

Nonprofits Stop Bad Regulations

06.09.16 | Linda J. Rosenthal, JD



Even well-meaning legislators and regulators can get it wrong. They see a fly hovering over the apple pie on the Memorial Day picnic table and try to swat it with a sledgehammer.

But twice in the last six months, nonprofit leaders have launched lobbying campaigns that have successfully turned back governmental overreactions to purported menaces. First up was an ill-conceived and unnecessary federal regulation on substantiating charitable deductions. The more recent victory was a dangerous bill proposed in the California Assembly.

California Legislature's Proposed Warning Label Bill

In "[CA Nonprofits Urged to Oppose AB 2855](#)," we highlighted a bill introduced in February 2016 by Assemblyman Jim Frazier (D-Oakley), reportedly aimed at helping donors make informed decisions about charitable giving.

The original, heavy-handed, version was so objectionable it was quickly and substantially amended. But the replacement text was still so bad that the California Association of Nonprofits organized an effort to get it scrapped. "At CalNonprofits we try to stay hopeful, but [AB 2855 is a bad bill with no silver lining](#)."

As first presented, the proposal would have required each California charity (along with others around the nation that solicit charitable donations in California) to disclose administrative and overhead expenses on each page of its webpage and on the first page of every fundraising document, along with a copy of the most recently filed IRS Form 990. [Worse yet](#), violating this law would be a crime, and the California Attorney General could suspend or revoke the organization's tax-exempt status.

As amended, nonprofits would not be required to include the overhead disclosures on their websites, but would still have to revise their websites to include a link to the California Attorney General's website for information about researching charities generally.

The California Association of Nonprofits explained why this bill was counterproductive. First, it played “on many of the same old tired misconceptions about nonprofits and overhead, and would be prejudicial and burdensome for smaller organizations. Second, “information about nonprofits is not exactly a secret. The IRS Form 990 —

*is already available to the public, [and] the California Attorney General’s office maintains a public Registry of Charities that provides information about whether a nonprofit is complying with state rules, and many nonprofits do post financial information on their websites now. * * * Sadly, this bill plays on public fears about the shady deals of a few high-profile scam charities....*

Similarly, see the comments of Tim Delaney, CEO of the National Council of Nonprofits, in *The Chronicle of Philanthropy*:

The bill, as amended ..., would force every nonprofit in the country that seeks funds in California to put a link on its home page – plus a disclosure on all other solicitation materials directing potential supporters to the California Attorney General’s Office. That office is instructed to provide ‘information about charities, informational materials containing consumer rights and protections and charity research resources to allow donors to become informed about a charity before making a decision to give.’ Such legislative language puts nonprofits at the mercy of an elected partisan’s changing views on what’s ‘appropriate’ on such things as overhead, compensation, and advocacy – as well as which charitable causes are worthy.

Finally, by the end of May 2016, with the help of concerned members of the philanthropic sector who submitted many hundreds of objections, as well as assistance from Rep. Lorena Gonzalez (D-San Diego), Chair of the Appropriations Committee, this “costly” and “dangerous” bill effectively died in committee.

Here is the original text and amendments over the course of the (thankfully brief) journey of AB 2855 that, if adopted, may have been the model for similar legislation around the United States.

By way of background for non-California readers, the state’s Senate and Assembly are both overwhelmingly Democratic, so a bill proposed by a Democratic representative – and, as here, also supported by some others from the same party – has at least a fair chance of eventual success.

Federal Regulation on Deduction Substantiation Opposed

Six months earlier, a nationwide effort to stop an unnecessary (and potentially dangerous) proposed Treasury Regulation was also successful. We discussed the particulars of that adventure in overreaching in “Action Urged on Proposed Regulation for Substantiating Charitable Donations” posted in early December 2015.

The Internal Revenue Service decided to tweak the rules about substantiating charitable deductions of more than \$250. The proposal was to give nonprofits the option of filing a separate new information return with the IRS and individual donors by February 28 of each year; the organizations would ask for, store, and report donor Social Security numbers. A similar proposal – which would have been mandatory – had been previously considered and rejected, based on a number of legal, policy, and confidentiality objections.

Under the usual procedure, public comment was invited by December 16, 2015.

The National Council of Nonprofits led the effort in opposition on the primary ground that regulations like this aren’t needed; in the Federal Register announcement of this proposed rule change, the

government admitted that the current substantiation procedure works just fine in most cases. In addition, the proposed, alternative, substantiation option would create “entirely unnecessary burdens, risks, and problems – not the least of which is the requirement to ‘ask for, store, and report donor Social Security numbers.’”

Regulators at the Treasury Department got an earful in response. “The IRS says it received a ‘substantial number of public comments’ in response ...” but the “government’s portal showed it received almost 38,000 comments, the vast majority of which appear to strongly oppose the rules.” By early January 2016, the proposed regulations were withdrawn.

Conclusion

These successful lobbying efforts spearheaded by leading groups in the philanthropic sector are important reminders that constant vigilance is required to avert bad laws and rules.