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STATE OF CALIFORNIA | ELECTIONS

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County Clerk/Registrar of Voters (CC/ROV) Memorandum #10179

TO: All County Clerks/Registrars of Voters

FROM: Jana M. Lean
Jana M. Lean
Chief, Elections Division

RE: Voter Registration: Use of Mobile Electronic Devices

As the Secretary of State and county elections officials have discussed, several Californians were recently offered a form via a touchscreen electronic device and told the form would enable them to register to vote. In such instances, a person wanting to register to vote entered information into a computer program and used a finger to write a signature on the screen of a mobile device. The information was sent to a third-party vendor that placed some of it – including a file representing the person's signature – onto an altered federal voter registration card (VRC) then converted the document into a portable document format (PDF) and emailed the PDF to the person wanting to register to vote, telling the person to submit the document to a county elections office.

Questions have arisen about whether this technological practice is legal under state and federal law, as well as what standards may exist to govern the practice, prevent fraud, and ensure the rights afforded to properly registered voters are not jeopardized. Vote-by-mail voting is just one right that could be threatened. For example, if a person can register to vote by using her finger on the screen of a mobile device to sign a VRC, and then she later votes by mail and signs her vote-by-mail ballot using a pen on a paper envelope, there is a greater likelihood that those two signatures would not match than for two pen-and-ink signatures (the signature on the vote-by-mail envelope and the signature on the voter's registration record) to not match. As a result, technology that is intended to help people register to vote could prevent them from having their legally cast ballots accepted by county elections officials.

It is clear the law does not provide a framework for accepting an electronic file capturing a person's finger signature on a mobile touchscreen device as a valid signature on election-related materials.

- The California Legislature has set forth numerous requirements for people who register voters and for elections officials who must determine whether VRCs comply with the law. The Legislature, when establishing the legal framework for voter

registration, has never contemplated the types of technologies and software that have recently come to market, as the entire structure is built on the presumption that a pen and paper will be used by a person to officially register to vote. California Elections Code section 2196, created in 2008, is the lone exception to this structure and is key evidence of the Legislature's intent. It states that, notwithstanding any other provision of law, an affidavit of voter registration can be electronically submitted to the Secretary of State's office only after California has a statewide voter registration database in compliance with the federal Help America Vote Act (HAVA), and only if it uses the signature on a person's California driver license or identification card that is on file with the State Department of Motor Vehicles.

- Under state and federal law the form of the federal VRC may not be altered. The form of federal VRCs that the third-party vendor used (as described above) has been altered in five locations, a violation of Elections Code sections 2162(a) and 2162(b), and sections 303(b)(4)(A) and 303(b)(4)(B) of HAVA.
- It appears the facsimile signatures on the altered VRCs have been altered. The facsimile signatures seem to have been reduced in size from the original signing action on mobile touchscreen devices, and some of the facsimile signatures appear to be cut off along the bottom.

The Secretary of State's office supports improving and simplifying the voter registration process both to modernize it and make it work better for everyone involved in the process. However, accommodating a new form of technology such as mobile touchscreen devices requires the Legislature and the Governor to change the law. Any such changes in this area will undoubtedly raise complex public policy questions involving security, privacy, budgetary and infrastructure issues, which is why the Secretary of State's office believes the Legislature is the appropriate venue for resolving these issues. If you have any questions, please feel free to contact me at Jana.Lean@sos.ca.gov or (916) 653-5144.