

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 3024 (Ward)  
Version: June 10, 2024  
Hearing Date: June 18, 2024  
Fiscal: No  
Urgency: Yes  
AWM

**SUBJECT**

Civil rights

**DIGEST**

This bill provides that, under the Ralph Civil Rights Act of 1976 (Ralph Act), “intimidation by threat of violence” includes terrorizing the owner or resident of private property with the distribution of materials on that private property, without authorization, with the purpose of terrorizing the owner or occupant of that property; and defines “terrorize” as to cause a person of ordinary emotions and sensibilities to fear for their personal safety.

**EXECUTIVE SUMMARY**

Despite California’s strong civil rights protections, hate crimes have increased in California over the past decade. The California Department of Justice’s most recent annual hate crimes report shows that the number of reported hate crimes in the state increased by 145.7 percent over the last 10 years, with increases in a number of protected categories, including race, religion, and sexual orientation. The author and proponents of this bill note that a growing type of hate crime involves the placing of hateful flyers, stickers, banners, graffiti, and posters on private property with the goal of making their targets fear for their safety, also known as “hate littering.” According to the author and supporters, hate littering has gained popularity because online hate messaging can be easily blocked or filtered.

This bill is intended to provide a civil remedy for hate littering that rises to the level of a deliberate threat. Specifically, this bill provides that “intimidation by threat of violence” under the Ralph Act includes terrorizing the owner or resident of private property with the distribution of materials on the private property, without authorization, with the purpose of terrorizing the owner or occupant of that property. The bill also defines “terrorizing” as “caus[ing] a person of ordinary emotions and sensibilities to fear for their personal safety.” The bill’s language is modeled after an existing California statute

that criminalizes placing symbols or marks on the property of another, without authorization, with the purpose of terrorizing an owner or occupant of the property.

This bill is sponsored by San Diego City Councilmember Raul Campillo, San Diego City Attorney Mara Elliott, San Diego Mayor Todd Gloria, and the Anti-Defamation League, and is supported by over 20 organizations and 1 individual. The Committee has not received timely opposition to this bill.

### **PROPOSED CHANGES TO THE LAW**

Existing constitutional law:

- 1) Provides that Congress shall make no law abridging the freedom of speech, or the right of the people to peaceably assemble, and to petition the government for redress of grievances. (U.S. Const., 1st amend. (the First Amendment) & 14th amends.; *see Gitlow v. People of State of New York* (1925) 268 U.S. 652, 666 (First Amendment guarantees apply to the states through the due process clause of the Fourteenth Amendment).)
- 2) Provides that every person may freely speak, write, and publish their sentiments on all subjects, and that a law may not restrain or abridge liberty of speech. (Cal. Const., art. I, § 2 (Section 2).)

Existing state law:

- 1) Establishes the Ralph Act, which provides that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed in the Unruh Civil Rights Act (set forth below), or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. (Civ. Code, § 51.7.)
  - a) The perceived characteristics imported from the Unruh Civil Rights Act are: sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, citizenship, primary language, and immigration status, as defined. (Civ. Code, § 51(a), (e).)
  - b) The bases of discrimination set forth in the Ralph Civil Rights Act are illustrative rather than restrictive. (Civ. Code, § 51.7(b)(1).)
- 2) Provides that, for purposes of the Ralph Act, “intimidation by threat of violence” includes, but is not limited to, making or threatening to make a claim or report to a police officer or law enforcement agency that falsely alleges that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention, knowing that the claim or report is false, or with reckless disregard for the truth or falsity of the claim or report. (Civ. Code, § 51.7(b)(2).)

- 3) Provides that the rights in 1) may not be waived, and any attempt to enforce a purported waiver is unenforceable. (Civ. Code, § 51.7(c).)
- 4) Provides that whoever denies a right provided in 1), or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:
  - a) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damage fees.
  - b) A civil penalty of \$25,000 to be awarded to the person denied the right in any action brought by the person, or by the Attorney General, a district attorney, or a city attorney. An action for the penalty shall be commenced within three years of the alleged practice.
  - c) Attorney fees as may be determined by the court. (Civ. Code, § 52(b).)
- 5) Establishes the crime of terrorism of a person, which prohibits the display or placement of certain items, signs, and symbols on private and specified property, as follows:
  - a) The enumerated prohibited acts are: hanging a noose, with knowledge that it is a symbol representing a threat to life; placing a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika; and burning or desecrating a cross or other religious symbol, knowing it to be a religious symbol.
  - b) The locations at which the acts are prohibited are: private property, or on the property of a school, college campus, public place, place of worship, cemetery, or place of employment.
  - c) The prohibited act must be committed (1) for the purpose of terrorizing the owner or occupant of the private property on which the act is committed, or with reckless disregard of the risk of terrorizing the owner of that private property, or (2) for the purpose of terrorizing a person who attends, works at, or is otherwise associated with the school, college campus, public place, place of worship, cemetery, or place of employment. (Pen. Code, § 11411(b)-(d).)
- 6) Provides that a person who engages in 5) shall be punished by imprisonment for 16 months or two or three years, by a fine of not more than \$10,000, or by both the fine and imprisonment, or in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both the fine and imprisonment for the first conviction; a second or subsequent conviction increases the maximum fine to \$15,000 or \$10,000. (Pen. Code, § 11411(b)-(e).)
- 7) Defines “terrorize,” for purposes of 5), to mean to cause a person of ordinary emotions and sensibilities to fear for personal safety. (Pen. Code, § 11411(f).)

This bill:

- 1) Provides that “intimidation by threat of violence,” for purposes of the Ralph Act, includes, but is not limited to, terrorizing the owner or resident of private property with the distribution of materials on the private property, without authorization, with the purpose of terrorizing the owner or occupant of that property.
- 2) Defines “terrorize” as causing a person of ordinary emotions and sensibilities to fear for their personal safety.
- 3) Includes an urgency cause.

### COMMENTS

#### 1. Author’s comment

According to the author:

The Stop Hate Littering Act, AB 3024, will protect individuals from the distribution of hateful propaganda in the form of flyers, posters, or symbols with the intent to terrorize vulnerable communities. These forms of hateful propaganda have rapidly become the preferred tactic of hate groups because it maximizes personal impact, while allowing them to remain anonymous and avoid accountability.

These are not just pieces of paper with words, these are deliberate, targeted attacks that are intended to harass and intimidate victims, dehumanizing them based on their religion, gender or sexual orientation, or other characteristic. They are being left on our windshields, in our driveways, and on our front doors. They have no place in our communities.

#### 2. Background on California’s civil rights laws and the pernicious rise in hate crimes

California maintains some the nation’s most robust civil rights laws. The Unruh Civil Rights Act<sup>1</sup> was one of the nation’s first state-level civil rights laws, and thanks to a series of amendments to the law, it remains one of the most widely encompassing civil rights statutes in the country. Similarly, the Ralph Act provides persons who suffer violence or threats of violence on the basis of being a member of a protected class the ability to recover financial penalties from the person who violated their civil rights.<sup>2</sup> The Attorney General, any district attorney, or city attorney may also bring a civil action against a person or group engaged in conduct intended to deny the full exercise of

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<sup>1</sup> Civ. Code, § 51.

<sup>2</sup> *Id.*, §§ 51.7, 52.

rights guaranteed under the Unruh Civil Rights Act and the Ralph Act to seek and obtain injunctive or other preventive relief against the violators.<sup>3</sup>

The Penal Code also provides protections against hate crimes committed against a person on the basis of their membership, or perceived membership, in a protected class.<sup>4</sup> Additionally – and relevant to this bill – it is a crime in California to place various symbols or marks on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that property or with reckless disregard of the risk of terrorizing the owner or occupant of the property.<sup>5</sup> The same statute prohibits placing such symbols or marks on the property of a school, college campus, public place, place of worship, cemetery, or place of employment, for the purpose of a person who attends, works at, or is otherwise associated with the location.<sup>6</sup>

Despite California’s strong civil rights protections, hate crimes have increased in California over the past decade. The California Department of Justice’s most recent annual hate crimes report shows that the number of reported hate crimes in the state increased by 145.7 percent over the last 10 years.<sup>7</sup> The report shows that hate crimes rose across protected categories, including race, religion, and sexual orientation.<sup>8</sup> The author and proponents of this bill note that a growing type of hate crime involves the placing of hateful flyers, stickers, banners, graffiti, and posters on private property with the goal of making their targets fear for their safety, also known as “hate littering.” According to the author and supporters, hate littering has gained popularity because online hate messaging can be easily blocked or filtered.

3. This bill provides that the Ralph Act prohibits deliberately terrorizing a person, on the basis of their membership in a protected class, by distributing messages without authorization on private property

This bill is intended to provide a civil remedy for hate littering that rises to the level of a deliberate threat. Specifically, this bill provides that “intimidation by threat of violence” under the Ralph Act includes terrorizing the owner or resident of private property with the distribution of materials on the private property, without authorization, with the purpose of terrorizing the owner or occupant of that property. The bill also defines “terrorizing” as “caus[ing] a person of ordinary emotions and sensibilities to fear for personal safety.”

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<sup>3</sup> *Id.*, § 52.

<sup>4</sup> *See* Pen. Code, §§ 422.55-422.86.

<sup>5</sup> *Id.*, § 11411.

<sup>6</sup> *Ibid.*

<sup>7</sup> California Department of Justice, Hate Crime in California 2022, p. 1, available at <https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/Hate%20Crime%20In%20CA%202022f.pdf>. (Link current as of June 13, 2024.)

<sup>8</sup> *Id.* at pp. 29-30.

This bill is modeled after California’s statute that criminalizes placing symbols or marks on the property of another, without authorization, with the purpose of terrorizing an owner or occupant of the property.<sup>9</sup> The definition of “terrorize” is identical to the definition in the Penal Code, and the scope of the proscribed conduct – placing materials on the private property of another, without authorization, with the intent of terrorizing the owner or occupant – is broadly the same, except that this bill requires specific intent to terrorize; recklessness is insufficient. This bill also does not apply to the non-private properties listed in the Penal Code section.<sup>10</sup> Additionally, in keeping with the fact that this bill permits an affected party to sue in court for damages, the bill requires that the target have actually been terrorized – in other words, that the target must have actually feared for their personal safety. As discussed below in the next section, these features of the bill make it likely that the bill is consistent with the First Amendment. The author has agreed to technical amendments that will more closely conform the language and punctuation of the bill to the existing Penal Code section.

4. This bill appears sufficiently narrowly tailored to survive First Amendment scrutiny

The federal and state Constitutions prohibit the government from abridging the freedom of speech.<sup>11</sup> Conduct that is “ ‘sufficiently imbued with elements of communication’ ” to express an idea also receives First Amendment protections.<sup>12</sup> “The vitality of civil and political institutions in our society depends on free discussion...it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effective. “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”<sup>13</sup>

That said, although the First Amendment’s speech guarantee is written as an absolute, there are certain narrow categories of speech that fall outside of the First Amendment’s protections.<sup>14</sup> This bill, and the Penal Code section on which it is modeled, address speech and expressive conduct that constitutes a “true threat.” “When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection.”<sup>15</sup>

While the rationale behind the true threats doctrine is based on the harm to the listener – “[t]rue threats subject individuals to ‘fear of violence’ and to the many kinds of ‘disruption that fear engenders’ ” – the United States Supreme Court recently held

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<sup>9</sup> See Pen. Code, § 11411.

<sup>10</sup> See *ibid.*

<sup>11</sup> U.S. Const., 1st & 14th Amends.; Cal. Const., art. I, §§ 2, 3.

<sup>12</sup> *Texas v. Johnson* (1989) 491 U.S. 397, 414 (*Johnson*)

<sup>13</sup> *Id.* at p. 404.

<sup>14</sup> *Counterman v. Colorado* (2023) 600 U.S. 66, 74.

<sup>15</sup> *In re M.S.* (1995) 10 Cal.4th 698, 711.

that liability for true threats requires a “culpable mental state.”<sup>16</sup> This limitation is intended to prevent “ ‘self-censorship’ of speech that could not be proscribed.”<sup>17</sup>

This bill requires, as elements of liability, that (1) the defendant intended to cause the victim to fear for their personal safety, (2) the victim actually feared for their personal safety, and (3) the act would have caused a person of ordinary emotions and sensibilities to fear for personal safety. By imposing both a subjective mental state requirement on the defendant and an objective reasonableness requirement on the victim, this bill appears to narrowly target speech and conduct that constitutes a true threat that falls outside First Amendment protection. The fact that the bill requires a trespass to property also reduces the likelihood that legitimate speech will be chilled; by definition, the bill would not reach materials left in locations where speech is normally conducted.

It also appears unlikely that the bill runs afoul of precedent relating to content neutrality. “The first Amendment generally prevents government from proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed.”<sup>18</sup> As a result, “[c]ontent-based regulations are presumptively invalid.”<sup>19</sup> The California Supreme Court has explained that the proper analysis of whether a regulation on speech or expressive conduct is content-neutral looks at “the *topic* of a punishable threat of violence,” not the motivation behind the threat.<sup>20</sup> Under this analysis, the California Supreme Court upheld California’s hate crime law, which penalizes threats made to a person because of their race or other protected characteristic.<sup>21</sup> The same analysis applies here: the bill is silent as to the content of the speech or conduct that gives rise to a prescribed threat – the perpetrator must have intended to threaten, and the victim must have objectively and subjectively felt threatened, regardless of the content of the threat – and the fact that the perpetrator must have been motivated by the victim’s protected characteristic does not alter that analysis.

## 5. Amendments

As noted above in Part 3, the author has agreed to minor technical amendments to conform the bill more closely with the Penal Code statute on which this bill is based. These amendments (1) replace the word “resident” with “occupant” in the new paragraph (3) of subdivision (a); and (2) add commas before and after “without authorization” in the same paragraph.

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<sup>16</sup> *Counterman*, *supra*, 600 U.S. at pp. 74, 76.

<sup>17</sup> *Id.* at p. 75.

<sup>18</sup> *R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 382.

<sup>19</sup> *Ibid.* (internal citations omitted).

<sup>20</sup> *In re M.S.*, *supra*, 10 Cal.4th at p. 722.

<sup>21</sup> *Id.* at pp. 721-722.

6. Arguments in support

According to Todd Gloria, the Mayor of the City of San Diego and a co-sponsor of this bill:

In 2022, Attorney General Rob Bonta released the annual Hate Crime in California Report, which highlighted a 20.2% increase in hate-motivated crime events from 1,763 in 2021 to 2,120 in 2022. One area that has seen a significant rise in the past few years has been the use of hate-motivated propaganda efforts, including hate littering in the form of racist, anti-Semitic and anti-LGBTQ+ flyers, stickers, banners, graffiti and posters. Further, data collected by the Anti-Defamation League's (ADL) Center on Extremism shows a 38% increase in these incidents from the previous year, with 6,751 cases reported in 2022, compared to 4,876 in 2021. This is the highest number of white supremacist propaganda incidents ADL has ever recorded.

As a state, we must recognize that these materials are not just pieces of paper, or expression of free speech. They are direct threats placed on the personal property of targeted community members and their neighbors with the intention to harass, intimidate, and dehumanize them.

AB 3024 will make necessary improvements to existing law by strengthening the Ralph Civil Rights Act of 1976 to ensure victims are provided adequate protections against hate littering and create new legal tools to deter terrorizing activity and hold offenders accountable

**SUPPORT**

Mara W. Elliott, City Attorney for the City of San Diego (co-sponsor)

Raul A. Campillo, Councilmember, City of San Diego (co-sponsor)

Todd Gloria, Mayor, City of San Diego (co-sponsor)

ADL

AJC California

CleanEarth4Kids.org

Democrats for Israel - California

Democrats for Israel - Los Angeles

ETTA

Hadassah

HIAS

Holocaust Museum LA

Jewish Big Brothers Big Sisters of Los Angeles

Jewish Community Federation & Endowment Fund

Jewish Community Relations Council of the Bay Area

Jewish Democratic Club of Marin



Jewish Democratic Club of Solano County  
Jewish Democratic Coalition of the Bay Area  
Jewish Family & Children’s Services of San Francisco, the Peninsula, Marin & Sonoma Counties  
Jewish Family Service LA  
Jewish Family Service of San Diego  
Jewish Federation Los Angeles  
Jewish Federation of the Greater San Gabriel and Pomona Valleys  
Jewish Long Beach  
Jewish Silicon Valley  
JFCS Long Beach and Orange County  
JPAC – Jewish Public Affairs Committee of California  
Progressive Zionists of California  
One individual

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: AB 2604 (Low, 2024) specifies that discriminatory selection of a victim of a crime because of a protected characteristic, as specified, is a type of bias motivation for purposes of determining whether a crime was committed because of a protected characteristic under the state’s hate crime statutes. AB 2604 is pending before the Assembly Public Safety Committee.

Prior Legislation:

AB 1064 (Low, 2023) would have provided that evidence that a person was motivated by bias on the basis of a protected characteristic, for purposes of the state’s hate crime statutes, could include specified attitudes and mental states. AB 1064 was held in the Assembly Appropriations Committee.

AB 2282 (Bauer-Kahan, Ch. 397, Stats. 2022) brought into conformity the penalties for the crimes of hanging a noose, displaying hate symbols (including a Nazi swastika), and burning or desecrating religious symbols, on specified property, for the purpose of terrorizing, and expanded and aligned the list of locations at which the conduct is a prohibited for each offense.

AB 1775 (Jones-Sawyer, Ch. 327, Stats. 2020) among other things, specified that intimidation by threat of violence under the Ralph Act includes knowingly or recklessly threatening to make a false claim or report to a peace officer or law enforcement agency

alleging that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention.

**PRIOR VOTES:**

Assembly Floor (Ayes 61, Noes 3)

Assembly Judiciary Committee (Ayes 10, Noes 1)

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