

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

AB 2642 (Berman and Gipson) – As Introduced February 14, 2024

SUBJECT: Elections: intimidation.

SUMMARY: Prohibits a person from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for engaging in specified election-related activities, and authorizes an aggrieved person, an officer holding an election or conducting a canvass, or the Attorney General (AG) to file a civil action to enforce those prohibitions. Creates a presumption that a person who openly carries a firearm, imitation firearm, or toy gun, as defined, while interacting with or observing specified election-related activities, is presumed to have engaged in prohibited intimidation, as specified. Specifically, **this bill:**

- 1) Establishes the PEACE Act and defines the following terms for the purposes of the Act:
 - a) “Firearm” to mean a device designed to be used as a weapon, from which a projectile is expelled through a barrel by the force of an explosion or other form of combustion. It includes any firearm that is in the nature of an air gun, spring gun or pistol, or other weapon in which the propelling force is a spring, an elastic band, carbon dioxide, compressed or other gas or vapor, or air or compressed air, or is ignited by compressed air, and that ejects a bullet or missile smaller than three-eighths of an inch in diameter with sufficient force to injure a person.
 - b) “Imitation firearm” to mean an object or device reasonably capable of being mistaken for a firearm.
 - c) “Toy gun” to mean a facsimile or reproduction of a firearm that is marketed as a product intended for children or is substantially similar in appearance, size, and shape to a genuine firearm.
 - d) “Voting” to include any action necessary to make a vote effective in a primary, special, or general election, including registration or other action required by law as a prerequisite to voting, casting a ballot by any method permitted by law, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to a candidate or measure for which votes are received in an election.
- 2) Prohibits a person, while acting under color of law or otherwise, from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for any of the following:
 - a) Voting or attempting to vote.
 - b) Urging or aiding any person to vote or attempt to vote, whether as part of official election administration activity or otherwise.

- c) Exercising any powers or duties to administer elections, including counting votes, canvassing, and certifying an election in accordance with existing law.
 - d) That other person's status as a past or present participant in the administration of elections.
- 3) Provides that a person who openly carries a firearm, imitation firearm, or toy gun while interacting with or observing any of the activities described above in 2) are to be presumed to have engaged in intimidation prohibited by this bill in the absence of an affirmative showing to the contrary by a preponderance of the evidence. Provides that law enforcement officers acting within the scope of their official duties are not subject to this presumption, but a court may nonetheless consider a law enforcement officer's possession of a firearm in determining whether the officer violated the provisions of this bill.
 - 4) Provides that a person aggrieved by a violation of the prohibitions described in 2) may enforce the provisions of this bill in a suit at law or in equity, or both. Permits a prevailing plaintiff in such an action to recover reasonable attorney's fees, reasonable expert fees, reasonable litigation expenses, and all such fees as are appropriate as part of the costs to be determined by a court of competent jurisdiction.
 - 5) Authorizes an officer holding an election or conducting a canvass to enforce the provisions of this bill and to institute an action for equitable relief on behalf of an aggrieved person who is in the officer's jurisdiction or is eligible to vote in the officer's jurisdiction. Authorizes the AG to enforce the provisions of this bill and to institute for the state, or in the name of the state, an action for equitable relief, including an application for a temporary or permanent injunction, restraining order, or other order.
 - 6) Provides that a suit brought by an officer holding an election or conducting a canvass or the AG under the provisions of this bill does not preclude a contemporaneous private suit by an aggrieved person to enforce the provisions of this bill. Permits a court, in a suit to enforce the provisions of this bill, to grant relief enjoining the use or carrying of firearms by a defendant beyond the areas defined. Provides that this does not limit the court's authority to grant any other just and equitable relief.
 - 7) Provides that in order to prevail in a suit to enforce the provisions of this bill, a plaintiff need not prove that a defendant intended to intimidate, threaten, or coerce any person, except in order to prove an attempt to intimidate, threaten, or coerce. Permits a court to nonetheless consider evidence of intent in determining the appropriate relief.
 - 8) Contains an urgency clause, allowing this bill to take effect immediately upon enactment, and contains various findings and declarations.

EXISTING STATE LAW:

- 1) Provides that the Secretary of State (SOS) is the chief elections officer of the state, and shall administer the provisions of the Elections Code. Requires the SOS to see that elections are efficiently conducted and that state election laws are enforced. (Government Code §12172.5(a))

- 2) Provides that voters have a right to cast a secret ballot free from intimidation. (Elections Code § 2300(a)(4))
- 3) Makes it a felony for a person to interfere with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted. Provides that “officers holding an election or conducting a canvass” includes, but is not limited to, the SOS as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the provisions of the Elections Code, and elections officials and their staff, including temporary workers and poll workers, and members of a precinct board, in their performance of any duty related to assisting with holding an election or conducting a canvass. Provides that “holding an election or conducting a canvass” includes, but is not limited to, the election observation process governed by the Elections Code and applicable regulations adopted by the SOS. Provides that “voting at an election” includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations, and voting by mail and returning a voted ballot. (Elections Code §18502)
- 4) Makes it a felony for a person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, or to hire or arrange for another person to do so, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election. Provides that “voting at any election” includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations, and voting by mail and returning a voted ballot. (Elections Code §18540)
- 5) Makes it a crime punishable by a fine, by imprisonment in county jail or in state prison, or by both a fine and imprisonment, for a person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place, or to hire or arrange for another such person do so, without written authorization of the appropriate city or county elections official. Defines “immediate vicinity” to mean the area within 100 feet of the room or rooms in which the voters are signing the roster and casting ballots. (Elections Code §§18544, 18545, 18546(b))
- 6) Makes it a crime punishable by imprisonment in county jail or in state prison for a person to knowingly challenge a person’s right to vote without probable cause or on fraudulent or spurious grounds; to engage in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting; or to fraudulently advise any person that the person is not eligible or registered to vote when in fact that person is eligible or is registered, or who violates a provision of existing law relating to challenges of voters at a polling place. Makes it a felony to conspire to violate these provisions. (Elections Code §18543)
- 7) Makes it a misdemeanor for a person to openly carry an unloaded handgun on the person while in or on a public place or public street, as specified. (Penal Code §26350)

EXISTING FEDERAL LAW:

- 1) Prohibits a person from intimidating, threatening, or coercing another person to vote, or attempt to do so, for voting or attempting to vote, or for urging or aiding any person to vote or attempt to vote. (52 U.S.C. §10307(b))
- 2) Prohibits a person from intimidating, threatening, or coercing another person, or the attempt to do so, with the purpose of interfering with a person's right to vote in federal elections. (52 U.S.C. §10101(b))
- 3) Makes it a crime punishable by a fine, imprisonment, or both, for a person to knowingly and willfully intimidate, threaten, or coerce any person, or attempt to do so, for registering to vote, or voting, or for urging or aiding anyone to vote or register to vote in federal elections. (52 U.S.C. §20511(1))
- 4) Makes it a crime punishable by a fine, imprisonment, or both for a person to intimidate, threaten, or coerce a person, or attempt to do so, for the purpose of interfering with that person's right to vote or to vote as they may choose in federal elections. (18 U.S.C. §594)
- 5) Makes it a crime punishable by a fine, imprisonment, or both, and by disqualification from holding any office of honor, profit, or trust under the United States (US), for an officer of the armed forces or member of the civil, military, or naval service of the US, to be present at federal polling places unless specifically posted to repel armed enemies. (18 U.S.C. §592)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

In an era when our nation faces an epidemic of gun violence, as well as escalating threats to elections officials and volunteers, we must prepare for the worst and continue to strengthen our election security and accessibility. California voters and election workers are among those who are at risk of experiencing intimidation and violence. As a result, there has been a nationwide exodus of workers from the job. In California, 41% of the state's counties now have a new chief local elections official, and 44% of voters will see a different election administrator for the 2024 election than to the official who oversaw the 2020 election.

AB 2642 would protect voters and election workers by strengthening and supplementing existing anti-intimidation laws by providing civil remedies to anyone who experiences intimidation, threats, or coercion while engaging in election-related activities. The PEACE Act would make it clear that the polling place is not the place for guns by creating a presumption that people who carry firearms around election activities or workers did so with the intent to intimidate. California has long been at the forefront of implementing sensible gun reform and strengthening access to our elections, the PEACE Act would continue this work and ensure that Californians have the freedom to vote without the fear of intimidation.

2) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed amendments to make various modifications to the findings and declarations. Specifically, the amendments are as follows:

- Amend the provisions on page 2, in line 8 of the bill, as follows:

(a) The Legislature has compelling interests in protecting both public safety and individual rights, including the fundamental right to vote. It is the Legislature's intent and purpose in enacting this act to help preserve the right to vote by securing the safety and freedom of our elections and allowing voters, election workers, and other officials who conduct our elections to play their roles free from ~~intimidation and the threat of gun violence.~~ **threats and intimidation.**

- Delete the findings on page 2, lines 30-31 and on page 3, lines 1-12, as follows:

~~(d) Over the past decade, gun violence has remained a very serious public health problem. According to the Centers for Disease Control and Prevention, between 2019 and 2021, national firearm-related homicide rates increased by 35 percent, and 2021 was the worst year on record for firearm deaths, with a dismaying 48,830 lives lost. Relative to historical averages, the period between March 1, 2020, and February 28, 2021, saw a 15 percent increase in firearm-related incidents, a 34 percent increase in nonfatal gun injuries, and a 28 percent increase in gun deaths.~~

~~(e) Mass shootings have also become more common. The number of annual mass shootings in the United States more than doubled in the last decade. In 2015, California experienced a mass shooting every thirteen days—in 2023 that number had changed to every six days.~~

- Amend the provisions on page 3, in line 39, and on page 4 in lines 2-3 of the bill, as follows:

(h) The increases in voting by mail and other changes to voting instigated by the global COVID-19 pandemic provided fodder for ~~President Trump and others to promote~~ disinformation and conspiracy theories about U.S. elections based on claims of voter fraud and election interference. In the years since, this fraudulent claim has served to radicalize an increasing number of ~~armed extremists and far-right supporters~~ **individuals** who use the election denial movement as an excuse to openly harass, threaten, and intimidate election workers and voters.

- Amend the provisions on page 4, in line 9 of the bill, as follows:

(i) California voters and election workers are amongst those at serious risk of experiencing this type of intimidation and harassment. In Shasta County, elections officials have encountered open hostility and threats from a small but vocal group of ~~far-right~~ activists who claim concern about voter fraud. These activists have physically crowded election workers performing their official duties, inundated elections offices with public records requests, and even visited voter homes while claiming to be part of an "official taskforce." Similarly, in Nevada County, the registrar-elect had to take out a restraining order against residents who harassed her, pushed their way into her office, and assaulted a staffer.

- Delete the findings on page 4, lines 30-40, and on page 5, lines 1-3 of the bill, as follows:

~~(k) The United States Supreme Court has made clear that the Second Amendment to the United States Constitution is not a “regulatory straightjacket.” N.Y. State Rifle & Pistol Ass’n v. Bruen (2022) 597 U.S. 1, 30. The Second Amendment allows for a “variety” of gun regulations.” Bruen, 597 U.S., at p. 80 (Kavanaugh, J., concurring). And the Supreme Court has repeatedly recognized that states may restrict the carrying of firearms in “sensitive places,” specifically including schools, government buildings, legislative assemblies, polling places, and courthouses. Bruen, 597 U.S., at p. 30; see also McDonald v. City of Chicago (2010) 561 U.S. 742, 786 (Alito, J., plurality op.); District of Columbia v. Heller (2008) 554 U.S. 570, 626. To date, no court has invalidated a prohibition on gun carrying in these sensitive locations specifically enumerated by the Court.~~

- Amend the provisions on page 5, in line 5 of the bill, as follows:

(l) The PEACE Act is intended to supplement existing anti-intimidation law under Section 11(b) of the **federal** Voting Rights Act of 1965, by, among other things, providing specific, explicit protections for election workers and acknowledging that in this era of increased gun violence and election denialism, the presence of guns in proximity to elections is presumptively intimidating. This act should not be construed, however, to suggest that other anti-intimidation laws do not protect election workers or protect against the use of firearms to intimidate.

- 3) **Current Protections and Previous Legislation:** As described above, both federal and state laws seek to protect election workers and voters from bad actors. There are civil and criminal federal laws that make it illegal to intimidate, threaten or coerce someone for voting or attempting to vote, as well as federal statutes that make it illegal to intimidate, threaten or coerce people who are urging or helping others to vote. The federal civil statutes are included the Civil Rights Act of 1957 and the Voting Rights Act and criminal laws appear in several Titles of the US Code. The Civil Rights Division of the US Department of Justice (DOJ) enforces these laws, however, individuals whose rights have been violated may also bring private lawsuits.

Under state laws, it’s a felony for a person to make use or threaten to use force, violence, coercion, or intimidate another person to vote or refrain from voting, and for a person to interfere with the officers holding an election or conducting a canvass, or a voter exercising their right to vote. Last year, SB 485 (Becker), Chapter 611, Statutes of 2023, clarified the law to ensure the applicability of the term “officers holding an election” included elections officials and their permanent staff, temporary workers and volunteers who conduct certain tasks during the election and canvass, and that the applicability of the phrase “holding an election or conducting a canvass” and the phrase “voting in an election” were updated to reflect recent election reforms and changes in the way voters are choosing to return their ballots.

This bill supplements existing state anti-intimidation laws by providing new tools to protect election workers and voters. According to the author and sponsors, although federal law

allows civil suits to be filed by voters and election workers who suffer election-related harassment and threats, this bill will provide more robust civil protections in state law that explicitly acknowledge that both election workers and voters are covered. Specifically, this bill prohibits an individual from intimidating, threatening, or coercing, a voter or election worker for engaging in election-related activities, such as voting or attempting to vote, exercising their duties to administer elections, or because of a person's status as a past or present election worker or official, and allows a voter or election worker who experienced election-related harassment or threats to file civil lawsuits in state court. Attempts to intimidate, threaten, or coerce are similarly prohibited by this bill.

Additionally, this bill provides further protection by allowing a victim who brings a civil suit under the provisions of this bill to sue for monetary damages and recover reasonable attorney's fees, expert fees, and litigation expenses. Moreover, while existing law already prohibits firearms at voting locations, this bill creates a presumption that a person who carries a firearm, imitation firearm, or toy gun around election activities or workers are engaged in intimidation, threats, or coercion that is prohibited by this bill.

Furthermore, this bill allows the AG, SOS, and election officials to obtain injunctive relief to prevent voter intimidation and threats. According to the author and sponsors, this will significantly bolster the state's ability to protect voters and election workers before harms occur.

- 4) **United States Supreme Court Decision in *Bruen***: On June 23, 2022, the US Supreme Court issued its decision in *New York State Rifle and Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), overturning a New York gun safety law. In a 6-3 ruling, the Court ruled that New York's law requiring a license to carry concealed weapons in public places is unconstitutional. The Court announced a new test for lower courts to use when evaluating gun safety laws. Previously, courts had applied balancing tests to Second Amendment challenges, weighing the government's public safety interests that support reasonable gun laws against an individual's Second Amendment rights. Instead the Court announced that the constitutionality of gun laws will be based on whether the plain text of the Second Amendment protects the activities the laws are regulating. If it does, then "the government must affirmatively prove that its firearms regulation is part of the historical tradition" to set boundaries on gun use. However, at the same time, the Court made it clear that various gun laws would withstand scrutiny under the newly-announced test. Notably, that states have the authority to restrict the carrying of firearms in "sensitive places," specifically including schools, government buildings, legislative assemblies, polling places, and courthouses.
- 5) **GIFFORDS Law Center to Prevent Gun Violence and Brennan Center for Justice Report**: Last year, the GIFFORDS Law Center to Prevent Gun Violence and the Brennan Center for Justice authored a joint report, "Guns and Voting, How to Protect Elections After *Bruen*," which discusses how American democracy has come under pressure due to conspiracies about elections and voter fraud that have led to an unprecedented surge in threats and violence towards election workers and voters. The report examines how these challenges have been further exacerbated due to the high rates of gun ownership and the legal challenges to gun safety laws following the US Supreme Court's decision in *Bruen*. The report evaluates the new risks that gun violence poses for US elections and proposes policy solutions to limit those risks. Solutions include prohibitions on firearms wherever voting or election administration occurs — at or near polling places, ballot drop boxes, election offices,

and ballot counting facilities. In addition, the report argues that states need stronger laws preventing intimidation of voters, election officials, election workers, and anyone else facilitating voting, with express recognition of the role that guns play in intimidation.

Notably, the report recommends states to adopt the following broad, flexible protections necessary to allow civil suits to stop armed intimidation from disrupting the elections process:

- A general prohibition on any conduct that intimidates, regardless of intent;
- Protection for voters and for those urging or aiding others to vote;
- A broad definition of voting that includes everything necessary to register, cast a ballot, and have the ballot counted;
- A private right of action allowing anyone aggrieved by intimidation to file suit for relief and attorneys' fees; and,
- Enforcement power for the state AG.

Additionally, the joint report recommends states supplement the components described above with the following additional protections:

- Explicit acknowledgment that election officials and election workers are covered by the protections for those urging or aiding others to vote and that election administration, including vote counting, canvassing, and certification, is protected conduct;
- A presumption that openly carrying a firearm while interacting with or observing those engaged in protected conduct is intimidating, requiring individuals carrying firearms to bear the burden of proving otherwise in a suit to enforce the law;
- An explicit allowance for courts to include prohibitions or limitations on firearms that extend beyond statutory perimeter limits in any relief granted; and,
- Enforcement power for election officials that allows them to bring suit to stop intimidation occurring within their jurisdictions and intimidation of voters eligible to vote in their jurisdictions.

This bill implements some of the recommendations from the joint report.

- 6) **Incidents of Intimidation Against California Elections Officials:** According to the author and sponsors, California voters and election workers are among those who are at risk of experiencing intimidation, violence, and harassment. For example, in Shasta County, individuals angry about unproven voter fraud physically crowded election workers while they performed their official duties, bombarded election offices with excessive public records requests, and falsely presented themselves as an "official taskforce" when visiting voters' homes. Similarly, in Nevada County, the registrar-elect suffered harassment resulting in her obtaining a restraining order against the responsible individuals and others who forcibly entered her office and assaulted a staffer. In San Luis Obispo County, an Asian-American

county clerk-recorder experienced months of harassment and was publically accused of being a member of the Chinese Communist Party for refusing to conduct an illegal audit of the 2020 election and the county's voting system.

- 7) **Recent Surveys:** In 2022, the Democracy Fund/Elections & Voting Information Center at Reed College conducted a national survey of local election officials. The goal of the survey was to lift up local election officials' voices in national, regional, and state conversations about election administration, integrity, and conduct. According to the survey, local election officials showed that nearly a quarter of them experienced threats of violence, harassment or other instances of abuse as the result of their work.

Additionally, a 2023 survey conducted by the Brennan Center for Justice reached out to local election officials and reported that nearly one in three election officials have been harassed, abused, or threatened because of their job, and more than one in five are concerned about being physically assaulted on the job in future elections. Additionally, more than half of survey respondents expressed concern the attacks will make it more difficult to retain or recruit election workers in future elections.

- 8) **Federal Level Response:** In July 2021, the US DOJ established the Election Threats Task Force in partnership with US attorneys' offices and the Federal Bureau of Investigation (FBI) to provide a federal resource for reporting, evaluating, and investigating threats against election workers. In August 2022, the task force announced that of the more than 1,000 cases it had reviewed, a handful of federal cases had been charged, but only one sentence had been handed down. Fifty-eight percent of all potentially criminal threats reviewed were found to be in states where election results were challenged following the 2020 election—including Arizona, Colorado, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.

Additionally, funding has been provided at the federal level for improved security. In 2022, the US Election Assistance Commission (EAC) voted unanimously to allow states to use federal Help America Vote Act funds to improve personal security of election officials and provide physical security services and social media threat monitoring to state or local election officials. Last year, the Department of Homeland Security announced a change in its Homeland Security Grant Program. Specifically, in fiscal year 2023, states must dedicate at least three percent of the money they receive to election security needs.

Furthermore, there is federal legislation pending in Congress that could help support and protect election workers. Specifically, the Election Worker Protection Act (S.1318) provides grants for state and local governments to help recruit and retain poll workers and protect election workers' personal information. The bill also expands federal penalties for threatening, intimidating, or doxxing (online harassment that involves sharing a person's private information) election workers. The Support Our Elections Workers Act (S. 1609) directs the EAC to establish a program to make grants to states to provide increased pay for election workers, and for other purposes as specified.

- 9) **Arguments in Support:** A co-sponsor of this bill, the Brennan Center for Justice, writes in support:

While California currently has several criminal laws that prohibit carrying guns openly and at places where elections are being conducted as well as intimidating

voters, election workers, or officials, it lacks a comprehensive mechanism for victims of such criminal behavior to receive compensation for the emotional distress or other harm they may endure. AB 2642 is designed to provide this much-needed relief. . . In recent times, we have seen a concerning rise in efforts to suppress or intimidate voters, both in the United States and globally. This profoundly troubling state of affairs is a direct threat to the individuals targeted and the democratic process itself. By providing a clear path to legal recourse for victims of such behavior, AB 2642 not only upholds the rights of individual voters and election workers but also fortifies the integrity of our democratic system. This legislation sends a clear message that threats and intimidation have no place in American elections, reinforcing the fundamental democratic principle that every voice has a right to be heard.

The urgency for AB 2642 was recently emphasized in a report titled “Guns and Voting” that we co-authored with the [GIFFORDS Law Center to Prevent Gun Violence.] This report underscores how unfounded conspiracies about elections and voter fraud have precipitated an unprecedented surge in threats and violence towards election workers and voters. High rates of gun ownership, coupled with legal challenges to gun safety laws brought by gun rights advocates following the U.S. Supreme Court’s decision in *NYSRPA v. Bruen*, 142 S. Ct. 2111 (2022), has further exacerbated these challenges.

Both election workers and voters bear the impact of these issues. A Global Project Against Hate and Extremism report found that only 41% of respondents now feel safe at their polling places. This figure is even lower for Hispanic (37%), Black (28%), and 18-25 year old (26%) respondents. Such fears have contributed to a nationwide exodus of election workers. Specifically, in California, between 2020 and 2024, 44% of election administrators in California left their positions, resulting in a significant loss of invaluable experience and institutional knowledge.

10) **Double Referred:** This bill is double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Brennan Center for Justice (Co-Sponsor)
GIFFORDS Law Center to Prevent Gun Violence (Co-Sponsor)
American Civil Liberties Union California Action
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
Asian Americans Advancing Justice - Asian Law Caucus
California Environmental Voters
California Voter Foundation
Disability Rights California
Everytown for Gun Safety Action Fund
League of Women Voters of California
San Diegans for Gun Violence Prevention
SEIU California

One Individual

Opposition

None on file.

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