



#TIMESUP: CALIFORNIA GOVERNMENT OFFICIALS SHIELDED FROM SEXUAL MISCONDUCT ACCOUNTABILITY AT TAXPAYERS' EXPENSE

Overview

No employee should have to endure sexual harassment in the workplace, [as state and federal laws make clear](#). Yet violations continue to emerge from the shadows, even after the #MeToo movement burst onto the national stage in the fall of 2017. California's government employees have not been immune to the problem, either as victims or perpetrators.

But while journalists and activists have raised public awareness of the problem generally, relatively few people understand the scope of the problem in California government or its drivers, specifically, the state policies that prevent wrongdoers in government from being held fully accountable for their misconduct. These policies include shifting the costs of misconduct settlements away from the accused and onto taxpayers, and anti-transparency laws that keep misconduct allegations and settlements out of public view.

This report of the California Golden Fleece® Awards takes aim at “public servants” who have committed sexual misconduct abuses or have protected wrongdoers while forcing taxpayers to foot the bill. By violating the public trust, these bad actors and the policies that have sheltered them have proven themselves worthy of the 6th California Golden Fleece® Award, an ignoble distinction the Independent Institute gives quarterly to California state or local officials, employees, or policies that inflict injustices and undue burdens on the very people they are supposed to serve.

Among the findings of this report are the following:

- **Sexual misconduct settlements in California government are a hidden cost born overwhelmingly by taxpayers.** At least \$21.3 million in taxpayer funds was paid to settle sexual misconduct claims against employees of the State of California in fiscal years 2015–2017. This includes \$15 million paid by the Department of Corrections and Rehabilitation and \$3.4 million paid by the University of

California, the state agencies with the two largest total settlement payouts. State agencies also paid about \$4 million using funds from insurance policies rather than money directly from taxpayers.

- **Legislators and their staffs—the public servants who are supposed to most closely represent the citizenry—are a small but not inconsequential part of the problem.** Over the past 25 years, the California State Legislature has paid \$2.8 million in taxpayer funds for settlements related to sexual misconduct charges against legislators and staffs. The betrayal of the public trust adds another distressing dimension to the problem.
- **Rather than protecting the people of California, certain state laws and practices impede the public's right to know and likely exacerbate the problems.** Inadequate misconduct reporting and record keeping and other barriers to transparency mean that the cost of sexual misconduct settlements is likely higher than estimated. One California law that prevents a full reckoning is the Legislative Open Records Act, which exempts the legislature from having to publicly disclose complaints and investigations of legislators and their staffs for misconduct. The legislature hides behind a special law it created for itself. Allowing the state legislature to investigate itself and hide the results is a practice fraught with serious conflicts of interest.
- **Justice for all—the accusers, the accused, and taxpayers—requires an array of reforms designed to improve transparency, impartiality, and accountability.**
 - Taxpayers should be protected from having to bear any direct financial cost for sexual misconduct of legislators, their staffs, and other government employees.
 - Nondisclosure agreements tied to sexual misconduct claims against legislators, their staffs, or other government employees should be prohibited. The recently enacted STAND Act is an important step toward transparency.
 - Sexual misconduct complaints and investigations of state lawmakers and government employees should be handled by outside experts, guarantee due process for both sides, and the results made public as a matter of course.
 - Banning the use of taxpayer money for misconduct payouts and making guilty parties personally responsible for their misdeeds would ensure that incentives align with personal accountability. This should include a claw back of pension benefits for offending parties.
 - State spending should be reallocated to eliminate the staggering backlog of untested rape kits.

California's "public servants" should not be permitted to use taxpayers as piggy banks to settle their sexual misconduct complaints or to hide behind laws that keep the public in the dark about sexual misbehavior. It is past time to clean house and remove the policies that help shield government employees from accountability for their wrongdoing and that shift the cost onto taxpayers.

The Structure of the Report

This report begins by looking at the rise of the #MeToo movement and the rise of sexual misconduct allegations across the country and in California State Government. We then examine how lawmakers and

state agencies have used taxpayer money to settle sexual harassment claims against other lawmakers and government employees, a disgusting use of hard-earned taxpayer dollars. Next, we reveal the tools that kept Californians in the dark: nondisclosure agreements and laws that give government officials special privileges to hide the truth.

These problems, we then explain, shed light on a more fundamental issue: the perverse incentives faced by politicians to hide misconduct and escape personal accountability in order to stay in power. Buying the ignorance of the public with public money is a blatant betrayal of public trust and must end immediately. Finally, we offer reform recommendations.

Background

Although sexual harassment in the workplace has long gone underreported, this changed dramatically in 2017 with the rise of the #MeToo movement, a social media campaign in the wake of allegations against Hollywood producer Harvey Weinstein. Actress Alyssa Milano popularized the hashtag, and thousands of women began sharing publicly their experiences of workplace harassment. The movement was so momentous that *Time Magazine* named #MeToo “silence breakers” its [“Person of the Year 2017.”](#)

The movement began in October 2017 with public revelations of sexual misconduct against Weinstein, who was eventually [arrested](#) on charges of rape and other sex crimes. Then in November 2017, NBC [fired](#) Matt Lauer, co-host of the “Today” show, after a complaint of sexual misconduct. Many more allegations against Lauer [surfaced](#), including that he exposed himself to a female coworker and berated her for not performing a sex act on him. In the same month, CBS and PBS [fired](#) anchor and talk-show host Charlie Rose after multiple women accused him of sexual misconduct, including lewd phone calls, walking around naked, and groping. Earlier, Fox News [cut ties](#) with founding executive Roger Ailes and its top-rated TV host Bill O’Reilly. In February 2018, Wynn Resorts chief executive Steve Wynn resigned after many allegations of sexual misconduct, and in September 2018, CBS chief executive and chairman Les Moonves [stepped down](#) after allegations by multiple women of sexual misconduct over several decades. Since April 2017, more than 250 “influential people”—celebrities, politicians, CEOs, and others—have faced allegations of sexual misconduct, [according](#) to *Vox*.

Stories of workplace sexual misconduct rippled from Hollywood to state capitols, with allegations of harassment by state lawmakers in many states. According to Ballotpedia, an elections website, government officials in at least 30 states were [accused](#) of sexual misconduct from October through December 2017. Allegations or investigations resulted in the departure of at least 10 legislators, the website reported.

In California, nearly 150 women—from lawmakers to lobbyists—signed an [open letter](#) in October 2017 that was distributed to news outlets decrying the “pervasive” culture of sexual harassment and “dehumanizing behavior by men” in California politics and across all industries. Early efforts to determine the extent of the problem in California government were met with resistance.

Initially, the California Legislature answered a request by the *Los Angeles Times* for sexual misconduct records by releasing brief summaries of [31 legislative investigations](#) from 2006 through 2017. The documents, however, did not answer important questions such as what triggered a formal investigation, who performed an investigation, and when, if ever, an outside law firm was hired to investigate.

The Senate disclosed 15 investigations, and the Assembly disclosed 16. The documents did not reveal the person investigated, dates, the complaints, the results of investigations, nor the cost of investigations.

Eventually, the legislature released more detailed information after ongoing pressure from the media and alleged victims. In early February 2018, information on [18 alleged sexual harassment incidents](#) since 2006 was made public including names: Assembly members Autumn Burke (D–Marina del Rey) and Travis Allen (R–Huntington Beach) and state senators Bob Hertzberg (D–Van Nuys) and Tony Mendoza (D–Artesia). Another batch of documents, released in April 2018, revealed [seven additional](#) sexual misconduct investigations before 2006 that resulted in reprimands. In July 2018, [records](#) disclosed investigations of Assemblyman Devon Mathis (R–Visalia) for sexual “locker room talk,” and Assemblywoman Cristina Garcia (D–Bell Gardens) for using vulgar language. Government officials reluctantly revealed information to the public, but much of it has been incomplete.

Allegations of repeated misconduct led Assemblymen Raul Bocanegra (D–Pacoima) and Matt Dababneh (D–Encino) to [resign](#) in late 2017. And in February 2018, Sen. Tony Mendoza [abruptly resigned](#) minutes before his Senate colleagues were to consider his expulsion following numerous claims of sexual misconduct. These resignations also had political implications: legislative Democrats [temporarily lost](#) their supermajority in the California Assembly in 2017, and they lost their Senate [supermajority](#) in early 2018.

Meanwhile, taxpayers foot the bill for the sexual misconduct.

Taxpayers Are on the Hook for the Sexual Misconduct of “Public Servants”

Amid the allegations of sexual harassment came new revelations: California lawmakers and agencies typically used taxpayer money to secretly settle claims of sexual misconduct.

By examining more than 40 California Public Records Act requests to state government agencies, the *Sacramento Bee* reported in early 2018 that the state had paid more than [\\$25 million](#) from fiscal year 2015 through 2017 to settle sexual harassment claims involving state agencies and public universities. Of the \$25 million, about \$21.3 million was estimated to be taxpayers’ money, the remainder paid by insurance policies. The payouts ranged from \$500 to \$10 million for 92 sexual harassment settlements involving 24 state agencies and 10 university campuses. Of the 92 settlements, 36 were for at least \$100,000, and seven exceeded \$500,000.

The California Department of Corrections and Rehabilitation was responsible for the bulk of settlement costs at \$15 million. In 2017 alone, 1,150 complaints were filed by California inmates alleging sexual mistreatment while in prison, a 29 percent increase from 2016. The largest single settlement was [\\$10 million](#) in 2016 paid to four young men who had been held in the Herman G. Stark Youth Correctional Facility in Chino and coerced into sex acts using beatings, contraband, and special treatment. The facility was closed in 2010.

The University of California (UC) system paid the second highest settlement of \$3.4 million. The highest settlement paid to a single individual was to [Tyann Sorrell](#), a former executive assistant at the UC Berkeley School of Law, who settled her claim against the former law school dean, Sujit Choudhry, for \$1.7 million.

The *Bee*'s \$25 million tally does not include taxpayer-funded payouts for sexual misconduct by legislators and their staffs.

According to Tuple Legal, a nonprofit law and political research firm, the California Legislature as of December 2017 had paid at least [\\$2.8 million](#) of taxpayer money (in 2017 dollars) to settle sexual harassment claims during the past 25 years. The largest settlements included \$540,000 for a complaint against the Assembly's then chief administration officer Jon Waldie for harassing his employee for breastfeeding her baby at work, and \$360,900 for complaints against former assemblyman Mickey Conroy (R–Orange County) and his chief of staff Pete Conaty.

A separate, and more limited, investigation by the Associated Press in November 2017 found that the California Legislature paid at least [\\$580,000](#) during the past five years to settle sexual harassment, racism, and other claims. The amount included five Senate settlements totaling \$372,000 and two Assembly settlements totaling \$210,000, the latter two for misconduct by then assemblyman Steve Fox (D–Santa Clarita Valley). Since the legislature bars many of its records from public disclosure, these figures likely underestimate the true total.

These revelations ignited public outrage. “This is the most disgusting use of taxpayer dollars we’ve ever seen,” Jon Coupal, president of the Howard Jarvis Taxpayers Association, [told](#) the *Sacramento Bee* on January 30, 2018. “There is no way taxpayers should be on the hook for this.” Similarly a few days earlier, Carolyn Pfanner, a board member for the Yolo County Taxpayers Association [told](#) the *Bee*, “Twenty-five million is a heck of a lot of money. It just shows a complete disdain for taxpayers, who have to work hard to provide that money.”

The public has a right to know what government is doing with tax dollars, but the rules are designed to protect harassers by hiding the truth.

A Long History of Keeping the Public in the Dark

Until the #MeToo movement inspired reporters to dig deep, sexual misconduct settlements agreed to by government officials were buried, the public intentionally kept in the dark. Laws protect legislators, their staffs, and other government employees from personal responsibility and public accountability. Requests for information are often stonewalled. Allegations of wrongdoing quietly go away, one after another, when victims receive payouts from taxpayer funds, and full accounts are shielded from public view using the law and nondisclosure agreements.

It was revealed during a hearing in November 2017 that the state [does not track](#) sexual harassment complaints, just investigations. (The state budget [now includes](#) \$1.5 million to begin a program to track sexual harassment and discrimination complaints across state government departments.) It took *Los Angeles Times* reporters and its lawyers [three months](#) of requests to eventually get access to investigation records of the California Legislature. In 2017, the *Times* sent [three requests](#) to each chamber seeking aggregate data. Officials representing the Senate and the Assembly each said they were denying a request for sexual harassment records dating back to 2006, citing the state's ironically named Legislative Open Records Act in denying the request.

The [Legislative Open Records Act](#) (LORA) of 1975 exempts public disclosure of complaints against legislators and their senior staffs and investigations by the legislature. LORA exempts lawmakers from the [California Public Records Act](#) (CPRA) of 1968, signed into law by Gov. Ronald Reagan (R), which allows the public access to most government documents upon request. Under the CPRA, there is case law that entitles the public to records of investigations, as long as the allegations are not unfounded. This is murky enough, however, to allow for much stonewalling by government agencies, as the *Times* and *Bee* discovered. But typically, victims of sexual harassment by legislators or their staffs sign nondisclosure agreements to settle claims, allowing lawmakers to escape full transparency and accountability because of LORA.

“The legislature carved out a special deal for itself with LORA, and it’s a deal that leaves the public out in the cold,” David Snyder, executive director of the California-based First Amendment Coalition, [told](#) the *Los Angeles Daily News* on March 11, 2018. “There’s a lot of things that the legislature is not required to disclose that every other government agency in California has to disclose. . . . [LORA] puts all of this in a black box. If there’s allegations of misconduct, no matter how grave, no matter how vital they are to the public interest, you’re just not entitled to them.”

In December 2017, an attorney for the *Times* told legislative officials that the newspaper might pursue a [legal challenge](#) to the legislature’s refusal to disclose information. The next month, leaders of both the Senate and Assembly [acquiesced to the pressure](#), deciding to unveil the identities of those who had been accused of sexual misconduct.

Even so, the resulting disclosure was limited, revealing only accusations against “high-level” staff members. And in legislative hearings on sexual harassment, it was also [revealed](#) that such records are only kept for a few years, which may explain why so few records were available. ([Senate Bill 419](#), signed by California Gov. Jerry Brown on September 30, 2018, will now require the Senate and Assembly to keep records of harassment complaints for a minimum of 12 years.)

Although LORA does not apply to state agencies and universities, it was almost as difficult for reporters to gain access to records of settlements by government agencies under the CPRA. *Sacramento Bee* investigators [combed through](#) more than 40 CPRA requests and copies of settlement agreements from 38 state entities, excluding the judiciary. Representatives of California’s financial and personnel agencies told the *Bee* that they have [no master list](#) of sexual harassment settlements, and there is no easy way to construct one.

By hiding information, lawmakers and government employees are able to keep misconduct a secret and often walk away unscathed. Such deals raise “a serious question about using public funds to pay for silence,” Terry Francke, general counsel for Californians Aware, a group that advocates for open government and the public’s right to know, [told](#) the *Los Angeles Times* back in July 2009. “Buying the ignorance of the public with public money seems contrary to the spirit of open government. It seems a kind of betrayal of public trust.”

The lack of transparency is not unique to California. At the federal level, a law ironically named the [Congressional Accountability Act](#) established an account in 1995 to pay sexual harassment settlements, which shielded lawmakers from personal financial responsibility. The same law also created an Office of Compliance that kept charges and payments secret. Under public pressure, the Office of Compliance

recently released documents showing it had paid [\\$17 million](#) since 1997 to settle 268 workplace claims, including sexual harassment claims.

In one notorious case in 2015, the office of then US Rep. John Conyers Jr. (D–Michigan) paid about \$27,000 to [settle](#) an undisclosed sexual harassment complaint against the lawmaker. This story came with a twist. Instead of using the “hush fund” established by the Congressional Accountability Act, the settlement was paid directly from Conyers’s taxpayer-funded office budget, where he “hired” the woman as a temporary employee despite her being directed not to do any work. She received \$27,111.75 during three months, after which she was removed from the payroll. Conyers [resigned](#) from office on December 5, 2017, amid multiple sexual harassment claims.

The story highlights the opaque processes that government officials use to hide misconduct and conceal settlements. Secrecy allows perpetrators to commit the same offense over and over. “The so-called process was clearly drafted to protect the institution rather than the most vulnerable,” US Rep. Jackie Spier (D–California) [told](#) *Fox News* on November 10, 2017. “Survivors have to sign a never-ending nondisclosure agreement just to start the complaint process, which is unheard of in the private sector, then continue to work in their office alongside their harasser.”

The lack of transparency in California and Washington, DC, leaves Californians in the dark, allowing some individuals to engage in repeated harassment aided by nondisclosure agreements and taxpayer money to pay off victims. “We really need to remove the curtain of secrecy about what’s happening,” state Sen. Connie Leyva (D–Chino) told *Variety* on October 18, 2017. “Ultimately, that’s what hurts victims and enables perpetrators to continue to do this and remain hidden.”

The use of power to shield the truth from the public is a common pathology of government.

The Pathologies of Government: Using Power to Hide the Truth

Transparency and accountability are central to any well-functioning organization, especially governments. Transparency helps to prevent the misuse or abuse of power by allowing for the gathering of key oversight information. Transparency also gives overseers information they need to ensure individual accountability—holding those in power responsible for their actions and providing proper incentives for value-maximizing behavior. Without adequate transparency there is no proper accountability, and trust is quickly broken.

The sexual harassment scandals in California government shed light on an enduring feature of government: politicians have incentives to craft laws that cover up their wrongdoing in order to stay in power, knowing that costs are high for the public to discover how laws and systems are manipulated to hide the truth.

Today, lawmakers give themselves special protections not afforded others, and they cloak actions in secrecy to keep the public in the dark to minimize true accountability. By maintaining a black box of secrecy designed to shield themselves from scrutiny, politicians are able to abuse their power in office and use taxpayers as personal piggy banks to pay for their misconduct.

Perhaps the most notorious example of this system was the [Watergate scandal](#), which began on the morning of June 17, 1972, when five burglars were arrested for breaking into the Democratic National

Committee headquarters in the Watergate Hotel in Washington, DC. The burglars, who were attempting to plant eavesdropping equipment, were connected to President Richard Nixon's reelection campaign. Soon after the break-in, Nixon arranged to pay hundreds of thousands of dollars in hush money to the conspirators. Perhaps even worse, Nixon and his aides hatched a plan to instruct the Central Intelligence Agency to impede the criminal investigation by the Federal Bureau of Investigation.

Unrelenting investigative journalism eventually exposed the criminal conspiracy and Nixon's aggressive steps to cover up his crime, resulting in his 1974 resignation. Nixon's mindset is mirrored today by many California politicians who engage in sexual harassment: first make a poor decision, then try to cover up the misconduct by hiding the truth from the public in order to stay in office and get reelected.

In California, many lawmakers accused of sexual misconduct have run for [office again](#), including Senators Bob Hertzberg and Tony Mendoza, and Assemblymembers Travis Allen, Autumn Burke, Cristina Garcia, and Devon Mathis. In July 2018, Matt Dababneh transferred more than [\\$1 million](#) into his campaign account, possibly planning a political comeback.

Those in government will have little incentive to change their behavior as long as wrongdoers can hide their misconduct and shift the burden to taxpayers. Lack of transparency and accountability shields the public from the truth and allows lawmakers and government employees to keep their jobs regardless of workplace misconduct, often repeating the same behavior.

Substantial reforms are needed.

The Recommendations: Due Process, Accountability, and Spending Priorities That Fight Sexual Violence

To effect meaningful change, California must enact a broad set of reforms that are aligned and integrated with a system that provides due process for the accusers and the accused. While due process is a key pillar of America's legal tradition, another must also be properly accommodated: transparency. Our legal and governance systems should provide the public with as much information as possible without infringing on specific privacy rights.

1. Require Outside Independent Investigators in Order to Guard Against Conflicts of Interest

Investigations of sexual misconduct complaints should be conducted by outside independent investigators approved by all parties with a proven record of professionalism, thoroughness, and impartiality—not institutional biases or political loyalties. These third-party investigators should themselves be subject-matter experts in sexual misconduct investigations.

The need for independent third parties is apparent from the problems that plagued the investigation of Assemblywoman Cristina Garcia, ironically a leader in the state capitol's #MeToo movement. In early 2018, Garcia was investigated for sexual harassment claims made by a former staff member. The Assembly Rules Committee ended its investigation abruptly when Garcia threatened to name lawmakers with whom she allegedly had sexual relations, [according](#) to *FlashReport*, a political news website. This is not how thorough, impartial investigations operate.

Nor does the current approach inspire confidence among victims of sexual harassment. “To find the truth and rebuild trust, we need a truly independent investigation, not a secretly hand-picked self-investigation,” lobbyist Adama Iwu [told](#) the *Sacramento Bee* on October 23, 2017, after she reported being inappropriately touched by a drunken male legislator. Lawmakers would think twice before engaging in misconduct if they thought they would not get away with it.

Under a new policy proposed in June, the California Legislature would [hand over](#) much of its authority regarding sexual harassment complaints and investigations inside the Capitol. A new unit of investigators with specialized training in workplace harassment would be formed inside the Legislative Counsel’s Office. The legislature would also create a panel of five subject-matter experts to make factual determinations on cases and recommend appropriate remedies. Leadership in the Senate and Assembly could impose a remedy different from what the panel recommended, but the respective leaders would have to document the reasons for a different remedy. Details on cases involving lawmakers or high-level staff would be made public only if the claims were found to be true, and they were disciplined.

This new policy would be a step in the right direction, but it would still hide valuable information that the public has a right to know. The earliest that this new policy could [go into effect](#) is February 1, 2019.

2. Amend LORA to Provide Needed Transparency

After the independent investigation is completed, a detailed summary of the report should be made part of the public record, including the names of the accuser and accused, the allegation, specific dates of the incident, and the investigative findings. Appropriate disciplinary action would be imposed based on the findings, such as formal reprimand, demotion, suspension, or job termination, with any compensation adjustments. The disciplinary action would also become part of the public record. LORA should be amended to give the public access to this information as a matter of course, ideally on a public website in a searchable database. The public has a right to know key details of any investigation. Monetary compensation should not be part of the decision at this stage. Harassers should be personally liable for any monetary compensation resulting from sexual misconduct, therefore, compensation decisions should be part of civil court proceedings (more on this in the following discussion).

If the alleged harasser is a lawmaker, the detailed summary should be available to colleagues for expulsion consideration (California Constitution Article 4, Section 5(a)) and to constituents for recall consideration (California Constitution Article 2, Section 13–19).

On February 6, 2018, Assembly Bill (AB) [2032](#) was introduced, which would have amended LORA to guarantee public access to documents related to “complaints of harassment, discrimination, or other misconduct” by a legislator or their senior staff, but only for complaints determined to be “true” or “well-founded.” Even this very weak bill was killed by the legislature.

3. Amend the California Tort Claims Act

Parallel with any employment investigation should be possible civil or criminal investigations and legal proceedings, depending on the circumstances.

According to the [California Tort Claims Act](#), a public entity must defend an employee in a civil case over actions taken within the scope of his or her employment. This is why, almost without exception, taxpayers are on the hook for the bad behavior of California government employees and lawmakers. This should change.

Taxpayers ought not be required to pay when government employees and elected officials commit torts while engaging in behavior clearly outside the bounds of their job descriptions, and this includes sexual misconduct and retaliation against complainants. This should be stated *explicitly* in California's tort claims law.

These claims, if proven true or agreed to, should be paid by the misbehaving individual from personal funds, insurance policies, or funds from private donors. Misconduct will continue as long as wrongdoers can walk away with no accountability and no personal financial cost.

Another disincentive for bad behavior would be to claw back retirement benefits, including pensions, for government employees and lawmakers for the years of service during which they were found to have participated in sexual misconduct. Currently, pensions for elected California officials can be [revoked](#) for conviction of any felony relating to official duties, but this is not broad enough.

Civil tort proceedings should determine monetary settlements or judgments, if any, and these should be paid by harassers, not taxpayers. Due process also requires, however, that accusers be subject to defamation liability if their claims are proven untrue. Fairness requires equal treatment: false accusations should be discouraged and victims of such false accusations properly compensated.

4. Prohibit Use of Taxpayer Money to Settle Sexual Misconduct Claims

As discussed earlier, California should ban the use of taxpayer money to settle sexual misconduct claims involving legislators, their staffs, and other government employees. Doing so is fair for taxpayers, and also fair for victims of harassment. Taxpayers, voters, and jurors may be less sympathetic to alleged victims when taxpayer money is used to settle claims.

For a model, California can look to a federal proposal introduced in November 2017, the [Congressional Accountability and Hush Fund Elimination Act](#), which would prohibit the use of taxpayer money to pay settlements and awards for sexual harassment or sexual assault by congressmembers and their staffs. The bill would require disclosure of all past settlements paid from the “hush fund” and the names of violators. It would prohibit all future use of taxpayer money to pay for sexual misconduct claims against congressmembers and their staffs. The bill has not yet been approved by Congress.

We concur with a cosponsor of the bill, US Rep. Mark Sanford (R–South Carolina), who on November 30, 2017, [wrote](#) in a news release: “Taxpayer dollars should not be used as a congressional piggy bank to bail out members of Congress and staff who have committed acts of sexual harassment or assault. That this has been swept under the rug and kept from the public—both the payments and the acts themselves—makes it even more egregious because it marginalizes the victims and acts to excuse the aggressors with little to no consequences.”

California should pass its own version of this legislation to bar the use of taxpayer funds to settle sexual harassment claims against California legislators, their staffs, and other government employees. In January 2018, State Assemblyman Kevin McCarty (D–Sacramento) introduced [AB 1750](#), which would require an elected official to reimburse a public entity that pays a settlement for sexual harassment against that official if an investigation supports the claim. It would apply only to elected officials.

“Why should taxpayers be on the hook for sexual harassment payouts, while sexual predators walk away with no financial accountability?” McCarty [wrote](#) in a news release dated January 3, 2018. “AB 1750 will strengthen the policies of the State Senate and the State Assembly to recover financial damages from proven violators directly and hold legislators financially accountable for their actions.” This bill, which does not go far enough, failed to advance in the past legislative session.

5. Prohibit Nondisclosure Agreements

Signing a nondisclosure agreement should not be required as a condition of filing a sexual misconduct claim or proceeding with an investigation. On September 30, 2018, Governor Brown [signed anti-secrecy legislation](#), Senate Bill (SB) 820—also known as the [STAND](#) (Stand Together Against Non-Disclosures) Act—which bans all nondisclosure agreements in cases of sexual misconduct. Under the bill, however, the victim can choose to keep her or his name private, but the perpetrator’s name cannot be confidential. Fairness and due process requires that the names of all parties should be disclosed in the final investigation summary.

“SB 820 is an important bill that will finally ban secret settlements, one of the primary tools that perpetrators have used time and time again to silence victims and prevent them from publicly acknowledging the harassment, assault, and discrimination they have endured,” [said](#) the bill’s author Senator Leyva in a statement after the Senate approved the bill last May.

The law sends a message to perpetrators that they can no longer hide behind a veil of secrecy, thereby improving transparency and accountability. It allows victims to speak out, thereby helping to protect others from future misconduct. On the down side, just as alleged harassers are named, so should accusers be named. Justice requires it. The law will also reduce incentives for harassers to settle, possibly making public lawsuits and trials more common in such cases in the future.

Buying the ignorance of the public with taxpayer money and nondisclosure agreements is a betrayal of public trust and should end immediately nationwide. The public has a right to know.

6. Eliminate California’s Backlog of Untested Rape Kits by Reallocating Taxpayer Money

Taxpayers should be spared the insult of having their hard-earned tax dollars used to pay for sexual misconduct claims against government workers and lawmakers—cost shifting that insulates perpetrators from their misbehavior. Stopping this misuse of funds would free up money that would be better spent on helping solve crimes of sexual violence, such as eliminating California’s backlog of untested rape kits.

California has a backlog of [13,615](#) untested rape kits waiting to be sent to crime labs for analysis, according to the [Joyful Heart Foundation](#), an advocacy group that addresses sexual violence and is leading a national

“[End the Backlog](#)” campaign. Law enforcement agencies have blamed the backlog partly on high costs. The cost to test one rape kit usually ranges from \$1,000 to \$1,500, but costs can reach \$2,000. Kits can sit untested in police storage lockers for years, even decades. That is unacceptable.

Legislative efforts to eliminate the backlog have failed over the years. Using taxpayer money to pay for rape kit testing would be more valuable than paying for the sexual misconduct settlements of harassers in California government. At \$1,500 per test, all of the untested rape kits could have been analyzed had the \$24 million been spent on testing rather than paying for the sexual misconduct of legislators, their staffs, and other government employees.

On September 30, 2018, Governor Brown signed [AB 3118](#), which mandates the first statewide audit of untested sexual-assault kits by requiring authorities to report how many kits they have in their possession to the California Department of Justice by July 1, 2019. But on the same day, Brown vetoed [SB 1449](#), which would have required the testing of all rape kits collected after January 1, 2016. Unfortunately, thousands of rape kits will remain on the shelves gathering dust.

Conclusions

Thus far, the #MeToo movement has not resulted in sufficient changes to California laws that would ensure full transparency and accountability in regard to sexual misconduct allegations. This report has shown that the problem cannot be solved merely by hiring “good” state employees. Systemic problems require fundamental institutional reforms. The enactment of SB 820 is helpful but not a cure-all. More needs to be done.

California is not unique in regard to misconduct problems. Indeed, inadequate transparency and disclosure requirements are the rule, not the exception. At the federal level, the Congressional Accountability Act contains provisions that ensure the secrecy of complaints and settlements arising from the misconduct of members of Congress. This has major but underreported consequences. Federal and state policies that block transparency necessarily hamper accountability. By weakening the incentive for government employees to act appropriately, these laws and procedures undermine the spirit and operation of representative government.

More fundamentally, these issues illustrate a problem at the heart of Western political thought: *Quis custodiet ipsos custodes?*—Who will guard the guards themselves? The premise behind the California Golden Fleece® Awards is that America's experiment in self-government requires concerned people to speak out when injustice rears its ugly head, especially when injustice is perpetrated at the people's expense.

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Each quarter, Independent Institute highlights a California state or local government spending program, tax, or regulation that fleeces taxpayers, consumers, or businesses. The California Golden Fleece® Awards shine a spotlight on waste, fraud, and abuse in California government to give valuable information to the public, enabling them to provide needed oversight and demand meaningful change.

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