



SEN. GEORGE RUNNER (RET.)

MEMBER
STATE BOARD OF EQUALIZATION
CALIFORNIA'S TAX BOARD

August 12, 2013

The Honorable Ricardo Lara
California State Senate
State Capitol
Sacramento, CA 95814

RE: OPPOSE SB 323 (Lara)

Dear Senator Lara,

I am writing to express my opposition to your Senate Bill 323.

SB 323, or the "Youth Equality Act," would remove sales and income tax exemptions from youth organizations whose membership policies discriminate on the basis of, among other things, "gender identity and sexual orientation." This proposal is problematic from a policy standpoint and is also impractical.

As an elected member of the California State Board of Equalization, the board which oversees the dispensing of "organizational clearance certificates" for non-profit groups, I find this proposal very troubling because it would remove certain tax-exempt status benefits from groups based on a subjective sexual morality standard set by the state. Tax-exempt status is a benefit the state and nation bestow upon groups that generally provide for the public good. Using tax policy as a hammer to coerce youth groups to espouse same-gender sexuality or transgender sexuality leads our state down a dangerous slippery slope.

SB 323 is not necessary. Groups that desire to expressly allow sexual orientation or transgender sexuality to be emphasized are free in the current structure of law to apply for tax exempt status. The "Youth Equality Act" does not remove any existing legal barrier for like-minded people to associate with one another or promote a social agenda. Rather than solving any real problem, this bill creates a disturbing problem by punishing all youth groups that espouse traditional sexuality.

All youth in California are equal under the law. This bill does not provide greater equality for anyone, but makes groups espousing traditional sexuality a "lesser class," underserving of tax-exempt status. SB 323 very likely infringes on the First Amendment guarantees of freedom of speech and freedom of association, as well as the protected freedom *not to associate*. This bill uses the coercive power to tax in an attempt to prevent youth groups from espousing their beliefs and associating with like-minded individuals.

Both the California Supreme Court and the US Supreme Court have affirmed the freedom of *expressive association*; that is, the State cannot compel an organization to accept members who disagree with the organization's expressive message, even if the State does not like that message. The US Supreme Court declared that the law "is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). The Court was clear that forced membership is unconstitutional if the person's presence affects in a significant way the group's ability to advocate public or private viewpoints. See also, *Curran v. Mount Diablo Council of the Boy Scouts*, 17 Cal 4th 670 (1998) (California Supreme Court decision affirming expressive associational rights). Both *Dale* and *Curran* specifically addressed the issue of discrimination on the basis of sexual orientation, meaning they are directly relevant to the issues raised in SB 323.

Many youth organizations are run by volunteers operating on a shoestring budget. Particularly for non-profits, having a tax exemption is what makes or breaks a budget. By using the threat of removing an existing tax exemption, i.e. imposing a new tax burden, this bill would silence youth organizations and force them to accept those who fundamentally change the group's ability to advocate their position on social issues. **SB 323 seeks to accomplish through tax policy what our courts have said is unconstitutional.** It will surely invite a prompt and expensive constitutional challenge if enacted.

In addition to First Amendment violations, the policy implications bound up within SB 323 are troubling. Implementation of a tax upon youth groups that "discriminate" is a coercive method of punishing groups for their beliefs. This bill sets a dangerous precedent that the majority party may levy taxes against organizations of their political rivals for the beliefs they hold.

Finally, the practical implementation of the "Youth Equality Act" will be extremely challenging. This legislation would require the Board of Equalization to discern which non-profit youth organizations promote acceptable beliefs and which are "discriminatory." However, the bill provides no guidance on how to determine what constitutes "discriminatory."

There are no BOE guidelines or procedures in place as to how or when or by what criteria the BOE would question whether or not an organization discriminates. Would "discriminatory" be decided by BOE staff personnel? By a supervisor? By the full Board at a public hearing? How would organizations prove they are NOT discriminatory? Are statements in their by-laws sufficient? Would they have to poll members and/or volunteers regarding their sexual orientation? Wouldn't such questioning be a violation of privacy? Would there be an appeal process for those found to be "discriminatory?" How would the appeal process work?

Since the bill also affects income tax status, would the Franchise Tax Board be required to make an independent finding of "discriminatory" for income tax purposes? What if the FTB and BOE came to different conclusions? Since the BOE hears FTB appeals, would the BOE make the final determination? Would the decision be appealable to Superior Court? As is evident, the implementation challenges are almost endless when trying to establish a fair system of social engineering.

For the above stated reasons, I strongly oppose SB 323, the "Youth Equality Act."

Sincerely,

A handwritten signature in black ink, appearing to read "G. Runner", written in a cursive style.

GEORGE RUNNER
Second District