

Twists and Turns in 2022's Nonprofit News

12.31.22 | Linda J. Rosenthal, JD



This turbulent year produced its fair share of interesting legal news and developments relevant to the nonprofit sector.

In a few notable instances, the story – as originally reported – was upended later in 2022. Three of them that we covered in repeated posts through 2022 landed by year's end with surprise outcomes:

- California Crowdfunding Law
- Insurrection Bar to 501(c)(3)
- Student-Loan Forgiveness

California Crowdfunding Law

In a much-anticipated development back in September 2021, the California legislature passed, and Governor Gavin Newsom signed into law, [Assembly Bill \(AB\) 488](#), "Charitable organizations: charitable fundraising platforms and platform charities" (2021-2022).

It is a first-of-its-kind-in-the-nation regulatory scheme for the immensely popular and rapidly growing field of charitable crowdfunding. The new and amended statutes were the result of several years of negotiation among government regulators, lawmakers, nonprofit leaders, academic and professional experts, the crowdfunding industry, and other stakeholders. It is complex and represents a major change to the status quo. See [A New Crowdfunding Law – At Last!](#) (September 28, 2021).

Legislators chose an effective date some fifteen months after passage: January 1, 2023. The delay would provide needed time to (a) develop regulations; and (b) allow all parties to adjust to the new requirements. The Attorney General's office began right away to seek public input and then craft proposed regulations. After a public-comment period, the California AG developed final regulations which, too, were posted for input from the general public. See [CA Crowdfunding Regulations: Last Chance to Comment](#) (November 23, 2022).

In the latest round of public-comment solicitation on the final regulations, the text included an indication that the effective date of the legislation might be delayed another full year until January 1, 2024. This point was noticed and circulated among the legal community by December 8, 2022.

On December 23, 2022, the Attorney General's office posted a formal clarification on its website. See [Charitable Fundraising Platforms \(including Crowdfunding\)](#): "On January 1, 2023, certain sections of California's Fundraising Platforms law ([Gov. Code, § 12599.9](#)) become operative...[specifying which ones]."

"The registration and other requirements in Government Code section 12599.9 are being delayed to January 2024 given the [pending](#) nature of the proposed regulations. Proposed regulations do not carry the force of law."

For an excellent summary of the details of these effective-date decisions and changes, see [California's New Law for Charitable Fundraising Platforms](#) (December 23, 2022) Gene Takagi, Esq., *NEO Law Blog*. ["While regulations to fully implement AB 488 have yet to be finalized, the Attorney General published a notice earlier today noting the key provisions that take effect starting January 1, 2023."]

Insurrection Bar to 501(c)(3)

After a break of just a few months, California legislators enthusiastically reconvened in January 2022 for the second half of the 2021-2022 Session of the Legislature.

One of the first surprises was new legislation introduced by Senator Scott Wiener (D-San Francisco). His [Senate Bill \(SB\) 834](#) was in response to the events a year earlier at the U.S. Capitol on January 6, 2021. It would "authorize suspension of tax-exempt status to any nonprofit that '[p]romotes, engages in, commits to, supports, or aids in any effort to overturn democratic election results or obstruct the peaceful transfer of power.'"

SB 834 was introduced "with summary intent language, with full bill language expected by early- to mid-February." Although SB 834 listed several prominent co-sponsors, this proposed legislation "[raised concerns](#) within the Golden State's nonprofit community." See [California Legislative Opportunities in 2022 for the Nonprofit Sector](#) (January 19, 2022), citing [Capitol Insurrection Inspires California NPO Revocation Bill](#) (January 18, 2022) Richard H. Levey, *The NonProfit Times*.

Over the next months, the California Association of Nonprofits was "in communication with Senator Wiener's office" about their "concerns." See [CalNonprofits' Fact Sheet](#) as of 3/8/22. See also [CA Nonprofit Legislative Update](#) (April 4, 2022).

This influential group told its members and the public that it would [continue to watch SB 834](#) "... to see how [it] evolves." Lucy Salcido Carter, the Public Policy Director, wrote in an email last spring: "While CalNonprofits opposes insurrection, we do have concerns about SB 834 (Wiener) in its current form. We don't want legitimate freedoms/activities by nonprofits to be curtailed...."

During the summer legislative deliberations, the bill's sponsor accepted certain recommendations and offered amendments which were incorporated into a final package. This first-in-the-nation bill [would authorize](#) the automatic revocation of 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].”

Despite these accommodations, critics continued to have reservations about the specifics. “CalNonprofits did not take a formal stand or commit to opposition, working instead with bill sponsor Wiener and his staff,... A few tweaks to the bill resulted from discussions but the final product is still too vague,” according to Jan Masaoka, CEO of CalNonprofits.

A somewhat amended version of the original SB 834 sailed through the Democratic-controlled Legislature in late August 2022. The approved legislation was promptly sent to the desk of Governor Gavin Newsom.

However, within the 30-day statutory period allowed, Governor Newsom 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.”

He continued, “However, 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.”

See *Insurrection-Group Revocation?: Newsom Veto May Be Overridden* (September 27, 2022). We wrote at the end of that post that “[t]he legislature, which has 60 days to override the veto, is now considering that action, and has the votes to do it. Stay tuned.”

The official legislative tracker, Legiscan, noted that, after the Governor’s September 22, 2022, veto, the matter is back “in Senate. Consideration of Governor’s veto pending.”

Legislators had 60 days to decide what to do. A 2/3 vote of each House is required to overturn a veto. Democrats have supermajorities in both chambers. But that 60-day period expired without any action. Governor Newsom’s veto stands.

As we explained in our previous post, that’s not unusual. In 2021, this Democratic California governor vetoed 8% of the bills that the super-blue Legislature had passed. But there were no overrides. “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.’”]

Student-Loan Forgiveness

Over the course of 2022, the general public have come to be generally aware that “something” big might be happening to deal with the crushing burden of student debt.

“Student loans were never meant to be a life sentence, but it’s certainly felt that way for borrowers locked out of debt relief they’re eligible for,” said Education Secretary Miguel Cardona in connection with announcement of the newest fixes for the troubled Public Service Loan Forgiveness (PSLF) program. *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs*, (April 19, 2022) Press Release, U.S. Department of Education.

We’ve reported on that something “big” several times this year: see *Public Service Loan Forgiveness: Update* (April 25, 2022); *Urgent Action Needed on PSLF Program* (August 9, 2022); and *No Extension for PSLF Temporary Waiver* (August 24, 2022).

For the nonprofit sector, the element of student-loan reform most directly relevant is the Public Service Loan Forgiveness (PSLF) program, enacted in 2007 to lure young job applicants into nonprofit, government, and public-service jobs. In order to compensate for what is often comparatively lower pay than available in the private sector, the government promises to forgive student-loan debt after ten years of service.

“But the PSLF Program was a mess and a hassle straight out of the gate.” See extensive history we discussed in posts from earlier years: *Public Service Loan Forgiveness: Glitches* (April 15, 2019); *Nonprofits & Student-Loan Forgiveness: Action Needed* (August 24, 2021); and *Student Loan Forgiveness Program: “Transformational” Fixes* (October 7, 2021).

We summarized the history and the problems in our first post of 2022: “The law was complex. It was confusing to borrowers, to program administrators, and to the outside contractor firms hired to service the loans. Making matters much worse was gross misconduct by the loan servicers. The full extent of the dysfunction became clear only when, in about 2017 and 2018, the first of the borrowers enrolled in the PSLF program became eligible for the 10-year student-loan discharge. A furor erupted when just a tiny percentage of the submitted applications for relief was approved.”

We explained: “Since the Biden Administration came into office in early 2021, there has been a continuing effort to solve past errors, to ease the path for applicants near the ten-year mark to apply for and receive loan cancellation including temporary waivers of certain requirements, to establish long-term fixes for the program, and to (possibly) wipe out a portion of debt for borrowers across the board.”

What’s made keeping up with developments in 2022 on “student-debt reform” difficult is that the Biden Administration’s proposed comprehensive reforms and accommodations “were moving forward on separate tracks, but simultaneously. Right now, all of them are in the news.”

In early August, we commiserated: “It’s understandable if you are confused – and frustrated – at this point.” For the nonprofit sector, although the most keen interest is about the Public Service Loan Forgiveness Program, there has also been significant attention to, and encouragement of, the broader plans to wipe out student-loan debt for lower-income borrowers.

For that reason, the President’s announcement and executive order in August, granting a one-time cancellation of \$10,000 or \$20,000 in outstanding student-loan debt for certain borrowers who qualify under maximum-salary limitations, has been watched closely and welcomed.

Since then – in a nutshell – quite a bit has happened on several of those separate tracks.

The development most highlighted in news reports since August and through December has been the whiplash-inducing twists and turns about the broad \$10,000/\$20,000 cancellation of debt across the board for eligible borrowers. There have been [legal challenges](#); the cancellation has been put on hold. Most recently, the U.S. Supreme Court upheld that delay until it hears the legal challenges in 2023. In the meantime, President Biden has reinstated the pre-existing temporary pause in repayment of student-loan debt.

On the other hand, there has been good news and considerable movement over the last few months in the long-overdue reform of the Public Service Loan Forgiveness Program. By the fall, there had been some short-term fixes, particularly for borrowers whose loans had not been forgiven on schedule, as well as a longer-term revamping of the statutory authority. Thrown into this mix during the summer was the issuance of proposed regulations to implement the long-term fixes, accompanied by a period of public-comment. Then, in October 2022, the final regulations were issued.

The best way to grab a hold of all of these overlapping developments is to devour several helpful end-of-year summaries. You were planning on a nice quiet evening at home, right?

See particularly: [Student Loan Rollercoaster and How It Impacts Nonprofit Workers](#) (November 27, 2022; updated December 1, 2022, to include news of the Supreme Court's action), Tiffany Gourley Carter, National Council of Nonprofits.

See also [360,000 student loan borrowers received \\$24 billion in forgiveness from fix to Public Service Loan Forgiveness](#) (December 8, 2022) Annie Nova, *cnn.com*; [Year-End Expert Advice On Student Loan Forgiveness](#) (December 26, 2022) Jeffrey Marcus, *Forbes*; and [The White House embraced debt forgiveness in 2022. Here's what student-loan borrowers can expect in 2023](#) (December 28, 2022) Jillian Berman, *marketwatch.com*

Conclusion

Bon Appetit and Happy New Year from For Purpose Law Group!

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