

AMENDED IN ASSEMBLY MAY 2, 2024

AMENDED IN ASSEMBLY APRIL 11, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2642

**Introduced by Assembly Members Berman and Gipson
(Principal coauthor: Assembly Member Cervantes)
(Coauthors: Assembly Members Bryan and Weber)**

February 14, 2024

An act to add Article 5 (commencing with Section 18580) to Chapter 6 of Division 18 of the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2642, as amended, Berman. Elections: intimidation.

Existing law makes it a crime to intimidate a voter or to interfere with the conduct of an election, as specified. Existing law makes it a crime for a person in possession of a firearm or a uniformed peace officer, private guard, or security personnel to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official, except as specified. Existing law also makes it a crime to hire a person to conduct these prohibited acts.

This bill would prohibit a person from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for engaging in specified election-related activities. The bill would authorize an aggrieved person, an officer holding an election or conducting a canvass, or the Attorney General to file a civil action to enforce this prohibition. The bill would create a presumption that a person who openly carries a ~~firearm, imitation firearm, or toy gun~~

firearm or imitation firearm while interacting with or observing the specified election-related activities would be presumed to have engaged in prohibited intimidation, in the absence of an affirmative showing to the contrary by a preponderance of the evidence. The bill would ~~entitle~~ *provide that* an aggrieved person who prevails in such an action ~~to will~~ recover reasonable attorney’s fees, reasonable expert fees, and reasonable litigation expenses, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) The Legislature has compelling interests in protecting both
- 3 public safety and individual rights, including the fundamental right
- 4 to vote. It is the Legislature’s intent and purpose in enacting this
- 5 act to help preserve the right to vote by securing the safety and
- 6 freedom of our elections and allowing voters, election workers,
- 7 and other officials who conduct our elections to play their roles
- 8 free from threats and intimidation.
- 9 (b) The United States, including California, has a history of
- 10 discrimination and intimidation in elections. African American
- 11 voters in California first began petitioning for the right to vote in
- 12 1865, two years after the Emancipation Proclamation was issued
- 13 and the same year that slavery was completely abolished with the
- 14 ratification of the 13th Amendment. California’s refusal to ratify
- 15 or enforce the 14th and 15th Amendments eventually prompted
- 16 the federal government to pass the Enforcement Act of 1870, only
- 17 after which African American men were allowed to register.
- 18 Minority voters continued to suffer harassment, physical violence,
- 19 and obstructionist tactics in the following decades, which included
- 20 a California poll tax active from 1879 until 1914 and a literacy
- 21 test active from 1894 until 1970. Passage of Section 11(b) of the
- 22 federal Voting Rights Act of 1965 offered important protections
- 23 against voter intimidation and, today, California has enacted several
- 24 critical voter protection laws.
- 25 (c) In recent years, there has been an increase in the number of
- 26 people carrying firearms in public, a development that has

1 coincided with the deregulation of gun laws in a majority of states.
2 Guns have been used where people are voting and tabulating ballots
3 to intimidate and harass them.

4 (d) It is indisputable that division in American politics has
5 reached a fever pitch. At the same time, an increasing share of the
6 American electorate is willing to use violence to advance their
7 political objectives. The Violence Policy Research Center at the
8 University of California, Davis, found that 12.4 million Americans
9 would be somewhat, very, or completely willing to kill a person
10 in a situation in which they believe force or violence is justified
11 to advance an important political objective. More than 47.7 million
12 Americans, including those who do not own guns, think it is
13 somewhat, very, or extremely likely that they will be armed with
14 a gun in the next few years in a situation in which they think force
15 or violence is justified to advance an important political objective.

16 (e) In 2022, the Global Project Against Hate and Extremism
17 conducted a poll on the effects of extremist political rhetoric and
18 activities and the proliferation of guns in public spaces. It found
19 that just 41 percent of all respondents feel safe at their polling
20 places and that 32 percent were specifically worried about people
21 carrying weapons at their polling place. That number was even
22 lower for Hispanic respondents (37 percent), Black respondents
23 (28 percent), and those aged 18–25 (26 percent). Voter
24 intimidation, suppression, and harassment were also listed as a
25 “grave concern” for 27 percent of those polled, with higher
26 numbers for groups that have historically experienced harassment
27 and disenfranchisement.

28 (f) The increases in voting by mail and other changes to voting
29 instigated by the global COVID-19 pandemic provided fodder for
30 disinformation and conspiracy theories about U.S. elections based
31 on claims of voter fraud and election interference. In the years
32 since, this fraudulent claim has served to radicalize an increasing
33 number of individuals who use the election denial movement as
34 an excuse to openly harass, threaten, and intimidate election
35 workers and voters.

36 (g) California voters and election workers are amongst those at
37 serious risk of experiencing this type of intimidation and
38 harassment. In Shasta County, elections officials have encountered
39 open hostility and threats from a small but vocal group of activists
40 who claim concern about voter fraud. These activists have

1 physically crowded election workers performing their official
2 duties, inundated elections offices with public records requests,
3 and even visited voter homes while claiming to be part of an
4 “official taskforce.” Similarly, in Nevada County, the registrar-elect
5 had to take out a restraining order against residents who harassed
6 her, pushed their way into her office, and assaulted a staffer.

7 (h) The result of this unprecedented level of harassment has
8 been a mass exodus of elections workers across the country.
9 According to a nationwide poll of election workers conducted by
10 the Brennan Center for Justice, 11 percent of current officials say
11 they are very or somewhat likely to leave their positions before
12 November 2024. Over half say they are concerned that threats,
13 harassment, and intimidation will harm retention and recruitment
14 and 30 percent admitted to having personally been abused,
15 harassed, or threatened because of their job as a local elections
16 official. In California alone, 41 percent of the state’s counties now
17 have a new chief local elections official, and 44 percent of
18 Californians will see the 2024 election administered by someone
19 different than the official who administered the 2020 election.

20 (i) The *Protecting Elections from Armed Coercion and*
21 *Extremism Act, or PEACE Act*, is intended to supplement
22 existing anti-intimidation law under Section 11(b) of the federal
23 Voting Rights Act of 1965, by, among other things, providing
24 specific, explicit protections for election workers and
25 acknowledging that in this era of increased gun violence and
26 election denialism, the presence of guns in proximity to elections
27 is presumptively intimidating. This act should not be construed,
28 however, to suggest that other anti-intimidation laws do not protect
29 election workers or protect against the use of firearms to intimidate.

30 (j) California law already prohibits the intimidation of voters
31 and others in the election process and the carrying of firearms
32 where votes are cast and counted. The PEACE Act is not intended
33 to, and should not be construed to, limit or replace those
34 prohibitions. It is instead a supplement to those protections.

35 (k) Because election administration and voting take place in a
36 number of locations—including, but not limited to, polling places,
37 elections and other government offices, ballot drop boxes, and
38 people’s homes—the term “voting” as defined by this Act is
39 intended to be read expansively to include all forms and methods
40 of voting permitted under federal and state law.

1 SEC. 2. Article 5 (commencing with Section 18580) is added
2 to Chapter 6 of Division 18 of the Elections Code, to read:

3
4 Article 5. ~~PEACE~~*Protecting Elections from Armed Coercion*
5 *and Extremism (PEACE) Act*
6

7 18580. For the purposes of this article, the following definitions
8 apply:

9 (a) “Firearm” means a device designed to be used as a weapon,
10 from which a projectile is expelled through a barrel by the force
11 of an explosion or other form of combustion. It includes any
12 firearm that is in the nature of an air gun, spring gun or pistol, or
13 other weapon in which the propelling force is a spring, an elastic
14 band, carbon dioxide, compressed or other gas or vapor, or air or
15 compressed air, or is ignited by compressed air, and that ejects a
16 bullet or missile smaller than three-eighths of an inch in diameter
17 with sufficient force to injure a ~~person~~. *person that is so*
18 *substantially similar in coloration and overall appearance to an*
19 *existing firearm or weapon as to lead a reasonable person to*
20 *perceive that the device is a firearm or weapon.*

21 (b) “Imitation firearm” ~~means an object or device reasonably~~
22 ~~capable of being mistaken for a firearm.~~ *has the same meaning as*
23 *in Section 16700 of the Penal Code.*

24 (c) “Law enforcement officer” *has the same meaning as in*
25 *Section 13519.05 of the Penal Code.*

26 (e)

27 (d) “Officer holding an election or conducting a canvass” has
28 the same meaning as in Section 18502.

29 (f)

30 (e) (1) “Open carry” has the same meaning as in Section 26350
31 of the Penal Code.

32 (2) *Notwithstanding Section 26350 of the Penal Code, this*
33 *definition applies to any firearm or imitation firearm that is openly*
34 *carried and applies to any firearm that is openly carried,*
35 *regardless of whether the firearm is loaded.*

36 (e) ~~“Toy gun” means a facsimile or reproduction of a firearm~~
37 ~~that is marketed as a product intended for children or is~~
38 ~~substantially similar in appearance, size, and shape to a genuine~~
39 ~~firearm.~~

1 (f) “Voting” includes any action necessary to make a vote
 2 effective in a primary, special, or general election, including
 3 registration or other action required by law as a prerequisite to
 4 voting, casting a ballot by any method permitted by law, and having
 5 such ballot counted properly and included in the appropriate totals
 6 of votes cast with respect to a candidate or measure for which votes
 7 are received in an election.

8 18581. (a) ~~A person, while acting under color of law or~~
 9 ~~otherwise,~~ *person* shall not intimidate, threaten, or coerce, or
 10 attempt to intimidate, threaten, or coerce, any other person for any
 11 of the following:

- 12 (1) Voting or attempting to vote.
- 13 (2) Urging or aiding any person to vote or attempt to vote,
 14 whether as part of official election administration activity or
 15 otherwise.
- 16 (3) Exercising any powers or duties to administer elections,
 17 including counting votes, canvassing, and certifying an election
 18 in accordance with Division 15.
- 19 (4) That other person’s status as a past or present participant in
 20 the administration of elections.

21 ~~(b) In~~
 22 *(b) (1) In* any suit to enforce this section, a person who openly
 23 carries a ~~firearm, imitation firearm, or toy gun,~~ *firearm or imitation*
 24 *firearm* while interacting with or observing any of the activities
 25 described in paragraphs (1) to (3), inclusive, *or interacting with*
 26 *or observing a person due to their status described in paragraph*
 27 *(4),* of subdivision (a) shall be presumed to have engaged in
 28 intimidation prohibited by this section in the absence of an
 29 affirmative showing to the contrary by a preponderance of the
 30 evidence. ~~Law~~

31 *(2) A law enforcement officers officer* acting within the scope
 32 of their official duties ~~are~~ *is* not subject to this presumption, but a
 33 court may nonetheless consider a law enforcement officer’s
 34 possession of a firearm in determining whether the officer violated
 35 subdivision (a).

36 18582. (a) A person aggrieved by a violation of Section 18581
 37 may enforce the provisions of this article in a suit at law or in
 38 equity, or both. A prevailing plaintiff in such an action ~~may~~ *shall*
 39 recover reasonable attorney’s fees, reasonable expert fees,
 40 reasonable litigation expenses, and all such fees as are appropriate

1 as part of the costs to be determined by a court of competent
2 jurisdiction.

3 (b) An officer holding an election or conducting a canvass may
4 enforce the provisions of this act and may institute an action for
5 equitable relief on behalf of an aggrieved person who is in the
6 officer's jurisdiction or is eligible to vote in the officer's
7 jurisdiction.

8 (c) The Attorney General may enforce the provisions of this act
9 and may institute for the state, or in the name of the state, an action
10 for equitable relief, including an application for a temporary or
11 permanent injunction, restraining order, or other order.

12 (d) A suit brought by an officer holding an election or
13 conducting a canvass or the Attorney General under this section
14 does not preclude a contemporaneous private suit by an aggrieved
15 person to enforce the provisions of this article.

16 (e) In a suit to enforce the provisions of this article, a court may
17 grant relief enjoining the use or carrying of firearms by a defendant
18 beyond the areas defined in Article 3. This subdivision does not
19 limit the court's authority to grant any other just and equitable
20 relief.

21 (f) In order to prevail in a suit to enforce the provisions of this
22 article, a plaintiff need not prove that a defendant intended to
23 intimidate, threaten, or coerce any person, except in order to prove
24 an attempt to intimidate, threaten, or coerce. A court may
25 nonetheless consider evidence of intent in determining the
26 appropriate relief.

27 (g) *The provisions of this article are cumulative and shall not*
28 *be construed as restricting the application of any other law,*
29 *including, but not limited to, the application of a criminal law to*
30 *a person whose conduct violates Section 18581.*

31 SEC. 3. This act is an urgency statute necessary for the
32 immediate preservation of the public peace, health, or safety within
33 the meaning of Article IV of the California Constitution and shall
34 go into immediate effect. The facts constituting the necessity are:

35 In order to deter intimidation, harassment, and violence at the
36 polls in the upcoming November 5, 2024 general election, it is
37 necessary that this act take effect immediately.