

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Edward Medrano, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p><b>Protecting California Voters on Election Day and During Early Voting</b></p>	<p><i>No.</i> 2020-DLE-16</p>	<p><i>Contact for information:</i> Edward Medrano, Chief Division of Law Enforcement (916) 210-6300</p>
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**TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES**

This bulletin serves as a reminder of relevant laws that you may be called upon to address during voting through Election Day. The bulletin discusses California state laws prohibiting election interference and voter intimidation, laws concerning poll watchers, and laws governing the possession of firearms at polling locations.<sup>1</sup> Law enforcement may also want to review the recent guidances issued by the Secretary of State concerning voter intimidation (<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/october/20236jl.pdf>); electioneering (<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/september/20222jl.pdf>); and election observers (<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/september/20224jl.pdf>).

Law enforcement officers should be aware of the following state statutes as they relate to voter protection in California. In responding to any situation at a polling place, peace officers should be mindful that weapons can inadvertently intimidate voters and to the extent that officers can avoid being inside a polling place, they should try to do so.

**1. LAWS PROHIBITING ELECTION INTERFERENCE AND INTIMIDATION**

**Election Interference**

An individual may not interfere with an official election or canvass (the counting of ballots). Individuals who in any manner interfere with elections officers who are holding an election or voters who are casting their ballots at an election site may be held criminally liable. (Elec. Code, § 18502.)

Any person is guilty of a felony who, before or during an election, tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes. (Elec. Code, § 18564, subd. (a).)

Below are some examples of election interference described in California law and written advisories issued by the California Secretary of State that law enforcement may be called upon to address during early voting or on Election Day<sup>2</sup>:

<sup>1</sup> There may be additional federal laws or local ordinances that also protect voters from election interference and intimidation that are not discussed in this bulletin.

<sup>2</sup> See Elec. Code, §§ 18502, 18565; California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20236, “General Election: Electioneering,” (Sept. 28, 2020), p. 1, <<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/october/20236jl.pdf>> [as of Oct. 26, 2020].

- Blocking access to voting locations.
- Disrupting the process of opening or closing polling stations.
- Disrupting the process of counting ballots.
- Damaging voting devices or ballot drop-off boxes.
- Creating an unlawful ballot drop-off box or other receptacle.

### **Voter Intimidation and Dissuasion**

Voter intimidation encompasses “conduct that is intended to compel voters to not vote or vote against their preferences through activity that is reasonably calculated to instill fear.”<sup>3</sup> Voter intimidation is prohibited at any election. (Elec. Code, § 18540.)

Threats, or the use of any force, violence, or tactic of coercion or intimidation to prevent a voter from casting their ballot or to cause a voter to change their vote for a particular candidate or measure on the ballot is a felony. (Elec. Code, § 18540, subd. (a).) Any person who hires or arranges for someone else to use or threaten to use force, violence, or other tactics of coercion or intimidation to affect a voter’s right to vote is also committing a felony. (Elec. Code, § 18540, subd. (b).)

#### **Voter Dissuasion and Electioneering Within 100 Feet of a Polling Place**

In addition to the general prohibitions against voter intimidation, there are specific restrictions on prohibited activities relating to dissuasion of voters and electioneering within 100 feet of a polling place.<sup>4</sup>

It is unlawful to take certain actions within 100 feet of a polling place with the intent to dissuade a voter from casting their ballot. (Elec. Code, § 18541.) These actions include: (1) soliciting a vote or speaking to a voter about marking their ballot; (2) posting signs about voter qualifications; (3) speaking to a voter about their qualifications (except for certain challenges by precinct board members); or (4) recording voters with photo or video technology as they enter or exit the polling place. (Elec. Code, § 18541, subs. (a) and (b).)

The law also prohibits “electioneering” by any person within 100 feet of a polling place, which is a misdemeanor. (Elec. Code, § 18370.) Electioneering includes, but is not limited to: (1) a display of a candidate’s name, likeness, or logo; (2) a display of a ballot measure’s number, title, subject, or logo; (3) a display of buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information; (4) the dissemination of audible electioneering information; and (5) at vote by mail ballot drop boxes, loitering near or disseminating visible or audible electioneering information. (Elec. Code, § 319.5.) While the display of a candidate’s name, likeness, or logo on voter’s clothing—such as a hat, t-shirt or button—constitutes electioneering prohibited under the law, the display of a political movement or campaign slogan on clothing—without inclusion of the name, likeness, or logo of a candidate—does not constitute electioneering.<sup>5</sup>

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<sup>3</sup> U.S. Dep’t of Justice, Federal Prosecution of Election Offenses *Eighth Edition*, (Dec. 2017), p. 52.

<sup>4</sup> See Elec. Code, § 319.5 (within 100 feet of a polling place, a vote center, an elections official’s office, or a satellite location); Elec. Code, § 18541, subd. (c) (defines 100 feet as “the distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.”); California Secretary of State, Elections Administration Guidance under COVID-19, (Aug. 27, 2020), p. 10 (“Maintaining physical distancing of at least six feet between and among workers and voters whenever possible is one of the most critical prevention measures.”), <<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20154j1.pdf>> [as of Oct. 26, 2020].

<sup>5</sup> California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20222, “General Election: Electioneering,” (Sept. 28, 2020), pp. 1, 3-4, <<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/september/20222j1.pdf>> [as of Oct. 26, 2020].

## Examples of Voter Intimidation:

Below are some examples of intimidation described in California law and written advisories issued by the California Secretary of State that law enforcement may be called upon to address during early voting or on Election Day<sup>6</sup>:

- Threatening to engage in criminal action against voters.
- Presenting false information about the voting process or voter eligibility requirements, including:
  - informing prospective voters that the ability to speak English is an eligibility requirement to vote;
  - informing voters that they need to present certain types of photo identification in order to vote; or
  - informing voters that there could be criminal consequences for voting (*e.g.*, that voting rolls will be used for debt collection purposes, to undertake arrest warrant checks, etc.).
- Harassing or threatening behavior toward voters based on a person's race, ethnicity, or gender identity.
- Aggressively questioning voters about their citizenship, criminal record, or other qualifications to vote.
- Engaging in assault, battery, verbal threats of violence or physical violence, or brandishing of weapons.

## **2. POLL WATCHING**

Observation of election proceedings in the polling locations is permissible, but only poll workers and voters engaged in voting may be within the voting booth area when the polls are open. (Elec. Code, § 14221.) Restricting access to the voting booth area protects a voter's right to cast a secret ballot free from intimidation. (Elec. Code, § 2300, subd. (a)(4).)

Poll watchers (also called poll observers) are individuals who observe the elections and canvassing process. Anyone may poll watch. (Elec. Code, § 2300 subd. (a)(9)(A)). Per Election Administration Guidance under COVID-19,<sup>7</sup> issued by the California Secretary of State, poll watchers must use face coverings in a polling location (not the voting booth area), and must maintain a physical distance of six feet from others. Elections officials may also limit the number of poll watchers allowed to observe at one time to ensure social distancing inside the polling place.

### **What are poll watchers permitted to do?**

Poll watchers are observers of elections proceedings. They must not interfere with the elections process. They are permitted to take notes and use electronic devices, including smartphones and tablets, as long as such devices are not used to record voters or interfere with the elections process or otherwise violate any other provision of the Elections Code. (Elec. Code, § 2302.)

Observation of elections proceedings includes the right to ask poll workers questions about elections procedures and to receive an answer or be directed to the appropriate official for an answer. However, if a poll watcher's persistent questioning disrupts the poll workers' duties, the poll workers can stop responding and direct the poll watcher to the county elections office for further answers. (Elec. Code, § 2300, subd.

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<sup>6</sup> See Elec. Code, §§ 14240, subd. (a), 18370, 18540, 18541; Civ. Code §§ 51, subd. (b), 51.7, subd. (b); California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20236, "General Election: Electioneering," (Sept. 28, 2020), pp. 1-3, <<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/october/20236jl.pdf>> [as of Oct. 26, 2020].

<sup>7</sup> See California Secretary of State, Elections Administration Guidance under COVID-19, (Aug. 27, 2020), p. 10, <<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/july/20154jl.pdf>> [as of Oct. 26, 2020].

(a)(9.) While poll watchers may undertake the above activities, they are not part of the official elections team and may not act as an elections officer. (Elec. Code, § 18575.)

### **What is prohibited behavior of poll watchers?**

Poll watchers cannot interfere with the elections process or intimidate voters. (Elec. Code, §§ 18502, 18540, 18541, 18543, 18564.) Interference may be caused by talking loudly on a cellular telephone, by questioning poll workers while they are trying to carry out their duties, by sitting at a table reserved for provisional voters, and by standing unreasonably close to poll workers while they are performing their duties.<sup>8</sup>

Poll watchers are not permitted to communicate with voters within 100 feet of the entrance of the polling place in order to encourage voters to vote any particular way or to discourage them from voting; to question a voter's qualifications; or to take photographs or video record voters as they enter or exit the polling place. (Elec. Code, § 18541.) Moreover, poll watchers are not allowed to display or audibly disseminate information that advocates for or against any candidate or measure on the ballot. Prohibited poll watcher advocacy includes, but is not limited to, the display of a candidate's name, likeness, or logo; the number, title, subject, or logo of a ballot measure; and the use of buttons, hats, pencils, shirts, signs, or stickers containing candidate or ballot measure information. (Elec. Code, §§ 319.5, 18370.)

Poll watchers are not permitted to challenge or question any person concerning their qualifications to vote. (Elec. Code, § 14240.) Poll watchers also may not "fraudulently advise" voters that they are not eligible to vote or that they are not registered when the voter is, in fact, registered and eligible. (Elec. Code, § 18543.) Only a member of a precinct board may challenge a voter's qualifications to vote within the polling place; and the challenge must be based upon the limited grounds expressly set forth in Elections Code section 14240, subdivision (a). (Elec. Code, § 14240; *see also* Elec. Code, § 18543.)

Finally, individuals are not permitted to wear peace officer, private security guard, or security personnel uniforms while poll watching.<sup>9</sup>

### **3. WEAPONS AND SECURITY PERSONNEL PRESENCE AT POLLING PLACES**

California law prohibits any person, including a person with a concealed weapon license, from possessing a firearm at or in the immediate vicinity of a polling place; this restriction applies whether such persons are voting or acting as poll watchers, and prohibits the hiring of someone else to do the same. (Elec. Code, §§ 18544, subd. (a), 18545.) Immediate vicinity refers to the area within 100 feet of the room or rooms in which the voters are signing the roster and casting ballots. (Elec. Code, § 18546, subd. (b).) Peace officers conducting official business or casting their own vote while on duty are permitted to possess a firearm at a polling place. (Elec. Code, § 18544, subd. (b).)

Additionally, any 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, may neither be stationed in the immediate vicinity of nor posted at a polling place without written authorization from the city or county elections official.<sup>10</sup> (Elec. Code, § 18544, subd. (a).) Anyone who violates section 18544 may be held criminally liable for voter intimidation. (*Ibid.*) Only four types of individuals are exempt from this law:

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<sup>8</sup> California Secretary of State, Election Observation Rights and Responsibilities, (Sept. 2, 2020), p. 5, <<https://elections.cdn.sos.ca.gov/pdfs/observation-rights-responsibilities.pdf>> [as of Oct. 26, 2020].

<sup>9</sup> California Secretary of State, Election Observation Rights and Responsibilities, (Sept. 2, 2020), p. 5, <<https://elections.cdn.sos.ca.gov/pdfs/observation-rights-responsibilities.pdf>> [as of Oct. 26, 2020].

<sup>10</sup> This requirement does not apply to law enforcement responding to a specific incident at a polling place.

- Unarmed, uniformed security personnel who are at the polling place to cast their vote;
- Peace officers engaging in official business in their capacity as peace officers or who are there to cast their vote;
- Private security personnel arranged for by elections officials; and
- Private security personnel arranged for by the owner or manager of the polling place location who were not hired solely for Election Day.

(Elec. Code, § 18544, subd. (b)(1-4).)