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County Clerk/Registrar of Voters (CC/ROV) Memorandum # 26126

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rachelle Delucchi
Elections Counsel

RE: Primary Election: Unauthorized Ballot Drop Boxes and Ballot Return Requirements

This memorandum will serve as a reminder of state law regarding unauthorized, non-official vote-by-mail (VBM) ballot drop boxes. In short, providing unauthorized, non-official VBM ballot drop boxes with the intent to deceive a voter into casting a ballot in an unofficial ballot box is prohibited by state law.

Summary

In past elections, our office was made aware of unauthorized, non-official VBM ballot drop boxes being used or having been proposed to be used at local political party offices, candidate headquarters, and/or churches. Past examples provided to our office included descriptions of boxes or containers labeled “ballot drop box,” while others were designated misleadingly as “official ballot drop box.”

State law prohibits the use of unauthorized, non-official VBM ballot drop boxes if they are presented in a way that makes the ballot drop box appear as an official drop box provided by the county elections office and would thereby deceive a voter into casting a ballot into an unauthorized, non-official ballot box.

County elections officials alone have the authority to designate the location, hours of operation, and number of drop boxes in the county, and have the responsibility for ensuring compliance with all applicable statutes and regulations that guarantee the security and chain of custody of VBM ballots deposited.

Moreover, the use of unauthorized, non-official VBM ballot drop boxes may not comply with state law governing ballot return requirements. In some circumstances, providing

any unauthorized, non-official VBM ballot drop box may constitute a violation of Elections Code sections 18569 and 18575 and other laws, potentially resulting in criminal penalties.

Authorized Methods for Return of VBM Ballots

Elections Code section 3017 establishes how voted VBM ballots may be returned. The voter may:

- Return the ballot by mail or in person to the elections official who issued the ballot.
- Return the ballot in person to a member of a precinct board at a polling place or vote center within the state.
- Return the ballot to a VBM ballot drop-off location within the state that is provided pursuant to Elections Code section 3025 or 4005.

Additionally, Elections Code sections 3011(a)(9) and 3017 govern the situation where a voter entrusts their voted ballot to another person.

A person to whom a voter entrusts their VBM ballot to return to the county elections official must include their name and signature on the ballot return envelope as the person authorized to return the ballot pursuant to Section 3017. (Elec. Code, § 3011(a)(9).)

Section 3017(a)(2) states, in full:

A vote by mail voter who is unable to return the ballot may designate another person to return the ballot to the elections official who issued the ballot, to the precinct board at a polling place or vote center within the state, or to a vote by mail ballot dropoff location within the state that is provided pursuant to Section 3025 or 4005. The person designated shall return the ballot in person, or put the ballot in the mail, no later than three days after receiving it from the voter or before the close of the polls on election day, whichever time period is shorter. Notwithstanding subdivision (d), a ballot shall not be disqualified from being counted solely because it was returned or mailed more than three days after the designated person received it from the voter, provided that the ballot is returned by the designated person before the close of polls on election day.

For ballots dropped off in unauthorized, non-official drop boxes, in order to be compliant with state law, the person(s) receiving and returning those ballots to the county elections officials must provide their name and signature on the ballot return envelopes, and they must return the VBM ballots to the county elections official within the required time period. (Elec. Code, §§ 3011(a)(9), 3017.)

VBM Ballot Drop Boxes and Drop-off Locations

The following statutory and regulatory references are only a few of the numerous official VBM ballot drop box requirements that are designed to ensure the safety and security of

these ballots. The Elections Code additionally provides for the VBM ballot retrieval chain of custody requirements and voter notification requirements.

Elections Code section 3025(a)(1) specifically defines what constitutes a VBM ballot drop box. A VBM ballot drop box means “a secure receptacle established **by a county or city and county elections official** whereby a voted vote by mail ballot may be returned to the elections official from whom it was obtained.” (Emphasis added.)

Additionally, Section 3025(a)(2) describes a VBM ballot drop-off location as “a location consisting of a secured vote by mail ballot drop box at which a voted vote by mail ballot may be returned to the elections official from whom it was obtained.”

The regulations promulgated by the Secretary of State’s office provide extensive requirements for the design, use, and security of VBM ballot drop boxes. (See generally, Cal. Code Regs., tit. 2 §§ 20130 - 20138.) These requirements include, but are not limited to, the following:

- Required construction from durable material able to withstand vandalism, removal, and inclement weather and with specific design and function requirements.
- Staffed and unstaffed drop boxes must have an opening slot that is not large enough to allow ballots to be tampered with or removed.
- Drop boxes must have a secure ballot container placed within the drop box that would provide physical evidence if unauthorized access has taken place.
- Each drop box must use a unique identifying number that is readily identifiable to the designated county ballot retrievers.
- Must be clearly and visibly marked as an “Official Ballot Drop Box” and include all required information in various languages required by state and federal law.
- VBM ballot drop boxes must comply with accessibility requirements.

(Cal. Code Regs., tit 2, §§ 20132, 20134.)

County elections officials determine the number, location, and hours of operation of all VBM ballot drop boxes based on various criteria and detailed chain of custody requirements for retrieval of ballots by authorized county authorized persons. (Cal. Code Regs., tit. 2, §§ 20133, 20135, 20136.)

Ballot drop boxes, both staffed and unstaffed, have a number of security requirements in addition to those referenced above, including:

- Unstaffed drop boxes placed outdoors must be securely fastened in a manner as to prevent moving or tampering, for example, fastening the drop box to concrete or an immovable object.
- Unstaffed drop boxes placed inside a building shall be secured in a manner that will prevent unauthorized removal.

- Staffed drop boxes must be utilized by securely fastening it to a stationary surface or to an immovable object, placing it behind a counter, or making it portable so it can be transported to a curbside area or a mobile voting area.
- Staffed drop boxes must be placed in an area that is inaccessible to the public and/or otherwise safeguarded during the hours the drop box is not in use.
- Drop boxes shall be monitored by a video security surveillance system or an internal camera that can capture digital images and/or video, if feasible.
- Drop boxes must be secured by a lock or sealable with a tamper-evident seal. Only an elections official and designated county elections office ballot retrievers shall have access to the keys and/or combination of the lock.

(Cal. Code Regs., tit. 2, § 20135.)

The use of unauthorized, non-official VBM ballot drop boxes would be misleading to the public and could result in confusion and a perceived lack of transparency on behalf of county elections officials.

Criminal Penalties

Under Elections Code section 18568, every person is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or by both that fine and imprisonment, who:

- (g) Displays a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Evidence of intent to deceive may include using the word “official” on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.
- (h) Directs or solicits a voter to place a ballot in a container prohibited by subdivision (g).

In addition to the prohibition of providing non-official VBM ballot drop boxes with the intent to deceive a voter into casting a ballot in an unofficial ballot box, any person (not including county or state elections officials) providing a drop box, whether or not it is identified as “official” or “unofficial,” may be in violation of Elections Code sections 18569 and 18575, which state:

18569. Every person who aids or abets in the commission of any of the offenses mentioned in Section 18566, 18567, or 18568 is punishable by imprisonment in the county jail for the period of six months or in the state prison for 16 months or two or three years.

18575. Every person is guilty of a felony, and on conviction shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three or four years, who at any election:

(a) Without first having been appointed and qualified, acts as an election officer.

(b) Not being an election officer, performs or discharges any of the duties of an election officer in regard to the handling, counting, or canvassing of any ballots.

Accordingly, providing any unauthorized, non-official VBM ballot drop box may constitute a violation of Elections Code sections 18569 and 18575 and other laws.

Notification and Announcements

Our office will provide a copy of this memorandum to all qualified state political parties advising them that providing non-official VBM ballot drop boxes with the intent to deceive a voter into casting a ballot in an unofficial ballot box is prohibited and encouraging them to send this information to their local affiliates.

Additionally, all public service announcements and official information from state and county elections officials should advise and direct voters to visit caearlyvoting.sos.ca.gov in order to find official VBM ballot drop boxes and early voting locations.

If you have any questions about this memorandum, please contact me at rdelucch@sos.ca.gov or Robbie Anderson at aanderso@sos.ca.gov.