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County Clerk/Registrar of Voters (CC/ROV) Memorandum # 25109

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rachelle Delucchi
Elections Counsel

RE: Statewide Special Election: In-Person Voting of Vote-by-Mail Ballots;
Surrendering Vote-by-Mail Ballots

This memorandum will provide a reminder regarding in-person voting of vote-by-mail (VBM) ballots and the procedures for surrendering VBM ballots.

In-Person Voting of Vote-by-Mail Ballots

A voter may vote their VBM ballot, without the ballot identification envelope, in person at their designated polling place or at a vote center, if all of the following conditions are met:

- The precinct board or vote center election board has real-time access to the county elections official's election management system (EMS), and does both of the following:
 - Verifies that the voter has not returned a VBM ballot for that election, and
 - Changes the status of the voter in the EMS from a VBM ballot voter to an in-person voter.
- The voter provides their name, address, and signature pursuant to Elections Code section 14216.
- The county elections official has established procedures to ensure that a voter who casts a ballot pursuant to this method does not submit more than one VBM ballot without a ballot identification envelope, and the precinct board or vote center election board complies with those procedures.

(Elec. Code, § 3016.5(a).)

A VBM ballot cast pursuant to this method can be placed directly into the ballot box at the polling place or vote center.

Additionally, a ballot cast pursuant to this method shall be processed and counted in the same manner as a nonprovisional ballot cast in person at the polling place or vote center. (Elec. Code, § 3016.5(b).)

Surrendering Vote-by-Mail Ballots

This reminder of the procedures for surrendering VBM ballots is not intended to affect any process a county may have in place for the drop-off of a voted VBM ballot.

The Secretary of State issues this reminder knowing that with the availability of Section 3016.5's method of casting a ballot, many voters appearing at their designated polling place or at a vote center may choose to not use the surrender process; however, some of these voters may need to use the surrender process if they have spoiled their ballot. Additionally, voters appearing at any permanent or satellite county elections office will need to use the surrender process.

A surrendered VBM ballot is one that the voter does not intend to cast—rather the voter is returning it so they may receive a nonprovisional (also referred to as “live,” “regular,” or “polling place”) ballot. A nonprovisional ballot is one that will be placed directly into the ballot box; it will not go into a ballot identification envelope.

The process of surrendering VBM ballots and the issuance of nonprovisional or provisional ballots is provided in Elections Code sections 3015 and 3016. These code sections apply to all counties regardless of how the election is conducted.

Issuance of Nonprovisional Ballots

If a voter appears at a vote center, at their designated polling place on Election Day, or at their county elections office where voting is permitted on or before Election Day, that voter **shall be permitted to vote a nonprovisional ballot** if either of the following conditions is satisfied:

1. The voter surrenders their VBM ballot,

OR

2. The voter is unable to surrender their VBM ballot, but the precinct board, vote center election board, or elections official does all of the following:
 - Verifies that the voter has not returned their voted VBM ballot, and
 - Notates the voter's voter record to ensure that the voter's VBM ballot is not cast or tabulated after they vote at the polls.

(Elec. Code, § 3015(a).)

Any voter who properly surrenders a VBM ballot (or the voting location meets Section 3015's conditions) and is issued a nonprovisional ballot, must sign the roster/index/electronic poll book or any roster supplement. (Elec. Code, §§ 14105(a), 14107, 14109, 14216.)

Section 3015 does not require a voter to surrender their VBM ballot envelope in order to receive a nonprovisional ballot. Section 3015 only requires the surrender of "vote by mail voter ballots." Requiring a voter to surrender their VBM ballot envelope along with their VBM ballot to receive a nonprovisional ballot is contrary to the provisions of Section 3015.

To ensure that a voter who has surrendered their VBM ballot is not issued multiple ballots, the following optional safeguards for the ballot auditing processes can be employed:

1. A county can consider suspending the processing of returned VBM ballots for voters who requested a replacement ballot after rosters are generated. These ballots could be separated for processing after Election Day and after the polling place voter history has been applied to the county's EMS.
2. A county can work with their EMS vendor to add a notation on the roster that is sent to the polls to indicate that a voter was issued multiple VBM ballots. If the voter cannot surrender *both (or all)* of the ballots that were issued to them, the county must require the voter to vote provisionally, unless the specified conditions apply.

Issuance of Provisional Ballots

A voter **shall be issued a provisional ballot**, in accordance with Section 14310, if:

The voter is unable to surrender their vote-by-mail ballot, and

1. The precinct board, vote center election board, or elections official cannot:
 - Verify if the voter has returned their voted VBM ballot, and
 - Notate the voter's voter record accordingly.

OR

2. The precinct board or elections official cannot readily determine if the voter is in the correct polling location.

(Elec. Code, §§ 3016, 14310(f).)

Additionally, voters who appear at a satellite location, and wish to surrender their VBM ballot or are unable to surrender their VBM ballot, must be issued a provisional ballot. (Elec. Code, § 3018(c).)

Vote Center Counties: Suggested Reminder for Election Workers

You may wish to provide to your vote center workers the following information regarding provisional ballots:

As a vote center worker, you have a duty to assist in the administration of the election. You should *never* turn away a voter from the vote center. A voter *always* has the right to cast a ballot, although scenarios will arise where a voter may not be able to cast a nonprovisional ballot (a ballot that goes directly into the ballot box) and they will be required to vote a provisional ballot (a ballot that goes into an envelope).

A provisional ballot is used in a polling location when:

- A voter's name does not appear on any of the roster lists provided.
 - In this instance, the voter can conditionally register to vote (CVR) and vote a CVR provisional ballot (unless "Instant" CVR is available).
- A voter's name (unless it is a changed surname) or address is different than that listed on the roster lists.
 - In this instance, the voter can conditionally re-register to vote and vote a CVR provisional ballot (unless "Instant" CVR is available).
 - Note: If the voter's address is different, but within the county, the voter can be offered a "Change of Political Party/Change of Address" form to update their address.
- A voter is challenged by a member of the election board (not by a member of the public), and the challenge is not resolved in their favor.
- A voter's voter record indicates that they have already cast a ballot.

Polling Place Counties: Suggested Reminder for Poll Workers

You may wish to provide to your poll workers the following information regarding provisional ballots:

As a poll worker, you have a duty to assist in the administration of the election. You should *never* turn a voter away from the polls. A voter *always* has the right to cast a ballot, although scenarios will arise where a voter may not be able to cast a nonprovisional ballot (a ballot that goes directly into the ballot box) and they will be required to vote a provisional ballot (a ballot that goes into an envelope).

A provisional ballot is used in a polling place when:

- A voter's name does not appear on any of the roster lists provided.
 - In this instance, the voter can conditionally register to vote (CVR) and vote a CVR provisional ballot (unless "Instant CVR" is available).
 - A voter's name (unless it is a changed surname) or address is different than that listed on the roster lists.
 - In this instance, the voter can conditionally re-register to vote and vote a CVR provisional ballot (unless "Instant CVR" is available).
 - Note: If the voter's address is different, but within the county, the voter can be offered a "Change of Political Party/Change of Address" form to update their address.
 - A voter is challenged by a member of the precinct board (not a member of the public), and the challenge is not resolved in their favor.
 - A voter is at the wrong precinct and their ballot is not available at your location, but the voter still wants to vote at this polling site.
 - A voter wants to vote at this precinct, but cannot surrender their vote-by-mail ballot, and your location
 - cannot verify if the voter has already returned their voted vote-by-mail ballot and cannot notate the voter's voter record accordingly.
- OR**
- cannot determine if the voter is in the correct polling location.

If you have any questions, please feel free to contact Rachelle Delucchi at rdelucch@sos.ca.gov or Robbie Anderson at aanderso@sos.ca.gov. Thank you.