
THIRD READING

Bill No: SB 35
Author: Umberg (D)
Amended: 3/18/21
Vote: 21

SENATE ELECTIONS & C.A. COMMITTEE: 4-0, 3/15/21
AYES: Glazer, Hertzberg, Leyva, Newman
NO VOTE RECORDED: Nielsen

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/13/21
AYES: Bradford, Ochoa Bogh, Skinner, Wiener
NO VOTE RECORDED: Kamlager

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Elections: prohibited activities

SOURCE: Author

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) Defines “polling place” to mean a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center.

- 3) 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.
- 4) 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.
- 5) 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.
- 6) Provides that every person is punishable by a fine not exceeding \$1,000, 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.
- 7) 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.
- 8) 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.

- 9) 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 prescribed 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.
- 3) Prohibits a person from engaging in electioneering and prescribed political activities within the immediate vicinity of a voter in line to cast a ballot or drop off a VBM ballot, as specified.
- 4) 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.
- 5) Provides that a person is punishable by a fine not exceeding \$1,000, 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 the use of, an unofficial ballot box for the collection of ballots and marks, places, or uses the word "official" on the ballot box, or otherwise provides, or aids or abets the use of, an unofficial ballot box that is likely to deceive a voter into believing the voter is placing a ballot into a secure collection box that has been approved by an elections official, as specified.
 - b) Encourages or solicits a voter to place a ballot in an unofficial ballot box, as specified.

6) 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 (later becomes the Elections 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.” It should be noted that the applicability of the 100-foot prohibition has changed over time, but 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, soliciting votes, loitering, electioneering, and posting signs 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, Iowa, Kansas, Maine, South Carolina), or the building (Hawaii, Nebraska, Wyoming).

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

Comments

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 modernizes 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 extends the buffer zone from 100 feet to 200 feet from the entrance to a polling place and, if there is a line outside the polling place, to the immediate vicinity surrounding any voters waiting to vote. SB 35 requires that notice regarding these prohibitions be provided to the public. Separately, this bill clarifies 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 rally goers 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/5/21)

California Professional Firefighters
California Teachers Association
Orange County Employees Association

OPPOSITION: (Verified 5/5/21)

Election Integrity Project California, Inc.

ARGUMENTS IN SUPPORT: In a letter supporting SB 35, the California Professional Firefighters states, in part, the following:

The COVID-19 pandemic caused an unprecedented shift in voting during the historic 2020 general election, as safety precautions combined with high turnout led to both an increase of the usage of vote by mail as well as longer lines at in-person polling places. Troublingly, there were also increased instances of individuals or organizations trying to disseminate false or misleading information surrounding the election, as well as the placement of unofficial and improperly labeled ballot boxes. As the options for voting expand to meet the needs of voters throughout the state, it is important that the protections that are in place are robust and evolve with these expanding opportunities.

ARGUMENTS 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.

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