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August 13, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21132

TO: All County Clerks/Registrars of Voters

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

RE: California Gubernatorial Recall Election: Cameras at Polling Locations

As you are aware, California Elections Code section 14291 allows a voter to “voluntarily disclose how he or she voted if that voluntary act does not violate any other law.”

A voter may now take a photograph of their ballot (a “ballot selfie”) and share it on social media. While “ballot selfies” are now allowed under California law, elections officials and poll workers will still need to exercise their discretion as to whether “ballot selfies” cause disruptions requiring a response.

Notwithstanding the provisions of Elections Code section 14291, the use of cameras in and outside of the polling place should remain limited, and certain uses of cameras in the polling place should continue to require the consent of the elections official. An example of when an elections official can permit the use of cameras at the polls is if a credentialed media organization wants to photograph or film a candidate voting at a polling place. This is something you may permit, provided you ensure such activity does not interfere with voting, is not intimidating to any voters or election workers, and that the privacy of voters is not compromised. With regard to exit polling, the Secretary of State’s office recommends advising news organizations and other pollsters to refrain from exit polling activities within at least 25 feet of a polling location.

In the event the county elections official permits the use of cameras at the polls for a credentialed media organization, or if individuals conducting exit polling are present, those individuals should be made aware of any current and necessary health and safety procedures to help prevent the spread of COVID-19.

Overall, voters must be mindful that their ability to take “ballot selfies” is not without limits. The limits on the use of “ballot selfies” include, for example:

- Prohibitions regarding the unauthorized sharing of and use of information relating to how a person voted. (see e.g. Elections Code sections 18520-18524)
- Prohibitions on soliciting or receiving consideration for voting, or refraining from voting, for any particular candidate or measure.
- Prohibitions on interference with the conduct of elections and with the duties of election workers.
- Prohibitions regarding the intimidation of voters.
- Prohibitions on compromising the privacy of other voters casting a ballot.

There are several laws that speak to the issue of whether people are allowed to film inside or adjacent to a polling place, most of which stem from the principle set forth in Article II, Section 7 of the California Constitution, which reads:

Voting shall be secret.

It is also clear that, over the years, the Legislature and the Governor have sought to make the voting process private and free from any form of intimidation or coercion.

California Elections Code section 14221 states:

Only voters engaged in receiving, preparing, or depositing their ballots and persons authorized by the precinct board to keep order and enforce the law may be permitted to be within the voting booth area before the closing of the polls.

California Elections Code section 14291 states:

- (a) After the ballot is marked, a voter shall not show it to any person in a manner that reveals its contents, except as provided in subdivision (b).
- (b) A voter may voluntarily disclose how he or she voted if that voluntary act does not violate any other law.

California Elections Code section 18370 states in part:

No person, on election day, or at any time that a voter may be casting a ballot, shall, within 100 feet of a polling place, a vote center, a satellite location under Section 3018, or an elections official's office:

- (a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
- (b) Solicit a vote or speak to a voter on the subject of marking his or her ballot.
- (c) 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.
- (d) Do any electioneering as defined by Section 319.5.

As used in this section, "100 feet of a polling place, a satellite location under Section 3018, or an elections official's office" means a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

Any person who violates any of the provisions of this section is guilty of a misdemeanor.

California Elections Code section 18540 states:

- (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.

California Elections Code section 18541 states:

- (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.

It should be noted, however, that pursuant to Elections Code section 2302, a voter, or any other person, may use an electronic device, including a smartphone, tablet, or other handheld device, at a polling place provided that the use of the device does not result in

CCROV #21132
August 13, 2021
Page 4

a violation of Section 14221, 14224, 14291, 18370, 18502, 18540, 18541, or any other provision of the Elections Code.

If you have any questions, please feel free to contact Robbie Anderson at aanderso@sos.ca.gov.

Thank you.