

No. 20-50683

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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EMILY GILBY, TEXAS DEMOCRATIC PARTY, DSCC, DCCC,  
TERRELL BLODGETT,

*Plaintiffs–Appellees,*

*v.*

RUTH HUGHS,  
in her official capacity as the Texas Secretary of State,

*Defendant–Appellant.*

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On Appeal from the United States District Court  
for the Western District of Texas  
Civil Action No. 1:19-cv-01063

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**PLAINTIFFS-APPELLEES’ REPLY IN SUPPORT OF  
EMERGENCY MOTION  
FOR SUMMARY AFFIRMANCE**

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## INTRODUCTION

The Secretary’s appeal is frivolous and dilatory, and this Court’s precedent makes abundantly clear that the Secretary has at least (indeed, far more than) “some scintilla” of a connection to the Texas election laws at issue, sufficient to satisfy the *Ex parte Young* exception to sovereign immunity. This Court confirmed this a little over a week ago, rejecting the very argument the Secretary offers again here in yet another voting case. *See Texas Democratic Party et al. v. Greg Abbott et al.*, No. 20-50407, slip op. at 13 (5th Cir. Sept. 10, 2020) (“The Secretary has both a sufficient connection and special relationship to the Texas Election Code. Accordingly, sovereign immunity does not bar suit against the Secretary.”). There is still time to prevent the manifest injustice that would follow from permitting the Secretary to abuse this Court’s procedural rules to stall out consideration of Plaintiffs’ preliminary injunction motion pending below. Thus, Plaintiffs respectfully request this Court act quickly to summarily affirm the district court’s well-reasoned order denying the Secretary’s motion to dismiss.

## LEGAL STANDARD

Federal Rule of Appellate Procedure 2 allows this Court “to expedite its decision” by “suspend[ing] any provision of [the Appellate] rules” and “summarily dispos[ing] of the appeal.” *Groendyke v. Transp., Inc. v. Davis*, 406 F.2d 1158, 1161 (5th Cir. 1969). This is proper where, as here, “time is truly of the essence,” including “situations where important

public policy issues are involved or those where rights delayed are rights denied.” *Id.* at 1162.

## ARGUMENT

### **I. Summary affirmance of the district court’s order remains warranted based on this Court’s precedent.**

This Court has repeatedly rejected the argument the Secretary makes again here, making this case particularly well suited for summary affirmance.

As the Secretary admits in her response, in *OCA-Greater Houston v. Texas*, [867 F.3d 604](#) (5th Cir. 2017), this Court concluded that “[t]he facial invalidity of a Texas election statute is, without question, fairly traceable to and redressable by the State itself and its Secretary of State, who serves as the ‘chief election officer of the state.’” Sec’y’s Response at 9 (quoting *OCA-Greater Houston v. Texas*, [867 F.3d at 613](#)). Here, as in *OCA*, Plaintiffs have brought facial challenges to a Texas elections law.<sup>1</sup>

Nevertheless, the Secretary contends that because *OCA* involved a pre-emption claim under the Voting Rights Act, this Court’s clear language must be disregarded here. But the central issue in *OCA* is the same as the central issue here: namely, whether the Secretary has “some

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<sup>1</sup> That both *OCA* and this case involve facial challenges is a fact that the Secretary notably ignores when she attempts to argue that *Texas Democratic Party v. Hughs*, [2020 WL 5406369](#), at \*1 (5th Cir. Sept. 10, 2020), an as-applied challenge, makes this case meaningfully different than *OCA*. This argument is nonsensical given the posture of Plaintiffs’ challenges in this case.

scintilla” of a connection to the Texas election laws, which is all that is required to satisfy the *Ex parte Young* exception to sovereign immunity. *City of Austin v. Paxton*, [943 F.3d 993, 1002](#) (5th Cir. 2019) (“[W]e recognize that this circuit’s caselaw requires some scintilla of “enforcement” by the relevant state official with respect to the challenged law.”).

Nor is *OCA* the last time this Court spoke on the matter. In a ruling issued in *Texas Democratic Party v. Abbott* a mere eleven days ago, this Court was again unequivocal that the Secretary’s sufficient connection and special relationship to Texas’s Election Code meant that sovereign immunity cannot bar a suit against the Secretary related to provisions of the Election Code. *See* No. 20-50407, slip op. at 13 (5th Cir. Sept. 10, 2020) (“The Secretary has both a sufficient connection and special relationship to the Texas Election Code. Accordingly, sovereign immunity does not bar suit against the Secretary.”)

This Court has repeatedly stated that its “caselaw shows that a finding of standing tends toward a finding that the *Young* exception applies to the state official(s) in question.” *City of Austin*, [943 F.3d at 1002](#); *see also Voting for Am., Inc. v. Steen*, [732 F.3d 382](#) (5th Cir. 2013) (volunteer deputy registrars); *Texas Democratic Party v. Benkiser*, [459 F.3d 582](#) (5th Cir. 2006) (whether party officer can declare candidate ineligible); *Texas Indep. Party v. Kirk*, [84 F.3d 178](#) (5th Cir. 1996) (declaration of intent to run for office); *Tolpo v. Bullock*, [356 F. Supp. 712](#),

713 (E.D. Tex. 1972), *aff'd*, 410 U.S. 919 (1973) (“Defendant, Bob Bullock, is the Secretary of State of Texas, responsible for the enforcement of the Texas election laws.”). Nor is there any requirement that an official must actually act to enforce the law in question: where “it’s been determined that an official can act, and there’s a significant possibility that he or she will act to harm a plaintiff, the official has engaged in enough ‘compulsion or constraint’ to apply the *Young* exception.” *Austin*, 943 F.3d at 1002.

And, in any event, the Secretary’s own public conduct rather vividly confirms that she regularly takes “actions that constrain[] the [P]laintiffs” specifically as it relates to the law in question here. *Id.* at 1001. The Secretary has issued at least one Election Advisory regarding implementing HB 1888, providing more than sufficient evidence of the likelihood of her enforcement. *See* Ex. 19. If the Secretary can issue such instruction, she surely has “some scintilla” of a connection to those statutes’ implementation and enforcement. Indeed, even while this appeal (and other related appeals, in which the Secretary has taken a similar position) have been pending, the Secretary has repeatedly and publicly acted to enforce Texas’s election laws on multiple occasions. *See e.g.*, Ex. 23 (ordering the Secretary to ensure that candidate names appear on the ballot); Ex. 24 (despite making reference to the purportedly “limited power granted to her by the Texas Election Code,” even as the chief election official for the State, indicating she “issued an amended certification” to the counties including the candidates in question); Ex. 25



(advising local election officials as to ballot design compliance pursuant to recently enacted legislation); Ex. 26 (advising local election officials on requirements arising as a result of rescheduling election dates as a result of COVID-19); Ex. 27 (providing guidance to local election officials regarding the process for making a ballot correction).

**II. Because Early Voting has not yet begun, let alone concluded, emergency summary affirmance is still necessary and in the interests of justice.**

The Secretary's response to Plaintiffs' Emergency Motion for Summary Affirmance argues that she has already won by running down the clock. This is not yet true, but if this Court does not act quickly, that will be the case.

To be clear: this case was never about *compelling* local election officials to utilize temporary or mobile early voting locations; instead, it is about returning to them their discretion to utilize temporary or mobile early voting locations as needed to best serve the needs of their local electorates. A summary affirmance, so that the district court may still evaluate Plaintiffs' claims on the merits of their pending motion for preliminary injunction before the end of the early voting period, would still afford Plaintiffs the possibility of meaningful relief in time for the coming election. A decision by the district court in Plaintiffs' favor on the merits would return the discretion to local election officials to meet in-person voting needs, which are only heightened as Texas's local election

officials struggle to meet the unique demands of their electorates during a global health crisis.

Accordingly, Plaintiffs remain steadfast in their request for summary affirmance, as soon as is practical, so a resolution on the merits will be possible well before early voting ends on October 30, 2020.

### CONCLUSION

Plaintiffs respectfully request that their emergency motion for summary affirmance be granted as soon as possible.

DATED: September 21, 2020

*/s/John M. Geise*

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*\*5th Cir. Admission Pending*

## CERTIFICATE OF SERVICE

On September 21, 2020, this reply was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) no privacy redactions were required under Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned and is free of viruses.

*/s/ John M. Geise*

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## CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,298 words, excluding the parts exempted by Rule 27(a)(2)(B); and (2) the typeface and type-style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

*/s/ John M. Geise*

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Texas Democratic Party, DSCC, and  
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No. 20-50683

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**IN THE UNITED STATES COURT OF APPEALS  
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EMILY GILBY, TEXAS DEMOCRATIC PARTY, DSCC, DCCC,  
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in her official capacity as the Texas Secretary of State,

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On Appeal from the United States District Court  
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**APPENDIX TO PLAINTIFFS-APPELLEES’  
REPLY IN SUPPORT OF EMERGENCY MOTION  
FOR SUMMARY AFFIRMANCE**

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<b>Exhibit</b>	<b>Document Description</b>
23.	September 15, 2020 Letter from the Texas Supreme Court Clerk regarding <i>In re the Green Party Of Texas, et al.</i> , 20-0708 (Texas 2020).

Exhibit	Document Description
24.	September 16, 2020 Letter from Attorney General Ken Paxton regarding <i>In re the Green Party Of Texas, et al.</i> , 20-0708 (Texas 2020).
25.	Election Advisory 2020-26, “Additional Instructions for Preparation of Ballot for Write-In Candidates and Independents, Procedures for Unopposed Candidates Declared Elected, and Legend Printing Instructions”
26.	Election Advisory 2020-24, “Election Procedures for Entities who Postponed their Election to November 3, 2020”
27.	Election Advisory 2020-23, “Ballot Corrections”



# **Exhibit 23**



**THE SUPREME COURT OF TEXAS**  
**Post Office Box 12248**  
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Tuesday, September 15, 2020

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RE: Case Number: 20-0708  
Court of Appeals Number: 03-20-00414-CV  
Trial Court Number:

Style: IN RE THE GREEN PARTY OF TEXAS, ET AL.

Dear Counsel:

Today the Supreme Court of Texas issued the following order: "The petition for writ of mandamus is granted. The Third Court of Appeals is directed to vacate its conditional grant of mandamus relief in 03-20-00414-CV. The court of appeals' order requiring a declaration that David B. Collins (U.S. Senate), Katija "Kat" Gruene (Railroad Commission), and Tommy



**THE SUPREME COURT OF TEXAS**  
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Wakely (Congressional District 21) are ineligible to appear as Green Party nominees on the November 2020 general statewide ballot is vacated. The Secretary of State shall immediately take all necessary actions to ensure these candidates appear on the 2020 general election ballot as they would have appeared before the court of appeals' conditional grant of relief. Opinion to follow."

Sincerely,

A handwritten signature in black ink that reads "Blake A. Hawthorne".

Blake A. Hawthorne, Clerk

by Claudia Jenks, Chief Deputy Clerk

cc: Justin Pfeiffer (DELIVERED VIA E-MAIL)  
Mr. Kevin Vickers (DELIVERED VIA E-MAIL)  
Mr. Douglas P. Ray (DELIVERED VIA E-MAIL)  
Mr. James C. Hatchitt (DELIVERED VIA E-MAIL)  
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# **Exhibit 24**



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September 16, 2020

**Via E-Filing**

Mr. Blake Hawthorne, Clerk  
Supreme Court of Texas

Re: No. 20-0708, *In re The Green Party of Texas, et al.*

Dear Mr. Hawthorne:

Yesterday, the Court granted a writ of mandamus vacating an order from the Third Court of Appeals that declared three Green Party nominees ineligible for the November 2020 general statewide ballot. The Court also ordered the Texas Secretary of State to take actions to ensure that those candidates appear on the ballot for the upcoming election.

The Secretary of State files this advisory to inform the Court of the actions she has taken in furtherance of the Court's Order and in accordance with the limited power granted to her by the Texas Election Code.

Section 161.008 of the Texas Election Code requires the Secretary of State to certify the name of each candidate for a statewide or district office. The Secretary issued an original certification on August 28, 2020, as required by statute. Due to the now-vacated order from the Third Court of Appeals, the names of the three Green Party candidates were not included on that original certification.

After receiving the Court's Order yesterday, the Secretary issued an amended certification that included the previously omitted three Green Party candidates: David B. Collins (United States Senate), Katija "Kat" Gruene (Texas Railroad Commission), and Tommy Wakely (United States Congressional District 21). Those candidates' names now appear on the candidate listing page on the Secretary's website. <https://candidate.texas-election.com/Elections/getCandidatesBallotOrderInfo.do> The Secretary also advised the county election administrators of this Court's Order,

the amended certification, and their obligation to include those candidates on their ballots.

Based on the Texas Election Code and the Court's Order, it is now incumbent upon the county election administrators, who are responsible for preparing ballots, to ensure that those candidates appear on their ballots. *See* Tex. Elec. §§ 52.002, .003. A county election official's failure to include a candidate entitled to be on the ballot is a criminal offense. *Id.* § 52.004. Anyone committing that offense risks prosecution by the attorney general or an appropriate local prosecutor. *See id.* §§ 273.021, .022.

The Secretary of State has fully complied with the Court's Order by taking all actions that she is legally empowered to take to ensure that the three Green Party candidates appear on the 2020 general election ballot. She files this advisory to inform the Court of her compliance. The Secretary intends to continue offering advice to counties to assist them in effectuating this Court's directive.

Respectfully submitted.

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Attorney General of Texas

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First Assistant Attorney General

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/s/ Kyle D. Hawkins  
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**CERTIFICATE OF SERVICE**

On September 16, 2020, this document was served electronically on: (1) Charles Waterbury, counsel to Relator, at Charles@waterburylawpc.com; (2) Chad Dunn, counsel to Real Parties in Interest, at chad@brazilanddunn.com; (3) Susan Hays, attorney for amicus Harris County Clerk, at Hayslaw@me.com; (4) Justin Pfeiffer, attorney for amicus Fort Bend County, at Justin.Pfeiffer@fortbendcountytexas.gov; (5) Randy Howry, attorney for Real Party in Interest, at rhowry@howrybreen.com.

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 387 words, excluding emptied text.

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS

# **Exhibit 25**





**COVID-19 - As recommended precautions continue to increase for COVID-19, the James E. Rudder Building will be closed to visitors and customers beginning Wednesday, March 18, 2020. The Office of the Secretary of State is committed to continuing to provide services to ensure business and public filings remain available 24/7 through our online business service, [SOSDirect](#) or use the new [SOSUpload](#). Thank you in advance for your patience during this difficult time. [Information on Testing Sites is now available.](#)** X

Note - Navigational menus along with other non-content related elements have been removed for your convenience. Thank you for visiting us online.

## Election Advisory No. 2020-26

**To:** All County Election Officers (County Clerks/Elections Administrators/County Tax Assessor-Collectors)

**From:** Keith Ingram, Director of Elections

A blue ink signature of Keith Ingram, the Director of Elections.

**Date:** August 28, 2020

**RE:** Additional Instructions for Preparation of Ballot for Write-In Candidates and Independents, Procedures for Unopposed Candidates Declared Elected, and Legend Printing Instructions

### Straight-Party Voting Repealed

House Bill 25, passed during the 85th Legislative Session, repealed straight-party voting effective September 1, 2020 (Section 64.004, Texas Election Code). As a result of this change in law, straight-party voting should not be included as an option on your ballot.

### Instructions Specific to the Preparation of the Ballot – Write-In Candidates and Independents

#### Write-in Candidates

Section 52.068(a) of the Code states that if no candidate's name is to appear on the ballot for an office and there is no declared write-in candidate for that office, the office title does not need to be printed on the ballot.

Section 124.0621 of the Code states that for counties using an optical/digital scan ballot, blank write-in lines must be provided on the ballot **only** for offices where a declared write-in candidate has been certified. You may include the language "write-in (voto escrito)" under the write-in line on your ballot to describe the purpose of the line. For counties using a DRE or ballot marking device, a blank write-in line needs to appear on the ballot page under the race title following the candidates' names that are printed on the ballot. You will need to post special

instructions on how the voter is to vote for a write-in candidate on the DRE or ballot marking device.

The sample ballot displays a square in the write-in column for which a candidate filed a valid declaration of write-in candidacy for state or district office. Do not print a write-in square for each race printed on the ballot; only races with declared write-in candidates should have a square.

When you prepare the list of declared write-in candidates, do not include candidates running for any district offices that are not included in your county. This list must be posted in each voting booth, on the wall where voters may be standing in line, and included with each mail ballot.

The Code does not provide direction as to how to list multiple write-in candidates for the same office on the List of Declared Write-in Candidates. If there are two or more declared write-in candidates in any one race, the Secretary of State recommends that you list them in alphabetical order or conduct a ballot drawing pursuant to Section 52.094(a) & (c) of the Code. The List of Declared Write-In candidates should list only those candidates running for offices for which the voter is eligible to vote. For example, if your county has a declared write-in candidate for County Commissioner, Precinct 2, that candidate's name should appear **only** on the list posted in the voting precincts contained in that commissioner's precinct. If your county participates in the Countywide Polling Place Program, you must post all declared write-in candidates' names in every voting booth that is deployed to polling places throughout the county.

The List of Declared Write-in Candidates must be mailed with the official balloting materials to all voters who vote by mail and must be posted in each voting station during early voting and on Election Day.

### **Independent Candidates**

Independent candidates will be listed on the ballot just as party affiliated candidates are listed. In accordance with Section 52.094(a) of the Code, if there is more than one independent candidate for an office, there will need to be a ballot drawing only for those independent candidates. The ballot drawing will determine the order of names of the independent candidates within the candidate listing for that office. This ballot drawing does not affect the listing of other candidates in the race.

## **Procedures for Unopposed Candidates Declared Elected**

### **State and District Offices**

The Secretary of State will not certify the unopposed candidates for state and district offices as declared elected. These unopposed candidates are certified with all other candidates and must be printed with a voting space in the regular ballot order.

### **County and Precinct Offices**

As county elections officer, you have the authority to print your unopposed county and precinct candidates as declared elected. If you choose to print your ballot this way, you will make a declaration that those candidates are unopposed and duly-elected. You do not need to file this with the commissioners' court, but you must keep it with your other election records. At the local canvass, you will issue a certificate of election to these candidates; however, the County Judge will continue to issue certificates to those candidates who won the election and were contested. (Section 2.056, Texas Election Code).

If you choose to print your ballots this way, you do not include a voting space but merely list all uncontested candidates at the end of your ballot under the heading “Unopposed Candidates Declared Elected.”

You will need to include the candidate’s name and the office title to which the county or precinct candidate is duly-elected. You may print all of your duly-elected county and precinct candidates on all ballots and do not need to take into account specific ballots styles. For example, if both your county commissioners’ races for Precinct 2 and 4 were unopposed, you may print both races on all ballots, even ballots where voters would not be voting on county commissioner in this election. Remember, if you do this type of ballot for one unopposed candidate, you must do it for all your county or precinct unopposed candidates. You cannot pick and choose which unopposed candidates will be printed on the ballot with or without a voting space.

The Sample Ballot posted on our website demonstrates the ballot layout for how Unopposed Candidates Declared Elected should appear on the ballot.

## Separate Listing of Unopposed Candidates for Electronic Voting Systems

For counties using electronic voting systems, you also have the authority to group your unopposed races and block vote them, per Section 124.003 of the Code. This process is different from the “Unopposed Candidates Declared Elected” process described under Section 2.056 of the Code.

### Printing Legend Instructions

If you abbreviate the party names on the ballot, you must also print a legend containing the explanation for each party. We suggest that you print the party legend at the bottom of the ballot or in the instruction box. For those of you who use voting equipment that will not allow you to place party legend on the ballot, we direct you to place the legend in each voting booth. You may combine the party legend with the List of Declared Write-In Candidates. See example below:

### List of Declared Write-In Candidates

**Name of Candidate**  
*Name*

**Office Sought**  
United States Senator

### Legend of Party Affiliation or Independent Printed on Ballot

Party	Legend
Republican	Rep
Democratic	Dem
Libertarian	Lib
Green	Grn
Independent	Ind

If you have any questions regarding this memorandum or the information enclosed, please call the Elections Division toll-free at 1-800-252-2216 or email [Elections Division](#).

KI:CA

# **Exhibit 26**



**COVID-19 - As recommended precautions continue to increase for COVID-19, the James E. Rudder Building will be closed to visitors and customers beginning Wednesday, March 18, 2020. The Office of the Secretary of State is committed to continuing to provide services to ensure business and public filings remain available 24/7 through our online business service, [SOSDirect](#) or use the new [SOSUpload](#). Thank you in advance for your patience during this difficult time. [Information on Testing Sites is now available.](#)**

Note - Navigational menus along with other non-content related elements have been removed for your convenience. Thank you for visiting us online.

## Election Advisory No. 2020-24

**To:** Election Officials

**From:** Keith Ingram, Director of Elections

A blue ink signature of Keith Ingram, the Director of Elections.

**Date:** July 21, 2020

**RE:** Election Procedures for Entities who Postponed their Election to November 3, 2020

The purpose of this advisory is to provide guidance to local political subdivisions and county election officials regarding elections that were postponed from the May 2, 2020 uniform election date to the November 3, 2020 general election, pursuant to the proclamation issued by Governor Greg Abbott on March 18, 2020. For most issues, the local political subdivisions will now follow the [November 3, 2020 election law calendar](#).

This advisory is intended to supplement our office's guidance in [Election Advisory No. 2020-12](#) (issued on March 18, 2020). To the extent of any conflict between this advisory and the recommendations provided in Advisory 2020-12, the guidance contained in this advisory prevails.

All statutory references in this advisory are to the Texas Election Code ("the Code"), unless otherwise indicated.

### Requirement to Contract with County Election Officer

In accordance with the Governor's March 18, 2020 proclamation, all county election officers are required to contract with local political subdivisions that postponed their May 2, 2020 election for election services or enter into a joint election agreement, if requested by the local entity. The extent of the county's involvement in the election (for example, sharing poll workers) depends on the terms of the contract between the county and the local political subdivision. If a local political subdivision has the equipment and resources to administer an election independent of the county while still using county election precincts, the subdivision may run the election on its own if it is able to comply with legal requirements associated with the November 3, 2020 uniform election date.

- **Requirement to use County Election Precincts for November 3, 2020 Election:** Per Section 42.002 of the Texas Election Code, county election precincts are required for all elections that occur on the November uniform election date. Political subdivisions cannot define their own precinct lines, as is permissible in May elections.

Additionally, local political subdivisions must use the county's designated polling places in each county election precinct. Local political subdivisions must work with their county election officer to determine whether any modifications to the ballot are needed in light of this requirement. If a county participates in the Countywide Polling Place Program, the local political subdivision must have its ballots available at every polling place in the county on election day, including those locations outside the political subdivision's territory.

- **Voting System Equipment Contracts:** If an entity is leasing voting system equipment from the county or directly from the vendor, the entity may need to contact the county/vendor regarding any necessary modifications to the lease agreements or to modify the procedures and timelines for receiving the equipment. As a reminder, a contract for the purchase or lease of voting system equipment from a vendor must be approved by our office, pursuant to Section 123.035 of the Code.
- **Office Hours:** The relevant dates for maintaining office hours for election purposes will be based on the November uniform election date. Under Section 31.122 of the Code, office hours must be maintained for at least three hours each day, during regular office hours, on regular business days between September 14, 2020 and December 13, 2020. If the political subdivision is an independent school district, a regular business day means a day on which the school district's main business office is regularly open for business. However, all entities should post information on how individuals can contact their office about election-related issues during the timeframe that those offices may be closed over the coming months.
- **Early Voting Implications:** Many entities will have joint elections on November 3, 2020. Consistent with our prior guidance, entities that conduct early voting jointly should coordinate their early voting hours. This may result in entities providing early voting on days and hours beyond what is required for their entity in the Texas Election Code. Even in a contract situation, some entities may choose not to hold early voting together and instead conduct voting jointly only on Election Day. However, in this situation, Section 85.010 of the Code requires a political subdivision to use the eligible county early voting polling places established by the county if the subdivision (1) has not executed a contract with the county under which the political subdivision and the county share early voting polling places for the election; and (2) is not holding a joint election with a county in accordance with Chapter 271. A political subdivision may only designate a different location as an early voting polling place if the entity has already designated each eligible county polling place located in the entity's territory as an early voting polling place.

## Revisions to Order of Election

Local political subdivisions that postponed their election must amend their order by August 17, 2020 to make any necessary changes to the entity's original order of election. Those revisions may include:

1. The change to the date of the election;

**Note:** This should not be a change, since you ordered the November 3, 2020 date in your postponement order; however, you should confirm the date to make clear the election date other changes pertain to.

2. Any change in the main early voting location;
3. Any changes to early voting dates and hours, including weekend early voting;
4. Any changes to the identity of the early voting clerk and their contact information; or
5. Any changes to branch early voting locations.

**BONDS:** If you are holding a bond election, you may need to make additional revisions to your order of election for that bond election. We recommend consulting with your bond counsel for additional guidance. However, please note that there is no authority to change the ballot language from what was previously ordered for the May 2, 2020 election.

Pursuant to Section 4.008 of the Code, each entity must provide a revised notice of election to their county election officer, as the county is required to post the entity's notice of election on the county's website no later than the 60th day before the date of the election.

## Effect of Postponement of Election on Candidates

By postponing the election date, the political subdivision preserved all candidate filings and ballot order actions that have already taken place. The **postponement does not reopen the candidate filing period**, and there is no need to hold a new ballot drawing.

- **Declarations of Ineligibility:** The deadline for declaring a candidate ineligible and having their name removed from the ballot is tied to election day. Therefore, the deadlines that apply to the November 3, 2020 uniform election date will apply to all candidates who were to appear on the ballot for the May 2, 2020 uniform election date. A candidate may be declared ineligible and have their name removed from the ballot if a declaration of ineligibility occurs on or before Monday, August 24, 2020. (Sections 145.092(f), 145.094(a)(4), 145.096(a)(4)).
- **Withdrawals:** The deadline for a candidate to withdraw and have their name removed from the ballot is tied to election day. Therefore, the deadlines that apply to the November 3, 2020 uniform election date will apply to all candidates who were to appear on the ballot for the May 2, 2020 uniform election date. A candidate may withdraw and have their name removed from the ballot if the withdrawal is received on or before 5:00 p.m. on Monday, August 24, 2020. (Sections 145.092(f), 145.094(a)(4), 145.096(a)(4)).
- **Death of a Candidate:** The deadline for a candidate's name to be removed from the ballot because of the death of the candidate is tied to the November election deadline. If a candidate passes away on or before Friday, August 14, 2020, their name will not be placed on the ballot. (Sections 145.094(a)(1), 145.098(b)).
- **Holdovers in Public Office:** Under Art. XVI, Sec. 17 of the Texas Constitution, the individuals who currently hold public offices that were scheduled to be on the ballot on the May uniform election date will continue to exercise the duties of those offices until the new officers take their oaths of office following the November uniform election date.
- **Candidates who will appear on the ballot in both May and November:** Candidates who may be running for two offices (one normally occurring in May and one normally occurring in November) **will not be removed** from the ballot because they are separate elections that do not normally occur on the same date. (Sections 52.034, 141.033).
- **Races that become unopposed after the withdrawal window reopens:** If a race becomes eligible for cancellation due to a candidate withdrawing or being declared ineligible, that race may be cancelled following the normal cancellation procedures. Any unopposed candidate declared elected through that process would then be sworn in during the November canvass period, which begins on Friday, November 6, 2020. For a reminder of the procedures or which offices are eligible for cancellation, please see our [cancellation outline](#).
  - If an entity properly cancelled their election prior to the May 2, 2020 election date, those officers should have been sworn in during the May canvass period.
  - If an entity properly cancelled their election prior to the May 2, 2020 election date, but the officers have not been sworn in, most entities may be able to swear in their candidates as soon as possible.

**NOTE:** For Type A General Law cities, there is a specific deadline by which offices must be sworn in. If they are not sworn in by that time, the city would now have vacancies in those positions.

- **Campaign Finance Filings:** Please contact the Texas Ethics Commission for further guidance on how modified timelines will affect campaign finance reporting requirements. Their office can be reached at (512) 463-5800.
- **Special Elections to fill a Vacancy in Office**
  - If you ordered your special election to fill a vacancy in office as part of your May 2, 2020 general election



(not ordered as a separate special election) and postponed to November 3, 2020, the candidates will have until Monday, August 24, 2020 to be removed from the ballot due to declaration of ineligibility or withdrawal. (Sections 145.092, 145.094).

- If your May special election was ordered separately from your May general election and postponed to November, the candidates will have until Tuesday, August 25, 2020 to be removed from the ballot due to a declaration of ineligibility or withdrawal. (Sections 145.092, 145.094).
- If your special election was ordered for November 3, 2020 and not postponed from May 2, 2020, your candidates have until Tuesday, August 25, 2020 to be removed from the ballot due to a declaration of ineligibility or withdrawal. (Sections 145.092, 145.094, 201.054(f)). If a candidate passes away on or before the deadline to file an application for a place on the ballot, Thursday, August 20, 2020, the authority may remove the candidate's name from the ballot. If the authority chooses to remove the candidate's name, the filling deadline will be extended until the 5th day after the filing deadline, August 25, 2020. (Section 145.098(b)).

## Effect of Postponement on Voting by Mail

Many political subdivisions had existing applications for a ballot by mail ("ABBM") on file with the early voting clerk for the May 2, 2020 election. We provide the below guidance to assist election officials with mail-ballot issues associated with the postponement of elections from the May 2, 2020 uniform election date to the November 3, 2020 general election.

Our ABBM guidance is divided into two major categories: (1) political subdivisions that did NOT mail ballots prior to postponing their election; and (2) political subdivisions that mailed ballots prior to postponing their election.

1. **Entities that did NOT mail ballots to voters prior to postponing their election:** For political subdivisions that did not mail ballots prior to postponing their election, there are several issues that must be taken into consideration before mailing ballots for the postponed elections that will now occur on November 3, 2020.
  - a. **Annual ABBM/FPCA Voters:** These voters are entitled to receive a ballot for all the elections in which the voter is eligible to vote, including postponed elections for which the county election officer is serving as the early voting clerk.
  - b. **Single-use ABBM voters asking only for the postponed May election:** The SOS recommends sending all of your single-use ABBM voters a letter that explains the postponement action and informs the voter that if their circumstances have changed, they may cancel their ABBM and/or submit a new ABBM to ensure proper delivery of their ballot. The letter should include a [standard cancellation form](#) and a new ABBM. See below for different actions to take regarding single-use ABBMs based on being out of the county of residence. **NOTE:** Prior to sending the notice to the voter about the postponement action, the early voting clerk should review their recent ABBMs to determine whether the voter has already submitted a new ABBM request for the November election.
    - i. If you have not received a new ABBM from the voter, the original ABBM may still be valid for the November 3, 2020 election. The early voting clerk must review the initial ABBM and look at the voter's grounds for voting by mail.
      1. **Disability or Age:** If a voter submitted an ABBM for the May election based on disability or age, and the voter is eligible to vote by mail on one of these grounds, the voter is entitled to a ballot by mail for the November election, as the applicable election for which they submitted an ABBM was postponed.
      2. **Out of County of Residence:** If a voter submitted an ABBM for the May election based on absence from the county, the ABBM should be rejected for the November election because the voter's eligibility to vote by mail was tied to a specific election date that changed. The Secretary of State recommends that the early voting clerk send such voters a new ABBM,

along with the rejection letter relating to the previous ABBM, as the circumstances surrounding the voter's absence from the county may still exist or the voter may otherwise be eligible to vote by mail.

- ii. **Change in Voter's Registration Status:** Prior to mailing out ballots, the early voting clerk should recheck the voter's registration status as this may have changed since the initial review. This applies to both single-use and annual ABBMs. If the voter is no longer a registered voter of the county, the ABBM should be rejected. If the voter is no longer registered in the territory, but is still registered in the county, the early voting clerk may want to send the voter a new ABBM to give the voter an opportunity to update their request, if they are still eligible for a ballot by mail and wish to vote by mail. If the voter does not return an updated ABBM, but is still registered in the county, the county would send a Statement of Residence with the balloting materials to the voter.

2. **Entities that mailed ballots to voters prior to postponing their election:** If an entity mailed out ballots by mail for the May 2, 2020 election before postponing their election, there are several options for proceeding with mail ballots for the November 3, 2020 election. If the entity is running the election on their own, they will continue to process new applications, and qualify and count returned mail ballots, just as they would if the election had occurred in May. If the entity is contracting with their county election officer, the county must decide whether to proceed with separate ballots for their entities or have joint ballots for all entities with elections occurring on November 3, 2020 and for which they have a contract for election services. For entities contracting with the county, there are two options for handling mail ballots, outlined below:

- a. **Corrected Ballots:** If an entity sent out a May ballot by mail before postponing its May election, and is conducting a joint election with the county on the November uniform election date, that entity may send a joint ballot as a corrected ballot as outlined below. Entities may want to consider this option to ensure that voters receive all eligible ballots for the November 3, 2020 election. This may also allow for a more streamlined process when tabulating election results. **As a reminder, the early voting clerk will need to send a corrected ballot with a new carrier envelope. The new carrier envelope shall contain a notation indicating it is a corrected ballot. (Section 86.009). For details on counting corrected ballots, please see Advisory 2020-23 – Ballot Corrections.**

- i. **Annual ABBM/FPCA Voters:** These voters may be sent a corrected ballot. As a reminder, if a voter returns the original uncorrected mail ballot but does not return a corrected mail ballot, the original uncorrected ballot must be retained and delivered to the early voting ballot board on election day. If the corrected ballot is not received by 7:00 pm on election day, the original uncorrected ballot will be processed and counted. (Section 86.009(e)).

ii. **Single-use ABBM voters asking only for the postponed May election:**

1. **Single-use ABBM voters who have NOT returned their mail ballot:** Prior to sending out your corrected mail ballot to these ABBM voters, we recommend that all single-use ABBM voters be sent a letter explaining the postponement action and the necessity to send out a corrected ballot. For those voters who have not yet returned their mail ballot, the voters may cancel their ABBM and/or submit a new ABBM if their circumstances have changed. The letter should be sent to the voter's mailing address listed on their voter registration. This would ensure that the voters receive the correct ballot style for all elections occurring on November 3, 2020 that are handled by that early voting clerk. If the voter does not submit a cancellation or a new ABBM, these voters **MUST** be sent a corrected ballot.
2. **Single-use ABBM voters who have already returned their mail ballot:** These voters may cancel their ABBM at any time before the original, marked (uncorrected) mail ballot is sent to the early voting ballot board. Ordinarily, these voters would not have been able to cancel a mail ballot once the early voting clerk received the ballot. (Section 84.032(b)). However, because the election was postponed and the voter's eligibility to vote by mail may have changed, the cancellation deadline for these single-use ABBM voters is modified in

accordance with Section 41.006. For this category of voters, we recommend that early voting clerks provide a special cancellation form and a new ABBM.

**NOTE:** As this cancellation can occur up until the time when ballots are sent to the EVBB, the county should hold these original, marked (uncorrected) mail ballots until 7:00 p.m. on election day. (Section 86.009)

- b. Separate Ballots for Joint Election Partners:** If an entity sent out ballots by mail before postponing its May 2, 2020 election, the early voting clerk for the November 3, 2020 election may opt to maintain separate ballots for the postponed entities. This may be the easiest way to determine what ballot styles a voter may receive for other entity elections occurring on November 3, 2020. If the early voting clerk opts to maintain separate ballots, the early voting clerk must review the initial ABBM to determine what ballots the voter is entitled to receive for the November 3, 2020 election.
- i. Political Subdivisions that had a Joint Ballot for May 2, 2020:** If one or more entities sent out a joint ballot by mail for the May 2, 2020 election that was subsequently postponed, those entities may remain on a joint ballot. However, this joint ballot can remain a separate ballot from all other elections that will occur on November 3, 2020.
  - ii. Annual ABBM/FPCA Voters:** These voters may be eligible to receive ballots for additional elections for which the early voting clerk is responsible. The early voting clerk must send any additional ballots the voter is entitled to receive in a new carrier envelope. The early voting clerk will NOT send a new, unmarked ballot for the postponed elections unless the voter cancels the original application and submits a new ABBM, or there was a necessary correction to the ballot and the early voting clerk was required to send a corrected mail ballot to the voter. **NOTE:** The early voting clerk will need to indicate on the carrier envelope the elections with which that envelope is associated.
  - iii. Single-use ABBM voters asking only for the postponed May election:** The SOS recommends sending all of your single-use ABBM voters a letter that explains the postponement action and informs the voter that if their circumstances have changed and they have not yet returned their mail ballot, they may cancel their ABBM and/or submit a new ABBM if they are eligible to vote by mail.
    - 1. Single-use ABBM voters who did NOT return their mail May 2, 2020 ballot:** The SOS recommends that all single-use ABBM voters be sent a letter explaining the postponement action. For those voters who have not yet returned their mail ballot, the voters may cancel their ABBM and/or submit a new ABBM if their circumstances have changed. The letter should be sent to the voter's mailing address listed on their voter registration. This would ensure that the voters receive the correct ballot style for all elections occurring on November 3, 2020 that are handled by that early voting clerk. The letter should include [standard cancellation form \(PDF\)](#) and a new ABBM.
    - 2. Single-use ABBM voters who returned their May 2, 2020 ballot:** These voters may cancel their ABBM at any time before the original, marked (uncorrected) mail ballot is sent to the early voting ballot board. Ordinarily, these voters would not have been able to cancel a mail ballot once the early voting clerk received the ballot. (Section 84.032(b)). However, because the election was postponed and the voter's eligibility to vote by mail may have changed, the cancellation deadline for these single-use ABBM voters is modified in accordance with Section 41.006. For this category of voters, we recommend that early voting clerks provide this special cancellation form and a new ABBM.

**NOTE:** As this cancellation can occur up until the time when ballots are sent to the EVBB, the county should hold these original, marked (uncorrected) mail ballots until 7:00 p.m. on election day. (Section 86.009).

## Election Records

All records, including candidate filings, applications to vote by mail, ballot proofs, and printed ballots shall be stored and secured during the postponement period. This may require your entity to use preservation methods that are similar to the methods you would use during the preservation period after the election has occurred. This includes:

- Storing returned ballots by mail in locked, sealed ballot boxes.
- Securely storing any unused ballots.
- Securely retaining any relevant election records, including candidate applications and ABBMs.

If your ballots have already been printed, you may be able to reuse them in November. However, if you must change your ballot to reflect any corrections or changes that occur between now and November, you would treat the original ballots as you would in a traditional ballot correction scenario and destroy those ballots in accordance with Section 52.0064 of the Texas Election Code.

If you have any questions regarding this advisory, please contact the [Elections Division](#) at 1-800-252-2216.

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# **Exhibit 27**



Texas Secretary of State  
Ruth R. Hughs

**COVID-19 - As recommended precautions continue to increase for COVID-19, the James E. Rudder Building will be closed to visitors and customers beginning Wednesday, March 18, 2020. The Office of the Secretary of State is committed to continuing to provide services to ensure business and public filings remain available 24/7 through our online business service, [SOSDirect](#) or use the new [SOSUpload](#). Thank you in advance for your patience during this difficult time. [Information on Testing Sites is now available.](#)**

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## Election Advisory No. 2020-23

**To:** Election Officials

**From:** Keith Ingram, Director of Elections

**Date:** August 20, 2020

**RE:** Ballot Corrections

The purpose of this advisory is to provide guidance to political subdivisions making a ballot correction. A ballot correction is necessary when the error on the ballot has the potential to affect one or more choices the voter will make in a given election. Examples of necessary ballot corrections are situations where a candidate has been left off the ballot in a contested race or a candidate who was required to be removed from the ballot remained on the ballot. Many circumstances involving potential ballot corrections will be fact-specific. Please contact our office with questions regarding whether your specific situation requires a ballot correction.

Please note, all statutory references in this advisory are to the [Texas Election Code](#) (“the Code”), unless otherwise cited.

### Correcting the Ballot

Upon determining that a ballot correction is necessary, the authority preparing the ballot must decide how to make the correction. Section 52.006 of the Code specifically authorizes several different methods of correction for errors on pre-printed paper ballots. These methods include the following: preparing new ballots, marking through or obscuring the incorrect information, or affixing correction stickers to the ballots. Please note, a correction sticker, if used, must be printed in the same type style and on the same

color of paper as the ballot. If your entity uses a ballot marking device or direct recording electronic ([DRE](#)) voting system for all voters, the only way to correct a ballot would be to correct the programming or database and create new ballots.

If you choose to prepare new ballots, this process may require your entity to reprogram and retest the electronic voting system equipment. Entities may need to contact their voting system vendor as part of that process. Please note that if reprogramming a voting system is necessary, the entity will have to conduct new pre-election tests of its voting system.

### **Section 52.006. Correcting Ballot.**

- a. To make a necessary correction on the ballot, the authority responsible for having the official ballot prepared may:
  1. prepare new ballots;
  2. line out or otherwise obscure the language being corrected and enter in printed form the correct language next to the language being corrected, if necessary; or
  3. prepare printed or blank correction stickers to be affixed to the ballots.
- b. A correction sticker used under this section must be printed in the same type style and on the same color of paper as the ballot.
- c. A correction sticker may be affixed to a ballot only by the authority responsible for having the official ballot prepared or by an election officer serving a polling place.
- d. A vote may not be counted for a name appearing on a correction sticker unless the sticker is prepared and affixed to the ballot as provided by this section.

## **Required Notice to the Office of the Secretary of State**

Once an entity has determined that a ballot correction is necessary and that new ballots need to be prepared, the authority responsible for preparing the ballot must provide written notice to the Secretary of State's office not later than 24 hours after the authority's determination is made. (Section 52.0061). The Secretary of State has prescribed a [form \(PDF\)](#) that may be used for this notice. The notice may be sent via [email](#).

### **Section 52.0061. Notice of Correction by Authority Responsible for Preparing Ballot.**

- a. The authority responsible for having the official ballot prepared shall deliver written notice to the secretary of state not later than 24 hours after the authority's determination to prepare new ballots to make a correction on the ballot.
- b. The notice must include a statement of the nature of the correction to be made.

## **Required Vendor Notice**

If an entity uses a vendor to print their ballots, contact the vendor to request that they begin preparing the corrected ballots. (Section 52.0062). The vendor must provide the Secretary of State's office with written notice within 48 hours of receiving a request to prepare new ballots to make a correction on the ballot for a primary election or the general election for state and county officers. The Secretary of State has

prescribed a [form \(PDF\)](#) that the vendor may use for this notice. The vendor may provide this notice via [email](#).

### **Section 52.0062. Notice of Correction by Certain Printers**

- a. Each person required to file a statement under Section 51.013 shall deliver written notice to the secretary of state not later than 48 hours after the person receives a request to prepare new ballots to make a correction on the ballot for a primary election or the general election for state and county officers.
- b. The notice must include the name, address, and telephone number of the person requesting the corrected ballots and a statement of the nature of the correction to be made.

## **Destruction of Incorrect Ballots**

Once the entity has received the corrected ballots from their printer, the entity must destroy the unused incorrect ballots. (Section 52.0064). Before destroying the ballots, the entity must post notice of the time and place where the ballots will be destroyed. The notice must be posted continuously for 72 hours prior to the appointed time for ballot destruction. The Secretary of State has prescribed a [form \(PDF\)](#) for this notice.

The ballot destruction process must be conducted in the presence of the sheriff (in a primary election or governor-ordered election) or the authority ordering the election (for all other elections). When destroying the ballots, the authority responsible for preparing the official ballot must keep a record of the incorrect ballots that are destroyed. The Secretary of State's office has prescribed a [form \(PDF\)](#) for this record. The authority shall preserve the record for the period for preserving the precinct election records.

### **Section 52.0064. Destruction of Incorrect Ballots.**

- a. (a) If new ballots are prepared to make a correction on the ballot, the authority responsible for having the official ballot prepared shall destroy the incorrect ballots in the presence of:
  1. the sheriff, in an election ordered by the governor or a primary election; or
  2. the authority responsible for ordering the election, in any other election.
- b. The authority responsible for having the official ballot prepared shall post in the authority's office a notice of the date, hour, and place of the destruction of the incorrect ballots. The notice must remain posted continuously for the 72 hours preceding the scheduled time of the destruction.
- c. Any interested person is entitled to be present at the destruction of incorrect ballots.
- d. The authority responsible for having the official ballot prepared shall prepare a record of the incorrect ballots that are destroyed. The authority shall preserve the record for the period for preserving the precinct election records.

## **Corrected Ballots for By Mail Voters**

The corrected ballot must be sent to all ballot by mail voters who were sent an incorrect ballot. (Section 86.009). The authority preparing the ballot must keep a list of the voters who have been sent a corrected ballot. The Secretary of State's office has prescribed a [form \(PDF\)](#) that may be used for this list.



As a reminder, the names of the voters who voted by mail are not available for public inspection until after the corrected ballot has been returned. (Section 87.121). Our office believes this provision would extend to the corrected ballot roster as well. However, if you receive a request for that information, you should consult with your public information officer about the request, including determining whether to seek a decision from the Attorney General's office on whether the requested information is exempt from disclosure to the public.

When mailing a corrected ballot, the early voting clerk must include a written notice explaining the reason for providing the corrected ballot. The notice must also include instructions to destroy the defective ballot if it has not already been returned to the clerk. The notice should also explain to the voter that if both ballots are timely returned to the early voting clerk, the corrected ballot will be counted. If only the original, defective ballot is returned to the early voting clerk, the original ballot will be counted. The Secretary of State's office has prescribed a [form \(PDF\)](#) that may be used for this notice.

Additionally, the **early voting clerk must make a notation on the carrier envelope** indicating that the ballot is a corrected ballot. This is important because when the ballot is returned, the early voting clerk must be able to identify if the ballot inside is the corrected or uncorrected ballot from the face of the carrier envelope. The early voting clerk may use a sticker, stamp, or other format approved by the Secretary of State to make this notation. The early voting clerk must also make a notation on the voter's application for ballot by mail, and on the early voting roster, that the voter was sent a corrected ballot.

### **Section 86.009. Providing Corrected Ballot to Voter.**

- a. If, after a ballot to be voted by mail is provided to a voter, the official ballot is changed in a way that affects the choices available to the voter in the election or the validity of the ballot provided to the voter if cast, the early voting clerk shall mail a corrected ballot and corresponding balloting materials to the voter unless in the clerk's opinion there is not sufficient time for the voter to timely return the corrected ballot to the clerk.
- b. The clerk shall include with the balloting materials provided to the voter a written notice containing:
  1. a brief explanation of the reason for providing another ballot; and
  2. an instruction to destroy the defective ballot if it has not already been returned to the clerk.
- c. Before mailing the corrected ballot to the voter, the clerk shall place a notation on the carrier envelope indicating that the ballot is a corrected ballot being provided under this section. The clerk shall also indicate on the voter's application that the voter was provided a corrected ballot.
- d. The clerk shall prepare a list containing the name of each voter who is provided a corrected ballot under this section. The clerk shall preserve the list for the period for preserving the precinct election records.
- e. A voter's defective ballot that is timely returned to the clerk as a marked ballot shall be treated as:
  1. a marked ballot not timely returned if the corrected ballot is timely returned as a marked ballot; or
  2. as the voter's ballot for the election if the corrected ballot is not timely returned.

## **Counting Corrected Ballots from Ballot by Mail Voters**

When a voter receives a corrected ballot by mail, the accompanying Notice of Correction to Ballot by Mail gives the voter specific instructions about returning his or her ballot. **Only one of the two ballots is allowed by law to be counted.** The ballot that will be counted depends on which ballot is returned by the voter, and when:

- For domestic voters using an ABBM, the corrected ballot must arrive by 7 p.m. on Election Day to be counted, otherwise the voter's originally returned uncorrected ballot will be counted on election night.
- For overseas voters using an ABBM, the corrected ballot must arrive by the 5th day\* after election day to be counted, otherwise the voter's originally returned uncorrected ballot will be counted.
- For military and/or overseas voters using an FPCA, the corrected ballot must arrive by the 6th\* day after election day to be counted, otherwise the voters' originally returned uncorrected ballot will be counted.

\*Per 1.006, if these deadlines fall on a Saturday, Sunday, or federal or state holiday subject to 1.006, then this deadline will roll forward to the next business day.

The Early Voting Ballot Board may not process any ballots from voters that received corrected ballots until after 7 p.m. on Election Day (for domestic ABBM voters), the 5th day after election day (for overseas ABBM voters) or the 6th day after election day (for FPCA voters).

A voter may still cancel his or her Application for a Ballot by Mail, and vote in person, up until the time the voted ballot is received by the early voting clerk. (Section 84.032). Below our office has provided guidance on specific ballot by mail counting scenarios.

### Specific Guidance on Counting of Mail Ballots

1. If a voter submits an uncorrected ballot by mail and does not return a corrected ballot (or vote a corrected ballot by personal appearance), the previously submitted uncorrected ballot will be counted.
2. If a voter returns a corrected ballot by mail, the corrected ballot will be counted.
3. If the voter submits a Request to Cancel Application for a Ballot by Mail before a voted ballot is received by the early voting clerk, the request should be marked as cancelled and the voter will be eligible to vote a regular ballot in person. Because the request was cancelled, any voted ballots by mail that arrive after the request was cancelled should NOT be sent to the Early Voting Ballot Board.
4. If a voter surrenders a corrected or uncorrected ballot at the polling place, he or she will vote a regular ballot.
5. If the voter does not have a ballot to surrender at the polling place, has not cancelled his or her Application for a Ballot by Mail in writing, and does not have a Notice of Improper Delivery, the voter may appear in person at the polling place and vote provisionally. Which ballot is counted depends on which ballot is reviewed by the Early Voting Ballot Board first. The provisional vote will be counted unless an uncorrected ballot or corrected ballot was already delivered to the Early Voting Ballot Board. This is why it is important to hold the uncorrected ballots until 7 p.m. on Election Day,

or until you receive the corrected ballot by mail, whichever comes first. NOTE: If a corrected or uncorrected ballot by mail is reviewed first and properly rejected (e.g., for lack of signature), that concludes the process for the voter. The voter's provisional ballot would not be accepted in this circumstance.

Please contact our office if you have any additional questions about whether a ballot correction is necessary or if you have any questions about the procedures outlined in this advisory. You can reach us at 1-800-252-8683, or via [email](#).

Updated: 09/2020

KI:CA:CP:JG