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

Bill No:	SB 35	Hearing Date:	9/8/21
Author:	Umberg		
Version:	8/26/21		
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 voting site are prohibited, as specified. This bill also extends an existing deadline for a candidate for Governor to submit tax returns to the Secretary of State (SOS) in order to have the candidate's name printed on the direct primary election ballot, and makes changes to the process for submitting those documents, as specified.

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 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.
- 10) Requires counties to provide VBM ballot drop boxes if a county is using a specified voting model when conducting an election. Prohibits the SOS from printing the name of a candidate for Governor on a primary election ballot, unless the candidate, at least 98 days before a primary election, files with the SOS copies of the income tax return the candidate filed with the Internal Revenue Service (IRS) in the five most recent taxable years, as specified.
- 11) Requires a candidate for Governor to submit the following to the SOS when filing their tax returns:
- a) Two hard copies of each tax return. Requires one copy of each tax return to be identical to the version submitted to the IRS, without redactions, and the second copy of each tax return to be redacted, as specified.
 - b) A written consent form, signed by the candidate, granting the SOS permission to publically release a redacted version of the candidate's tax returns.
- 12) Requires the candidate to redact specified information from the redacted version of each tax return, and permits the candidate to redact certain other information from the redacted version of each tax return, as specified.
- 13) Requires the SOS to review the redacted copy of each tax return submitted by the candidate to ensure that the redactions comply with existing law. Requires the SOS, if the SOS determines that the candidate has redacted information other than

that required under existing law, to prepare a new version of the tax return with only the redactions permitted.

- 14) Requires the SOS, within five days of receipt of the candidate's tax returns, to make the redacted versions of the tax returns available to the public on the SOS's internet website.
- 15) Requires the public versions of the tax returns to be continuously posted until the official canvass for the direct primary election are completed, and requires the SOS, upon completion of the official canvass, to remove the public versions of the tax returns, as specified.

This bill:

- 1) Modifies the current distance prohibiting electioneering and other prescribed political activities to within the 100 feet from the entrance to a building that contains a polling place, an elections official's office, a satellite location, or from an outdoor voting area where a voter may cast their ballot or drop off a ballot, as specified.
- 2) Prohibits obstructing access to a VBM ballot drop box, as specified.
- 3) Prohibits obstructing ingress, egress, or parking with the intent of dissuading another person from voting within 100 feet of a voting site, as specified.
- 4) 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.
- 5) 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.
- 6) 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) Displays a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Establishes that evidence of intent to deceive may include using the word "official" on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.
 - b) Directs or solicits a voter to place a ballot in a container as mentioned above, as specified.
- 7) Extends an existing deadline for a candidate for Governor to submit tax returns to the SOS to have the candidate's name printed on the direct primary ballot, from 98 days before the direct primary election to 88 days before the direct primary election.

- 8) Deletes provisions of law that require the SOS to prepare a new version of the tax return if the SOS determines a candidate redacted information other than that permitted under existing law, and instead requires the SOS to notify a candidate for Governor of any deficiencies, as specified, and requires the candidate to submit corrected hard copies of the tax return no later than 5 p.m. on the 78th day before the direct primary election. Provides that the candidate shall not be qualified to appear on the direct primary ballot if the corrected copies are not timely submitted.
- 9) 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 (which later became 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 where the 100-foot prohibition is measured from has changed over time, but the actual number, 100 feet, 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.

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.

Tax Return Disclosure Requirements. In 2019, the Legislature approved and Governor Newsom signed SB 27 (McGuire), Chapter 121, Statutes of 2019, which requires a candidate for Governor, as a precondition for appearing on a California primary election ballot, to file copies of their income tax returns with the SOS. SB 27 required a candidate for Governor to submit to the SOS two copies of each tax return filed with the IRS in the five most recent taxable years, as specified. One copy of each tax return was required to be identical to the version submitted to the IRS, without redactions, and the second copy of each tax return had to be redacted in accordance with existing law. SB 27 similarly required candidates for United States President to file copies of their income tax returns as a precondition for appearing on the primary election ballot in California, but the California Supreme Court directed the SOS to refrain from enforcing those provisions if they would keep the name of a recognized candidate for President

off of the ballot, as specified. (*Patterson v. Padilla* (2019) 8 Cal. 5th 220.)

According to the SOS's office, during the process of implementing the provisions of SB 27, and subsequent legal challenges and rulings pertaining to the September 14, 2021, gubernatorial recall election, various implementation issues were discovered. In order to address these concerns before candidate filing for the June 7, 2022, statewide gubernatorial primary election, the SOS has requested certain statutory changes be made. SB 35 extends the deadline for a candidate for Governor to submit tax returns to the SOS and aligns the submission of those documents with the deadline for a candidate to file a declaration of candidacy and nomination papers.

SB 35 also modifies the procedure that applies when a candidate improperly redacts copies of tax returns that are provided to the SOS. Instead of requiring the SOS to prepare a properly-redacted copy of the tax returns as required in certain situations under existing law, this bill requires the SOS to notify a candidate for Governor of any deficiencies in their tax return submissions, as specified, and requires a candidate to submit corrected hard copies of the tax return no later than 5 p.m. on the 78th day before the direct primary election. This bill further clarifies that a candidate is not qualified to appear on the direct primary ballot if the corrected copies are not timely submitted.

COMMENTS

- 1) According to the author: SB 35 would modernize state election law to protect voters from intimidation and harassment at the polls and make clarifying changes to help the Secretary of State's office implement existing law related to future gubernatorial filings.

Existing law requires that gubernatorial candidates submit copies of their recent tax returns in order to appear on the ballot. In order to assist with the implementation of this statute, SB 35 will adjust the timeline for these filings and create a process for their office to assist with deficiencies in filings. These changes will not take effect until the 2022 Gubernatorial Election.

SB 35 will also help ensure that all voters are free from electioneering and harassment while casting their ballot by doing the following:

1. Extending the protections against harassment and electioneering to protect all voters in line, regardless of where they are standing.
2. Clarifying that the word "official" may not appear on unofficial ballot boxes to ensure that voters are provided notice that such receptacles are not official county ballot drop boxes.
3. Prohibiting the obstruction of a polling place, with the intent to dissuade another person from voting, within 100ft of a protected voting space.

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, California: 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 at the drop box site attended by about 300 people.
- Temecula, California: According to the *Los Angeles Times*, on November 1, 2020, police received complaints that electioneering activities conducted by an estimate 4,000 people 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 *The Washington Post*, a supporter repeatedly drove past a polling place in a church in a large truck-and-trailer rig with flags and music blaring from speakers.
- Albuquerque, New Mexico: A convoy of vehicles, some with 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 supporter was “loudly exclaiming political statements” and played a 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.

- 2) Argument in Support. In a letter supporting SB 35, the California Teachers Association (CTA) states, in part, the following:

CTA believes one of our most important freedoms is the right to vote and to be a full participant in the electoral process of our nation. CTA further believes our voting system must be free of procedures dissuading voters from voting in person. Electioneering in and around a polling location can have a “chilling effect” and should not be visible when a voter approaches a polling location. We believe SB 35 is a necessary change to further the opportunity for eligible voters to participate in the democratic process.

- 3) Argument in Opposition. In opposition to a prior version of this bill, the Election Integrity Project California, Inc. (EIPCa), wrote:

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.

RELATED/PRIOR LEGISLATION

SB 27 (McGuire), Chapter 121, Statutes of 2019, among other provisions, required a candidate for Governor, as a precondition for appearing on a California primary election ballot, to file copies of their income tax returns with the SOS.

SB 286 (Stern), Chapter 806, Statutes of 2017, among other provisions, 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.

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 satellites, during the 29 days preceding an election.

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."

PRIOR ACTION

Assembly Elections Committee:	6 - 0
Assembly Floor:	59 - 15
Assembly Appropriations Committee:	16 - 0
Assembly Public Safety Committee:	8 - 0
Assembly Elections Committee:	6 - 1
Senate Floor:	29 - 2
Senate Public Safety Committee:	4 - 0
Senate Elections and Constitutional Amendments:	4 - 0

POSITIONS

Sponsor: Author

Support: Secretary of State Shirley N. Weber, Ph.D.
California Federation of Teachers, AFL-CIO (prior version)
California Professional Firefighters (prior version)
California Teachers Association
Orange County Employees Association (prior version)

Oppose: Election Integrity Project California, Inc. (prior version)

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