

Date of Hearing: August 31, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
SB 35 (Umberg & McGuire) – As Amended August 26, 2021

SENATE VOTE: [vote not relevant]

SUBJECT: Elections.

SUMMARY: Expands prohibited electioneering and political activities near voting sites, and prohibits activities related to deceptive unofficial ballot collection containers. Requires the Secretary of State (SOS) to promulgate regulations specifying the manner in which to give required notice to the public on the prohibited activity. Extends an existing deadline for a candidate for Governor to submit tax returns to the 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. Specifically, **this bill:**

- 1) Modifies the distance from which electioneering and other specified political activities near a polling location are prohibited from the 100-foot radius of protected voting space from the room or rooms in which voters are signing the roster and casting ballots to instead the 100 feet from the entrance to a building that contains a polling place, 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, loitering near, or disseminating visible or audible electioneering information at a vote by mail (VBM) ballot drop box.
- 3) Prohibits obstructing ingress, egress, or parking with the intent of dissuading another person from voting within 100 feet of a voting site.
- 4) Prohibits engaging in specified political activities and electioneering in the immediate vicinity of a voter in line to cast or drop off a ballot, as specified.
- 5) Prohibits displaying a ballot collection container with the intent to deceive a voter into casting a ballot in an unofficial ballot box and directing or soliciting a voter to cast a ballot into an unofficial ballot collection container. Establishes that evidence of an 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.
- 6) Requires notices regarding the prohibitions on electioneering and the prohibitions on activity related to corruption of the voting process be provided to the public and requires the SOS to promulgate regulations specifying the manner in which these notices are provided.
- 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 conforming 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 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.

- 10) 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.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

- 1) SOS costs to develop regulations for the notice to the public on prohibited activities are absorbable.
- 2) Insignificant costs to the Department of Justice to the extent the new crimes added by this bill result in increased prosecutions brought by the department.
- 3) Minor non-reimbursable costs to local governments for enforcement and prosecution, which will likely be offset to some extent by fine revenues. Violations of the "100-foot" law are misdemeanors.

This fiscal effect does not reflect the tax return provisions of the bill.

COMMENTS:

- 1) **Prior Version of This Bill:** When this bill was heard by this committee earlier in the year, it included the provisions related to electioneering and unofficial VBM ballot drop boxes. That version of the bill was approved by this committee on a 6-1 vote on June 16, 2021. Those provisions remain in the bill.

The August 26, 2021 amendments add provisions to the bill that extend 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, and make changes to the process for submitting those documents, as specified. These new provisions have not been heard in an Assembly policy committee during this legislative session. As a result, this bill has been re-referred to this committee for further consideration of these new provisions in accordance with Assembly Rule 77.2.

- 2) **Purpose of the Bill:** 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 100 [feet] 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 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 [estimated] 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.

- 3) **Secretary of State and Tax Return Disclosure Requirements:** Last session, the Legislature approved and the Governor 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. Specifically, SB 27 requires 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. The bill 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 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. Specifically, this bill 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.

Furthermore, this bill 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 in such a situation as is required 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.

- 4) **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.

- 5) **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.

- 6) **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. 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.

- 7) **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.”

- 8) **Arguments in Support:** In support of this bill, the California Teachers Association writes:

SB 35 expands prohibited activities including obstructing ingress, egress, and parking within 100 feet for which it is a crime to conduct electioneering at a polling place, an election official’s office, or a satellite voting location; requires notice regarding prohibitions on electioneering; requires regulations promulgated by the Secretary of State regarding the notice; makes it a felony offense to display a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box; and makes changes to criteria for gubernatorial candidates and their reporting of income tax returns.

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... 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.

- 9) **Arguments 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.

- 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 on the Senate floor.
- 11) **Double Referral:** This bill was double-referred to the Assembly Committee on Public Safety and the prior version of this bill passed out of that committee on July 13, 2021, on an 8-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers, AFL-CIO (prior version)
California Professional Firefighters (prior version)
California Teachers Association
Disability Rights California (if amended) (prior version)
League of Women Voters of California (if amended) (prior version)
Orange County Employees Association (prior version)
Secretary of State Shirley N. Weber, Ph.D.

Opposition

Election Integrity Project California, Inc. (prior version)

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