MEMORANDUM

To: Democratic County Central Committees, Campaign Committees of Democratic Candidates, and Interested Parties
From: Coby King, Esq., Promote and Protect the Vote (P2TV) Director; Steven Kamp, Esq., P2TV Preparing for Election Day Legal Manual Principal Author; Clark Lee, Esq., Political Director; and Kasey Walukones, Deputy Political Director
CC: Sandra Lowe, Senior Strategist
Date: October 2018
Subject: General Information on Returning Vote-By-Mail (VBM) Ballot by Any Designee of a VBM Voter

CDP Promote and Protect the Vote Hotline: 877-321-VOTE (8683) | www.cadem.org/p2tv

Introduction and Overview

In 2016, the Governor signed AB 1921, authored by Assembly Member Lorena Gonzalez Fletcher (D-San Diego), which amended California Elections Code Section 3017, allowing a voter’s completed vote-by-mail (VBM) ballot to be returned to the elections official by anyone designated by that voter on behalf of that voter. The law was enacted in 2017. 2018 is the first statewide election with the law in effect. This new law removes the previous restriction whereby only an immediate family member or a person in the voter’s household could return a voter’s VBM ballot.

This new law empowers a voter with greater choice on how to return the cast ballot. It also affords campaigns and activists additional outreach opportunities to help make sure that cast ballots are returned by Election Day and that every vote is counted as cast. Moreover, with five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) implementing the Voter’s Choice Act this year, which triggers all voters to receive VBM ballots, this new law becomes even more critical.

We are encouraged by the continued reforms which enfranchise voters in California and keep our state at the cutting-edge of expanding voting rights and ballot access, and we want to make sure that you are informed about them and that you don’t run into unexpected pitfalls. Additionally, any campaign that wishes to engage in opportunities presented by the new law to help voters should set up proper procedure and training for all campaign staff/volunteers accordingly.

This memo includes key points and general notes regarding the law for reference only. No part of this memo constitutes legal advice, nor is this memo intended to be construed as legal advice.

Key Points on AB 1921 (Elections Code Section 3017)

- Previously, a VBM voter who was unable to return their own completed VBM ballot could designate the voter’s immediate family member (e.g., spouse, parent, grandparent, grandchild, brother, sister) or a person residing in the same household as the VBM voter to return the ballot to the elections official who issued the VBM ballot to the voter, before the close of the polls on Election Day.

- The new law allows a VBM voter to designate anyone to return said voter’s completed VBM ballot on behalf of the voter.

- The person designated by the VBM voter to return the completed VBM ballot is prohibited from receiving any form of compensation based on the number of ballots the person has received/collected (i.e., any form of monetary payment, goods, services, benefits, promises or offers of employment, or any other form of
consideration offered to another person in exchange for returning a voter’s VBM ballot). Organizations, groups, and individuals are prohibited from providing compensation on this basis.

- Any person designated to turn in a completed VBM ballot on behalf of a VBM voter who knowingly and willingly engages in criminal acts related to that ballot (e.g., bribery, fraud, intimidation, failure to return ballot in a timely manner, tampering with ballot, etc.), is subject to punishment pursuant to existing law.

**General Notes and Important Things to Remember**

- **Voter’s Right to A Secret Ballot.** A person seeking to return a voter’s completed VBM ballot must respect the voter’s right to a secret ballot, respect the voter’s right to refuse a request to turn in VBM ballot, and not interfere with voter casting his or her VBM ballot.
  - The voter must mark their own ballot.
  - The voter must place the completed ballot into the VBM ballot return envelope.
  - If the voter requires assistance in completing the ballot, the voter may seek assistance from anyone of their own choosing, except their employer or union representative.
  - However, it is advised that a campaign staff/volunteer refrain from assisting said voter from casting their own ballot.

- **Completing VBM Ballot Envelope.** A VBM voter should make sure to complete the VBM ballot envelope in accordance with VBM instructions, including but not limited to printing their name, residence address (as shown on the voter’s affidavit of registration), and signing their name on the VBM ballot envelope.
  - A campaign staff/volunteer may suggest to the voter that the voter try and sign with the same signature used on their voter registration form.

- **Designating VBM Ballot Returner.** Further, the VBM voter must complete the portion describing their relationship to the person designated to return the VBM ballot on their behalf.
  - A campaign staff/volunteer should indicate their role as campaign representative on this portion.
  - A campaign may elect to provide a receipt to the voter with contact information of the campaign.
  - It is advised that a voter’s designated person for turning in that voter’s VBM ballot returns the VBM ballot physically to the elections official, not return the VBM ballot by mail.

- **Timeline and Process of Returning VBM Ballot.** A VBM ballot must be returned to the elections official (e.g., a polling place, the county registrar’s office, or a vote center in Voter’s Choice Act participating counties) before the close of polls at 8:00 PM on Election Day, Tuesday, November 6, 2018.
  - A campaign should set up a proper internal procedure, such as:
    - A record of chain of custody of each VBM ballot, including but not limited to: name/address of voter, name/contact of staff/volunteer serving as designee to the voter for returning VBM ballot, date/time the ballot was received from a voter, date/time the VBM ballot was returned to the elections official, record/receipt from the election official for returning the VBM ballot
    - A method to secure the VBM ballot received
    - Return the VBM ballot to elections official promptly
  - A VBM ballot should be returned to the elections official within a reasonable time (e.g., on the same day)
• **Voter’s Option to Return Ballot.** The voter has the option to mail in their own VBM ballot. A campaign staff or volunteer must respect a voter’s choice to mail their own VBM ballot and must not pressure the voter to do otherwise.
  
  o VBM ballots must be postmarked on or before Election Day, Tuesday, November 6, 2018, and received by elections officials by Friday, November 9, 2018. A voter mailing a VBM ballot should make sure to place sufficient postage on the VBM ballot envelope.
    
    ▪ Note that in 2018, VBM ballot postage is prepaid in the following counties: Alpine, Los Angeles, Marin, Napa, Plumas, San Francisco, Santa Clara, Santa Cruz, and Sierra.
    
    ▪ Starting 2019, all VBM ballot postage are required to be prepaid by the counties.
  
  o The voter can personally return their own VBM ballot to the elections official (e.g., a polling place, the county registrar’s office, or a vote center in Voter’s Choice Act participating counties) before the close of polls at 8:00 PM on Election Day, Tuesday, November 6, 2018.

**General Questions**

If you have any general questions, please contact:

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For more information and resources on Promote and Protect the Vote (P2TV), visit www.cadem.org/p2tv.

If you have further specific legal questions, please consult legal counsel.

*Sources: California Elections Code Sections 3017, 3021, 18577; AB 1921 Floor and Committee Analyses; Future of California Elections 2018 Election Reform Primer: What Voters Need to Know*