

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 802 (Low) – As Introduced February 15, 2017

SUBJECT: Voter intimidation: public official: disqualification.

SUMMARY: Imposes a lifetime ban on holding office in California against any public official who is convicted of a felony for violating specified laws that prohibit voter intimidation or suppression.

- 1) **EXISTING LAW:** Prohibits a person from making use of or threatening to make use of force, violence, or tactic of coercion or intimidation to induce or compel any other person to vote or refrain from voting at any election, as specified. Provides that a violation of these provisions is a felony.
- 2) Prohibits a person, with the intent of dissuading another person from voting, from soliciting a voter or speaking to a voter on the subject of his or her qualifications within 100 feet of a polling place. Provides that a violation of these provisions is punishable by imprisonment in a county jail. Provides that a person who conspires to violate this provision is guilty of a felony.
- 3) Prohibits a person from knowingly challenging a person's right to vote without probable cause, or fraudulently advising a person that he or she is not eligible to vote. Provides that a violation of this provision is punishable either as a misdemeanor or as a felony. Provides that a person who conspires to violate this provision is guilty of a felony.
- 4) Prohibits the possession of firearm at a polling place or stationing a uniformed peace officer, private guard, other person wearing a uniform at a polling place without authorization of the appropriate elections official, except in certain specified situations. Provides that a violation of this provision is punishable either as a misdemeanor or as a felony.
- 5) Prohibits the hiring or arranging for the stationing of a uniformed peace officer, private guard, or other person wearing a uniform at a polling place without the authorization of the appropriate elections official, except in certain specified situations. Provides that a violation of this provision is punishable either as a misdemeanor or as a felony.
- 6) Permits a court to order a person who is convicted for violations of specified laws prohibiting voter intimidation to pay a fine to pay for voter education campaigns to respond to that act of voter intimidation.
- 7) Prohibits a person who has been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes, from being a candidate for state or local elective office.
- 8) Imposes a lifetime ban on holding office in California against any public official who violates specified election laws and thereby aids in the illegal casting or attempting to cast a vote, or nullifies specified election laws in order that fraud may be perpetrated.

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

1) **COMMENTS:**

Purpose of the Bill: According to the author:

Voting is a fundamental human right recognized under international human rights law and protected under the United States and California Constitutions. Yet voter harassment and intimidation often are used to suppress participation by voters, thereby making it difficult for eligible voters to have access to their right to vote. Assembly Bill 802 seeks to combat this problem by imposing a lifetime ban on holding office in California against any public official who is convicted of felony voter intimidation or suppression. Existing state law already provides for public officials who abuse the public trust by committing perjury, embezzlement, bribery, or voter fraud to be stripped of their governmental authority and prohibited from seeking public office in the future. AB 802 merely makes penalties for voter intimidation commensurate with current penalties for other election crimes.

- 2) **Federal Legislation to Combat Voter Intimidation:** The 15th Amendment to the United States Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. Despite this legislation, physical violence and legalistic barriers were used to target low income and minority communities and make it difficult for them to vote.

The Civil Rights Act of 1957 (Act) sought to more explicitly legislate against voter intimidation. The legislation provided that no one "shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person" with the intent of interfering with that person's right to vote. While the Act helped curb blatant instances of use of force and physical violence, other intimidation tactics were not covered by the Act. Furthermore, Congressional hearings found that litigation to eliminate discriminatory election practices was largely ineffective, because states and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the Voting Rights Act (VRA) in 1965.

The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." Importantly, Section 2 of the VRA allows the Attorney General, as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA.

- 3) **Potential Voter Intimidation Felonies:** Under current California law a person could be convicted of felony voter intimidation for the following crimes (a) Threatening or using force, violence, coercion, or intimidation to induce or compel a person from voting or refraining from voting, or from voting or refraining from voting for a particular person or measure; (b) Hiring another person to threaten or use force, violence, coercion, or intimidation to induce or compel a vote; (c) Soliciting a voter or speaking to a voter on the subject of his or her qualifications within 100 feet of a polling place, with the intent of dissuading another person from voting; (d) Challenging a person's right to vote without probable cause, or fraudulently advising a person that he or she is not eligible to vote; (e) Possessing a firearm at a polling place or stationing a uniformed peace officer, private guard, other person wearing a uniform at a polling place without authorization of the appropriate

elections official, except in certain specified situations; and, (f) Hiring or arranging for the stationing of a uniformed peace officer, private guard, or other person wearing a uniform at a polling place without the authorization of the appropriate elections official.

- 4) **Voter Intimidation in California:** In October 2006, a Spanish-language letter was sent to foreign-born Democrats with Spanish surnames in the 47th Congressional District, which warned recipients that immigrants are not allowed to vote. Additionally, the letter warned that the United States government was installing a new computer system to verify the names of all new registered voters, which would be made available to anti-immigrant organizations. It is estimated that 14,000 Latino voters received these letters, which threatened them with arrests if they attempted to vote.

In 1988, the Orange County Republican Party hired security guards wearing blue uniforms and badges, to be posted at polling places in heavily Latino precincts. The guards displayed bilingual signs warning non-citizens not to vote, and such signs were also posted in Latino neighborhoods days before the election. According to an Los Angeles Times report from 1989, the Orange County Republican Party paid \$400,000 as part of a settlement to a lawsuit that was brought in response to the program.

- 5) **Similar Punishments:** Existing state law already prohibits public officials who have been convicted of felony crimes of perjury, embezzlement, bribery, or voter fraud from seeking public office in the future. Pursuant to Elections Code Section 20, “A person shall not be considered a candidate for, and is not eligible to be elected to, any state or local elective office if the person has been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes.” Furthermore, pursuant to Elections Code Section 18501 “Any public official who ... thereby aids in any way the illegal casting or attempting to cast a vote, or who connives to nullify any of the provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in this state and upon conviction shall be sentenced to a state prison for 16 months or two or three years.”
- 6) **Voter Disillusionment:** *The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today* a joint report by People For the American Way Foundation and the National Association for the Advancement of Colored People published in 2004 highlights the need for election protection efforts and the need for severe punishment for those who engage in such tactics. According to the report:

In every national American election since Reconstruction, every election since the Voting Rights Act passed in 1965, voters – particularly African American voters and other minorities – have faced calculated and determined efforts at intimidation and suppression. The bloody days of violence and retribution following the Civil War and Reconstruction are gone. The poll taxes, literacy tests and physical violence of the Jim Crow era have disappeared. Today, more subtle, cynical and creative tactics have taken their place.

In his 2008 article in the *Emory Law Journal* titled “Criminalizing Voter Suppression,” Jordan Stringer argues that voter intimidation and suppression has a long-lasting impact on the credibility of the American voting system, especially among minority communities.

According to his analysis, African Americans, and now increasingly Latinos, are growing disillusioned with the voting process and their belief in government. This is especially harmful since these communities have traditionally viewed the voting process with cynicism and mistrust.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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