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ELECTIONS DIVISION

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October 11, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20240

TO: All County Clerks/Registrars of Voters
FROM: /s/ Jana M. Lean
Chief, Elections Division
RE: General Election: Unauthorized Ballot Drop Boxes

This memorandum will serve as a clarification of state law regarding the provision of unauthorized, non-official vote-by-mail ballot drop boxes. In short, providing unauthorized, non-official vote-by-mail ballot drop boxes is prohibited by state law.

Summary

Our office has been made aware of unauthorized, non-official ballot drop boxes being used or having been proposed to be used at local political party offices, candidate headquarters, and churches throughout the state. Examples provided to our office include boxes or containers labeled simply as “ballot drop boxes,” while others have been designated misleadingly as “official ballot drop boxes.”

State law does not authorize the use of unauthorized, non-official vote-by-mail ballot drop boxes. 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 vote-by-mail ballots deposited.

Moreover, the use of unauthorized, non-official vote-by-mail ballot drop boxes does not comply with state law governing ballot collection activities.

Overview of Relevant Vote-by-Mail Ballot Legal Authority

Authorized Methods for Return of Vote-by-Mail Ballots

California Elections Code section 3017 establishes the means by which voted vote-by-mail ballots can 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 vote-by-mail ballot drop-off location within the state that is provided pursuant to Elections Code section 3025 or 4005.
- Designate a 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 drop-off location within the state that is provided pursuant to Section 3025 or 4005.

Ballot Collection Requirements

Elections Code sections 3011(a)(9)-(11) and 3017 govern ballot collection.

Pursuant to Elections Code section 3011(a)(11), a person to whom a voter entrusts their vote-by-mail ballot to return to the county elections official must include their signature on the return vote-by-mail envelope as the person authorized to return the ballot. That individual is also required to provide their name and relationship to the voter. (Elec. Code, § 3011(a)(9)-(11).)

When a voter drops off a ballot in an unauthorized, non-official vote-by-mail drop box, no designated “person” would be signing, as required by state law. A person designated by the voter to return their vote-by-mail ballot envelope to the county elections official within the required time period by law, must provide their name, signature and relationship to the voter. (Elec. Code, § 3011(a)(11).)

Additionally, 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 drop-off 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.

Official Vote-by-Mail Ballot Drop Boxes

The following references are only a few of the numerous official vote-by-mail ballot drop box requirements that are designed to ensure the safety and security of vote-by-mail ballots. They additionally provide the vote-by-mail ballot retrieval chain of custody requirements and voter notification requirements.

Elections Code section 3025(a)(1) specifically defines what constitutes a “vote-by-mail ballot drop box.” A vote-by-mail 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 “vote-by-mail 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 vote-by-mail 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.
- Vote-by-mail 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 vote-by-mail 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.)

Vote-by-mail 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.)

Additionally, all public service announcements and official information from state and county elections officials advise and direct voters to visit "caearlyvoting.sos.ca.gov," in order to find official vote-by-mail ballot drop boxes and early voting locations. The use of non-official vote-by-mail 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

In addition to the prohibition of providing non-official vote-by-mail ballot drop boxes, 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 section 18575, which states:

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 or non-official vote-by-mail ballot drop box may constitute a violation of Elections Code section 18575 and other laws.

Notification

Our office will send a notice, and a copy of this memorandum, to all recognized state political parties advising them that providing non-official vote-by-mail ballot drop boxes is prohibited and encouraging them to send this information to their local affiliates.

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.