

Date of Hearing: June 16, 2021

ASSEMBLY COMMITTEE ON ELECTIONS  
Marc Berman, Chair  
SB 35 (Umberg) – As Amended March 18, 2021

**SENATE VOTE:** 29-2

**SUBJECT:** Elections: prohibited activities.

**SUMMARY:** Increases the distance in which electioneering and other specified political activities near a polling location are prohibited, as specified. Specifically, **this bill:**

- 1) Extends the distance, from 100 feet to 200 feet, within which electioneering and other specified political activities near a polling location are prohibited, as specified.
- 2) Specifies that electioneering activities and specified other political activities 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.
- 3) Prohibits a person, on election day, at any time that a voter may be casting a ballot, or with the intent to dissuade a person from voting pursuant to existing law, from doing any of 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; or
  - c) Disseminate visible or audible electioneering information.
- 4) Requires notices regarding the prohibitions on electioneering and the prohibitions on activity related to corruption of the voting process be provided to the public. Requires the Secretary of State (SOS) to 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 does either of the following:
  - a) Provides, or aids or abets 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 or abets 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, as specified.

- b) Encourages or solicits a voter to place a ballot in an unofficial ballot box that is likely to deceive a voter into believing that it is a secure collection box that has been approved by an elections official, as specified.

- 6) Makes conforming and technical changes.

**EXISTING LAW:**

- 1) Defines a “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.
- 2) 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.
- 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) Prohibits a person, on election day, or at any time that a voter may be casting a ballot, within 100 feet of a polling place, a satellite location, or an elections official’s office, from doing any of the following:
  - a) Circulating an initiative, referendum, recall, nomination petition, or any other petition.
  - b) Soliciting a vote or speaking to a voter on the subject of marking the voter’s ballot.
  - c) Placing a sign relating to voters’ qualifications or speaking to a voter on the subject of voter’s qualifications, except as provided in current law.
  - d) Doing any electioneering as defined under current law.

Specifies that for the purposes of this prohibition, within 100 feet of a polling place, a satellite location, or an elections official’s office means a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

- 5) Prohibits a person, with the intent of dissuading another person from voting, within 100 feet of a polling place, from doing any of the following:
  - a) Soliciting a vote or speaking to a voter on the subject of marking their ballot.
  - b) Placing a sign relating to voters' qualifications or speaking to a voter on the subject of voter's qualifications, except as provided in current law.
  - c) Photographing, video recording, or otherwise recording a voter entering or exiting a polling place.

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. Defines "100 feet," for these purposes, 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 does any of the following:
  - 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) Permits counties, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Purpose of the 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 and, if there is a line outside the polling place, to the immediate vicinity surrounding any voters waiting to vote. 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.

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 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.

- 2) **Current Vote by Mail Ballot Use in California:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among other provisions, authorized any voter to become a permanent vote by mail (PVBM) voter. As a result, California voters have increasingly used VBM ballots to vote in elections. According to data from the SOS’s office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election.

Additionally, there are three counties (Alpine, Plumas, and Sierra), in which 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Moreover, fifteen counties have chosen to conduct elections pursuant to the CVCA (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne), which requires an elections official to mail every active registered voter a ballot. As a result, nearly 90% of California’s registered voters receive a ballot in the mail for each election in which they are eligible to vote.

- 3) **Previous Legislation & November 2020 Election Participation:** Due to concerns that conducting in-person voting during the spread of COVID-19 could threaten the health and safety of voters, election workers, and the public generally, last year the Legislature approved and Governor Newsom signed bills that made significant changes to the way that the state conducted the November 2020 presidential general election. Those changes largely were enacted through two bills—AB 860 (Berman), Chapter 4, Statutes of 2020 and SB 423 (Umberg), Chapter 31, Statutes of 2020. Notably, those bills required that a mail ballot be sent to every active registered voter, provided voters in all counties with the ability to track their ballot, authorized changes to in-person voting requirements, and made other changes to facilitate the expected surge in voting by mail at the November election.

According to official election results compiled by the SOS, 17,785,151 Californians voted in the November 3, 2020 statewide general election—15,423,301 (86.7%) using a VBM ballot, and 2,361,850 (13.3%) voting in-person at a polling place or vote center. That represents a turnout of 80.67% of California’s registered voters, and 70.88% of the estimated number of eligible California voters. As a percentage of eligible voters, California’s turnout in the November 2020 election was the highest turnout in a statewide election since the presidential general election in November 1952.

- 4) **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 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. 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) where voting is taking place.

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.

- 5) **Unofficial VBM Ballot Drop Boxes:** As mentioned in the author’s statement, during the 2020 November general election there were instances of unauthorized and non-official VBM drop boxes. According to an October 11, 2020 advisory from the SOS to county elections officials, the SOS’s office received several complaints regarding the use of unauthorized and non-official VBM drop boxes being used or proposed to be used at local political party offices, candidate headquarters, and churches throughout the state. According to the memo, examples that were provided to the SOS’s office included boxes or containers labeled simply as “ballot drop boxes” or designated misleadingly as “official ballot drop boxes.” The memo stated that, “[state] law does not authorize the use of unauthorized, non-official vote-by-mail

ballot drop boxes. County elections officials alone have the authority to designate the location, hours of operation, and number of drop boxes in the county, and have the responsibility for ensuring compliance with all applicable statutes and regulations that guarantees the security and chain of custody of vote-by-mail ballots deposited. Moreover, the use of unauthorized, non-official vote-by-mail ballot drop boxes does not comply with state law governing ballot collection activities.”

- 6) **Enforcement:** In addition to limits on electioneering within a specified distance of polling places, this bill also prohibits electioneering and other specified political activities on election day, or at any time a voter may be casting a ballot within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot. This bill, however, does not provide any detail as to what constitutes the “immediate vicinity of a voter in line.” As a result, in practice this provision may be challenging to enforce and could be interpreted differently across counties.
- 7) **Technical Amendments:** The author has the following technical clarifying amendments:
  - a) The following technical amendments clarify that the electioneering prohibitions are applicable to official VBM ballot drop boxes and ensures that terminology is consistent throughout the bill:
    - On page 3, in line 17, delete “A ballot box for the collection of ballots” and insert “*A vote by mail ballot drop box for the collection of ballots pursuant to Section 3025*”
    - On page 3, in line 38, delete “A ballot box for the collection of ballots” and insert “*A vote by mail ballot drop box for the collection of ballots pursuant to Section 3025*”
    - On page 5, in line 5, delete “A ballot box for the collection of ballots” and insert “*A vote by mail ballot drop box for the collection of ballots pursuant to Section 3025*”
    - On page 6, in line 2, delete “ballot box” and insert “*vote by mail ballot drop box*”
    - On page 6, in line 4, delete “ballot box” and insert “*vote by mail ballot drop box*”
    - On page 6, in line 5, delete “ballot box” and insert “*vote by mail ballot drop box*”
  - b) The following technical amendments clarify that the electioneering prohibition applicable to an “outdoor site” includes curbside voting:
    - On page 3, in line 16, delete “An outdoor site at which a voter may cast or drop off a ballot” and insert “*An outdoor site, including, but not limited to, a curbside voting area, at which a voter may cast or drop off a ballot.*”

- On page 3, in line 37, delete “An outdoor site at which a voter may cast or drop off a ballot” and insert “*An outdoor site, including, but not limited to, a curbside voting area, at which a voter may cast or drop off a ballot.*”
  - On page 5, in line 4, delete “An outdoor site at which a voter may cast or drop off a ballot” and insert “*An outdoor site, including, but not limited to, a curbside voting area, at which a voter may cast or drop off a ballot.*”
- c) The following technical amendments clarify that the electioneering prohibitions applicable to polling places includes vote centers.
- On page 3, in line 13, after the words “polling place” insert the following “*as defined by Section 338.5*”
  - On page 3, in line 34, after the words “polling place” insert the following “*as defined by Section 338.5*”
  - On page 5, in line 1, after the words “polling place” insert the following “*as defined by Section 338.5*”

8) **Arguments in Support:** In support the California Professional Firefighters writes:

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.

SB 35 enacts a variety of increased electioneering and other electoral protections to ensure that the votes of all Californians are safeguarded and counted properly. This bill will expand to 200 feet the existing prohibition on electioneering activities from the entrance to a polling place, and clarify this provision applies to all access points including an outdoor voting location, a ballot box, or any voter who is in line to cast or drop off a ballot. Additionally, SB 35 strictly prohibits the placement of an unofficial ballot box in any capacity, or the encouragement to use an unofficial ballot box.

These clarifications and updates to existing elections law ensure that all voters can be confident that their ballots will be fairly received and counted, and that elections in California will take place without any outside influence.



- 9) **Arguments in Opposition:** In opposition, the Election Integrity Project California, Inc. (EIPCa), writes:

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.

- 10) **Related Legislation:** AB 37 (Berman) requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a VBM ballot tracking system, for all elections. AB 37 passed out of this committee on a 6-1 vote and is pending in the Senate Elections & Constitutional Amendments Committee.

- 11) **Double Referral:** This bill has been double-referred to the Assembly Committee on Public Safety.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Professional Firefighters  
California Teachers Association  
Disability Rights California (if amended)  
League of Women Voters of California (if amended)  
Orange County Employees Association

**Opposition**

Election Integrity Project California, Inc. (prior version)

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