
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 35 **Hearing Date:** April 13, 2021
Author: Umberg
Version: March 18, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Elections: prohibited activities*

HISTORY

Source: Author

Prior Legislation: SB 286 (Stern) Chapter 806, Stats. 2017
SB 7 (Kopp) Chapter 554, Stats. 1998

Support: California Professional Firefighters; California Teachers Association; Disability Rights California (support if amended); Orange County Employees Association

Opposition: None known

PURPOSE

The purpose of this bill is to move the “buffer zone” to protect voters from 100 to 200 feet and to increase the locations and types of prohibited activities intended to persuade or dissuade voters.

Existing law defines “electioneering” as 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 election official’s office, or a satellite location. (Elections Code Section 319.5(a))

Existing law prohibits the following as electioneering:

- 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 ballot drop boxes, loitering near or disseminating visible or audible electioneering information. (Elections Code Section 319.5 (a))

This bill provides the activities listed above are prohibited within 200 feet of any of the following:

- a) The entrance to a building that contains a polling place, an elections official's office, or a satellite location.
- b) An outdoor site at which a voter may cast or drop off a ballot
- c) A ballot box for the collection of ballots. (Elections Code Section 319.5(b))

Existing law no person, on election day or at any time that voter may be casing a ballot, shall, within 100 feet of a polling place, a satellite location, or an elections official's office:

- a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
- b) Solicit a vote or speak to a voter on a subject or marking the voter's ballot.
- c) Place a sign relating to voters' qualifications or speak to a voter on the subject of the voter's qualifications except as provided.
- d) Do any electioneering.
- e) 100 feet of a polling place means from the room or room where voters are signing the roster and casting ballots.(Elections Code Section 18370(a))

Existing law provides that a person who violates the above is guilty of a misdemeanor (Elections Code 18370)

This bill extends the distance limitation to 200 feet.

This bill provides that the following activities are prohibited within 200 feet of the following and also subject to misdemeanor penalties:

- a) The entrance to a building that contains a polling place, an elections official's office, or a satellite location.
- b) An outdoor site at which a voter may cast or drop off a ballot.
- c) A ballot box for the collection of the ballots

This bill provides it is also a misdemeanor for a person, on election day, or at any time that a voter may be casting a ballot, to do any of the following within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot:

- a) Solicit a vote.
- b) Speak to a voter about marking the voter's ballot.
- c) Disseminate visible or audible electioneering information.

This bill provides that notice regarding the prohibitions on activity related electioneering set forth in this article shall be provided to the public. The Secretary of State shall promulgate regulations specifying the manner in which such notice shall be provided.

This bill provides that notice regarding the prohibitions on activity related to corruption of the voting process set forth in this chapter shall be provided to the public. The Secretary of State shall promulgate regulations specifying the manner in which such notice shall be provided.

Existing law provides a person shall not, with the intent of dissuading another person from voting, within 100 foot limit, do any of the following:

- a) Solicit a vote or speak to a voter on the subject of marking the voter's ballot.
- b) Place a sign relating to voters' qualifications or speak to a voter on the subject of the voter's qualifications except as provided in Section 14240.
- c) Photograph, video record, or otherwise record a voter entering or exiting a polling place.

A violation is a wobbler punishable by up to 12 months in the county jail or by 16 months, 2, or 3 years in state prison. (Elections Code Section 18451 (a)(b))

This bill extends the prohibitions of the above to 200 feet and provides that the activities described above are also punishable by a wobbler when done within 200 feet of any of the following:

- a) The entrance to a building that contains a polling place, an elections official's office, or a satellite location.
- b) An outdoor site at which a voter may cast or drop off a ballot.
- c) A ballot box for the collection of ballots.

This bill further expands the existing wobbler to provide that a person shall not, with the intent of dissuading another person from voting, do any of the following within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot:

- a) Solicit a vote.
- b) Speak to a voter about the voter's ballot.
- c) Disseminate visible or audible electioneering information.

Existing law provide that every who does the following is punishable by a fine not exceeding \$1,000 or by a jail felony of 16 months, 2, or 3 years in prison or both:

- 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.
- d) Adds to or mixes with, or attempts to mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with 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.

(Elections Code Section 18568)

This bill in addition makes it a felony for a person to:

- a) Provides, or aids or abets in the provision of, an unofficial ballot box for the collection of ballots and marks, places, or uses the word “official” on a box, or otherwise provides or aids or abets in the provision of, an unofficial ballot box that is likely to deceive a voter into believing the voter is placing the ballot in a secure collection box that has been approved by an elections official.
- b) Encourages or solicits a voter to place a ballot in a prohibited receptacle.

COMMENTS

1. Need for This Bill

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 vote-by-mail 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, would prohibit the conduct of these activities in the immediate vicinity of voters. 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 and would attach criminal penalties to those who mislead voters into believing they are placing their ballots in an official ballot box.

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, Tenn.: 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, NM: A convoy of vehicles, some with Trump flags, honked and yelled near a voting site on the first day of early voting.
- Craven County, N.C.: 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 two states have a flexible buffer that includes persons in a voting line.

According to the California Secretary of State, 65 percent of California voters who cast ballots in the November 2018 election voted by mail, and nearly 87 percent of voters registered for the November 2020 election were vote-by-mail voters. In nine counties, 100 percent of voters are registered to vote by mail. Given the high proportion of California voters who are casting their ballots by mail, it is imperative that voters have safe access to ballot boxes.

2. Expansion of existing criminal penalties

This bill was heard in the Elections and Constitutional Amendments Committee where the merits of the changes to the Elections Code in this bill were discussed in detail.

This bill expands the “buffer zone” of prohibited activities around electioneering from 100 to 200 feet and prohibits additional activities at sites where ballots may be dropped off.

- a. Expansion of existing Misdemeanor.

Existing law makes it a misdemeanor to do specified activities within 100 feet of a polling place on election day or any other day a ballot may being cast. These activities include circulating a petition, referendum etc.; soliciting a voter or speaking to a voter about their ballot; placing a sign relating to voter qualification, and electioneering.

This bill expands that misdemeanor by expanding the buffer from 100 to 200 feet and additionally prohibits the behavior within 200 feet of the entrance of a building that contains a polling place; an outdoor site at which a voter may drop off a ballot; a ballot box for the collection of ballots.

In addition this bill expands the misdemeanor to prohibit a person from doing any of the following within the immediate vicinity of a voter in line to vote or drop off a ballot: solicit a vote; speak to a voter about marking the voter's ballot; or, disseminate visible or audible electioneering information.

Is a misdemeanor appropriate for the activities added by this bill? The author's intent is to update our existing statutes, are the changes consistent with the current misdemeanor?

b. Expansion of a wobbler

Existing law makes it a wobbler with up to 12 months in county jail or 16 months, 2, or 3 years in prison for a person to do specified activities within 100 feet of a polling place with the intent of dissuading another person from voting. The activities include, solicit a vote or speak to a voter on the subject of marking the ballot; placing a sign relating to voter qualifications or speak to a voter regarding their qualifications; photograph, video record, or otherwise record a voter entering or exiting a polling place.

This bill extends the buffer to 200 feet and also makes the behavior a wobbler if it is also done: at the entrance to a building that contains a polling place, elections official's office or a satellite location; or, a ballot box for the collection of ballots.

In addition this person provides that a person is guilty of the wobbler if they, with the intent of dissuading another person from voting: solicit a vote; speak to a voter about marking the voter's ballot; disseminate visible or audible electioneering information.

Should a person who does these additional behaviors be subject to a wobbler? Are these activities consistent with the ones for which a wobbler can currently be charged?

c. Expansion of a jail felony

Under existing law, a person is subject to a jail felony of 16 months, 2, or 3 years and/or a fine of \$1,000 (plus penalty assessments) if they: aid in changing or destroying any poll list or official ballot; aid in wrongfully placing any ballots in the ballot container or in taking any therefrom; adds 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; carries or destroys, or attempts to, or knowingly allows another to, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns; removes any unvoted ballots from the polling place before the completion of the ballot count.

This bill in expands the jail felony by also making it illegal to provide, or aid and abet in the provision 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 and abets in the provision 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 or to encourage, or solicit a voter to place a ballot in a prohibited receptacle.

Is the behavior of adding a fake ballot box as added by this bill similar to the behavior that currently is subject to a jail felony? Could an innocent business owner be charged with aiding and abetting in the provisions relating to a fake ballot box when they may not understand it is fake?

3. Argument in Support

The California Teachers Association supports this bill stating:

During the 2020 election cycle, there were reports of attempts to demonstrate for specific candidates within close proximity of polling places as well as attempts to create unofficial ballot boxes. This proposal addresses attempts to “corrupt” the voting process by ensuring voters are not subjected to false electioneering while at a designated polling place and guarantees their ballots are counted.

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.

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