Date of Hearing: March 24, 2026
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1538 (Krell) – As Amended March 17, 2026

SUMMARY: Makes it a crime for an elected or appointed official to retaliate or exert political retribution against any person exercising a state or federal constitutional right. Specifically, **this bill**:

1) Provides that it is unlawful for any elected or appointed official, under color of authority, to retaliate or exert political retribution against any person exercising a state or federal constitutional right, with the intent to suppress another from continuing to exercise a state or federal constitutional right.

2) Provides that the above crime is punishable by forfeiture of office and disqualification from ever holding any public office in California.

3) States that the bill's provisions do not apply to the hiring or personnel decisions of an elected or appointed official relative to an employee or prospective employee of that elected or appointed official. This section does not remove any protection or recourse available for an employee or prospective employee to remedy a wrongful employment action.

4) Defines "retaliation" as intentionally engaging in acts of reprisal, threats, coercion, or similar acts against another, including organizations.

5) Defines "political retribution" as intentionally using governmental or institutional authority to engage in acts of reprisal, threats, coercion, or similar acts against another, including organizations.

EXISTING LAW:

1) States that a person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony. (Cal. Const., Art. IV, § 15.)

2) Prevents a person, whether or not acting under color of law, from committing acts by force or threat of force, that willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim. (Pen. Code, § 422.6, subd. (a).)

3) States that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property

because of political affiliation, or on account of any defined characteristic, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. (Civ. Code, § 51.7, subd. (b)(1).)

4) Makes every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city and county, city, or public corporation, with intent to corruptly influence such member in his action on any matter or subject that could be heard by the body of which he is a member, and every member of any of the bodies mentioned in this section who receives, or offers or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, upon which he may be required to act in his official capacity, is punishable by imprisonment in the state prison for two, three or four years, and upon conviction shall, in addition to said punishment, forfeit his office, and forever be disfranchised and disqualified from holding any public office or trust. (Pen. Code, § 165.)

5) Provides that an elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding office and voting. (Gov. Code, § 274.)

6) Provides that every member of the Legislature convicted of a defined crime, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in the State. (Gov. Code, § 9055.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The real danger is that today's shocking abuses of power become routine, permanent parts of tomorrow's political culture. AB 1538 ensures that no official who abuses their office to settle personal scores is allowed to remain. Specifically, AB 1538 would require the removal from office and a ban on holding office for any public official found guilty of using their authority to exert political retribution against a person exercising their constitutional rights."

2) **Effect of the Bill – Potential for Arbitrary Enforcement and Application**: AB 1538 presents potential concerns, including constitutional violations, harm to institutional integrity, and compromising the people's right to elect representatives of their choosing.

   a) Vagueness

   One of the issues presented by AB 1538 is vagueness. AB 1538 purports to expel and exclude a person from public office for acts that retaliate or exert political retribution against a person exercising a state or federal constitutional right. This bill defines retaliation as intentionally engaging in acts of reprisal, threats, coercion, or similar acts against another, including organizations. AB 1538 additionally defines political retribution as intentionally using governmental or institutional authority to engage in acts of reprisal, threats, coercion, or similar acts against another, including organizations. Concerns over vagueness may be mitigated by providing relatively clearly defined terms for the bill's prohibited conduct. Arguably, however, AB 1538 may nevertheless face constitutional challenge.

Void for vagueness is a doctrine generally applied to criminal laws and First Amendment claims. The doctrine arises out of the Fifth Amendment and Fourteenth Amendment guarantees that people's life, liberty, and property will not be deprived without due process of law. (U.S. Const. amends. V & XIV.) Due process requires notice of what conduct is prohibited that is understandable to normal people and sufficiently clear to preclude arbitrary enforcement.[1] Laws voided by the Supreme Court for vagueness commonly include undefined criminal laws. (See, e.g., *City of Chicago v. Morales* (1999) 527 U.S. 41; *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156.) While the Court has found that people occasionally may be bound by an imperfectly defined criminal law or a new application of an existing law, this is only true where fundamentally similar case precedent exists, and the prohibited behavior is readily apparent to the defendant. (*United States v. Lanier* (1957) 520 U.S. 259, 271–72.)

Many of the key terms[2] in AB 1538 have been defined. By defining retaliation and political retribution, AB 1538 helps put individuals on notice about the conduct prohibited under the bill. Terms like "reprisal," "threats," and "coercion" appear to have enough development in statute and case law to provide a generally sufficient understanding of how those terms would be applied under this bill.[3] "Color of authority" generally refers to a public official acting actually or apparently in their official capacity.[4] Also important is the phrase, "exercise of a state or federal constitutionally protected right." This indicates the victim must be exercising, for example, their First Amendment right to free expression or Second Amendment right to carry firearms for the bill's provisions to apply. Therefore, to be subject to punishment under this bill, the accused must be a public official who retaliates or exerts political retribution against a victim, who is exercising a constitutionally protected right, with the intent to suppress the person from exercising their constitutional rights.

Individuals possess numerous state and federal constitutional rights that are exercised in some way every day. There are existing laws that place restrictions on the exercise of those rights. The legal process of challenging government restrictions on individual rights is essential not just to understand the bounds of those rights, but to the overall structure of American government. Applying definitions to the bill's key terms potentially mitigates concerns about constitutional challenges that would void the law for vagueness. Nevertheless, some risk of unintended application remains with the current language.

b) AB 1538 Could Permit Decertification of Peace Officers

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[1] Barnum, C. *The Void-for-Vagueness Doctrine in Criminal Law* (Sep. 17, 2025) United States Congress <https://www.congress.gov/crs-product/IF13091> [as of Mar. 1, 2026].
[2] Hereinafter, the phrase, "key terms" will be used to refer to the words "retaliate," and "political retribution" throughout the analysis.
[3] See, e.g., 18 U.S.C. 1591, Pen. Code, § 236.1, subd. (h), *United States v. Todd* (9th Cir. 2010) 627 F.3d 329, 330, *Consumer Advocacy Group v. Walmart Inc.* (2025) 112 Cal.App.5th 679, 679, *In re D.C.* (2021) 60 Cal.App.5th 915, 920 [coercion defined]; Gov. Code, § 3543.5, subd. (a), *Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 38. *Alliance Marc & Eva Stern Math & Science High School v. Public Employment Relations Bd.* (2024) 107 Cal.App.5th 930, 930 [reprisal defined]; Pen. Code, § 76, *People v. Carron* (1995) 37 Cal.App.4th 1230, 1233, *People v. Barrios* (2008) 163 Cal.App.4th 270, 271 [threat(s) defined].
[4] Lampe, J. *Federal Police Oversight: Criminal Civil Rights Violations Under 18 U.S.C. § 242* (June 15, 2020) United States Congress <https://www.congress.gov/crs-product/LSB10495> [as of Mar. 5, 2026].

Some of the outcomes possible under this bill may be illustrated through hypothetical scenarios. Law enforcement officers are public officials under California law. (Gov. Code, § 7920.535.) So, for example, if the victim can make a case that a law enforcement officer retaliated them for protesting police violence or lawfully carrying a firearm at a protest by conducting what amounts to an illegal seizure or a questionable arrest for trespass, then that law enforcement officer could be thrown off the force and permanently barred from securing any position in California government. In practice, this bill could effectuate a backdoor process for decertifying officers.

The Commission on Peace Officer Standards and Training (POST) offers certification to peace officers.[5] Certain law enforcement officers must secure a Proof of Eligibility and Basic Certificate to be a working officer in California. (Pen. Code, § 13510.1.).[6] POST operates a POST Accountability Division that is empowered to review serious misconduct investigations of a peace officer.[7] The Division reports its findings to the POST Accountability Advisory Board, which will make a recommendation to the POST Commission regarding whether disciplinary action ought to be taken against the officer.[8] The Commission then sends back to the Board its opinion on whether it agrees with the Board's findings.[9] If the Commission agrees with the Board, then the Board holds a hearing to render disciplinary action against the officer.[10] Disciplinary action can include suspension, ineligibility, and revocation.[11] Revocation means the peace officer is permanently decertified.[12] Revocation affords no opportunity to reactivate certification, which means the officer is permanently barred from being a peace officer in California.[13]

Permanent decertification is a severe punishment. The lengthy process for decertification is rigorous and intentional. It is the result of years of consideration and negotiation. Yet, creating a potential alternative mechanism for the decertification of a peace officer could be an unintended consequence of this bill.

c) AB 1538 Could Permit Removal of Judges from the Bench

AB 1538 could lead to judges being removed from the bench for doing their jobs. Imagine a judge issues a valid gag order. These are used in various contexts but have the effect of intentionally suppressing an individual's First Amendment rights. Judges issue gag orders, among other things, to ensure a fair trial, to facilitate efficient administration of justice, and to prevent prejudicial information from reaching a jury pool.[14] Proponents of these orders argue that the harm caused by such disclosures may hinder the fair administration of

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[5] *Peace Officer Certification* (Jan. 9, 2026) State of California Commission on Peace Officer Standards and Training <https://post.ca.gov/Certification> [as of Mar. 4, 2026].
[6] See also *ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Peace Officer Certification Actions* (Feb. 8, 2026) State of California Commission on Peace Officer Standards and Training <https://post.ca.gov/Certification> [as of Mar. 4, 2026].
[12] *Ibid.*
[13] *Ibid.*
[14] Strickland, R.A. *Gag Orders* (May 1, 2025) Middle Tennessee State University Free Speech Center <https://firstamendment.mtsu.edu/article/gag-orders/> [as of Mar. 19, 2026].

justice.[15] This common judicial process results in a restriction of an individual's constitutional rights. In this hypothetical scenario, punishment was imposed by a public official, under color of authority, and against a person exercising their constitutionally protected rights, which appears to be prohibited under this bill.

What makes the example of judges using gag orders being subject to removal from the bench less clear is that the bill requires an "intent" to stop a person from exercising their constitutional rights. Demonstrating judges are issuing gag orders with the intent to suppress a person from exercising their rights may be challenging to prove. Certainly, an argument can be made that the *intended effect* of the gag order is to prevent an individual exercise of rights, but the intent of issuing the gag order itself is more likely to reflect an intent stated above, like ensuring the fair administration of justice. Ultimately, whether AB 1538 could result in the removal of a judge from the bench is unclear.

d) AB 1538 Could Permit Expulsion and Exclusion of Duly Elected Legislators

AB 1538 additionally could lead to legislators being removed from office. In this case, imagine if a Committee Chair on their official Twitter account insults the spouse of another member of their party in response to the spouse making a controversial political statement. This then leads to the Speaker being pressured by most of the party delegation to strip the member of their Committee Chair position(s). The Speaker responds to the pressure from the party delegation and removes the member as Chair of their committee(s). In this hypothetical scenario, the Speaker would be subject to removal from office and disallowed from ever holding office again for removing a Committee Chair because that Chair exercised their First Amendment rights over their official Twitter account.

Courts have referred to exclusion and expulsion from office as "severe" punishments. (*Trump v. Anderson* (2024) 601 U.S. 100, 109.) So, too, has the United States Congress.[16] By expelling even one member, there is a cogent argument that the people's fundamental right to vote for members of their choosing has been usurped. (*Reynolds v. Sims* (1964) 377 U.S. 533, 55-561.) The area represented by the expelled Member has now effectively had their vote nullified and the effectiveness of their representation compromised. This may be especially true if the people voted for the person because they approved of the member's arguably confrontational and disrespectful approach.

Impeachment arguably results in the same outcome, so banishment from office is not necessarily an offensive or unprecedented penalty. Impeachment, however, is a constitutionally enshrined process that has relatively clear, precedential standards from which members can conform their conduct. Impeachment additionally sets a high bar for execution. (Cal. Const. Art. IV § 18, subd. (a)) ["The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs."]. Any amendment to the impeachment process then would take a two-thirds vote in the legislature

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[15] *Ibid.*

[16] Title 18 – Crimes and Criminal Procedure, United States Code Sec. 241. Reviser's Note (Mar. 4, 1909) ["There seems to be no reason for imposing [removal from office] in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act."].

and confirmation by a majority vote at the next election, or a successful initiative campaign. Both the act of impeachment and amending the Constitution to reform impeachment erect higher bars to removal than what is contemplated in this bill.

Providing clarity through defining the prohibited conduct addresses certain concerns with ambiguity, vagueness, and due process. But, even with those definitions, entrenched in AB 1538 remains the potential for problematic outcomes in particular cases.

3) **Separation of Powers**: Separation of powers refers to cabining different responsibilities and authorities in different branches of government – legislative, executive, and judicial.[17] One branch, therefore, often counteracts and balances the other branches.[18] Locating specific powers in certain branches does not mean there is no overlap among the branches. Where overlap occurs, it often provides an essential additional check on an important power.[19] California followed this model when drafting its Constitution. (See Cal. Const., arts. IV, V & VI.)

a) Judicial Review and the Political Question Doctrine

The jurisdiction of the courts is defined in both the US and California Constitutions. (U.S. Const., art. III, Cal. Const., Art. VI.) No justiciable controversy is presented when the parties seek adjudication of only a political question. (*Flast v. Cohen* (1968) 392 U.S. 83, 94.) Courts may invoke the political question doctrine where they find they are being asked to review a question outside their authority. (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 160-61.) The doctrine also can be invoked when courts cannot effectively render relief or where there is an absence of judicially manageable standards. (*Zivotofsky v. Clinton* (2012) 566 U.S. 189, 195.) The California Supreme Court held that our Constitution explicitly confers to the Legislature the exclusive power of expulsion, and courts do not have power to review that power. (*French v. Senate of California* (Cal. 1905) 146 Cal. 604.) Judicial review, therefore, may be unavailable in certain cases under this bill because they will present a nonjusticiable political question.

It is unclear how expulsion would be enforced under this bill before any judicial proceedings. Is removal self-executing? Is an affirmative act required of the impacted branch of government? The potential lack of judicial review may create further uncertainty.

b) Impeachment

AB 1538 adds a new provision to the Penal Code that does not provide for the types of punishment common to nearly every criminal law – incarceration, fines, or both. The punishments specified in this bill are more akin to those produced by impeachment. Impeachment, especially as applied to the legislature and certain members of the executive and judiciary, may be a more appropriate mechanism for enforcing this bill's penalties.

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[17] The Federalist No. 47, at p. 301 (James Madison) Bantam Publishing (1982) ("the preservation of liberty [requires that] the three great departments of power should be separate and distinct.").
[18] *Ibid.*
[19] *Youngtown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579, 635 (Jackson, J., concurring) ["While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government . . . ."].

Impeachment requires a majority vote of the Assembly, and a two-thirds vote of the Senate.[20] AB 1538, presumably due to its placement in the Penal Code, would require a conviction in court. In other words, this bill provides for the same punishment as impeachment but uses a much different, lower standard.

Impeachment is a political process but is somewhat commonly used for serious official misconduct. (e.g., treason, insurrection, and taking bribes.) Like California law, federal law also provides for civil and criminal penalties against government actors for deprivation of rights. (See Civ. Code, §§ 51.7 & 52.1; 42 U.S.C. § 1983; and 18 U.S.C. §§ 241-42.) It was noted during the debate amending the federal criminal deprivation of rights statute that inclusion of expulsion as a penalty was too severe a consequence and rendered prosecutions difficult.[21] That is why the federal analogues to AB 1538 provide for fines and imprisonment but have not provided for removal from office for decades. (18 U.S.C. §§ 241-42.)

The author indicates federal officials are engaging in widespread denial of constitutional rights. While there is ample evidence supporting federal overreach and deprivation of rights, enforcement of this state law against federal officials is unlikely to succeed.[22]

c) Speech and Debate and Qualifications Clauses

AB 1538 potentially usurps legislative immunity under the Speech and Debate Clause of the US Constitution. The federal clause affords legislators immunity from prosecution while engaging in legislative acts. (U.S. Const., Art. I, § 6.) California's Constitution has similar, but different protections, as our Constitution more broadly protects speech relative to the First Amendment. (Cal. Const., Art. 1, § 2, subd. (a); see also *Pruneyard Shopping v. Robbins* (1980) 447 U.S. 74.)

The privilege of legislators to be free from legal processes was deemed so essential for the representatives of the people that the clauses establishing legislator immunity were codified in both Articles of Confederation and later into the U.S. Constitution. (See *Tenney v. Brandhove* (1951) 341 U.S. 367, 372.) This immunity is now common. 43 states currently provide legislators with some type of speech and debate immunity.[23]

The US Supreme Court found that *state legislators* had immunity when acting in legitimate legislative spheres like committee work. (*Tenney, supra*.) The Court noted the judiciary was not the place for legislative controversies. (*Ibid.*) Regardless of the merit of a claim, especially in times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and just as readily believed. (*Ibid.*)

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[20] Cal. Const., Art. IV § 18, subd. (a) ("The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.").
[21] *Supra*, note 15.
[22] *Infra,* Comment 5, at **Federalism and Inapplicability to Federal Officials.**
[23] *Separation of Powers: Legislative Immunity* (Nov. 16, 2022) National Conference of State Legislatures <https://www.ncsl.org/about-state-legislatures/separation-of-powers-legislative-immunity> [as of Mar. 4, 2026].

Congress possesses clear constitutional power to judge the "Qualifications of its own Members." (U.S. Const., Art. I, §§ 2-5.) Like the US Constitution, the California Constitution gives legislators strict constitutional authority to determine the qualifications of its members, which the Legislature cannot delegate to the courts. (Cal. Const., Art. IV, § 5, subd. (a); see also *In re McGee* (1951) 36 Cal.2d 592.) The US Supreme Court has ruled that not even Congress has the power to alter or add to the qualifications set forth in the Constitution. (*Powell, supra,* at p. 540.) In one case, the Court found a state congressional term limits measure unconstitutional where it had the effect of indirectly creating additional qualifications. (*Thornton, supra,* at p. 828.) Since federal officers "owe their existence and functions to the united voice of the whole," powers over their election and qualifications must not be delegated to the States. (*Ibid.*)

While Congress is empowered to expel its members, exercise of this constitutional authority has been met with controversy. One committee suggests the expulsion power conflicts with the right of the Member's constituency to choose their representative.[24] Another committee report, however, found support for a limited expulsion power.[25] Furthermore, courts have ruled that the Equal Protection Clause grants a substantive right to voters to participate in the electoral process on an equal basis with other qualified voters. (*Lubin v. Panish* (1974) 415 U.S. 709, 713.) The California Supreme Court has protected the rigid separation between the judiciary and legislature's constitutional powers in this space noting, "the assembly should be the sole and exclusive judge of the eligibility of those whose election is properly certified. For this court to undertake to try the question of eligibility and to deprive the candidate of any chance to be elected, would simply be to usurp the jurisdiction of the assembly." (*McGee, supra,* at p. 594) Therefore, an attempt to apply AB 1538 to state legislators may not even be entertained by the judiciary.

4) **Restriction on Civil Liberties and Political Rights**: Some applications of AB 1538 may produce infringements on civil liberties and political rights. Civil liberties are generally considered those individual rights captured in the Bill of Rights, like freedom of speech.[26] Political rights are generally considered those rights attached to citizenship, like voting and officeholding.[27]

a) The Right to Vote

The Court has stated the right to vote is a fundamental concern in a free society. (*Reynolds v. Sims* (1964) 377 U.S. 533, 561.) Included as part of the right to vote is the right to vote freely for the candidate of one's choice. (*Id.* at p. 555.) Legislatures may not enact laws that act as direct burdens on a candidate's ability to run for office or on the voter's ability to voice their

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[24] Garvey, T. *Expulsion of Members of Congress: History and Practice* (Nov. 7, 2023) United States Congress <https://www.congress.gov/crs-product/R45078#ifn72> [as of Mar. 20, 2026] (noting a House report that said Congress expelling its own members potentially "'abuses its high prerogative' . . . and might exceed the just limitations of its constitutional authority by seeking to substitute its standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative.")
[25] *Ibid* ("voting is the essential power that cannot belong to governments in a democratic republic.")
[26] *Civil Rights*, Cornell Law School Legal Information Institute <https://www.law.cornell.edu/wex/civil_rights> [as of Mar. 20, 2026].
[27] Amar, A. *The Privileges or Immunities Clause* (2026) National Constitution Center <https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/704#the-privileges-or-immunities-clause-americas-lost-clause-by-akhil-reed-amar> [as of Mar. 20, 2026].

preferences for representative government. (*Buckley* v. *Valeo* (1976) 424 U.S. 1, 94.) Any restriction on the right to vote strikes at the heart of representative government. (*Ibid.*)

In California, the legislature and judiciary have acknowledged the fundamental right of citizens to vote and to hold office. (Gov. Code, §§ 274, 275; see also *Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.) Both high Courts affirmed, "That a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution." (*Fort v. Civil Service Com.* (1964), 61 Cal.2d 331, 334.) Critically, our Supreme Court noted "the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship." (*Carter, supra,* at p. 182.) AB 1538 may not directly implicate the right to vote, but statutory authority to remove a duly elected legislator from office arguably violates the people's right to vote for a candidate of their choice.

b) The Right to Free Expression

The First Amendment rights of free speech, a free press, and freedom of assembly depend on no election's outcome. (*West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624.) Like the U.S. Constitution, California's Constitution establishes the rights to vote and free expression. (Cal. Const., Art. I, § 2; Cal. Const., Art. II, §§ 1-3.) The right to have one's voice heard and one's views considered by the appropriate governmental authority is core to the First Amendment. (*Williams v. Rhodes* (1968) 393 U.S. 23, 38-39.)

This bill arguably violates expressive rights because it could be used to chill speech and political participation. For example, would it be retaliation under this bill if one public official directing mean-spirited, but otherwise lawful, speech at an elected official causes previously supportive public officials to rescind endorsements, work to kill their bills, or vote for opposing candidates? Even if the intent of the speech was retaliatory or retributive, expelling the offending speaker would have the effect of chilling speech.

5) **Federalism and Inapplicability to Federal Officials:** The Constitution gives the federal government specifically enumerated powers, while intending to leave other powers to the states, or to the people.[28] This was an intentional construct for government aimed to unite the country and create checks on each government's exercise of power.[29] Can the Tenth Amendment offer a source of constitutional authority to enforce AB 1538? The Framers certainly envisioned the States retaining a healthy reserve of powers under the Constitution.[30] One of those powers is the police power. The police power is generally considered broad in scope but extends only to such measures as are "reasonable in their application and tend . . .

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[28] Sutton, J. (Hon.), *Federalism.* National Constitution Center <https://constitutioncenter.org/essays/federalism> [as of Mar. 1, 2026].
[29] See, e.g., U.S. Const.. Amend. X; *United States Term Limits, Inc. v. Thornton* (1995) 514 U.S. 779, 838 ["the Framers 'split the atom of sovereignty' in an effort to unite thirteen disparate colonies and unleash a new government."]; The Federalist No. 51, at p. 320 (James Madison) Bantam Publishing (1982) ["ambition must be made to counteract ambition."].
[30] Reese, E.A. *Or to the People: Popular Sovereignty and the Power to Choose a Government* (2023) 39.6 Cardozo L. Rev. 2051, 2051-52 <https://cardozolawreview.com/popular-sovereignty-tenth-amendment-reese/> [as of Mar. 20, 2026].

to promote, protect, or preserve the public health, morals, safety, or the general welfare." (*Ex parte Quarg* (1906) 149 Cal. 79, 81.)

The States' reserved powers under the Tenth Amendment likely do not extend into voting, elections, and most regulation of federal officeholders. Despite being included as one of the Bill of Rights, the Tenth Amendment formally changed nothing in the Constitution.[31] In a rare case where the Tenth Amendment was implicated, the Court wrote, "Our conclusion that States lack the power to impose qualifications vindicates the same fundamental principle that we recognized in *Powell,* namely, that the people should choose whom they please to govern them." (*Thornton, supra,* at p. 793.)

Criminal law is one of the public safety powers that predominantly resides with states.[32] While states have authority to legislate broadly in the public safety space, that authority neither 1) arises through the Tenth Amendment, nor 2) permits most regulation of federal officeholders.

a) The Supremacy Clause

Generally, the Supremacy Clause means that federal laws supersede contrary state laws. (U.S. Const., Art. VI) ["the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."]. A significant concern for the Framers with the new government was states becoming too powerful.[33] While in 2026 it often feels like it is the states serving as protectors against unlawful federal overreach, the federal government occasionally has exercised its authority to check state government abuses.[34] The Court interprets the Supremacy Clause broadly. (*McCulloch v. Maryland* (1819) 417 U.S. (4 Wheat.) 316, 427.) "States have no power . . . to retard, impede, burden, or in any manner control . . . the powers vested in the general government." (*Id.* at p. 436.)

Courts have held that states have limited authority to regulate the conduct of federal officeholders. (*Ibid.*) Courts support federal officials being subject to state criminal laws like murder, burglary, and the like while *outside* the scope of their official duties.[35] Perhaps states may burden congressional authority, but only if they are exercising their sovereign power over their own state offices. (*Anderson, supra*, at p. 112.) The Constitution though nowhere affirmatively delegates to states the authority to impose burdens on congressional power. (*Id.*

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[31] *Ibid.*
[32] Lawson, G. & Schapiro, R. Tenth Amendment: Common Interpretation (2026) National Constitution Center <https://constitutioncenter.org/the-constitution/amendments/amendment-x/interpretations/129> [as of Mar. 20, 2026].
[33] The Federalist No. 28, at p. 159 (Alexander Hamilton) Bantam Publishing (1982) ["Power being almost always the rival of power, the government will at times stand ready to check the usurpations of state governments."].
[34] See, e.g., *The Kennedys and the Civil Rights Movement,* National Park Service <https://www.nps.gov/articles/000/the-kennedys-and-civil-rights.htm>; Voting Rights Act (1965) National Archives < https://www.archives.gov/milestone-documents/voting-rights-act>;
Brown v. Board of Education (1954) National Archives <Brown v. Board of Education (1954) | National Archives> [as of Mar. 2, 2026].
[35] Godar, B. *Explainer: Can States Prosecute Federal Officials?* (July 17, 2025) University of Wisconsin State Democracy Research Initiative <https://statedemocracy.law.wisc.edu/featured/2025/explainer-can-states-prosecute-federal-officials/> [as of Mar. 1, 2026].

at p.113.) The form of immunity afforded to federal officeholders is referred to as Supremacy Clause immunity.

Supremacy Clause immunity as applied to federal officers facing state law criminal penalties does not appear to be commonly challenged over the past century. The first significant US Supreme Court case evaluating this form of Supremacy Clause immunity occurred towards the end of the nineteenth century, while the most recent occurred in the 1920's. (*In re Neagle* (1890) 135 U.S. 1; see also *Johnson v. Maryland* (1920) 254 U.S. 51.) The most commonly cited case is *In re Neagle*, where the Supreme Court held that a US Marshal guarding a traveling Justice, who defended the Justice from attack by killing the attacker, was not subject to California criminal law penalties. (*Neagle*, *supra*.) The Court has consistently reaffirmed that where federal officers are engaging in official conduct that is "necessary and proper" to their positions, federal officers are protected from state criminal prosecution by the Supremacy Clause of the US Constitution. (See *Johnson, supra*, at pp. 56-57.)

Of course, courts have found exceptions to this form of federal officer immunity, but in rare and highly particularized cases. One of those cases involved military officers on a military base who killed a person stealing items from the base. (*United States ex rel Drury v. Lewis* (1906) 200 U.S. 1.) The shooting occurred under such questionable circumstances the Court found it constitutional to subject the officers to state criminal charges. (*Ibid.*) Another federal district court case found a Department of Agriculture employee not protected by Supremacy Clause immunity where the employee used the authority in his job as a means of settling a personal dispute that at least initially unfolded while he was not on the job. (*Arizona v. Files* (D. Ariz. 2014) 36 F.Supp. 3d 873.) The employee essentially orchestrated the situation so that he could use his professional authority to settle a personal dispute then claim immunity, which the court would not conclude were "necessary and proper" acts of his job. (*Ibid.*) These exceptions, while illustrative, are unlikely to be a common set of facts in Supremacy Clause immunity cases or cases arising under AB 1538.

Insofar as AB 1538 attempts to assert authority to, for example, expel or exclude duly elected Congressmembers from office, the bill is unlikely able to effectuate this outcome. The same likely applies to any federal officer on the job, provided the officer is engaging in necessary and proper acts of employment. The power to expel Members of Congress clearly would interfere with the operation of Congress. Moreover, cases against any federal official under AB 1538 would be removed to federal court. (28 U.S.C. § 1446.) A federal judge is probably less likely to hold that state law can expel or exclude duly elected Representatives from their seats in Congress or subject federal officers to state criminal penalties. The US Constitution and federal law contain few sources of authority that allow states to regulate federally elected officials. Thus, AB 1538 almost certainly would not apply to federal officeholders.

b) State Authority to Regulate the Times, Places, and Manners of Federal Elections

States have one explicit constitutional source of authority that allows them to regulate federal elections. (U.S. Const., Art. I, § 4.) Here, states may regulate the "'times, places and manner' of elections" for Congress. (*Ibid.*) Congress, however, retains explicit constitutional authority to 1) override state time, place, and manner laws, and 2) decide who holds sufficient qualifications for Congress. (U.S. Const., Art. I, §§ 4-5; see also *Thornton, supra,* at p. 779.)

States' inability to regulate federal officeholding is an inescapable conclusion. (See *Powell v. McCormack* (1969) 395 U.S. 486, 540.) Allowing individual states to enact their own qualifications for Members of Congress would damage the constitutional structure created by the Framers to "'form a more perfect union.'" (*Thornton, supra,* at p. 838.) State authority to regulate federal elections simply means providing "notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices," but does not extend to state legislatures being permitted to ignore constitutional restraints or abridging fundamental rights. (*Tashjian v. Republican Party of Conn*. (1986) 479 U.S. 208, 217.)

It is unlikely, but ultimately unclear, whether a state law can authorize expulsion or exclusion of public officials from *state* office. Attempting to do the same to federal officials, however, would almost certainly run afoul of Congress' constitutional right to control its membership.

6) **Potential Redistribution of Power**: AB 1538 provides for expulsion and exclusion of public officials from public office, where those public officials use their authority to retaliate or exert political retribution against a person for exercising a constitutionally protected right. By providing a potential means of expelling or banishing duly elected individuals from office, this bill could have an impact on the people's right to democratically elect representatives of their choosing. There is a risk the law could be weaponized to accomplish outcomes that otherwise would be sought at the ballot box.

   Assuming the law would be enforced like most criminal laws, county district attorneys and the California Department of Justice would wield extraordinary, unprecedented power. Empowering county district attorneys to try a case where the outcome causes removal of a state officeholder would result in a substantial redistribution of power. Perverse incentives could be created in these cases where a county district attorney could take the case of an officeholder to trial whose office they are currently seeking. Prosecutorial discretion essentially could carry the same weight as the people's vote. Another effect of AB 1538 could be to create an unusual and significant redistribution of power in California government.

7) **Argument in Support**: According to *California Civil Liberties Advocacy,* "On behalf of California Civil Liberties Advocacy (CCLA), I write to express our strong support for AB 1538, which would prohibit elected and appointed officials from retaliating against individuals for exercising their constitutionally protected rights.

   "The foundation of any constitutional democracy is the principle that individuals may exercise their rights—whether speech, petition, association, religion, or other protected liberties—without fear of government retaliation. When public officials use the power of their office to punish critics, whistleblowers, activists, or ordinary citizens for exercising those rights, the result is a chilling effect that undermines democratic participation and erodes trust in government.

   "AB 1538 addresses this problem directly by establishing a clear statutory prohibition against political retribution carried out under color of authority. While federal civil rights laws provide civil remedies in some circumstances, those mechanisms are often slow, expensive, and inaccessible to many victims of government retaliation. By creating a clear state-level criminal prohibition, your bill reinforces the principle that public office is a public trust, not a tool for personal or political vengeance.

"This measure is also consistent with longstanding constitutional jurisprudence recognizing that government may not condition benefits, opportunities, or protections on a citizen's willingness to refrain from exercising their rights. The U.S. Supreme Court has repeatedly held that retaliation against individuals for exercising First Amendment rights is itself a constitutional violation. AB 1538 strengthens California's commitment to those principles by ensuring that officials who abuse their authority in this manner face meaningful accountability.

"Importantly, the bill helps restore public confidence that government institutions operate within the bounds of the Constitution. Californians should never have to worry that speaking out against a public official, criticizing government policy, or asserting their legal rights will result in retaliation from those in power."

8) **Argument in Opposition**: According to *American Civil Liberties Union California Action*, "The American Civil Liberties Union California Action must regretfully oppose AB 1538, which would make it illegal for elected or appointed officials to use their authority to retaliate against individuals for exercising their constitutional rights.

"Our organization was founded in the aftermath of what is often referred to as the "Palmer Raids," in which former U.S. Attorney General Mitchell Palmer began rounding up and deporting people who were anti-war suspected to be communists believed to be undermining U.S. stability during the First Red Scare following the aftermath of World War I. Thousands of people were arrested without warrants and without regard to constitutional protections against unlawful search and seizure. Those arrested were brutally treated and held in horrible conditions.

"Since our founding, we have been dedicated to our mission of ensuring the promise of the Bill of Rights and to expand its reach to people historically denied its protections. In our first year, we fought the harassment and deportation of immigrants whose activism put them at odds with the authorities. In 1939, we won in the Supreme Court the right for unions to organize. We stood almost alone in 1942 in denouncing our government's round-up and internment in concentration camps of more than 110,000 Japanese-Americans. And at times in our history when frightened civilians have been willing to give up some of their freedoms and rights in the name of national security, the ACLU has been the bulwark for liberty.

"While we understand the intent behind this bill, the current language is so sweeping that virtually any elected official may be disqualified from holding office for who we sue in the ordinary course of challenging an unconstitutional law, simply because we contend that the official is responsible for enforcing it. For example, the measure would permit disqualification if an official "punished" someone for exercising a constitutionally protected right. But it does not define "punished."

"An official who cites or arrests someone engaged in what is ultimately determined to be lawful protest — a constitutionally protected activity — could be accused of having "punished' protected conduct and therefore be subject to disqualification. That interpretation would transform standard constitutional litigation into a mechanism for removing officeholders throughout the state.

"Establishing general qualifications to run for elected office or be appointed has been a longstanding practice in our representative democracy. Our position is to assess any new limitations and the government's rationale for those limitations. Therefore, we encourage the author to explain the government's rationale for removing public officials in the bill with a legislative declarations and findings.

"The impact of this bill is extraordinary and can have sweeping consequences that would essentially disqualify elected officials and appointees who are sued for enforcing an ordinance or law that a court considers unconstitutional."

9) **Related Legislation**:

a) AB 1535 (Davies) would include felonies motivated by the victim's political affiliation as a discretionary circumstance in aggravation that courts may consider in sentencing. AB 1535 is pending hearing the Assembly Appropriations Committee.

b) AB 1545 (Krell) would, among other things, provide enhanced penalties for the commission of an offense that is a targeted attack on a person who is reasonably identifiable as a journalist, as defined. AB 1545 is pending hearing in the Assembly Public Safety Committee.

10) **Prior Legislation**:

a) SB 1044 (Durazo), Chapter 829, Statutes of 2022, prohibited an employer, in the event of an emergency condition from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe.

b) SB 238 (Melendez), of the 2021-2022 Legislative Session, would have prohibited an employer from taking adverse employment action against an employee or applicant for employment based on their political affiliation or lack of political affiliation or their membership or association with a political organization. SB 238 failed passage in the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
California District Attorneys Association
California News Publishers Association
California State Council of Service Employees International Union (seiu California)
Peace Officers Research Association of California (PORAC)
3 Private Individuals

Oppose

ACLU California Action
Riverside County Sheriff's Office
San Bernardino County Sheriff's Department

Analysis Prepared by: Dustin Weber / PUB. S. / (916) 319-3744