Common Cause to call it “the new fad in influence peddling.”¹³⁶

While Common Cause has expressed concern about all behested payments, Common Cause spokesperson Ung states that donations to charities run by a public official’s family member are especially concerning.¹³⁷ SB 831 would have responded directly to that particular concern, prohibiting payments to those types

125. Parkerperry, *supra* note 122.

126. See Onishi, *supra* note 7 (describing recent bribery allegations against California politicians).

127. McGreevy, *supra* note 12.

128. *Id.*

129. *Id.*

130. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

131. UNG, *supra* note 32, at 13–14.

132. *Id.* at 13.

133. *Id.*

134. *Id.*

135. York, *supra* note 41.

136. *Id.*

137. Parkerperry, *supra* note 122.

of organizations.¹³⁸ Still, SB 831 would have only expanded the definition of a contribution to include those that confer a material financial benefit on a public official or are made to a nonprofit controlled by a public official or a member of his family, an expansion that would not address all of the concerns of Common Cause.¹³⁹

There are those, however, who support behested payments to nonprofit organizations.¹⁴⁰ Dan Schnur, a former FPPC Chairman, emphasized the difficulty in legally separating legitimate philanthropic donations from those that are motivated by the potential for political gain.¹⁴¹ There is real concern that the proscription of such payments would create a chilling effect on charitable donations as a whole.¹⁴²

Because SB 831 would only have banned behested payments to organizations owned or controlled by elected officials and their families, groups like Brown's schools would likely fall outside of the legislation's purview.¹⁴³ Still, the concern regarding potential improprieties stemming from these payments is clearly reflected in SB 831.¹⁴⁴ The bill would have defined an organization as "owned or controlled" by a person if that person "is a director, officer, partner, or trustee of, or holds any position of management with, the nonprofit organization, and is paid for his or her services."¹⁴⁵ While Brown founded the schools when he was the mayor of Oakland, his only role with them now is as a fundraiser and supporter.¹⁴⁶ Even Ung admits that Brown "has no day-to-day management of the schools."¹⁴⁷ As a result, the new legislation would leave the payments to Brown's schools unaffected.¹⁴⁸

Despite concern about the motives behind these gifts from groups like Common Cause,¹⁴⁹ there is a countervailing interest in avoiding discouraging

138. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

139. Compare UNG, *supra* note 32, at 13–14 ("One example is the common practice of interest groups underwriting charitable food kitchens donations, school supply drives, book fairs, and other high profile community events while promoting the elected official as the headliner. This arrangement could provide a significant level of influence over an elected official's decision making that may benefit special interest over public interest."), and Parkerperry, *supra* note 122 ("There is influence that can occur with the public officials, especially when the behested payments are made to close friends of legislators. . . ."), with SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted). (limiting new regulations on behested payments to organizations run by an official's family member).

140. Parkerperry, *supra* note 122.

141. *Id.*

142. *Id.*

143. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

144. See UNG, *supra* note 32, at 13–14 (describing the concerns of watchdog group Common Cause).

145. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

146. Parkerperry, *supra* note 122.

147. *Id.*

148. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted) (limiting restrictions on behested payments to those organizations controlled or owned by elected officers or their family members).

149. UNG, *supra* note 32, at 13–14.

charitable donations as well.¹⁵⁰ In the case of Brown in particular, the governor has defended his fundraising efforts with the schools, calling it “the Lord’s work” and dismissing the scrutiny applied to the donations in question as “journalistic games.”¹⁵¹

Senate Bill 831 would have avoided discouraging charitable donations of this kind due to a stipulation that would have limited the restrictions on behested payments to 501(c)(4) groups.¹⁵² The stipulation thus would have exempted all charities and schools from its new regulations, subjecting only a single, narrower class of nonprofit organization to increased scrutiny.¹⁵³ 501(c)(4) groups include “social welfare” groups and include organizations such as civic leagues, that are allowed to participate in the political arena through financial contributions in order to pursue their respective agendas.¹⁵⁴

By failing to include 501(c)(3) organizations under the purview of the bill, legislators would have excluded all organizations acting “exclusively for religious, charitable, and educational purposes.”¹⁵⁵ These groups include schools and charities, including Brown’s charter schools and the organization set up by Tom Calderon.¹⁵⁶ However, while this stipulation would have significantly limited the scope and effectiveness of SB 831, it is often necessary to amend legislation and compromise in order to get legislation passed.¹⁵⁷

Despite the limited scope of the new restrictions, SB 831 would have prohibited the type of payment that Common Cause indicated was of the gravest concern: those payments made to nonprofit organizations owned or controlled by public officials and their families.¹⁵⁸ Supporters of the legislation contend that taken as a whole, SB 831 would have “improve[d] and modernize[d] California’s Political Reform Act,”¹⁵⁹ and struck a balance between limiting behested payments to groups owned or controlled by elected officials and their families while continuing to allow genuine charitable donations.¹⁶⁰

150. Parkerperry, *supra* note 122.

151. York, *supra* note 41.

152. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

153. *Id.*; see 26 U.S.C. §§ 501(c)(3-4); Sean Sullivan, *What Is a 501(c)(4), Anyway?*, WASH. POST, May 13, 2013, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/05/13/what-is-a-501c4-anyway/> (on file with the *McGeorge Law Review*); Peter J. Reilly, *Org Tries Exempt Status Multiple Choice—IRS Answers None of the Above*, FORBES, Aug. 8, 2014, <http://www.forbes.com/sites/peterjreilly/2014/08/08/org-tries-exempt-status-multiple-choice-irs-answers-none-of-the-above/> (on file with the *McGeorge Law Review*).

154. Sullivan, *supra* note 153.

155. Reilly, *supra* note 153.

156. See Sullivan, *supra* note 153 and accompanying text (discussing the types of organizations eligible for 501(c)(3) status); Parkerperry, *supra* note 122; McGreevy, *supra* note 12.

157. See Calefati, *supra* note 9 (noting that amendments are often made to make bills “more workable”).

158. SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted); Parkerperry, *supra* note 122.

159. *Senate Adopts New Ethics Standards*, *supra* note 104.

160. See Parkerperry, *supra* note 122.

C. Campaign Fund Expenditures

The new restrictions SB 831 would have implemented on campaign fund expenditures¹⁶¹ could hardly be described as controversial.¹⁶² The treatment commentators afforded to these provisions of SB 831 can charitably be described as cursory.¹⁶³ New rules that would have forbidden the use of campaign funds on items including vehicles, real property, clothing, tuition, and country club dues form the bulk of SB 831's campaign fund expenditure provisions.¹⁶⁴ None of these, however, are the subject of the bulk of the discussion of SB 831's campaign fund expenditure restrictions.¹⁶⁵ Instead, the main topic of conversation when it comes to the campaign fund expenditure side of SB 831 revolves around a provision that was removed from the final version of the bill: a new restriction that would have forbidden the use of campaign funds for the legal defense of indicted legislators.¹⁶⁶

SB 831 and other ethics bills drafted around the same time were preceded by the indictment of three California Legislators early in 2014.¹⁶⁷ The provision to stop indicted lawmakers from using their campaign funds to subsidize their legal defense was removed "at the request of Senate leaders."¹⁶⁸ However, the sponsor of SB 831, Senator Hill, has indicated that he is unaware of the reasons behind the alteration.¹⁶⁹ While the changes SB 831 would have implemented are significant, they may not fully realize the vision of the lawmakers who sought this legislation in the aftermath of stunning scandal.¹⁷⁰ Those who see the changes that would have been implemented by SB 831 as underwhelming suggest that as the embarrassment of the scandal has faded, the motivation to accomplish real reform has faded with it.¹⁷¹ Dan Schnur, former FPPC chair, put it this way: "[a]s soon as the headlines faded, so did the interest in the Capitol for any meaningful effort to clean up the system."¹⁷² The implicit suggestion is that the motive for SB 831 and other political reform bills was to avoid embarrassment in the wake of the senatorial indictments rather than to implement lasting reforms.¹⁷³ Defenders

161. SB 831 § 4, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

162. See *Senate Adopts New Ethics Standards*, *supra* note 104 (offering a mere one sentence discussion of SB 831's campaign fund expenditure provisions); Calefati, *supra* note 9 (offering little discussion of new restrictions on campaign spending).

163. *Id.*

164. SB 831 § 4, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

165. See, e.g., *Senate Adopts New Ethics Standards*, *supra* note 104 (giving only cursory treatment to new rules on campaign expenditures).

166. Calefati, *supra* note 9; *Senate Adopts New Ethics Standards*, *supra* note 104.

167. Calefati, *supra* note 9.

168. *Senate Adopts New Ethics Standards*, *supra* note 104.

169. Calefati, *supra* note 9.

170. See *id.* (describing overall political reform efforts as "lukewarm").

171. *Id.*

172. *Id.*

173. *Id.*

of the amendments made to the legislation have characterized them as necessary changes for the passage of the bill.¹⁷⁴ Despite this characterization, the sentiment that it represents a “watered-down” attempt at political reform may stem at least in part from the fact that such an emblematic provision was removed from SB 831.¹⁷⁵ An amendment so favorable to indicted Senators to legislation created in response to the indictment of Senators could feel counter-intuitive.¹⁷⁶ After all, the amendment would ensure that these Senators would not be forbidden from using their campaign war chests to fund their legal defense.¹⁷⁷

Still, the fact remains that the new rules that would have been implemented by SB 831 represent the next step in pursuing the goals espoused by the PRA.¹⁷⁸ While Schnur and others may feel let down by the final result, the legislation has been endorsed by Common Cause, a watchdog organization.¹⁷⁹ While what SB 831 failed to include has garnered criticism, what it did include would have “help[ed] improve and modernize the Political Reform Act of 1974.”¹⁸⁰

D. *The Anatomy of a Veto: Brown’s Refusal to Sign SB 831*

Governor Brown vetoed SB 831 despite the legislature’s overwhelming support.¹⁸¹ He explained his decision to veto the bill as a way to block additional complicated regulatory requirements.¹⁸² Governor Brown further stated that the areas covered by SB 831 were already subject to extensive regulation that, presumably in his view, was sufficient.¹⁸³

Common Cause executive director Kathay Feng expressed disappointment that SB 831, along with other ethics bills passed by the Legislature, were vetoed by Brown.¹⁸⁴ She indicated that Governor Brown’s vetoes came as a surprise to

174. *Id.*

175. *See Senate Adopts New Ethics Standards*, *supra* note 104 (describing the bill as “watered-down”); Calefati, *supra* note 9 (noting a decline in support for the bill as the embarrassment of the scandals fades).

176. *See Senate Adopts New Ethics Standards*, *supra* note 104 (noting that the provision’s removal was requested by senate leaders).

177. *See id.* (discussing the removal of the provision regarding the use of campaign funds for legal defense purposes).

178. *See id.* (indicating that SB 831 seeks to “improve and modernize” the PRA).

179. Leila Pedersen, *Defending Democracy and Delivering Disclosure*, COMMON CAUSE, July 2, 2014, <http://www.commoncause.org/states/California/news/defending-democracy-and.html> (on file with the *McGeorge Law Review*).

180. *Senate Adopts New Ethics Standards*, *supra* note 104.

181. *SB 831 Senate Bill–History*, OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION, Nov. 29, 2014, http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0801-0850/sb_831_bill_20140930_history.html (on file with the *McGeorge Law Review*).

182. Letter from Edmund G. Brown, Governor of California, to the Members of the California State Senate (Sept. 30, 2014) (on file with the *McGeorge Law Review*), available at http://gov.ca.gov/docs/SB_831_Veto_Message.pdf [hereinafter Veto Letter].

183. *Id.*

184. David Siders, *Jerry Brown Vetoes California Political Ethics Bills*, SACRAMENTO BEE, Sept. 30, 2014, <http://www.sacbee.com/news/politics-government/capitol-alert/article2616394.html> (on file with the

the organization “just in terms of restoring public confidence and creating the optics that our state government cares about ethics and takes it seriously.”¹⁸⁵ Despite Feng’s concerns about the perception created by the veto, the effectiveness of the proposed legislation was questioned by political ethics expert Jessica Levinson, who indicated that the bill would fail to “change the way business is done in Sacramento.”¹⁸⁶ Governor Brown’s reasoning reflects the same line of thought; his veto message indicated that he refused to sign the bill because he felt it would not meaningfully “reduc[e] undue influence.”¹⁸⁷

Governor Brown’s suggestion that SB 831’s impact would have been less than meaningful may stem from the sense that the bill was diluted during its legislative journey.¹⁸⁸ Between curtailing the impact of the restrictions on behested payments to 501(c)(4) groups,¹⁸⁹ eliminating caps on gifts of travel,¹⁹⁰ and excising provisions like the one restricting politicians from using their campaign funds for legal defense,¹⁹¹ Governor Brown had a litany of examples to point to justify his assertion that the bill would fail to effectively eliminate improper influence.¹⁹² One state official noted that bills like these are often made as a response to a public relations disaster like the Senatorial indictments rather than for legitimate policy reasons; Governor Brown’s veto makes more sense in light of sentiments like that one.¹⁹³

V. CONCLUSION

Governor Brown is foremost among those who have criticized SB 831.¹⁹⁴ The bill’s amendments have led some to suggest that it is a product of waning ambition and desire.¹⁹⁵ This ambition that led to the bill’s drafting has faded along with the embarrassment of the scandal that gave birth to it.¹⁹⁶ However, criticisms of the magnitude of the bill’s potential impact cannot erase the fact that it would

McGeorge Law Review).

185. *Id.*

186. *Id.*

187. Veto Letter, *supra* note 182.

188. *See* Calefati, *supra* note 9 (discussing amendments that diluted the strength of the bill).

189. *See* SB 831 § 1(a), 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted) (excluding 501(c)(3) and other types of nonprofits from the bill’s scope).

190. *See id.* at § 3 (failing to put a limit on gifts of travel).

191. *See Senate Adopts New Ethics Standards*, *supra* note 104 (discussing the provision that eliminated the restriction on using campaign funds for legal defense).

192. Veto Letter, *supra* note 182.

193. *See* Email from Alex Barrios, Communications Director, California State Senate, to Elizabeth Kim, *Greensheets* Staff Writer, *McGeorge Law Review* (July 18, 2014, 17:17 PST) (on file with the *McGeorge Law Review*) (discussing responsive legislation in the context of SB 1441, another political ethics bill from this legislative session that Governor Brown vetoed).

194. Veto Letter, *supra* note 182.

195. Calefati, *supra* note 9.

196. *Id.*

have been impactful on some level.¹⁹⁷ The bill would have addressed concerns regarding lax disclosure requirements surrounding gifts of travel—a concern which has been echoed by one of the original drafters of the PRA.¹⁹⁸ Additionally, SB 831 would have addressed payments to nonprofits owned or operated by elected officials and their family members, like those made to the organization operated by Senator Calderon’s brother.¹⁹⁹

The legislation was intended to “improve and modernize” the PRA, and according to its sponsor, it would have done so.²⁰⁰ Indeed, Common Cause, a watchdog organization that prides itself on advocating for this sort of change, endorsed the bill.²⁰¹ “Sometimes it takes a crisis,” Senator Steinberg said, and what began with significant embarrassment for California’s democratic process resulted in an attempt by the legislature to strengthen that democratic process.²⁰² SB 831 would have represented a compromise, to be sure, but its veto nullifies what appeared to many to be a step in the right direction.

197. See Pedersen, *supra* note 179.

198. White, *supra* note 33; SB 831 § 3, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

199. UNG, *supra* note 32, at 13; SB 831 § 1, 2013–2014 Leg. Sess. (Cal. 2014) (as enrolled on Sep. 5, 2014, but not enacted).

200. *Senate Adopts New Ethics Standards*, *supra* note 104 (quoting Senator Jerry Hill).

201. Pedersen, *supra* note 179.

202. Calefati, *supra* note 9.