



## Senator Scott Wiener, 11<sup>th</sup> Senate District

### Senate Bill 834 – No Exemption for Insurrection Act

#### SUMMARY

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<sup>1</sup>. 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<sup>2</sup>, there is no clear authority concerning nonprofits that support insurrection. Furthermore, the bill targets illegal conduct—not protected speech<sup>3</sup>.

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.

#### BACKGROUND/EXISTING LAW

Tax-exempt nonprofits do not pay federal or state tax. In addition, contributions to certain types of nonprofits are deductible by donors on their income tax returns. Nonprofit organizations outside of California can also obtain permission to fundraise in our state from the FTB—a significant privilege.

<sup>1</sup> USC §§ 2381-2385, 2387

<sup>2</sup> IRC § 501(p), Cal. Rev & Tax Code § 23703.5

<sup>3</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969)

Tax-exempt status can be granted at the federal and/or state level. The federal government and state governments each have distinct authority to grant or deny exempt status. Exempt status is a valuable privilege, not a right. It is extended by the State of California, at the expense of its taxpayers, to support a wide array of charitable work in our state.

As the United States Supreme Court held in *Bob Jones University v. United States* (1983), it is permissible for the IRS to deny tax-exempt status to a private school with explicitly racist policies<sup>4</sup>. The Court held that entitlement to tax exemption depends on meeting certain common-law standards of charity, namely, that a nonprofit organization seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. For example, the IRS and FTB must suspend a nonprofit's tax-exempt status if it engages in or supports international terrorist activity.<sup>5</sup>

SB 834 will ensure that nonprofit organizations engaged in insurrection-related offenses will be held to the same standard as those that engage in or support international terrorist activity, and also have their exemption revoked.

#### PROBLEM

On January 6, 2021, pro-Trump extremists and insurrectionists – incited by the “Big Lie” (the fraudulent notion that the 2020 election was stolen) and then-President Donald Trump – breached the United States Capitol. Five people were killed and hundreds were injured as a result of this insurrection. A variety of individuals and organizations – including nonprofits –

<sup>4</sup> *Bob Jones University v. United States* 461 U.S. 574 (1983).

<sup>5</sup> IRC § 501(p), Cal. Rev & Tax Code § 23703.5

participated in the events on January 6<sup>th</sup>. Nonprofits raised millions of tax-free dollars off the “Big Lie” that the 2020 presidential election was stolen.<sup>6</sup>

Individuals associated with some of these nonprofit organizations were charged with criminal offenses, such as those covered by SB 834.

For example, the leader of the “Oath Keepers,” a national militia movement, was charged with seditious conspiracy. While the Oath Keepers does not have California tax-exempt status, it has an “educational foundation” with federal exempt status and tax-exempt branches in several states. In the words of one expert, “It can only be presumed that [funds contributed to the Oath Keepers], which [donors were] able to deduct from their federal taxes, went to transporting and lodging members of the group slated to participate in the ensuing riots.”<sup>7</sup>

There is also a risk of future insurrections inspired by the “Big Lie” or other falsehoods. Therefore, the FTB and AG must have clear authority to revoke the tax-exempt status of California nonprofits engaged in these actions.

### **SOLUTION**

Tax-exempt status is a privilege, not a right. Organizations that engage in, or incite the active engagement of insurrection-related offenses – both of which are illegal – should not be given this special status to help them fundraise.

SB 834 will give the Attorney General and Franchise Tax Board the tools they need to revoke this special status. 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<sup>8</sup>, they shall notify the Franchise Tax

<sup>6</sup> “Sidney Powell group raised more than \$14 million spreading election falsehoods,” Washington Post, Dec 6 2021.

<sup>7</sup> “Dollars against Democracy: Domestic Terrorist Financing in the Aftermath of Insurrection,” Virtual

Board (FTB), who shall revoke the nonprofit’s tax-exempt status.

### **FOR MORE INFORMATION**

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<sup>8</sup> USC §§ 2381-2385, 2387