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County Clerk/Registrar of Voters (CC/ROV) Memorandum # 25106

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson
Elections Counsel

RE: Statewide Special Election: REVISED - Challenge Processes

This memorandum revises an earlier version published on September 17, 2025, and is intended to address potential pre-election challenges by members of the public and provide an overview and a reminder of the challenge process during the conduct of an election (at the polls and during the processing of vote-by-mail ballots).

Previous Voter Roll Challenges

State and federal law dictate how the Secretary of State and county election officials maintain voter rolls, including the removal of voters. (See, generally, 52 U.S.C. §§ 20501 to 20511 and Elec. Code, §§ 2000-2227.)

As required by state and federal law, the Secretary of State and county election officials diligently maintain California's voter rolls using the most recent data available from various government agencies ("VoteCal data").

In recent years, several county elections offices received massive voter challenge lists from members of the public seeking to remove thousands of people from the voter rolls. Those communications included requests to county elections offices to review their official voter rolls, which are confidential and not subject to public record act requests, against their list of voters being challenged. Those communications also included demands for the immediate removal of voters they had identified.

There are many issues regarding such challenges. First, the publicly available State and county voter rolls do not include all of the VoteCal data, as it is unlawful for the public to have access to certain types of data. (See, Gov. Code § 7924.000.) VoteCal

data includes other voter record matching criteria found in a voter's confidential voter file, such as a Social Security Number, a California Driver's License number, a California Identification Card number, and uniquely assigned voter identification numbers. The publicly available State or county voter roll data is prohibited from including this information. Second, the voter roll data used by proprietary computerized data-matching programs (such as IV3, EagleAI, and i360) using unknown methodologies and datasets can be outdated, sometimes as old as six months – in marked contrast to the daily VoteCal data updates that occur throughout the state. Third, California relies on a more robust set of data to maintain voter files – including regular updates from the California Department of Corrections and Rehabilitation, the California Department of Public Health, the California Employment Development Department, and the California Department of Motor Vehicles. As a result, many of the lists of challenged voters provided to State and county election officials included active voters and already-cancelled voters.

Additionally, it is unlawful for unauthorized persons to possess or use voter file data. The use of unlawfully obtained voter registration data is a misdemeanor. (Elec. Code, § 18109.) The knowing use of fraudulent or spurious data to challenge a person's voter registration and the mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting are punishable as felonies. (Elec. Code, § 18543.)

Moreover, the National Voter Registration Act ("NVRA") governs the manner and timing of removing a person's name from voter registration rolls. (See 52 U.S.C. § 20507). As stated in United States Department of Justice ("U.S. DOJ") NVRA list maintenance guidance, in addition to a state or county's regular list maintenance programs, a registrant may seek removal of their own name from the voter rolls. (See United States Department of Justice: Civil Rights Division, "Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507" ("Guidance document"), available at <https://www.justice.gov/crt/nvra-list-maintenance-guidance>, Sept. 2024).

Third-Party Challenges/Submissions

The previously received mass challenges of voter eligibility were issued by third-party individuals or organizations.

With respect to challenges made by third parties, the U.S. DOJ, in their Guidance document, states, "A 'removal at the request of the registrant' under the NVRA requires first-hand action by a registrant ... [¶] **Information submitted by a third party does not constitute a "removal at the request of the registrant."**" (Emphasis in original.)

Furthermore, the U.S. DOJ's guidance cautions that certain types of list maintenance activities may violate the NVRA:

Examples of list maintenance activities that may violate the NVRA include comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth. **The prohibitions of the NVRA extend to any list maintenance activity based on third-party submissions.** (Emphasis in original.)

Changes of Residence Outside of the Jurisdiction

The NVRA contains specific safeguards designed to protect voters from improper voter purges. The U.S. DOJ provides a reminder of the NVRA's rules regarding address changes. For instance, a voter may be removed from the voter rolls due to a change in their residential address outside of the jurisdiction only after providing written confirmation of the move, or if an NVRA 8(d)(2) notice, which includes all required language advising the voter that they will be removed if they do not vote in two subsequent federal elections, is sent to the voter and they do not vote during that time frame.

With respect to a voter's written confirmation, the U.S. DOJ's guidance notes that: **"A third-party submission—such as a submission of another individual's information via an online portal or a challenge based solely on public database information—is not confirmation by the registrant of a change of address."** (Emphasis in original.)

In Conclusion and as a Reminder

The previously submitted mass challenges were not authorized by statute. First, those requests for removal were not being made by the registrants themselves, but instead submitted by third-parties. Second, those voter challenge efforts relied on computerized data-matching processes (such as IV3, EagleAI, and i360) using unknown methodologies and datasets. Third, those voter challenge efforts relied on very outdated state or local voter file data. Many counties reviewed some of the challenged voter records and found that they contained significant errors. Acting upon those challenge requests would have disenfranchised voters and could have subjected (requestors) and counties to liability.

Polling Place Challenges

Elections Code section 338.5 provides that the term “polling place” means a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center. A polling place can serve more than one precinct. It should be noted that “polling place” would include a vote-by-mail ballot drop-off location and a vote-by-mail ballot drop box.

Elections Code sections 14240 through 14253 detail the procedures for a member of the precinct board to challenge a voter’s qualifications at a polling place.

Precinct board and precinct board member are defined in Elections Code section 339 as follows:

- (a) “Precinct board” is the board appointed by the elections official to serve at a single precinct or a consolidated precinct. In an election conducted using vote centers, “precinct board” means the board appointed by the elections official to serve at a vote center.
- (b) “Precinct board,” when used in relation to proceedings taking place after the polls have closed, likewise includes any substitutive canvassing and counting board that may have been appointed to take the place of the board theretofore serving.
- (c) “Precinct board member” is a member of the precinct board and includes an election officer.

Section 14240(a) clearly provides that only a member of the precinct board, and not any other person, can challenge a voter’s qualification at a polling place. Section 14240(a) reads, in part, as follows:

A person offering to vote may be orally challenged within the polling place only by a member of the precinct board upon any or all of the following grounds...

Section 14216(a) provides that challenge may be made in the event a voter is unable to sign the roster and has their name signed by another person on the roster.

For challenges made at a polling place, the precinct board is required compile and maintain a list of challenges. (Elec. Code, § 14252.)

While only a member of the precinct board can make a challenge to a voter’s qualification at a polling place, there is a provision that allows individuals to provide a document or list to the precinct board concerning the residence or other voting qualifications of any person(s). Elections Code section 14240(c) allows for such an action. If such a list is provided, the precinct board member shall first determine whether the provided list or documentation contains or is accompanied by evidence that constitutes probable cause to justify or substantiate a challenge. Whether or not

sufficient evidence has been provided, the precinct board member must contact the elections official immediately for further action.

If a voter is challenged by a member of the precinct board, the voter shall be provided a provisional ballot.

In the event a person attempts to challenge a voter's qualifications in any manner, the precinct board should immediately contact the county elections official.

Finally, if the precinct board 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.)

Processing of Vote-By-Mail Ballot Identification Envelopes

Members of the public have the right to observe the processing of vote-by-mail ballot identification envelopes and vote-by-mail ballots.

Elections Code section 15104(a) provides that the processing of identification envelopes and vote-by-mail ballots shall be open to the public, both prior to and after the election.

As specified in Elections Code section 15104(d), the elections official must provide sufficiently close access to enable individuals to observe the identification envelopes and the signatures on those envelopes and challenge whether those individuals handling vote-by-mail ballots are following established procedures.

As used in Section 15104(d), "sufficiently close" is defined in Section 20872(l) of the Election Observations Rights and Responsibilities of the California Code of Regulations ("the regulations") as:

...the distance determined by the elections official that enables an observer to observe and see the vote-by-mail identification envelopes and the signatures and dates, date stamps, or postmarks thereon and challenge whether those individuals handling vote by mail ballots are following established procedures, which includes all of the following:

- (1) Verifying signatures on the vote by mail ballot return envelopes by comparing them to voter registration information.
- (2) Duplicating accurately damaged or defective ballots.
- (3) Securing vote by mail ballots to prevent tampering with them before they are counted on election day.

In determining the “sufficiently close” distance, the elections official takes into account the health and safety of the election workers and observers, while maintaining the right of observers to observe the identification envelopes and the signatures on those envelopes and challenge whether those individuals handling vote-by-mail ballots are following established procedures.

In addition, challenges to a vote-by-mail voter may be made for the same reasons as those made against a voter voting at a polling place. A challenge may also be entered on the grounds that the ballot was not received within the time provided by the Elections Code or that a person is currently serving a state or federal prison term for the conviction of a felony. All challenges shall be made prior to the opening of the vote-by-mail identification envelope of the challenged vote-by-mail voter. (Elec. Code, § 15105.)

Elections Code section 15106 provides that, because the vote-by-mail voter “is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made.”

If the challenge is overruled, the precinct board shall open the identification envelope without defacing the affidavit printed on it or mutilating the enclosed ballot and, without viewing the ballot, remove it and destroy the numbered slip, if any remains, and store the ballots in a secure location. (Elec. Code, §15107.)

If a challenge is allowed, the precinct board shall endorse on the face of the identification envelope the cause of the challenge and its action thereon. (Elec. Code, § 15108.)

While challenges may be made during the processing of identification envelopes, Section 20879(c) of the regulations provide elections officials with the discretion to halt verbal challenges from a person or group if multiple challenges are being made by the same person or group, and those challenges are disrupting the processing of the vote-by-mail identification envelopes. However, that person or group shall have the right to submit written challenges for the elections official to review at a later time.

Finally, Section 20879(f) of the regulations provide the elections official with the discretion as to whether a challenge made during the processing of identification envelopes and vote-by-mail ballots can be made verbally or in writing.

For reference, the regulations may be found on the Secretary of State’s website at: <https://www.sos.ca.gov/administration/regulations/current-regulations/elections/election-observations-rights-and-responsibilities>

Challenges in General

For all challenges made during the conduct of the election, Section 20879(g) of the regulations provides that in the event the elections official determines that challenges

appear frivolous or meritless, the elections official shall have the right to halt the challenge process for those making the frivolous or meritless challenges to prevent interference with the conduct of the elections activity or process being undertaken.

The elections official shall document these challenges as required by Section 20879(h) of the regulations.

Criminal Penalties

There are criminal penalties associated with the improper use of voter registration data, making improper challenges, interfering with the conduct of the election, and intimidating voters. The penal provisions in the Elections Code for these actions are set forth below.

18109. (a) It is a misdemeanor for a person in possession of information identified in Section 2138.5, or obtained pursuant to Article 5 (commencing with Section 2183) of Chapter 2 of Division 2 of this code or Section 7924.000 of the Government Code, knowingly to use or permit the use of all or any part of that information for any purpose other than as permitted by law.

(b) It is a misdemeanor for a person knowingly to acquire possession or use of voter registration information from the Secretary of State or a county elections official without first complying with Section 2188.

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

(b) For purposes of this section, "officers holding an election or conducting a canvass" include, but are not limited to, the Secretary of State as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the provisions of the Elections Code, and elections officials and their staff, including temporary workers and poll workers, and members of a precinct board, in their performance of any duty related to assisting with holding an election or conducting a canvass.

(c) For purposes of this section, "holding an election or conducting a canvass" includes, but is not limited to, the election observation process governed by the Elections Code and applicable regulations adopted by the Secretary of State.

(d) For purposes of this section, "voting at an election" includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations pursuant to Section 3018, and voting by mail and returning a voted ballot pursuant to subdivision (a) of Section 3017.

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.

(c) For purposes of this section, "voting at any election" includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations pursuant to Section 3018, and voting by mail and returning a voted ballot pursuant to subdivision (a) of Section 3017.

18541. (a) A person shall not, with the intent of dissuading another person from voting, within the 100 foot limit specified in subdivision (b), do any of the following:

- (1) Solicit a vote or speak to a voter on the subject of marking the voter's ballot.
- (2) Place a sign relating to voters' qualifications or speak to a voter on the subject of the voter's qualifications except as provided in Section 14240.
- (3) Photograph, video record, or otherwise record a voter entering or exiting a polling place.
- (4) Obstruct ingress, egress, or parking.

(b) The activities described in subdivision (a) are prohibited within 100 feet of either of the following:

- (1) The entrance to a building that contains a polling place as defined by Section 338.5, an elections official's office, or a satellite location specified in Section 3018.
- (2) An outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot.

(c) A person shall not, with the intent of dissuading another person from voting, do any of the following within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot:

- (1) Solicit a vote.
- (2) Speak to a voter about marking the voter's ballot.
- (3) Disseminate visible or audible electioneering information.

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

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.

If you have any questions, please contact me at aanderso@sos.ca.gov or Rachelle Delucchi at rdelucch@sos.ca.gov. Thank you.