
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No:	SB 35	Hearing Date:	3/15/21
Author:	Umberg		
Version:	3/9/21		
Urgency:	No	Fiscal:	Yes
Consultant:	Scott Matsumoto		

Subject: Elections: prohibited activities

DIGEST

This bill makes changes to the distance within which electioneering and specified political activities near a polling location are prohibited.

ANALYSIS

Existing law:

- 1) Defines “electioneering” to mean the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot within 100 feet of a polling place, a vote center, an elections official’s office, or a satellite location, as specified.
- 2) Provides that prohibited electioneering information includes, but is not limited to, any of the following:
 - a) A display of a candidate’s name, likeness, or logo.
 - b) A display of a ballot measure’s number, title, subject, or logo.
 - c) Buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information.
 - d) Dissemination of audible electioneering information.
 - e) At vote by mail (VBM) ballot drop boxes, loitering near or disseminating visible or audible electioneering information.
- 3) Provides that no person, on Election Day, or at any time that a voter may be casting a ballot, shall, within 100 feet of a polling place, a satellite location, as specified, or an elections official’s office:
 - a) Circulate an initiative, referendum, recall, nomination petition, or any other petition.
 - b) Solicit a vote or speak to a voter on the subject of marking the voter’s ballot.

- c) Place a sign relating to voters' qualifications or speak to a voter on the subject of voter's qualifications, except as provided in current law.
 - d) Do any electioneering as defined by the Elections Code.
 - i) Defines "100 feet of a polling place, a satellite location under [Elections Code] Section 3018, or an elections official's office" to mean a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.
- 4) Provides that no person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:
- a) Solicit a vote or speak to a voter on the subject of marking their ballot.
 - b) Place a sign relating to voters' qualifications or speak to a voter on the subject of voter's qualifications, except as provided in current law.
 - c) Photograph, video record, or otherwise record a voter entering or exiting a polling place.
 - d) Provides that any person who violates any of these provisions is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 12 months, or in state prison. Provides that any person who conspires to violate any of the following provisions is guilty of a felony.
 - i) Defines "100 feet" to mean a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.
- 5) Provides that every person is punishable by a fine not exceeding one thousand dollars, or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment, as specified, who:
- a) Aids in changing or destroying any poll list or official ballot.
 - b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom.
 - c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted.
 - d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with the intent to change the result of the election, or allows another to do so, when in the person's power to prevent it.

- e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns.
 - f) Removes any unvoted ballots from the polling place before the completion of the ballot count.
- 6) Defines “vote by mail ballot drop box” to mean a secure receptacle established by a county or city and county elections official whereby a voted VBM ballot may be returned to the elections official from whom it was obtained.
- 7) Requires the Secretary of State (SOS) to promulgate regulations establishing guidelines based on best practices for security measures and procedures, including, but not limited to, chain of custody, pick-up times, proper labeling, and security of VBM ballot drop boxes, that a county elections official may use if the county elections official establishes one or more VBM ballot drop-off locations.
- 8) Requires counties to provide VBM ballot drop boxes if a county is using a specified voting model when conducting an election.

This bill:

- 1) Extends the current distance prohibiting electioneering and specified political activities near a polling location from 100 feet to 200 feet, as specified.
- 2) Provides that electioneering activities and other specified political activities pursuant to existing law are prohibited within 200 feet of any of the following:
 - a) An entrance to a building that contains a polling place, an elections official’s office, or a satellite location, as specified.
 - b) An outdoor site at which a voter may cast or drop off a ballot.
 - c) A ballot box for the collection of ballots.
 - d) A voter who is in line to cast a ballot or drop off a ballot.
- 3) Requires that the notices regarding the prohibitions on electioneering and the prohibitions on activity related to corruption of the voting process be provided to the public, as specified. Requires that the SOS promulgate regulations specifying the manner in which these notices are provided.
- 4) Provides that a person is punishable by a fine not exceeding one thousand dollars, or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment, as specified, who:
 - a) Provides, or aids or abets in the provision of, an unofficial ballot box for the collection of ballots, including by marking or placing the word “official” on an unofficial ballot box.

- b) Encourages or solicits a voter to place a ballot in an unofficial ballot box.
- 5) Makes technical, non-substantive changes.

BACKGROUND

Why 100? The earliest reference to the 100 foot electioneering prohibition dates back to at least 1891 where the Political Code stated, “No officer of election, nor any person, shall do any electioneering on election day within one hundred feet of any polling place.” The Political Code from 1891 also stated, “No person shall solicit a vote or speak to a voter on the subject of marking his ticket within one hundred feet of the polling place.” The Political Code was re-written in 1939 to become the Elections Code.

In 1947, AB 2165 (Sherwin, Robertson, and Dunn), Chapter 373, Statutes of 1947, prohibited petitions from being signed within 100 feet of any election booth, polling place, or any place where registration of electors is being conducted.

In 1963, AB 1116 (Crown and Song), Chapter 1171, Statutes of 1963, established a 100 foot prohibition for issues related to a voter’s qualifications. The statute read, “No person, in or within 100 feet of a polling place, shall place a sign relating to voters’ qualifications or speak to a voter on the subject of his qualifications,” except as provided by existing law. Additionally, AB 1251 (Song, Moreno, Elliot, and Soto), Chapter 1560, Statutes of 1963, provided that “no person shall challenge any voter or question him concerning his qualifications to vote within 100 feet of a polling place except when it is made by a member of the precinct board within the polling place,” as specified.

In 1965, the Elections Code read that “no person shall post or cause to have posted any poster, bill, or placard containing any information concerning eligibility to vote to be displayed on the day of the election within 500 feet of the entrance to a polling place.”

AB 3196 (Keysor), Chapter 220, Statutes of 1976, defined “100 feet of a polling place” to mean “a distance 100 feet from the point on the property line closest to the entrance of the polling place.” Another bill in 1976, AB 3683 (Fazio), Chapter 1192, Statutes of 1976, defined the definition of “100 feet of a polling place” in an Elections Code section pertaining to electioneering to mean “a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.”

In 1998, SB 7 (Kopp), Chapter 554, Statutes of 1998, among other provisions, extended the prohibition on electioneering within 100 feet of a polling place on Election Day to include any time a voter may be casting their ballot in an election official's office. This bill also prohibited electioneering and specified political activities from occurring within 100 feet of all elections offices, including any satellite offices, during the 29 days preceding an election.

Finally, in 2017, SB 286 (Stern), Chapter 806, Statutes of 2017, extended the definition of electioneering to include a vote center and prohibited loitering near or disseminating visible or audible electioneering information at a VBM drop box.

Even though the applicability of the 100 foot prohibition has changed over time, the actual number, 100, has remained generally the same with some exceptions.

Other States. According to the National Conference of State Legislatures, each state has some form of restriction on political activities near polling locations when voting is taking place. However, the criteria for prohibited electioneering activities and the parameters regarding the distance of the prohibited zone varies by each state. For example, it is prohibited in Washington, within a voting center, to suggest or persuade any voter, circulate cards or handbills, solicit petition signatures, engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the voting center, obstruct doors or entries, or prevent free access. However, in Iowa, campaign materials, influencing voters, circulating petitions, loitering, voter intimidation and obstructing the entrance all cannot occur within 300 feet of the outside door of the building where the polls are held. For the purposes of this bill, nine states have an electioneering ban that extends at least 200 feet from either the ballot box (Oklahoma), the entrance (Alaska, Kansas, Maine, Nebraska, South Carolina), or the building (Hawaii, Iowa, Wyoming).

According to the National Association of Secretaries of State, two states (Arkansas and Georgia) prohibit electioneering activities within a certain distance of people standing in line to vote in addition to a prohibition zone for a building where voting is taking place.

Voting by Mail in 2020. California voters have increasingly utilized VBM ballots when voting in elections. In the 2020 general election, of 17,785,151 ballots cast, 15,423,301 were VBM ballots. This represents 86.72% of the votes cast in November 2020 and is the highest VBM participation percentage for a general election in the state's history. When comparing the past two presidential general elections (2016 and 2020), there were nearly seven million more VBM ballots in November 2020 (15,423,301 voters) than in November 2016 (8,443,594 voters). It should be noted that a ballot was mailed to every active registered voter for the November 2020 general election pursuant to AB 860 (Berman), Chapter 4, Statutes of 2020. Additionally, a ballot will be mailed to every active registered voter for an election proclaimed or conducted in 2021 pursuant to SB 29 (Umberg), Chapter 3, Statutes of 2021.

Unofficial Drop Boxes. On October 12, 2020, the SOS's and the Attorney General's office sent a letter to the California Republican Party, the Fresno County Republican Party, the Los Angeles County Republican Party, and the Republican Party of Orange County to cease and desist the coordination, use and/or false or misleading promotion of unauthorized and non-official VBM drop boxes.

This letter was sent after the SOS's office received several complaints regarding the use of unauthorized and non-official VBM drop boxes. It was requested that information about the voters who dropped off their ballots in an unauthorized drop box be sent in order to have the voters verify the return status of their VBM ballot. Additionally, a demand to immediately return and surrender the collected VBM ballots was also stated in the letter.

COMMENTS

- 1) According to the author: Californians have embraced an expanding array of options for casting their ballots. But state law intended to protect voters from intimidation and partisan harassment has not kept pace. Buffer zones that may have provided

adequate protection to voters in the past are becoming less effective forms of protection for voters who may now wait in lines that stretch far outside of early and day-of polling places due to social distancing restrictions, increasing voter engagement, and work and family obligations that limit the times of day that many Californians are available to vote. Further, the law does not clearly provide any protection at all to a growing number of early voters who cast their ballots in official vote-by-mail ballot drop boxes.

SB 35 would modernize the laws that protect voters from intimidation and harassment at the polls by moving and extending the buffer zone inside which electioneering activities and voter intimidation are prohibited and by clarifying that these protections apply to VBM ballot drop boxes. This bill would extend the buffer zone from 100 feet to 200 feet from the entrance to a polling place or, if there is a line outside the polling place, to 200 feet from the last person in line. SB 35 would require that notice regarding these prohibitions be provided to the public. Separately, this bill would clarify that the word “official” may not appear on unofficial ballot boxes.

California’s voters deserve to cast their ballots free of partisan harassment and intimidation. Unfortunately, during the November 2020 election, voters seeking to exercise their franchise in California were forced to wade through crowds of partisan rallygoers to vote, while voters in other states were confronted by persons engaged in other electioneering activities:

- Nevada City: According to an article in *The Washington Post*, residents reported that they did not feel comfortable and could not access one of the most popular ballot boxes in the county during an October 11, 2020 rally for then-President Donald J. Trump at the drop box site attended by about 300 people.
- Temecula: According to the *Los Angeles Times*, on November 1, 2020, police received complaints that electioneering activities conducted by an estimate 4,000 Trump supporters parked at Ronald Reagan Sports Park may be violating state elections law because the crowd was blocking access to a voting center inside the park.
- Hendersonville, Tennessee: According to the *Post*, a Trump supporter repeatedly drove past a polling place in a church in a large truck-and-trailer rig with Trump flags and music blaring from speakers.
- Albuquerque, New Mexico: A convoy of vehicles, some with Trump flags, honked and yelled near a voting site on the first day of early voting.
- Craven County, North Carolina: An election worker reported that a Trump supporter was “loudly exclaiming political statements” and played a Trump rally loudly on her phone within earshot of others lining up to vote.

Separately, the *Orange County Register* reported that during the November 2020 election, a political party distributed more than 100 ballot collection boxes to churches, shops, local political party headquarters, and campaign offices, initially labeling at least some of them as “official” ballot drop boxes.

The United States Supreme Court has upheld a prohibition on electioneering within 100 feet of a polling place as permissible, finding a state's interest in protecting voters from undue influence and preserving the integrity of the election process sufficient to survive strict of a limitation on speech. (*Burson v. Freeman* (1992) 504 U.S. 191.) Some 14 states have electioneering buffer zones at or around polling places that are greater than 100 feet, and at least one state, Georgia, has a flexible buffer that extends past the last person in a voting line.

- 2) Voters in Line? In addition to limits on electioneering within a specified distance of polling places, this bill also prohibits electioneering and other specified political activities within 200 feet of a voter in line to cast a ballot or drop off a ballot. This provision could be confusing and difficult for elections officials to enforce, especially for visual displays, because signs placed legally at one time of the day might later be deemed illegal if the line grows longer and the end of the line shifts. For example, if a line extends around a street corner, it is possible this prohibition could apply to signs, such as billboards, erected weeks before Election Day even though no voters in line would see it.
- 3) Unofficial Drop Boxes. This bill provides that every person is punishable by a specified fine, a specified term of imprisonment, or both if a person provides, or aids or abets in the provision of, an unofficial ballot box for the collection of ballots. This includes marking or placing the word "official" on an unofficial ballot box. The bill also establishes the same penalties for a person who encourages or solicits a voter to place a ballot in an unofficial ballot box. The term "unofficial ballot box" could have various meanings and range from an individual collecting a ballot with the consent of the voter who places the VBM ballot in a bag to a coordinated effort to create ballot boxes that claim to be "official" ballot boxes.
- 4) Argument in Support. In a letter supporting SB 35, the Orange County Employees Association states, in part, the following:

Current law prohibits electioneering within 100 feet of a polling place; a distance once thought to be adequate. However, with the pandemic and the need for social distancing and the current political atmosphere, a reexamination of current law is necessary.

- 5) Argument in Opposition. In a letter opposing SB 35, Election Integrity Project California, Inc. (EIPCa) states, in part, the following:

SB 35 assumes that certain types of third-party ballot collection are legitimate and that others are not. EIPCa reiterates that no form of unrestricted ballot collecting is legitimate or conducive to a healthy democratic process.

If the legislature is sincere in its desire to encourage every eligible Californian to register and vote, then it needs to provide them with a system that is secure and trustworthy, one that engenders trust and confidence that all votes will be legitimate and that their vote will be equal to all other votes and receive due and legal process.

- 6) Amendments.

- a) Electioneering. The provisions prohibiting electioneering within 200 feet of a voter in line would be very difficult to enforce because the length and the direction of the line are positions in constant movement. Committee staff suggests amending the bill to instead either remove the buffer zone from being applied to a voter in line beyond 200 feet from the polling location or narrow this additional prohibition to encompass only soliciting a vote, speaking to a voter on the subject of marking their ballot, or disseminating visible or audible electioneering information in the immediate vicinity of a voter in line.
 - b) Unofficial Ballot Boxes. To avoid confusion about the meaning of “unofficial ballot box,” staff recommends that the author amend the bill to clarify whether the penal provisions prescribed in this bill apply to any receptacle for collecting ballots that has not been approved by elections officials or only to unofficial boxes that use the word “official” or are otherwise likely to deceive a voter into thinking they are placing their ballot into a secure collection box which has been approved by an elections official.
 - c) Minor Amendment. On Page 5, Line 13, a minor amendment is needed. The amendment should read, “...in a county jail for not more than 12 months, or in the state prison.”
- 7) Double Referral. If SB 35 is approved by this committee, the bill will be referred to the Committee on Rules where it will be re-referred to the Committee on Public Safety.

RELATED/PRIOR LEGISLATION

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POSITIONS

Sponsor: Author

Support: California Teachers Association
Disability Rights California
Orange County Employees Association

Oppose: Election Integrity Project California, Inc.

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