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County Clerk/Registrar of Voters (CC/ROV) Memorandum #26085

TO: All County Clerks/Registrars of Voters

FROM: /s/ Steve Reyes
Chief Counsel, Secretary of State

RE: Preservation of Election Materials

The Secretary of State's office has received questions about the retention of material for federal as well as state elections. These questions have recently come about based on a form letter some counties have received from a third party containing specific demands that: 1) county elections officials indefinitely preserve election records for the November 5, 2024, Presidential Election and the November 4, 2025, Statewide Special Election; and 2) that county sheriffs commence investigations related to alleged "irregularities" in those elections.

It is our assessment that the demands and requests included in these letters do not provide any legal basis to preserve or unseal election records beyond what is authorized by state or federal law. The letter seeks preservation of records pursuant to 52 U.S.C. section 20701, a provision exclusively for the United States Attorney General to obtain records, not any other party, such as a sheriff or third-party organization. (See §§ 20703, 20704.).

Further, the demands do not provide any statutory authority or basis for indefinite records preservation or any investigative action. Likewise, demands or requests to *retain* a specified list of documents cannot be construed as a Public Records Act request which may otherwise necessitate a required response asserting privileges, exemptions or otherwise.

Attached to this this advisory are two charts outlining the California Elections Code retention requirements for the materials that must be preserved for federal elections and for state elections, the applicable retention period, and the applicable destruction requirements. This advisory also provides the exceptions to those destruction requirements.

The overwhelming majority of election materials identified in the California Elections Code sections, absent very specific and narrow additional circumstances, must remain sealed and shall be destroyed at the end of the retention period. State law does not authorize any discretion in the retention of these materials beyond statutory deadlines.

In *Citizens' Oversight, Inc. v. Vu* (2019) 35 Cal.App.5th 612, the California Court of Appeal commented on the protections afforded voted and counted ballots: "The Legislature specified in clear language that after being counted, ballots "shall be kept ... *unopened and unaltered*." (§ 17301, subd. (b), emphasis added.) Further, "[a]fter ballots are counted and sealed, the elections official *may not open any ballots nor permit any ballots to be opened*." (§ 15370, emphasis added.)" (*Id.* at pp. 618, 619.) The *Citizens' Oversight* ultimately upheld a lower court ruling concluding that ballots cast in the 2016 presidential election were exempt from disclosure under the Public Records Act based on prohibitions specified in the Elections Code. (See, Elections Code § 15370 prohibiting sealed ballots to be opened.)

APPLICABLE RETENTION PERIODS

- The 22-month retention period for the March 5, 2024, Presidential Primary Election ended on January 4, 2026.
- The 22-month retention period for the November 5, 2024, Presidential General Election ends on September 5, 2026.
- The 6-month retention period for the November 4, 2025, Statewide Special Election, ends on May 4, 2026.

DESTRUCTION OF MATERIALS/EXCEPTIONS

The attached charts describe the mandatory and discretionary destruction requirements for various types of election materials. The respective Elections Code sections also describe the types of exceptions to mandatory or discretionary destruction or materials following the end of the retention period.

Generally, based on these Elections Code sections, materials cannot be destroyed if one of two circumstances exist:

1. An election contest **is commenced** within the applicable retention period; and/or
2. A criminal prosecution **is commenced within the applicable retention period, and that prosecution involves** fraudulent use, marking or falsification of ballots, or forgery of vote-by-mail voters' signatures.

Our office is unaware of any election contests that have been commenced within the applicable 22-month or 6-month periods.

OTHER CONSIDERATIONS

Your office may be subject to other actual election-related litigation that may or may not impact the retention and destruction requirements referenced above. As such, you should consult with your county counsel if you have questions related to the impact of any such litigation, or generally, to the retention or destruction of various materials.

If your county would like additional guidance specific to an inquiry or demand not addressed herein, please reach out to our office.

Attachments

Chart for Federal Election Materials: Retention and Destruction

Chart for State Election Materials: Retention and Destruction

Federal Election Materials: Retention and Destruction

FEDERAL ELECTIONS

President, Vice President, United States Senator, and United States Representative

Materials to be Retained	Code Section	Retention Period	Destruction Requirements
Voted polling place ballots Paper cast vote records, as defined by Sections 305.5 and 19271 Voted vote-by-mail voter ballots Vote-by-mail voter identification envelopes Voted provisional voter ballots Voted conditional voter registration ballots Provisional ballot voter identification envelopes, including conditional voter registration voter identification envelopes cast pursuant Section 2170(e) Spoiled ballots Canceled ballots Unused vote-by-mail ballots surrendered by the voter pursuant to Section 3015	17301	22 months MATERIALS MUST REMAIN SEALED	Mandatory destruction (at end of retention period)
Two tally sheets Challenge lists Assisted voters' lists	17303	22 months Packages of materials must be preserved (voters may inspect these materials)	Discretionary destruction (at end of retention period)
Sealed ballot Container of items listed in Section 17301	17305	22 months CONTAINERS MUST REMAIN SEALED	Mandatory destruction (at end of retention period)
All voting system electronic data All ballot on demand system electronic data, if applicable All adjudication electronic data All remote accessible vote by mail system electronic data, if applicable All electronic poll book electronic data, if applicable HASH values taken from voting technology devices, if applicable All ballot images	17601	22 months	Mandatory destruction (at end of retention period)

State Election Materials: Retention and Destruction

STATE ELECTIONS

Elections that are not provided for in Sections 17301(a), 17303(a), 17305(a), and 17601(a)

Materials to be Retained	Code Section	Retention Period	Destruction Requirements
<p>Voted polling place ballots</p> <p>Paper cast vote records, as defined by Sections 305.5 and 19271</p> <p>Voted vote-by-mail voter ballots</p> <p>Vote-by-mail voter identification envelopes</p> <p>Voted provisional voter ballots</p> <p>Voted conditional voter registration ballots</p> <p>Provisional ballot voter identification envelopes, including conditional voter registration voter identification envelopes cast pursuant to Section 2170(e)</p> <p>Spoiled ballots</p> <p>Canceled ballots</p> <p>Unused vote-by-mail ballots surrendered by the voter pursuant to Section 3015</p>	17302	<p>6 months</p> <p>MATERIALS MUST REMAIN SEALED</p>	<p>Mandatory destruction (at end of retention period)</p>
<p>Two tally sheets</p> <p>The copy of the roster used as the voting record. If an electronic poll book is used, a copy of the electronic data file may be preserved in lieu of creating a paper copy</p> <p>Challenge lists</p> <p>Assisted voters' list</p>	17304	<p style="text-align: center;">6 months</p> <p>Packages of materials must be preserved (voters may inspect these materials but may not copy or distribute materials with signatures)</p>	<p>Discretionary destruction (at end of retention period)</p>
<p>Sealed ballot container of items listed in Section 17302</p>	17306	<p>6 months</p> <p>CONTAINERS MUST REMAIN SEALED</p>	<p>Mandatory destruction (at end of retention period)</p>
<p>All voting system electronic data</p> <p>All ballot on demand system electronic data, if applicable</p> <p>All adjudication electronic data</p> <p>All remote accessible vote by mail system electronic data, if applicable</p> <p>All electronic poll book electronic data, if applicable</p> <p>HASH values taken from voting technology devices, if applicable</p> <p>All ballot images</p>	17602	<p>6 months</p>	<p>Mandatory destruction (at end of retention period)</p>