

California Shakedown: **An Investigation of Behested Payments to Elected Officials in California**

- September 2019

Report produced by the [Kersten Institute for Governance & Public Policy](#)
for the [Center for Ethics, Transparency & Accountability \(CETA\)](#)



The Center for Ethics, Transparency & Accountability (CETA) is a non-profit 501c committed to studying the conduct of public agencies and officials. Of particular concern to CETA is ensuring that public office is not used as a mechanism for profit, that public funds and agency actions are transparent and available for public review, and that elected & appointed official conduct their duties in an ethical and accountable manner.



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I. Executive Summary:

In an era of increased public awareness and scrutiny of both real and perceived political corruption and questionable ethical behavior, this report sought to investigate a very substantial issue that has succeeded in evading the public eye despite significant implications for both the public and the integrity of our system of elected democracy.

This report, titled “California Shakedown: An Investigation of Behested Payments to Elected Officials in California,” was produced by the Kersten Institute for Governance and Public Policy at the request of the Center for Ethics, Transparency and Accountability (CETA).

CETA asked the Kersten Institute to take an in-depth look at an emerging campaign finance issue whereby publicly elected officials steer contributions from individuals, corporations, unions, and other organizations to the nonprofit or charitable cause of their choice (commonly referred to as “behested payments”).

Moreover, these so-called “behested payments” are essentially an end-run around state and local limitations on campaign finance contributions to candidate committees directly controlled by elected officials.

Furthermore, a case study of the City of Sacramento in 2010-2013 alerted CETA, the *Sacramento Bee*, and good government watchdogs up and down the state regarding the perceived unethical behavior of large “charitable” contributions made by Wal-Mart and other special interests with business before the city to then Mayor Kevin Johnson and City Councilman Jay Schenirer.

This report sought to investigate this City of Sacramento case study and others like it to produce a written report on the origins of the behested payment issue in California and an analysis of potential policy solutions that have been taken or could be taken to address the problem.

The following report represents the findings and conclusions reached in this investigation and ultimately provides a look at an emerging issue that raises important ethical questions about the role of behested payments in our state and local political system, as well as potential issues that may merit additional investigation and political action.

In short, this report found significant evidence regarding the highly questionable practice of California elected officials accepting large behest payment payments from special interests which then at least gave the perception of impropriety and improper influence buying by these special interests, particularly when behests appeared to directly benefit the elected official.

The *Los Angeles Times* Editorial Board even went so far as to refer to practice of elected officials soliciting behest contributions from special interests with business before their elected body as a “shakedown.”

The intent of this report is to provide an initial look at the issue, present relevant case studies, data and sources, and discuss potential solutions to this important public policy issue.

Summary of Study Findings

1. The City of Sacramento case studies that served as the impetus for this report turned out to be the “canary in the coal” mine for the explosion in “behested payments” in California politics at both the local and state levels of government.
2. A review of reputable media reports and official government data sources reveals dozens of new cases of “behested payments” which raise significant ethical questions regarding the integrity of the nation’s local, state, and federal political process.
3. The “behested payments” issue is a huge emerging campaign finance issue that merits further study both in California and nationwide.

II. Literature Review:

A review of the relevant literature was conducted in preparation for this report which determined that “behested payments” to influence public officials is still an emerging policy issue and lacks a significant research foundation.

Despite a recent explosion in the number of press reports, and growing number of readily available case studies and data on “behested payments” in California and nationwide, very few groups and organizations have devoted resources to further studying this issue.

NBER Landmark Study (March 2018)

The National Bureau of Economic Research (NBER) published a working paper in March 2018 titled “Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence,” which reached conclusions similar to this report regarding the lack of attention paid to this emerging issue.

“We explore the role of charitable giving as a means of political influence, a channel that has been heretofore unexplored in the political economy literature,” states a summary of the report.

This NBER report found that for philanthropic foundations associated with Fortune 500 and S&P 500 corporations from 1998 to 2015, grants given to charitable organizations located in a congressional district increase when its representative obtains seats on committees that are of policy relevance to the corporation associated with the foundation.

Also, this pattern mirrors that of publicly disclosed political action committee (PAC) spending.

Furthermore, the NBER report found that “as further evidence on firms’ political motivations for charitable giving, we show that a member of Congress’s departure leads to a short-term decline in charitable giving to his district, and we again observe similar patterns in PAC spending,” states the report.

“Charities directly linked to politicians through personal financial disclosure forms filed in accordance to Ethics in Government Act requirements exhibit similar patterns of political dependence,” states the report.

Perhaps most interestingly, the report clearly demonstrates the sheer volume of this corporate influence buying compared to direct campaign finance contributions.

“Based on a straightforward model of political influence, our estimates imply that 7.1% of total U.S. corporate charitable giving is politically motivated, an amount that is economically significant: it is 280% larger than annual PAC contributions and about 40% of total federal lobbying expenditures,” states the NBER report.

The NBER report concludes that “Given the lack of formal electoral or regulatory disclosure requirements, charitable giving may be a form of political influence that goes mostly undetected by voters and shareholders, and which is directly subsidized by taxpayers.”

The *New York Times* concluded that the report “lays bare the extent to which corporate donations may respond to political, rather than charitable motivations,” citing several key examples.

The *New York Times* said the NBER study doesn’t “claim that any specific charitable contribution was meant to manipulate the political process,” but it quickly appears apparent that this is the case to anyone with experience in politics.

To illustrate, it is possible that when the Exelon Corporation donated \$25,000 to Representative Joe Barton's effort to build a Boys and Girls Club in Texas in 2008, it did so because it believed in boys and girls, not because Mr. Barton was the top Republican member of the House Energy and Commerce Committee, according to the NYT report.

What Are the Federal Disclosure Laws?

A report produced by the international law firm Perkins-Coie agreed with the *New York Times* assertion that federal campaign finance laws generally do not require disclosure of corporate contributions to charities.

"However, both the Times and the researchers appear to have overlooked that federal lobbying laws do require such disclosure, when lobbyists give to charities closely associated with certain federal government officials," states the PerkinsCoie report.

Specifically, under the "Honest Leadership and Open Government Act of 2007, federal lobbying registrants—which include both individual lobbyists and their corporate employers—must disclose the date, recipient, and amount of contributions made to charities connected to elected officials, according to Perkins Coie law firm.

"While these reports do not generally cover giving by a corporation's affiliated foundation, they do cover donations made from corporate treasury funds and corporate PACs," states the Perkins Coie report, which notes that these reports are available online and subject to audit by the Government Accountability Office.

The data, case studies, and issues discussed in the NBER study and accompanying reports raise many questions about the prevalence of charitable giving as well as the many different types of cases, suggesting that this issue needs far more substantive study given the potential ramifications on our nation's political process.

Similar trends and conclusions are seen at the state and local levels of government based on our review of California-specific data and reports, which are discussed in the next section of this report.

In conclusion, the study of this important public policy issues is still in its infancy and hopefully this study will help encourage additional research and study at the federal, state and local levels of government.

III. Description of Methodology:

The key issue examined in the report is "behested payments" to organizations and/or non-profits controlled by elected officials and/or their spouses or other closely associated family members and individuals. Similar questionable

financial arrangements were also examined that compromise the integrity of public officials through influence peddling based on financial contributions to politically connected causes and organizations.

The impetus for this study arose from a handful of high-profile cases in Sacramento County which raised serious questions regarding the integrity of the local political process with regard the behested payments to charities controlled by local elected officials. These case studies are presented in the next section.

Given that the sponsor of this report, the Center for Ethics, Transparency & Accountability (CETA), is based in Sacramento, California, the immediate interest in this issue came from these local Sacramento-area cases.

But after more research was conducted, it was revealed that these local cases represented just the tip of the iceberg with regard to the integrity of our nation's political process at the federal, state and local levels of government.

Thus, in researching and preparing this study, we cast a broad net initially for national, and statewide cases, of which some are briefly summarized in this report to establish this as both a statewide and nationwide issue.

But given the workload involved and our desire to be fair but also relatively comprehensive we focused on California statewide cases (i.e. California State Legislature and California State Constitutional Elected Officials) and other high-profile cases at the local levels of government in California.

Due to limitations on the scope of this study, we limited the study of these cases to representative samples and aggregate data to provide a good overview, synopsis and analysis of the issue as it currently stands in the State of California.

We believe that the analysis of California State cases from the Sacramento-area, combined with the high-profile cases from local government in California provide an excellent sampling of cases that highlight the extent of the problem as well as providing case studies that include solutions regarding how to potentially address the problem.

Sources of Data and Evidence

Most of the case studies and data presented in this report originate from official government sources and media sources originally based on government sources. All data and evidence sources are identified in the discussion of each case study.

In the case of the high-profile case studies, most were initially disseminated in the media through reputable local and state newspapers such as the *Sacramento Bee* and the *Los Angeles Times*.

Summary of Study Scope & Methodology

1. Impetus for study arose from a handful of high-profile cases in Sacramento County which raised serious questions regarding the integrity of the local political process with regard to “behested payments” to charities controlled by elected officials.
2. Further study revealed that City of Sacramento case studies just represented the “tip of the iceberg” of the emerging issue of “behested payments” at local, state & federal levels of government in the United States.
3. Due to workload considerations, this study focused on California statewide cases (i.e. California State Legislature) and other high-profile cases at the local levels of government in California.
4. Every effort was made to use only government data sources and/or reputable media outlets, as well as other reputable third-party sources such as law firms, government correspondence, and online media.

In terms of aggregate data and enforcement actions, the California Fair Political Practices Commission is the primary source of such data.

Every effort was made to use only government data sources and/or reputable media outlets, but other third-party report content was utilized as well to corroborate and expand on these primary sources, including industry sources such as law firms, government correspondence, and less well-known media outlets. Again, all key data and cases are sourced with at least one reputable media or government agency source.

Needless to say, the analysis and conclusions reached represent the opinions of the report authors based on a careful objective review of the data and evidence presented.

IV. Presentation of Case Studies and Data:

As mentioned previously, the impetus for this study originated about 10 years ago in the City of Sacramento based on a series of large and very questionable behest payments made to Sacramento City Mayor Kevin Johnson, City Councilmember Jay Schenirer and other city council members.

“Kevin Johnson raised eyebrows with his big-dollar behests—a total of nearly \$6.5 million in 2012 and another \$1.3 million in 2013. He was also fined, twice, by the state political watchdog [FPPC] for flouting the rules on behests—payments from corporations, well-off individuals and foundations made at the behest of elected officials,” states a January 3, 2018 *Sacramento Bee* report.

In 2012-13, Sacramento City Mayor Kevin Johnson, Councilmember Jay Schenirer and other Sacramento City Councilmembers came under close scrutiny for accepting big dollars in behest payments from Wal-Mart while considering relaxing restrictions on big-box stores in the City of Sacramento, a move which would greatly benefit Wal-Mart and other big-box retailers.

“Since 2011, the Mayor and the City Council [Sacramento] have reported more behest contributions than all members of the [California] State Senate and Assembly combined,” according to a Bee analysis of data compiled by both the city and the state’s Fair Political Practices Commission, according to the Sacramento Bee on Sunday June 30, 2013.

Behest Payments Skyrocket in the City of Sacramento

“While behest donations made to state legislators have declined in recent years, the amount reported by city officials has skyrocketed from \$15,750 in 2005 to \$7.1 million last year, records show,” states the Sacramento Bee report.

Wal-Mart and the Walton Family Foundation, founded by the family that formed the company, were the largest donors, contributing nearly \$800,000 combined to nonprofits on behalf of Johnson and other council members since 2009, according to official disclosure documents and the Sacramento Bee.

These Wal-Mart payments included \$505,000 in 2012-2013 to Johnson’s education reform initiatives and other groups backed by the Mayor. Johnson received another \$210,000 from Wal-Mart between 2009 and 2011—most of which was not reported by the mayor until December 2012, according to the *Sacramento Bee* and FPPC.

The Wal-Mart foundation also gave \$50,000 to a neighborhood nonprofit foundation organization founded by Councilmember Jay Schenirer, according to a Bee analysis.

Schenirer, the [Sacramento] council’s second largest recipient of behest payments, has raised a total of \$803,000, most of which has gone to a non-profit he controls called WayUp Sacramento.

Prior to June 2013, Schenirer had received \$434,800 in behest payments from the California Endowment and significant contributions from Sutter Health, AT&T and Kaiser Permanente, according to the *Sacramento Bee* analysis of official government records.

In June 2013, Schenirer announced that he had received another \$75,000 from the California HealthCare Foundation and \$25,000 from Wells Fargo, with both large contributions going to his nonprofit Way Up.

Did Wal-Mart Buy Political Influence?

At the same time, Johnson and Schenirer were the two Sacramento City politicians with the most political clout regarding the city's consideration of relaxing or eliminating a 2006 city prohibition on big-box retailers.

Councilmember Jay Schenirer initially opposed revising the big-box retailer prohibition during his campaign for City Council. In 2008, Schenirer called on city staff to keep the city's big-box retailer prohibition in place, according to an August 8, 2008 report by *Sacramento Press*.

In his campaign for public office, Schenirer wrote "I have not taken campaign contributions from oil or tobacco companies or Walmart," but did note that Walmart Foundation had contributed to youth programs that he had developed in Oak Park, according to a candidate statement.

In June 2013, Schenirer chaired the City Council's Law and Legislation Committee, which voted in favor of advancing a repeal of the city's strict big-box store regulations to the City Council. Since receiving the large behest payments from Wal-Mart, Schenirer also decided to publicly voice support for easing restrictions on Wal-Mart and other retailers, according to the *Sacramento Bee*.

Newsreview.com reported that a nonprofit called WayUp Sacramento has taken in \$800,000 from Wal-Mart and other special interests since Schenirer was elected in 2010. Furthermore, a closer investigation revealed that the organization was not even a nonprofit and had staff that were paid with a "blend of city money from Schenirer's district office budget and private money from WayUp" and their job responsibilities are a mix of city work and work for way up, according to the Newsreview.com report. "Some of it is under the band of WayUp, some of it is under the [council] district," Schenirer told *Newsreview.com*.

Jessica Levinson, a professor of election law at Loyola Law School, said she was not sure Schenirer was doing anything wrong through the utilization of these nonprofits to benefit his public office, adding "The thing that feels a bit funny is that it is using government resources, according to *Newsreview.com*.

Levinson said the work WayUp does is an extension of Schenirer's brand as a politician, and an extension of his professional brand too, suggesting that this arrangement provides a benefit to him in both capacities as a private consultant and City Councilman.

Schenirer is also an education consultant and that is how he makes his living. Another nonprofit organization connected to Schenirer called the San Francisco Foundations Community Initiative Fund *received hundreds of thousands of dollars* from the Bill and Melinda Gates, William and Flora Hewlett and the James Irvine Foundations for the purpose of supporting the Legislative Education Project, which *had then in turn contracted with a firm controlled by Schenirer* called Capitol Impact, LLC to run a Capitol education program, according to official FPPC documents.

Both Mayor Johnson and Councilman Schenirer Vote to Repeal Big Box Ordinance

In a 6-2 final vote, both Mayor Johnson and Councilmember Schenirer voted to repeal the prohibition on big-box retailers when the city ordinance came before the full City Council on August 20, 2013.

The vote also repealed the city's required wage and benefit study and made three exceptions to the requirement that superstores conduct an economic impact analysis that can cost tens of thousands of dollars, even hundreds of thousands of dollars, according to official city records and KCRA 3 News.

In addition to at least the appearance of buying influence, many campaign finance experts say these large behest payments are an end run around state and local campaign finance requirements which limit local public officials from accepting gifts from any single source in any calendar year with a total value of more than \$360, according to an opinion issued by the legal division of the FPPC.

"Since records on behests were first made available in 2005, Wal-Mart and the Walton family have been the largest donors to charitable causes affiliated with members of the [Sacramento] City Council," states the Sacramento Bee.

Telecommunications giant AT&T had also given \$646,700 in council behest payments since 2005, along with the Siemens Industry which gave \$450,000 in behest payments. Siemens makes light-rail trains and locomotives at its Sacramento plant, according to the Bee analysis.

Good Government Watchdog Groups Sound Alarm on Behest Payments, Politicians Deny Wrongdoing

In addition to the solid reporting by the Sacramento Bee and other local press, the questionable motivations of these big behest payments drew the ire of local and state watchdog groups who by and large said that these behest payments are another way of buying influence and skirting strict campaign finance limitations and disclosure requirements.

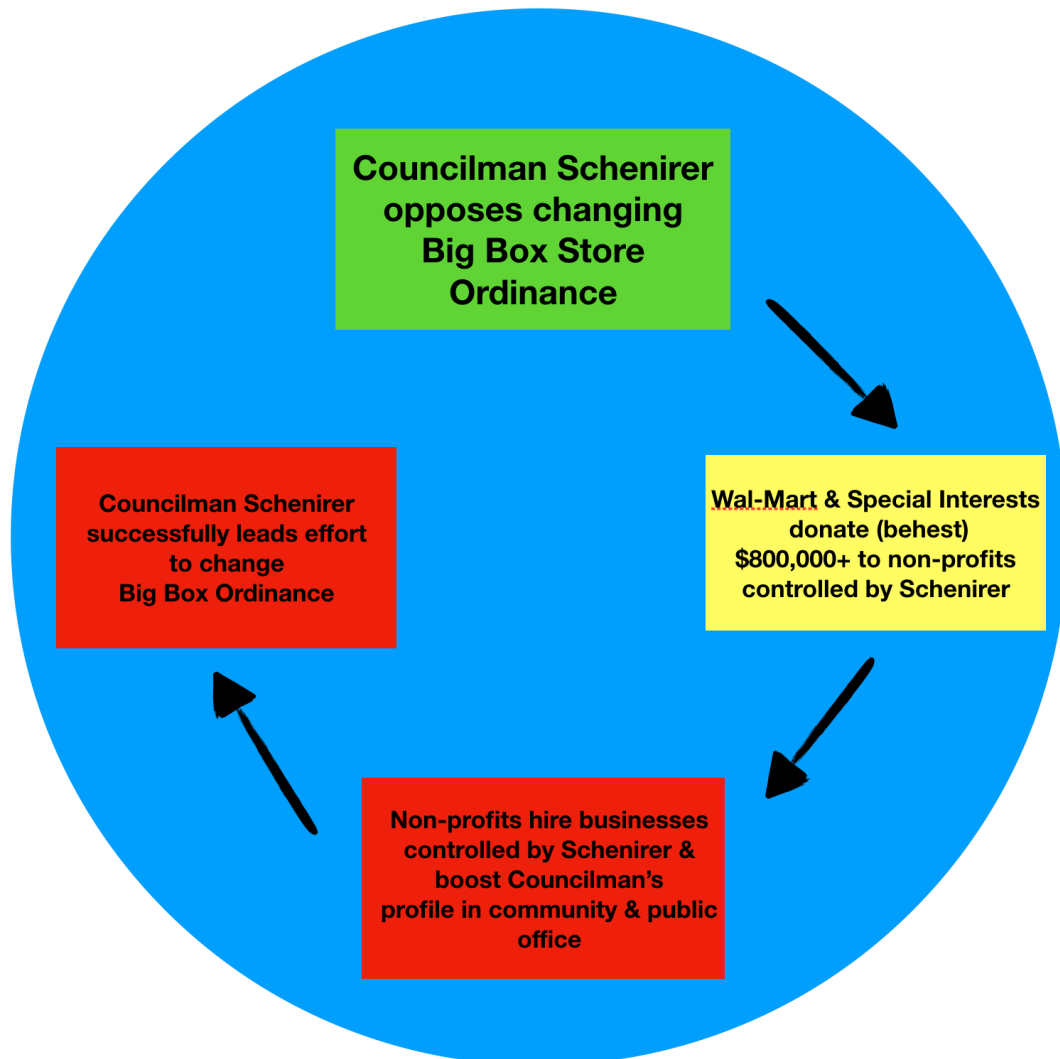


Diagram of Questionable Influence Peddling in City of Sacramento

Sources: *Sacramento Bee*, *Newsreview.com*, *FPPC Opinion*

Another nonprofit organization connected to Schenirer called the San Francisco Foundations Community Initiative Fund received hundreds of thousands of dollars from the Bill and Melinda Gates, William and Flora Hewlett and the James Irvine Foundations for the purpose of supporting the Legislative Education Project, *which had then in turn contracted with a firm controlled by Schenirer* called Capitol Impact, LLC to run a Capitol education program, according to official FPPC documents.

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Bob Stern, former president of the Center for Governmental Studies in Los Angeles, said Schenirer's acceptance of the Wal-Mart donations "raises ethical questions," considering that he is pushing for the big-box regulations to be loosened at the same time, according to the Sacramento Bee.

"The problem is, he is parlaying his position as council member to raise from people who are doing business in front of the city," Stern told the Bee.

Both then Mayor Johnson and Councilman Schenirer denied that the big money contributions had any influence on their decision to support Wal-Mart, but serious questions remain given at least the appearance of significant ethical questions, according to several media reports.

Sacramento City Behest Payment Scandal as the "Canary in the Coal Mine" for Explosion in Behest Payments in California

But it appears that this Johnson and Schenirer case, as well as the Sacramento City case was the "canary in the coal mine" with regard to behest payments in the State of California and actually represented one of the best documented early case studies on this issue.

This often used political allegory goes back to the caged canaries (birds) that miners would carry down into the mine tunnels with them. If dangerous gases such as carbon monoxide collected in the mine, the gases would kill the canary before killing the miners, thus providing a warning to exit the tunnels immediately.

In short, this important case study in the City of Sacramento foreshadowed an explosion in behest payments in California at both the state and local levels of government since about 2010-11.

CA Election Watchdog Agency Begins Producing Public Reports on Behest Payments in 2011

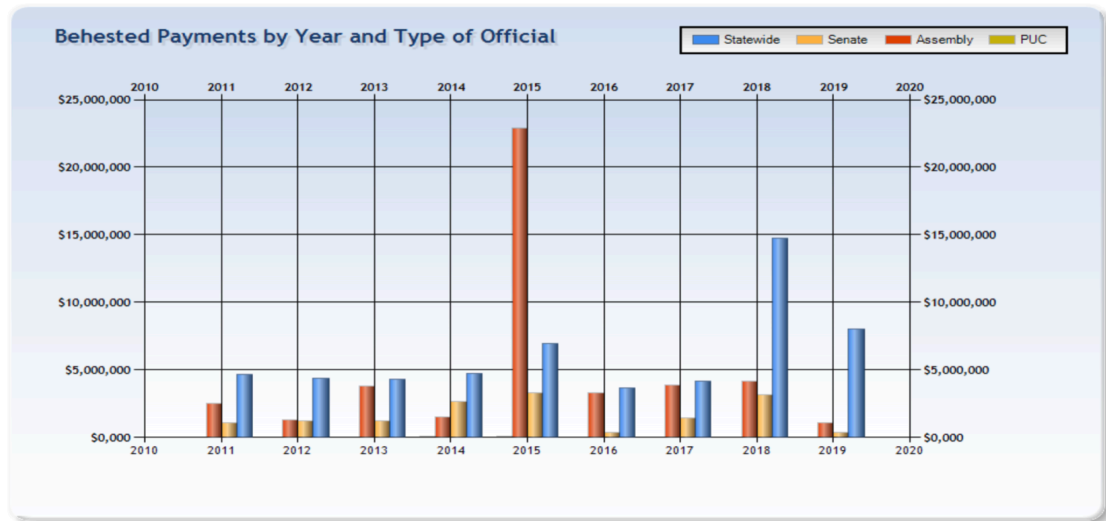
In 2011, the California Fair Political Practices Commission (FPPC) started tracking good data on behest payments for state elected officials. This data documents an explosion in behest payments since 2011, which continues to this day in mid-2019 (the time of this writing).

The FPPC is the best source of aggregate data on behested payments, as well as related enforcement actions in California. The FPPC maintains a database of behested payments to California elected officials and also produces summary data for such payments made to California State elected offices.

In 2012, the California Institute for Local Government (ILG) also produced a brief report titled “Understanding the “Behested Payments” Issue,” which was intended to inform elected officials in California that behested payments must be reported under the state’s campaign finance reporting requirements.

2011 - Present

Click on a bar below to see totals for each official who filed a report. The totals represent the information as provided by the official.



“Behested payments are donations made to a government agency or charity at the request of an elected official for a legislative, governmental or charitable purpose. Behested payments are not considered gifts, but must be disclosed if donations from a single source in a calendar year equal or exceed \$5,000,” states the IGL report.

As the chart illustrates, there has been an explosion in behested payments to California state elected officials since 2011.

A review of FPPC enforcement data and third-party analyses also suggest that there has been an increase in the failure to report or misreporting of behested payments as required under California law.

In 2018, the latest year for which full-year data is available, total behested payments totaled roughly \$20 million to California state candidates including statewide offices, the Senate and Assembly and the Public Utilities Commission. This total includes \$15 million given to candidates for statewide office. In 2015 alone, some \$22 million was given to California Assembly candidates alone, and another \$7 million to statewide candidates, according to FPPC data.

Source: FPPC reports

A closer examination of the database reveals that the California State *politicians with more political clout (i.e. more powerful offices, positions) received significantly more behested payments*, while many other members of the California State Legislature received very little or no such payments.

To clarify, this money in behested payments comes on top of the money given by special interests to the official state campaign accounts of these same elected officials, so this is in effect a “loophole” that allows special interests to give unlimited amounts to charities associated or connected to these elected officials.

In 2015, the California Legislature passed and the Governor signed into law AB 1544 (Cooley) which exempted payments to local governments from the state’s behest payments disclosure requirements.

AB 1544 states that “a payment made at the behest of an elected officer is exempt from the behested payments reporting requirement if the payment is made by a state, local, or federal government agency and is principally for legislative or government purposes. The payment is exempt from reporting requirements regardless of who received the payment. For example, a government agency could make the payment to another government agency, a nonprofit or a private third party and it would not have to be reported as a behested payment,” according to the 2015 annual report by the FPPC.

This bill significantly reduced the reporting of behest payments under California law by exempting many behest payments that are documented below effective October 10, 2015.

Summary of Behest Payments to CA Elected Officials for 2011-2019

Here is a quick summary of selected behested payments credited to members of the California Legislature and California State Constitutional office holders based on FPPC reporting:

- For 2011-2018 Governor Jerry Brown (D), received \$35.5 million in behested payments to hundreds of organizations including the Oakland School for the Arts, the Oakland Military Institute, and the Governor’s 2011 Inaugural Committee. A \$1 million contribution was given by Kaiser Permanente to fund the Global Climate Action Summit under the care of the UN Foundation. Another \$1 million contribution was given by Schwab Charitable Trust to the Global Climate Action Summit. Both Bank of America and Heising-Simmons Foundation gave \$250,000 a piece to the Global Climate Action Summit as well. Many other donors gave to this climate action summit. A \$250,000 contribution was given by the Lefanowicz Family Foundation (New York) to fund the Oakland Military Institute. A \$250,000 contribution was given by

the California Association of Realtors to the California State Protocol Foundation.

- For 2011-2019, Gavin Newsom received \$10.7 million in behested payments while serving as California Lt. Governor and now as California Governor. Much of these payments were made to the Governor's Inaugural Fund 2019 and the California Fire Foundation, both nonprofit organizations. Major contributors included Salesforce.com (\$1,000,000), AT&T (\$100,000), Federated Indians of Graton Rancheria (\$200,000), Dublin Chevrolet (\$100,000), Silicon Valley Community Foundation (\$250,000), California State Pipe Trades Council of United Association PAC (\$100,000), and the California Teachers Association Issues PAC (\$200,000).
- For 2011-2018 Tony Atkins (D) received \$1.2 million in behested payments during her terms in both the Assembly and Senate. Atkins was elected Speaker while in the California Assembly and then President Pro Tem of the California Senate in 2018. Atkins also received a \$800,000 behested payment from the California Coastal Conservancy which was paid to the Maritime Museum of San Diego. The Barona Band of Mission Indians contributed \$45,000 over the period to various organizations including the San Diego History Center, Henry C. Johnson Elementary School, Cabrillo Elementary School and the Roosevelt International Baccalaureate Middle School. AT&T gave \$25,000 for a LGBT art exhibit at the San Diego History Center, and Sempra Energy gave another \$15,000 for the same exhibit. Kaiser Permanente gave \$17,500 to the Gay and Lesbian Leadership Institute.
- In 2018-2019 Lt. Governor Eleni Kounalakis (D) has already received \$553,500 in behested payments including the highly publicized union payments for office furniture and other improvements to her office. These contributions included \$20,000 from the California State Council of Laborers, \$25,000 from the CA Professional Firefighters, \$15,000 from the United Domestic Workers of America, \$25,000 from SEIU State Council, \$25,000 from SEIU Local 2015 State PAC, and \$10,000 from AFSCME, among other union and labor contributions.
- For 2010-2016, then Attorney General Kamala Harris (D) received \$1.85 million in behested payments to a variety of groups and organizations. In 2010-11, Some \$221,000 was paid to the 2011 Attorney General Inaugural Fund from AFSCME, Microsoft, CA Teamsters, Hewlett Packard, AT&T, EBay, CA State Council of Laborers, Time Warner Cable, and Comcast, among others. Similar contributions were made to an inaugural fund in 2014-15. The California Endowment gave \$50,000 to Children NOW and another \$57,500 for LA Mission College. The Ford Foundation gave \$250,000 to the

Los Angeles Mission College Foundation. Elizabeth Simons gave \$150,000 to the Advertising Council for a statewide public services announcement on the adverse consequences of elementary school absences. The Roy and Patricia Disney Family Foundation gave \$150,000 to Five Keys Charter School.

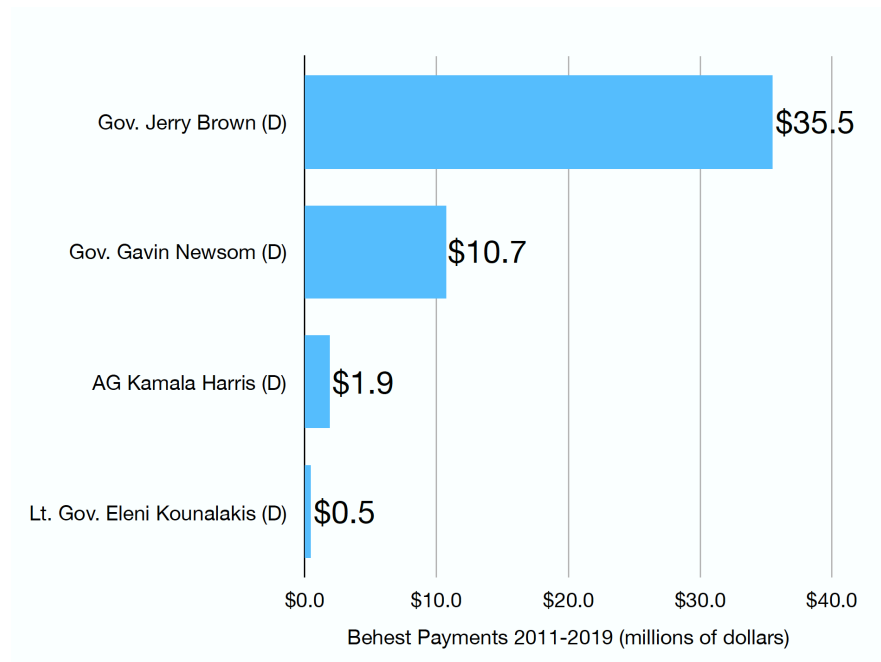
- In 2013-2018, Assemblyman Brian Maienschein (D) received \$12.7 million in behested payments. These payments included \$1 million from the California State Wildlife Conservation Board to River Partners for habitat restoration. Other big contributions were made by the Governor's Office of Business and Economic Development to various companies including Fluoresprobe Sciences, LLC (\$220,000), iBoss, Inc. (\$320,000), LCMS Solutions, Inc. (\$220,000), and Underground Elephant (\$165,000) related to the California Competes Tax Credit. The California Energy Commission paid \$6 million to Transportation Power, Inc. for renewable fuel and vehicle technology. A \$800,000 contribution was made by the California State Coastal Conservancy to the Maritime Museum of San Diego. The Governor Office of Business and Economic Development paid \$1.8 million to Pacific Steel Group and \$2 million to General Dynamics NASSCO for the California Competes Tax Credit.
- For 2015-2018 Assemblyman Rob Bonta received a whopping \$5.7 million in behested payments (not a typo) for dozens of causes including the Bonta California Progress Foundation and the API Legislative Caucus Foundation. A \$3.4 million payment was made by the California Energy Commission to Viridis Fuels, LLC for a renewable fuel and vehicle technology grant program. A \$1 million contribution came from the Governor's Office of Emergency Services to support a group called MISSEY that combats sexually exploited youth. A \$500,000 payment was made from Google, Inc. to the Bring Me a Book organization to support early childhood literacy.
- For 2014-2019 Assemblywoman Lorena Gonzalez (D) received \$1.4 million in behested payments. Gonzalez is chair of the powerful Assembly Appropriations Committee. Much of the contributions were paid to the California Latino Caucus Foundation from an array of corporations, unions and statewide associations including Philips 66, Verizon, the California Nurses Association, SDG&E, AT&T, Coca-Cola, and the Barona Band of Mission Indians. Major contributions included \$25,000 from Chevron to the California Latino Caucus Foundation. Another \$50,000 from Aera Energy, LLC for the California Latino Legislative Caucus Foundation. A \$800,000 contribution was paid by the California Coastal Conservancy to the Maritime Museum of San Diego. A \$150,000 contribution was made by the California Department of Social Services to the Jewish Family Service of San Diego.
- For 2015-2019 Assemblywoman Cristina Garcia (D) received \$955,174 in behested payments. Much of the money went to a group called Women in California Leadership, but other payees included the Community Family

Guidance Center, Tesla, and her own Office. The money was given by the who's who of the California political scene including powerful groups such as Kaiser Permanente, Google, the California Apartment Association, PG&E, SEIU, and the California Chamber of Commerce.

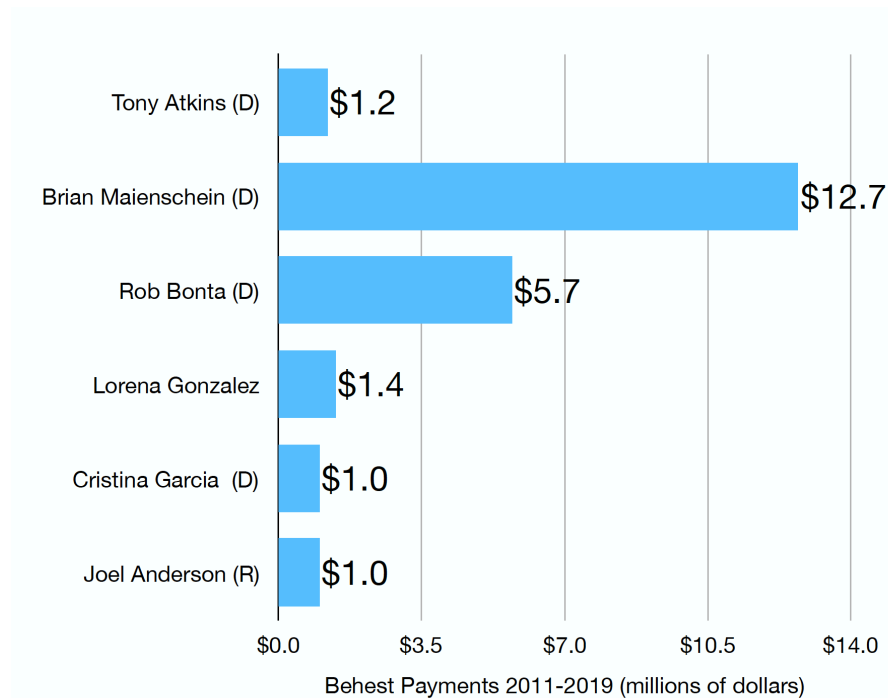
- For 2011-2015 Assemblyman Katcho Archadjian (R) received \$331,063 in behested payments from an array of individuals and special interests including the Barona Band of Mission Indians (\$35,000), PG&E (\$5,000), and the Santa Ynez Band of Chumash Indians (\$10,000). Most of the money went to the Arroyo Grande Community Hospital Foundation, but other causes included Saint Patricks' Catholic School, Children's Resource Network, and the Legislative Armenian Caucus.
- For 2011-2018, Assemblyman Luis Alejo (D) received \$570,000 in behested payments from dozens of special interests including the California Building Association, Chevron, CA Nurses Association PAC, Barona Band of Mission Indians, SEIU United Healthcare Workers, and AT&T. Much of this money went to the California Latino Caucus Foundation, but other payees included Fremont Elementary School Alisal High School and the Hollister Dual Language Academy.
- For 2011-2018, Senator Joel Anderson (R), received \$993,083 in behested payments from a variety of special interests. The bulk of that haul was from a \$800,000 from the California State Costal Conservancy (Oakland) which funded the Maritime Museum of San Diego. Another \$48,875 in contributions was made from Akin Gump Strauss Hauer & Feld law firm paid for pro bono legal services performed by that same firm. VSP Vision Care donated \$5,000 for an unspecified group or organization. Northrop Grumman Corp (Irving) paid \$25,000 to the Institute of Aeronautics and Astronautics for a policy symposium.

Important Note: Dozens of other state elected officials received large behest payments, according to FPPC data, but only the most significant and representative cases were chosen for illustrative purposes of this important issue.

Summary of “Behested Payments” to Select Members of the California Legislature 2011-2019 (in millions of dollars)



Summary of “Behested Payments” to Select California Constitutional Officeholders for 2011-2019 (in millions of dollars)



Sources: FPPC

FPPC Takes Enforcement Action Against Elected Officials Failure to Report Behest Payments

A review of FPPC enforcement data, as well as third party analyses of this data suggest that the FPPC does take enforcement actions against California state and local officials who fail to report or misrepresent behest payments.

The FPPC publishes annual reports with such enforcement actions on its website. Three recent cases are summarized below.

In addition to these closed cases, there are many more recent cases which have drawn the scrutiny of the media and watchdog groups but have not been acted upon by the FPPC or other regulators regarding possible enforcement action. A selection of these cases are also summarized on the following pages.

Select FPPC enforcement actions relating to behest payments:

- \$37,500 FPPC fine against former Sacramento Mayor Kevin Johnson in connection with fundraising for nonprofit organizations. (*Source: FPPC*)
- In September 2017, the FPPC issued a \$21,000 fine against former Orange County District Attorney Tony Rackauckas in connection with his gang intervention nonprofit. Rackauckas failed to timely report 14 payments of \$5,000 or more made at his behest to the Orange County Gang Reduction and Intervention Partnership, according to FPPC documents. (*Source: FPPC*)
- \$18,000 fine against Richmond School Boardmember Charles Ramsey in connection with fundraising for a college scholarship fund. (*Source: FPPC*)

Brief summary of current high-profile cases requiring closer scrutiny:

- As mentioned previously, California Lt. Governor Eleni Kounalakis solicited donations from labor unions and her family's business to fill out her lean office budget and cover the costs of her inauguration. Kounalakis raised more than \$300,000 from these groups to an IRS tax-exempt social welfare organization which is now paying for new furniture, paint and other furnishings for her state Capitol office. The FPPC has not taken any enforcement actions, which raises the question of whether this conduct is legal under California law? (Sources: FPPC, *Sacramento Bee*)
- Former Assembly Speaker and current Senate Pro Tem Toni Atkin's spouses' consulting business hugely benefits from the powerful role of Ms. Atkins.

The clientele for Jennifer LeSar’s two affordable housing and economic development firms has grown nearly fourfold since 2013—the year before Atkins became Assembly Speaker, according to the *Sacramento Bee*. (Source: *Sacramento Bee*)

- Sacramento Mayor Darrell Steinberg has continued his predecessor’s questionable practices of raising large behest payments to his favorite charities. As of January 2018, Steinberg had raised more than \$2 million through 58 behest payments since just before taking office in December 2016, according to a *Sacramento Bee* analysis of reports filed with the Sacramento City Clerk’s office. Steinberg has raised money for well-known separate charities with one very large exception: a \$1.5 million payment from Sutter Health to his Steinberg Institute to improve mental health services across California. The Steinberg institute takes in a lot of money from other donors in the community, some of which may be interested in specific business or policies that come before the City Council.

V. Discussion of Policy Solutions

Given that this report is the first of its kind on this important emerging issue, this issue likely needs significant more study prior to more significant action being taken at the state or local levels of government on behest payments.

But many groups have already been active at the local levels of government to combat what they see as ethical challenges presented to the integrity of our political process raised by behest payments.

On January 10, 2017, the San Francisco Board of Supervisors voted 11-0 to enact an ordinance requiring stricter behest payments reporting, which took effect on January 2, 2018. The ordinance requires members of city boards and commission who are required to file a Statement of Economic Interests (Form 700) to disclose if they directly or indirectly request or solicit payments of \$1,000 from parties or participants (or their agents) while certain matters are pending before that board or commission, according to official city documents.

Also in early 2017, the Sacramento City Council passed a package of transparency provisions regarding to the behest payments issue, which at least one analysis found to have led to a reduction in behest payments.

Specifically, the Sacramento City ordinance requires that an elected city official announce publicly in a Council meeting the identity, amount and source of the behest payment prior to voting on related business before the council.

Sacramento City Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 4 ETHICS AND OPEN GOVERNMENT Chapter 4.04 TRANSPARENT GOVERNMENT AND PUBLIC ENGAGEMENT							

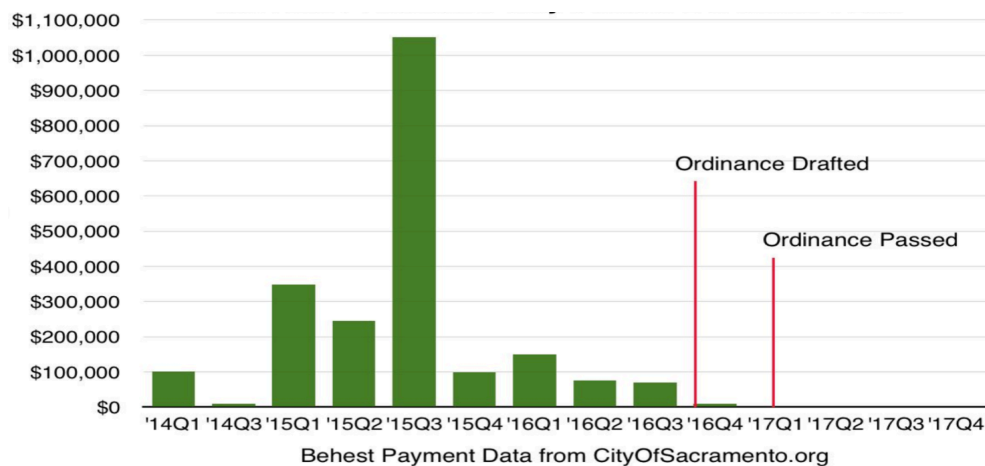
4.04.080 Reporting of behests.

A. If the payor of a reportable behested payment will materially benefit from a decision of the city council that occurs before the reporting deadline set forth in the Political Reform Act ([Government Code](#) section 82015), the elected officer shall also announce the behested payment – including the identity of the payor, the amount, and the identity of the payee – at the council meeting before voting on the matter.

B. An elected official's obligations under this section arise upon actual knowledge of the payee's receipt of the behested payment. (Ord. 2017-0024 § 3)

Source: Sacramento City Code

City of Sacramento ordinance requiring reporting of behested payments reporting



One third party analysis posted on Twitter, suggested that the new Sacramento City ordinance encouraged Councilmember Jay Schenirer to stop accepting behest

payments altogether, at least for the one year directly following the passage of the ordinance.

Behest payments in the City of Sacramento fell off dramatically after ordinance required greater reporting and transparency.

In Los Angeles County, it took a federal corruption and bribery investigation into the city's handling of real estate developments for the City Council to somewhat reluctantly take action on the behested payment issue and related campaign finance issues.

In November 2018, the FBI raided Councilman Jose Huizar's office as part of an investigation into possible bribery, extortion and money laundering at L.A. City Hall stemming from huge real estate investments by Chinese companies. The raids prompted the introduction of the reform package by six council members, according to a CBS Los Angeles report.

In May 2019, the Los Angeles City Council voted to move forward with an ordinance that would ban candidates running for city elected office from receiving political campaign contributions from real estate developers, according to CBS Los Angeles.

If ultimately approved, it would be the first such ban on property developer donations by any jurisdiction in the nation, according to the Los Angeles City Ethics Commission.

In May 2019, the Los Angeles City Council vote 14-0 to have the City Attorney draft three ordinances including one ordinance focused on behested payments. The proposed behested payments ordinance would include a "ban on political donations from non-individuals and on "behested" payments made to a charity or government program at the request of an elected official. Non-individuals can include groups such as labor unions and corporations," according to the CBS Los Angeles report.

If adopted, the ordinances would become effective after the 2020 election. Several Council members raised questions about the ordinances, but ultimately voted to move forward.

Summary of Policy Solutions to Address “Behested Payments” Issue

1. Require Public Disclosure of “Behested Payments” at Official Public Meetings (i.e. City of Sacramento 2017 Ordinance)
2. Require Stricter Disclosure & Reporting Requirements for “Behested Payments” That Exceed \$1,000 (i.e. City of San Francisco, 2017 Ordinance)
3. Outright Ban on “Behested Payments” to Charity or Government Programs at Request of Elected Officials (i.e. City of Los Angeles, 2019 Proposal)

The *Los Angeles Times* Editorial Board, in a June 1, 2019 editorial titled “Yes, Los Angeles City Council, even charitable fundraising can be corrupt,” made a strong case for the approval of the stepped up campaign finance and behested payments reforms.

The LAT Editorial Board criticized the City Council members who “reacted with alarm, skepticism and even downright hostility to the idea of reining in “behested payments,” a part of a major political reform effort to stamp out the pay-to-play culture - whether perceived or real - that has dogged City Hall for years.

“To hear some council members tell it, if they were no longer allowed to solicit contributions from (or to put it more plainly, to shake down) lobbyists, city contractors and developers to fund their favorite nonprofits, then charitable giving would practically dry up...Transactional politics are, apparently, the lifeblood of philanthropy,” wrote the LAT Editorial Board in the June 1, 2019 editorial.

In summary, there are many related issues here and much more study and attention is needed to be paid to these issues. But both the Sacramento and Los Angeles experiences regarding behested payments raise significant ethical questions about why these payments are even allowed at all.

At a minimum, comprehensive and strong public disclosure measures are needed and it appears that the Sacramento ordinance requiring the oral disclosure of the

identity, source and amount of such payments at the time of voting on business before a public agency is reasonable. However, if that same elected official is still willing to collect the money and take the vote to the benefit of the special interest, legally under state and local law, that raises the question of whether such payments in excess of the local and state campaign finance contribution limits should be allowed at all?

Furthermore, as previously noted, the California Legislature in 2015 quickly passed legislation (AB 1544, Cooley, 2015) to exempt payments made by government agencies from the state's disclosure requirements related to the required public reporting of behested payments in excess of \$5,000.

For example, if the state elected official successfully lobbied for specific tax credits or other public subsidies to specific special interests, it seems like that is something the public should be informed about.

VI. Conclusion

This report is the first of its kind in California and only really scratches the surface of the behested payment issue, along with related issues in campaign finance and the integrity of our political institutions.

Given that there are very few studies and data sources on this issue, this report attempted to take a preliminary look at a huge emerging issue that clearly merits much more extensive study.

The sampling of case studies and data on the behested payment issue suggests that this issue is much more substantial and far-reaching than most people realize and really touches on the very foundations of the philanthropic community and its relationship to our government, as suggested by the *Los Angeles Times* Editorial Board.

Disclosure laws requiring the public reporting of behested payments are currently in place, but real questions are raised about why elected public officials should be allowed to skirt campaign finance limits by raising funds for connected groups, nonprofits or charities, which clearly provides them with huge benefits in power, political clout, and even personal financial gain.

Increased disclosure measures should be considered by local and state agencies. Based on the Sacramento and Los Angeles case studies, a strong case can be made for an outright ban on behested payments by corporations and other organizations with business before government agencies and deliberative bodies.

After all, if they disclose it but still do the wrong thing, why should that be allowed? This again raises the question of why a broader set of campaign finance contributions by businesses, labor unions and other organization with financial and regulatory business before elected bodies is also allowed, but that gets to

questions of legal precedent and constitutional law which has been determined, at least for the time being, by the United States Supreme Court.

The U.S. Supreme Court (in *Citizens United vs. FEC*) has placed strict constitutional limitations on the ability of government agencies to limit campaign contributions to influence political elections.

This does not mean, however, that California State and local governments could not go ahead and approve an outright ban on behested payments, as the Los Angeles City Council has voted to do earlier this year.

This report has demonstrated that first line of defense is most often the media, who scrutinizes publicly available campaign finance reports. But all good government and watchdog groups need to be diligent on this issue in particular, since the behested payments issue is still largely under the public's radar despite its huge influence on elected officials and policymakers.

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