



## California Corporate & Securities Law

# The Shades Of Samson Occum, Daniel Webster And John Marshall Haunt New LLC Act Bill

Posted In [Legislation](#)

2/17/2011

Nearly two decades ago, I co-wrote an article describing a new form of business entity – the limited liability company – and pondering whether California would ever enact laws authorizing the organization of LLCs. Bishop & Rizzi, “Are Limited Liability Companies Coming to California?” 13 CEB California Business Law Reporter 135 (Dec. 1991). A few years later, California enacted the Beverly-Killea Limited Liability Company Act. 1994 Stats. c. 1200.

Having been begotten and born, the Beverly-Killea Act will die before its dotage if Senator [Juan Vargas](#) has his way. On Monday, he introduced [SB 323](#) which would repeal the Beverly-Killea Act and enact in its place a California version of the Revised Uniform Limited Liability Company Act. I will discuss in future posts the question of whether adoption of a new LLC act is a good idea. Today, I’m focused on whether the legislature can kill off the Beverly-Killea Act as it purports do in Section 1 of SB 323.

This is actually a constitutional issue. Article I, Section 10 of the U.S. Constitution forbids a state from passing any law “impairing the obligations of contracts.” In the venerable decision of *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819), the U.S. Supreme Court held that Article I, Section 10 prevents states from legislatively amending corporate charters. States responded to this holding by including reserve clauses in their state constitutions and business entity acts that expressly retain the right to alter, amend or repeal those acts. Unfortunately, the California legislature failed to include a reserve clause when it enacted the Beverly-Killea Act.

What do Samson Occum and Daniel Webster have to do with this question? For the answer, see my article “[State Power Over Corporate Charters](#)“.

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