

Insurrection-Group Revocation?: Newsom Veto May Be Overridden

09.27.22 | Linda J. Rosenthal, JD



Coming up with a concise title for this blog post was no easy task. Let's try it again within the more comfortable space that a long paragraph provides:

In late August, the Democratic-controlled California legislature overwhelmingly passed a first-in-the-nation bill revoking the state tax-exempt status of any organization that the Attorney General determines has actively engaged in or incited treason, ... seditious conspiracy, [or similar illegal acts]. There were concerns expressed including from some nonprofit-sector leaders: not about the aim but rather about the specific procedure and wording of the proposal. On September 22, 2022, Democratic Governor Gavin Newsom vetoed the measure. The legislature, which has 60 days to override the veto, is now considering that action, and has the votes to do it. Stay tuned.

Hot Topic

We've been covering the story of [Senate Bill 834](#) since it was introduced at the beginning of the current session in January 2022. See [California Legislative Opportunities In 2022 For The Nonprofit Sector](#) (January 19, 2022) and [CA Nonprofit Legislative Update](#) (April 5, 2022). See also [Capitol! Insurrection Inspires California NPO Revocation Bill](#) (January 18, 2022) Richard H. Levey, *The Nonprofit Times*.

An official government site, [California Legislative Information](#), includes the entire history of SB 834 from introduction through to the present. It includes the original text and all amendments offered by the author and cosponsors (with changes marked up) as well as official summaries and comments and vote counts along the legislative path.

Purpose

According to the [summary explanation](#) by lead sponsor State Senator Scott Wiener, [D-11th Dist], issued when the proposed bill was first approved by the California Senate in May 2022, “SB 834 revokes the California tax-exempt status of a nonprofit organization if the Attorney General determines that the nonprofit has actively engaged in or incited treason, misprision of treason, insurrection, seditious conspiracy, advocating overthrow of the government or the government of any State, or advocating mutiny by members of the military or naval forces of the United States [USC §§ 2381-2385, 2387].

He continues: “If the Attorney General finds that a nonprofit organization has incited or actively engaged in an act that is directed and likely to imminently violate one or more of these crimes, they shall notify the Franchise Tax Board (FTB), who shall revoke the nonprofit’s tax-exempt status. SB 834 fills an important gap.”

“While the FTB is currently directed to suspend the tax-exemption of a nonprofit supporting international terrorism – [IRC § 501(p), Cal. Rev & Tax Code § 23703.5] – there is no clear authority concerning nonprofits that support insurrection.”

“Furthermore, the bill targets illegal conduct—not protected speech – [Brandenburg v. Ohio, 395 U.S. 444 (1969)].”

“SB 834 gives the FTB a crucial tool to punish tax exempt nonprofit organizations involved in the January 6th insurrection or any future efforts to overthrow our government.”

Senator Wiener’s summary includes additional paragraphs addressing: “Background/Existing Law” as well as “Problem” and “Solution.”

Note that the sponsor, in reaction to feedback, offered amendments when the measure was taken up by the Assembly after initial passage by the Senate.

Reaction

The California Association of Nonprofits [CalNonprofits] follows all proposed legislation affecting or of interest to the nonprofit community.

In a late spring [article on its website](#), CalNonprofits places this legislation in the “watching to see how this bill evolves” category, explaining: “[SB 834](#) (Wiener) would allow the Franchise Tax Board to revoke a nonprofit’s tax-exempt status if the Attorney General finds that the organization is actively engaged in conspiracy or acts of treason, and other similar illegal activities. This bill is in response to the January 6, 2021 attacks on the U.S. Capitol.”

While CalNonprofits “acknowledge[s] the intent of the bill,” they are “concerned about nonprofits being singled out” and “are in communication with Senator Wiener’s office with regard to ”these concerns.”

CalNonprofits publishes an excellent resource called the [California Legislation Tracker](#). On a spreadsheet of individual pending bills, the organization notes its role as sponsor or otherwise indicates its position as “supporting,” “watching,” or “opposing” each proposal.

The comment, as of September 27, 2022, remains unchanged from earlier points in the legislative year: “This bill grants authority to the Attorney General to make a finding that a nonprofit has engaged in acts of conspiracy likely to produce violation of federal treason or insurrection laws. Upon this finding, the Franchise Tax Board would be required to revoke the nonprofit’s tax-exempt status.”

However, in [California Passes Bill To Pull Insurrectionists’ Tax-Exempt Status](#) (August 29, 2022) *The NonProfit Times*, CalNonprofits’s CEO Jan Masaoka was more specific about the deficiencies of the just-enacted bill. “She opposes Senate Bill 834 – dubbed ‘No Tax Exemption for Insurrection Act’ – saying it is too vague, lacking in clarity and open to abuse by individuals or groups who oppose the missions of certain nonprofits.”

“We respect the intent of the bill,” she continues, “but there’s a lot of language in it that’s vague and confusing. We feel the law could be used for political purposes. Treason is already against the law so you don’t need this law.”

For instance, not clearly addressed is “‘whether a nonprofit would be held accountable for the unsanctioned actions of members. Also unclear,’ she said, ‘is a standard of proof required to strip a nonprofit of its tax exemption.’”

“CalNonprofits did not take a formal stand or commit to opposition, working instead with bill sponsor Wiener and his staff, Masaoka said. A few tweaks to the bill resulted from discussions but the final product is still too vague, she said.”

Governor’s Veto

A somewhat amended version of the original SB 834 sailed through the Legislature and was sent to the desk of Governor Gavin Newsom in late August 2022.

Within the statutory period allowed, he vetoed the measure with the customary official statement of his reasons: “This bill allows the Franchise Tax Board to revoke the tax-exempt status of a nonprofit, charitable organization if the California Attorney General determines the organization has engaged in treason, insurrection, conspiracy, government overthrow, or mutiny by members of the military. Without question, extremist groups that participate in anti-government acts such as those that took place during the insurrection on January 6, 2021 should be renounced and investigated for their participation.”

“However,” he continues, “these are issues that should be evaluated through the judicial system with due process and a right to a hearing. For these reasons, I am returning SB 834 without my signature.”

What’s Next

The official legislative tracker, [Legiscan](#), notes that, after the Governor’s September 22, 2022, veto, the matter is back “in Senate. Consideration of Governor’s veto pending.”

Legislators have 60 days to decide what to do. A $\frac{2}{3}$ vote of each House is required to overturn a veto. Democrats have supermajorities in both chambers.

Conclusion

The California Courage Campaign provides some historical perspective: “In 2021, the state legislature passed 836 bills. Governor Newsom signed 770 (92%) bills and vetoed 66 (8%). The state legislature did not override any of his vetoes.”

“An old Sacramento adage uses baseball imagery to explain the power of California’s chief executive at the end of the legislative process: ‘The governor bats last.’” See *Column: Once California’s governor vetoes a bill, lawmakers almost never challenge the decision* (September 30, 2018), John Myers, *The Los Angeles Times* [“...a vote to override is ‘seen as a significant insult to the governor and major disruption to the balance of power relationship between the three branches.’”]

This time may be different, though. We’ll see.

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