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February 3, 2022

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22024

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson
Elections Counsel

RE: Emergency Regulations: Notices Regarding Prohibition of Electioneering
and Corruption of the Voting Process

The Secretary of State is proposing to adopt emergency regulations regarding providing public notices for electioneering and corruption of the voting process. The regulations are required by Senate Bill 35 (SB 35, Chapter 385 of the Statutes of 2021).

As required by SB 35, the Secretary of State is to draft regulations for notices regarding the prohibitions on electioneering and regarding the prohibitions on activity relating to corruption of the voting process.

Notice period:

This notice period will run from February 3, 2022, through February 10, 2022. At the end of the notice period, the Secretary of State will submit the required documents to the Office of Administrative Law for the adoption of these emergency regulations.

A copy of the notice and the proposed text of the regulations are attached to this memorandum and are available on the Secretary of State's website at <https://www.sos.ca.gov/administration/regulations/proposed-regulations>

If you have any questions, please feel free to contact Robbie Anderson at aanderso@sos.ca.gov or Raj Bathla at rbathla@sos.ca.gov. Thank you.

**California Secretary of State
Proposed Emergency Regulatory Action:
Notices Regarding Prohibition of Electioneering and
Corruption of the Voting Process
Finding of Emergency**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. (1 California Code of Regulations, Section 48.)

INFORMATIVE DIGEST AND STATEMENT OF EMERGENCY

These emergency regulations avoid serious harm to the public peace, health, safety, and general welfare by providing newly-required notices designed to protect the integrity of the voting process.

On January 1, 2021, Senate Bill 35 (SB 35, Chapter 318 of the Statutes of 2021) became law. Amongst other things, SB 35 requires the Secretary of State to promulgate regulations for notices regarding the prohibitions on electioneering and regarding the prohibitions on activity relating to corruption of the voting process. While SB 35 does not provide a timeframe for when these regulations are to be promulgated, the Secretary of State has determined that it is imperative to have the notices available and provided to the public prior to the June 7, 2022, Statewide Direct Primary Election.

The proposed regulations provide information on how and where county elections officials and the Secretary of State are to provide the notice, and also the language that the notices are to require. The language of the notices is provided to ensure that all California voters are receiving the same messages on the prohibitions of electioneering and corruption of the voting process.

There is insufficient time to promulgate these regulations and have them effective in time for the Secretary of State and county elections officials to include the notices in their respective voter information guides.

These emergency regulations are necessary to make sure that voters, interested persons, and members of the public are fully aware of activities that are not allowed during an election, with the intent to retain the integrity of the voting process.

Regulatory Compatibility

The Secretary of State has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Secretary of State has concluded that these are the only regulations that concern notices regarding the prohibition of electioneering and corruption of the voting process in California.

Local Mandate Determination

Mandate on local agencies or school districts: None

Estimate of Cost Savings

Cost savings to any state agency: None

Reimbursable cost to any local government agencies: None

Nondiscretionary cost or savings to local government agencies: None

Cost or savings in federal funding to the state: None

NECESSITY STATEMENT

These proposed regulations are necessary to ensure that voters, interested persons, and members of the public are fully aware of activities that are not allowed during an election, with the intent to retain the integrity of the voting process.

AUTHORITY AND REFERENCE

Section 12172.5, Government Code; and Sections 10, 18372 and 18504, Elections Code.
Reference: Section 3025, Elections Code.

DOCUMENTS RELIED UPON

Senate Bill 35 (Chapter 318 of the Statutes of 2021)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB35

**California Secretary of State
Proposed Emergency Regulatory Action:
Notices Regarding Prohibition of Electioneering and
Corruption of the Voting Process
Proposed Regulation Text**

Title 2. Administration
Division 7. Secretary of State
Chapter 3.7 Voting Locations

Article 1. Notices Regarding Prohibition of Electioneering and Corruption of the Voting Process

20180. Providing Notice on Electioneering

- (a) A person may not engage in electioneering, as defined in Elections Code section 319.5. If a person does engage in electioneering, that person may be subject to the penal provisions provided in Elections Code section 18370. To ensure that voters, interested persons, and members of the public are aware of the prohibition of electioneering and its related penalties, elections officials must provide public notice.
- (b) The Secretary of State shall provide notice to the public as follows:
- (1) Posting conspicuously on the Secretary of State’s internet website.
 - (2) Including the notice in the state voter information guide.
- (c) County elections officials shall provide notice to the public as follows:
- (1) Posting conspicuously on the county elections official’s internet website.
 - (2) Including a notice in the county voter information guide, if that guide is provided to voters.
 - (3) Including a notice in the vote-by-mail packet sent to a voter prior to each election.
 - (4) Posting conspicuously at all buildings that contain a polling place (including an election official’s office or a satellite location) and any outdoor site (including a curbside voting area and a vote-by-mail drop box) at which a voter may cast or drop off a ballot.
- (d) The notice to the public shall be as follows:

**“WARNING:
ELECTIONEERING PROHIBITED!
Violations can lead to fines and/or imprisonment.**

WHERE:

- Within the immediate vicinity of a person in line to cast their ballot or within 100 feet of the entrance of polling place, curbside voting or drop box the following activities are prohibited.

WHAT ACTIVITIES ARE PROHIBITED:

- **DO NOT** ask a person to vote for or against any candidate or ballot measure.
- **DO NOT** display a candidate’s name, image, or logo.
- **DO NOT** block access to or loiter near any ballot drop boxes.

- **DO NOT** provide any material or audible information for or against any candidate or ballot measure near any polling place, vote center, or ballot drop box.
- **DO NOT** circulate any petitions, including for initiatives, referenda, recall, or candidate nominations.
- **DO NOT** distribute, display, or wear any clothing (hats, shirts, signs, buttons, stickers) that include a candidate’s name, image, logo, and/or support or oppose any candidate or ballot measure.
- **DO NOT** display information or speak to a voter about the voter’s eligibility to vote.

The electioneering prohibitions summarized above are set forth in Article 7 of Chapter 4 of Division 18 of the California Elections Code.”

(e) In the event the elections official does not have sufficient space on their vote-by-mail drop boxes to include the entire notice provided in section (d), the elections official, at a minimum, must include the following:

**“WARNING:
ELECTIONEERING PROHIBITED!
Violations can lead to fines and/or imprisonment.**”

For additional information on the prohibitions of electioneering, please visit our website at (insert county website address here).”

(f) The format of the notice prescribed in section (d) may be modified based upon the needs of the elections official.

*Note: Authority cited: Section 18372, Elections Code; Section 12172.5, Government Code.
Reference cited: Sections 319.5 and 18370, Elections Code.*

20181. Providing Notice on Activity Relating to Corruption of the Voting Process

- (a) A person may not engage certain activities that constitute corruption of the voting process, which are detailed in Elections Code sections 18500-18578. If a person does engage in activities that constitute corruption of the voting process, then that person may be subject to a criminal penalty. To ensure that voters, interested persons, and member of the public are aware of activities that constitute corruption of the voting process and the related penalties, elections officials must provide public notice.
- (b) The Secretary of State shall provide notice to the public as follows:
- (1) Posting conspicuously on the Secretary of State’s internet website.
 - (2) Including the notice in the state voter information guide.
- (c) County elections officials shall provide notice to the public as follows:
- (1) Posting conspicuously on the county elections official’s internet website.
 - (2) Including a notice in the county voter information guide, if that guide is provided to voters.
 - (3) Including a notice in the vote-by-mail packet sent to a voter prior to each election.
- (d) The notice to the public shall be as follows:

WARNING:
CORRUPTING THE VOTING PROCESS IS PROHIBITED!
Violations subject to fine and/or imprisonment.

WHAT ACTIVITIES ARE PROHIBITED:

- **DO NOT** commit or attempt to commit election fraud.
- **DO NOT** provide any sort of compensation or bribery to in any fashion or by any means induce or attempt to induce a person to vote or refrain from voting.
- **DO NOT** illegally vote.
- **DO NOT** attempt to vote or aide another to vote when not entitled to vote.
- **DO NOT** engage in electioneering; photograph or record a voter entering or exiting a polling place; or obstruct ingress, egress, or parking.
- **DO NOT** challenge a person's right to vote or prevent voters from voting; delay the process of voting; or fraudulently advise any person that he or she is not eligible to vote or is not registered to vote.
- **DO NOT** attempt to ascertain how a voter voted their ballot.
- **DO NOT** possess or arrange for someone to possess a firearm in the immediate vicinity of a polling place, with some exceptions.
- **DO NOT** appear or arrange for someone to appear in the uniform of a peace officer, guard, or security personnel in the immediate vicinity of a polling place, with some exceptions.
- **DO NOT** tamper or interfere with any component of a voting system
- **DO NOT** forge, counterfeit, or tamper with the returns of an election.
- **DO NOT** alter the returns of an election.
- **DO NOT** tamper with, destroy, or alter any polling list, official ballot, or ballot container.
- **DO NOT** display any unofficial ballot collection container that may deceive a voter into believing it is an official collection box.
- **DO NOT** tamper or interfere with copy of the results of votes cast
- **DO NOT** coerce or deceive a person who cannot read or an elder into voting for or against a candidate or measure contrary to their intent.
- **DO NOT** act as an election officer when you are not one.

EMPLOYERS cannot require or ask their employee to bring their vote by mail ballot to work or ask their employee to vote their ballot at work. At the time of payment of salary or wages, employers cannot enclose materials that attempt to influence the political opinions or actions of their employee.

PRECINCT BOARD MEMBERS cannot attempt to determine how a voter voted their ballot or, if that information is discovered, disclose how a voter voted their ballot.

The prohibitions on activity related to corruption of the voting process summarized above are set forth in Chapter 6 of Division 18 of the California Elections Code.”

(e) The format of the notice prescribed in section (d) may be modified based upon the needs of the elections official.

Note: Authority cited: Section 18504, Elections Code; Section 12172.5, Government Code.

Reference cited: Sections 18500, 18501, 18502, 18503, 18504, 18520, 18521, 18522, 18523, 18524, 18540, 18541, 18542, 18543, 18544, 18545, 18546, 18547, 18548, 18560, 18561, 18562, 18562.5, 18563, 18564, 18564.5, 18565, 18566, 18567, 18568, 18569, 18570, 18571, 18572, 18573, 18573.5, 18574, 18575, 18576, 18577, and 18578, Elections Code.