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ELECTIONS DIVISION

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October 6, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20236

TO: All County Clerks/Registrars of Voters

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

RE: General Election: Voter Intimidation; Prohibited Voter Challenges

Summary

This memorandum addresses recent inquiries requesting clarification regarding laws, practices, and procedures related to voter intimidation at polling locations, challenges to voters at polling locations or during the vote by mail/provisional ballot processing period and electioneering. This memorandum also provides recommendations related to reporting voter intimidation incidents to our office. While many of the activities referenced below may constitute violations of federal law, this memorandum focuses on state law.

Election observers are welcome to observe in-person voting and other activities and their presence is authorized by law. Those who avail themselves of observation activities must, however, not engage in any prohibited activity.

Election Activities that May be Vulnerable to Intimidation

Voting: Voter intimidation is illegal and is a serious offense. It is a felony if any person “makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation” to compel any other person to vote or refrain from voting, refrain from voting for any particular person or measure at any election; or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure. (Elec. Code, § 18540.)

While such acts of voter intimidation may happen in and around a polling location (immediate vicinity), they may occur anywhere. Such acts may include, for example:

- Blocking access to voting locations
- Threatening criminal action against voters

- Presenting false information about voter eligibility requirements, including criminal consequences for voting (e.g., credit card debt, arrest warrant checks, etc.)
- Harassing or threatening behavior, including aggressive questioning of voters based on a person's race, gender identity, or aggressively questioning voters about their citizenship, criminal record, or other qualifications to vote
- Challenging voters' right to vote
- Presenting false information to voters about the voting process and requirements, including the ability to speak English, or the need to present certain types of photo identification
- Assault, battery, threats of violence, brandishing of weapons

Security Guards/Law Enforcement/Firearms: It is a felony for any person to possess a firearm at a voting location or in the immediate vicinity of a voting location. Similarly, it is illegal for any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel from being stationed at or in the immediate vicinity of a voting location. (Elec. Code, § 18544.)

Additionally, it is also a felony for any person or entity to hire or arrange for the prohibited activity in Elections Code section 18544. (Elec. Code, § 18545.)

Note: These prohibitions do not in any way prevent a law enforcement officer or an unarmed, uniformed security guard from voting. Please note the minor, but important exceptions specified in Elections Code sections 18544(b) and 18545.

Shirts, hats, or other displays that indicate a person is with "Election Security" or "Ballot Security" or apparel or accessories with any semblance of a logo or display that might be confused with any private guard or security company or government agency are prohibited. This includes observers and anyone who is not there to vote.

Ballot Collection: If a voter elects to entrust another person with returning their vote-by-mail ballot, that person is prohibited from knowingly and willingly engaging in criminal acts related to that ballot, which includes voter intimidation. Voters are not required to give their mail ballot to anyone. Voters have full control in choosing how to return their ballot. (Elec. Code, § 3019(e)(3).)

Voting Location Observation: While citizens can observe in-person voting, state law prohibits voter intimidation or security guards being stationed at polling locations. Voters have a right to cast a secret ballot free from intimidation. (Elec. Code, § 2300(a)(4).)

This right applies to all voters, whether the voter is at an in person voting location, votes by mail, or allows another person to return their vote-by-mail on their behalf.

Observer Challenges of Voters (at Voting Locations): Only a member of the precinct board (a poll worker) may challenge a voter. Elections Code section 14240(b) provides the following: “A person, other than a member of a precinct board or other official responsible for the conduct of the election, shall not challenge or question any voter concerning the voter’s qualifications to vote.” Elections Code section 18543 provides penalties for the unauthorized challenge of a voter.

Observer Challenges (During Process/Canvass Period): If an election worker (precinct board members) determines that persistent challenging of voters is resulting in a delay of voting sufficient to cause voters to forego voting because of insufficient time or for fear of unwarranted intimidation, the board shall discontinue all challenges, and so note on the roster. (Elec. Code, § 14253.)

Electioneering: Electioneering—which is defined as “the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot”—is prohibited within 100 feet of any voting locations. Our office recently issued [CCROV # 20222](#) to county elections officials relating to electioneering.

Best Practices for Handling Voter Intimidation/Disruptions

County elections officials should be prepared to handle incidents involving disruption and/or voter intimidation at the office of the elections official and/or polling locations.

Most incidents can be effectively diffused and deescalated with a calm demeanor and approach that advises persons that they are engaged in prohibited activity that violates state law. Elections staff, including poll workers, should be provided with training and procedures on what to do in the event of a voter intimidation incident, including who should be contacted. County elections officials should contact their local law enforcement, the county sheriff, and/or the California Highway Patrol (CHP) to ensure preparedness and the Secretary of State’s office to submit appropriate reports, as described below.

As a reminder the Secretary of State’s [Election Administration Guidance under COVID-19](#), provides guidance for poll workers regarding COVID-19 safety protocols including de-escalation techniques, including for persons without face coverings.

Poll Worker/Election Personnel Training: Ensure your poll workers, troubleshooters, hotline staff, and other relevant election personnel are updated and understand what types of observer activity the law protects and what it prohibits so that informed decisions can be made as potential issues arise. Ensure these personnel, know how to deescalate issues in a friendly, non- confrontational manner, when to escalate as circumstances dictate, and how to report such incidents.

Outreach to Local Law Enforcement: Many of your offices have already contacted your local law enforcement agencies to apprise them of polling and

drop box locations in the event there is a situation where law enforcement is needed. If your office has not reached out to your local law enforcement, we recommend that you do so.

Additionally, many offices have provided information to these agencies related to relevant election laws, and to encourage that police presence in and around polling locations is minimized (except to the extent such persons are voting or responding to a law enforcement call or for official business). Please note that Elections Code sections 18544 and 18545 prohibit firearms and uniformed peace officers, guards, or security personnel stationed, with minor exceptions, at or near polling locations.

Guidance for Observers: To minimize issues, we recommend providing every observer with clear, written guidelines regarding appropriate conduct as observers, including identifying their basic rights as observers and to describe compliance laws related to: 1) electioneering prohibitions; 2) COVID-19 safety and health protocols; 3) permissible activity; 4) prohibited activity, including voter intimidation and voter challenges; and 5) consequences of violation (i.e., removal, contacting appropriate authorities, etc.).

Reporting Incidents

We request that you report any known incidents of voter intimidation, disruptions, and/or examples of unauthorized challenges to voters (either at a polling location or during the vote-by-mail/provisional ballot processing period) to our office, even if resolved. Timely reporting of these types of incidents will assist our office in monitoring/tracking and taking any additional remedial steps necessary to protect voters from interference with their right to vote or other violations of federal or state laws.

How to Report: The Secretary of State has created an email address for counties to report incidents. The email address will be shared with county elections officials in a separate communication.

What to Report:

- County contact information (including phone number and email)
- Date and time of incident
- Location (precinct; name and address of voting location)
- Description of any voter intimidation activity, disruption and/or unauthorized challenge (i.e., by who; described words; conduct of activity; response/reaction of other voters)
- Whether and how issue was resolved (i.e., conversation with observer or other person; corrective action; observer or other person removed; law enforcement response required)

Secretary of State Response

Secretary of State Observers: As we do every election, our office will be deploying poll observers across the state to monitor voting. Moreover, we are aware of the events in other states, monitoring any further developments, and will take appropriate action, when necessary to ensure that Californians can exercise their right to vote free from intimidation and harassment from anyone.

Complaint Hotline: If any Californian believes their voting rights are being denied, they should contact their local county elections official or the Secretary of State's toll-free Voter Hotline at (800) 345-VOTE (8683).

Incident Response: While we expect that the majority of issues will be resolved without incident, the Secretary of State's office will be available to assist in any additionally required response; please report any incidents to the email address that will be shared directly with the counties to report incidents.

Pertinent Elections Code Sections

18502. Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

18540. (a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.
(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

18541. (a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:
(1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.
(2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.

(3) Photograph, video record, or otherwise record a voter entering or exiting a polling place.

(b) Any violation of this section is punishable by imprisonment in a county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

18542. Every employer, whether a corporation or natural person, or any other person who employs, is guilty of a misdemeanor if, in paying his or her employees the salary or wages due them, encloses their pay in pay envelopes upon which or in which there is written or printed the name of any candidate or any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of the employees.

18543. (a) Every person who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting, or who fraudulently advises any person that he or she is not eligible to vote or is not registered to vote when in fact that person is eligible or is registered, or who violates Section 14240, is punishable by imprisonment in the county jail for not more than 12 months or in the state prison.

(b) Every person who conspires to violate subdivision (a) is guilty of a felony.

18544. (a) Any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, who is stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate city or county elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) This section shall not apply to any of the following:

(1) An unarmed uniformed guard or security personnel who is at the polling place to cast his or her vote.

(2) A peace officer who is conducting official business in the course of his or her public employment or who is at the polling place to cast his or her vote.

(3) A private guard or security personnel hired or arranged for by a city or county elections official.

(4) A private guard or security personnel hired or arranged for by the owner or manager of the facility or property in which the polling place is located if the guard or security personnel is not hired or arranged solely for the day on which an election is held.

18545. Any person who hires or arranges for any other person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be

stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or in a county jail not exceeding one year, or by both that fine and imprisonment. This section shall not apply to the owner or manager of the facility or property in which the polling place is located if the private guard or security personnel is not hired or arranged solely for the day on which the election is held.

18546. As used in this article:

(a) "Elections official" means the county elections official, registrar of voters, or city clerk.

(b) "Immediate vicinity" means the area within a distance of 100 feet from the room or rooms in which the voters are signing the roster and casting ballots.

18547. (a) In addition to any other fine or penalty imposed by this article, the court may order any person convicted of violating this article to pay a restitution fine, the amount of which shall be determined by the court and be commensurate with the seriousness of the offense.

(b) The moneys derived from the fine assessed pursuant to subdivision (a) shall be deposited in the Voter Intimidation Restitution Fund, created in Section 18548.

18548. The Voter Intimidation Restitution Fund is hereby established in the State Treasury. Upon appropriation by the Legislature, moneys in the fund shall be allocated to the Secretary of State to be used in voter education campaigns addressing the specific crime committed by anyone convicted of violating this article. The funds shall also be used for the administrative costs associated with distribution of the fund.

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

Thank you.