

The Right to Life League of Southern California



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June 24, 2021

Chair Jones-Sawyer
California Assembly Public Safety Committee
1010 N. Street (LOB), Room 111
Sacramento, California 95814

Re: OPPOSITION LETTER - SB-742 (Vaccination Buffer Zone)

Dear Chair:

Despite its most recent amendments, SB-742 remains an unduly vague and flawed restriction on California citizens' freedom of speech.

SB-742 IS AN UNCONSTITUTIONAL FLOATING BUFFER ZONE

SB-742 limits behavior and speech within 30 feet of any person approaching the entrance of a vaccination site. This type of restriction is commonly referred to as a "floating buffer zone" because it follows the person approaching the vaccination site, and is not fixed. The United States Supreme Court has, on several occasions, ruled on floating buffer zones.

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The Court ruled a 15 foot floating buffer zone unconstitutional in the case of *Schenck v. Pro-Choice Network Of W. New York*, stating:

We strike down the floating buffer zones around people entering and leaving the clinics because they burden more speech than is necessary to serve the relevant governmental interests. The floating buffer zones prevent defendants...from communicating a message **from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks**. This is a broad prohibition, both because of the type of speech that is restricted and the nature of the location. Leafletting [sic] and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its **most protected on public sidewalks**, a prototypical example of a traditional public forum.”

Schenck v. Pro-Choice Network Of W. New York, 519 U.S. 357, 377, 117 S. Ct. 855, 866–67, 137 L. Ed. 2d 1 (1997) (emphasis added).

Notably, the floating buffer zone in SB-742 is 15 feet further than the zone in *Schenck*.

In *Hill v. Colorado*, the Supreme Court upheld an eight foot floating buffer zone, distinguishing the case from *Schenck*, because the eight foot distance “allows the speaker to communicate at a ‘normal conversational distance,’ 519 U.S. at 377, 117 S.Ct. 855, and to remain in one place while other individuals pass within eight feet.” *Hill v. Colorado* (2000) 530 U.S. 703, 704.

SB-742 expands the zone of censorship nearly four times the *Hill* distance. If a fifteen foot floating buffer zone is unconstitutional, then the thirty foot floating buffer zone proposed by SB-742 is unconstitutional. Thirty feet is not within a normal conversational distance.

SB-742 IS AN UNCONSTITUTIONAL VIOLATION OF DUE PROCESS

“Protections against vagueness are based on due process. To satisfy the constitutional requirement of due process of law, a penal statute must (1) be sufficiently definite to provide



adequate notice of the conduct proscribed, and (2) provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. (*Tobe, supra*, 9 Cal.4th at pp. 1106–1107, 40 Cal.Rptr.2d 402, 892 P.2d 1145.)” *Allen v. City of Sacramento* (2015) 234 Cal. App. 4th 41, as modified on denial of reh'g (Mar. 6, 2015). SB-742 does not meet this standard.

As written, SB-742 does not define what it means to “knowingly approach.” May an advocate stand, holding a sign or offering a pamphlet, while people pass? What if the advocate turns his sign towards a person? Does this fall within the law’s definition of “harassment” in subsection (c)(3)?

As drafted, the bill does not explain how a protester could tell whether “a person is making the approach within 100 feet of the entrance of a vaccination site and is seeking to enter.” How is this provision enforceable? The wording “making an approach” presumes the person’s unspoken and objectively unknowable intent from a minimum of 100 feet away.

Likewise, the phrase “is seeking to enter” is similarly vague and unknowable. Suppose someone is walking down a public sidewalk towards a Walgreens where vaccinations of all sorts routinely take place. May a climate change activist advocate or offer a pamphlet to this person while he walks by? May a Black Lives Matter proponent hold up a sign or extend her fist in the air as the person approaches her? By offering a pamphlet or holding a sign, is the advocate arguably “knowingly” approaching the person while the person is walking towards the Walgreens? Is that sufficient to trigger the violation? Moreover, the walking person’s intent to approach or enter a vaccination site might change as the person nears or passes the vaccination site (perhaps he forgot his keys or wallet). How can the climate activist or the BLM proponent know the person’s intent?

Furthermore, current amendments to SB-742 eliminate any exception for use of **private property**. A property owner posting signs in his parking lot may be liable for “approaching” anyone who walks across his parking lot towards a vaccination site if the owner’s signs “interfere” with that person “in connection with any vaccination site.” Moreover, SB-742, if passed as amended, will bar a business owner from engaging in any “non-consensual and knowing approach within 30 feet of a person or vehicle for the purpose of passing a leaflet or pamphlet or handbill” or even “displaying a sign to ... other such person in a public way or on a sidewalk area” to promote its business services immediately in front of his own property.



Finally, SB-742's definition of "true threat" is vague, overly broad and conflicts with already established criminal law by failing to include an objective test, such as a reasonable person standard, to evaluate whether the speaker intends to act on the "threat." Such a definition may include sarcasm. The crime of assault is already defined and illegal under California Penal Code Section 240 as an "attempt . . . to commit a violent injury on the person of another...." SB-742's "true threat" language expands, confuses and conflicts with this definition.

Importantly, protection of the public to be free from intimidation or other threats is already covered by numerous penal code sections. *See* California Penal Code §§ 241, 242, 422, 422.6, 423.2, 646.9, etc.

For these reasons, we strongly OPPOSE SB-742.



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