March 26, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 20070

TO: All County Clerks/Registrars of Voters

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

RE: Requests for Ballot Images

The Secretary of State’s office has received numerous inquiries regarding ballot image requests relating to the one percent manual tally process. Specifically, counties have asked if they are required to provide those ballot images to a requestor. It is the opinion of the Secretary of State’s office that ballot images can be viewed by an observer during the one percent manual process, but copies shall not be provided to a requestor.

The phrase “ballot image(s)” is not defined by the Elections Code. In the absence of a definition our office understands that requestors may be referring to a digital scanned copy of a ballot.

Newly enacted Section 20119(b) of the California Code of Regulations (CCR) (applicable to Risk Limiting Audits) states that cast vote record data shall not be published on the elections official’s website, but can be made available to the public at the location where the audit is being conducted.

For the definition of a cast vote record, CCR section 20111(f) refers to Elections Code section 15366(d) and states that a cast vote record shall be generated by the voting system. Elections Code section 15366(d) defines “cast vote record” as “an auditable document or electronic record that purports to reflect the selections a voter made on a ballot. It lists the contests on the ballot and the voter’s selections in each of those contests.”

Based on the above, and while CCR section 20119 applies to Risk Limiting Audits, the Secretary of State is of the opinion that a ballot image is a cast vote record, and as such, a copy should not be provided to a requestor.
Additionally, pursuant to Elections Code section 15360, county elections officials are not required to provide a ballot image or any other materials when conducting the one percent manual tally.

We further understand that requestors may have asked you to provide documents using third party services. We advise against connecting your networks to any untrusted services.

If you have any questions, please contact Robbie Anderson at aanderso@sos.ca.gov or NaKesha Robinson at nakesha.robinson@sos.ca.gov. Thank you.