

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

REPUBLICAN PARTY OF NEW MEXICO,

Plaintiff,

Case assigned to Ellington, T. Glenn

vs.

Case No. D-101-CV-2020-02344

MAGGIE TOULOUSE OLIVER, Secretary of
State of New Mexico, PATRICK MARTINEZ,
County Clerk of Guadalupe County, and ANNA
MARTINEZ, County Clerk of Taos County,

Defendants.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF REGARDING
ABSENTEE-BALLOT DROP BOXES**

Plaintiff Republican Party of New Mexico (“RPNM”) alleges the following as its three-count Complaint against Defendants Maggie Toulouse Oliver, Secretary of State of New Mexico (“the Secretary”), Patrick Martinez, County Clerk of Guadalupe County (“the Guadalupe Clerk”), and Anna Martinez, County Clerk of Taos County (“the Taos Clerk”).

THE NATURE OF THE ACTION

1. In 2019, the Election Code was amended to allow voters a fourth option for returning their completed absentee ballots — beyond mailing them in, walking them into the county clerk’s office, or walking them into a polling place. That option is the “secured container,” which is described in NMSA 1978, § 1-6-9(E). That subsection of the Election Code attaches a number of security requirements to the use of secured containers, and it additionally requires that “the location of the containers and the days and times the containers will be available to receive ballots [be] posted by the county clerk *at least ninety days before* a statewide election.” *Id.* § -

9(E)(1) (emphasis added). For reasons that remain unclear, very few county clerks thought about setting up such containers in time to meet the deadline, *see, e.g.*, Petition for Order to Post Notice of Secured Container, *In re: Bernalillo Cnty. Petition for Secured Container*, No. D-202-CV-2020-05052 (N.M. 2d Jud. Dist. Ct. Sept. 4, 2020) (asking the Court to allow untimely designation of a secured container, which was ultimately denied), and the Secretary’s solution was to create another ballot-return option — one with no basis whatsoever in statute — called the “drop box.” The Secretary released her main guidance on the use of drop boxes in early September, *see* General Election 2020 Drop Box Standards & Guidance (dated Sept. 9, 2020) (Exhibit 1 to this Complaint) (“Standards & Guidance”), and followed up with an additional, multi-topic advisory touching on drop boxes in mid-October, *see* Secretary of State and Attorney General’s 2020 New Mexico General Election Voter Information Advisory at 6 (dated Oct. 14, 2020) (Exhibit 2 to this Complaint), which unfortunately some clerks appear to be interpreting as softening the earlier Standards & Guidance (the subsequent advisory, *e.g.*, changes references to “must remain under the direct supervision of at least two county staff or election workers at all times” to “should have at least two workers supervising them”).

2. The RPNM wants to promote widespread voter turnout under safe, secure conditions, and as such it did not categorically object to this legally questionable creation of the Secretary’s, given the unique circumstances of this election and the COVID-19 pandemic.¹ However, in addition to being treated as in-person drop-offs under § 1-12-8.2(A), these drop boxes

¹ The basic answer to the practical question “why has the RPNM opposed untimely petitions for secured containers but not opposed drop boxes” is that drop-box locations, unlike secured-container locations, are necessarily tied to preexisting polling places, and thus not subject to the same degree of location-selection gamesmanship. For example, in the previously cited Bernalillo County case, the county clerk was asking to put a single secured container in an 80%-Democrat precinct surrounded by 65%-, 73%-, 73%, 67%-, 77%-, 75%-, 78%-, and 77%-Democrat precincts, despite the fact that Bernalillo County at large is only 62% Democrat (these numbers refer to the 2018 gubernatorial vote). *See* RPNM Response to Petition, No. D-202-CV-2020-05052 (filed Sept. 15, 2020). There is a greater degree of protection in place to prevent the ruling party of a county from just setting up *polling places* in locations designed to benefit themselves.

should be held to the same security requirements as secured containers, including the requirement that they “shall be monitored by video surveillance cameras and the video recorded by that system shall be retained by the county clerk as a record related to voting.” NMSA 1978, § 1-6-9(E)(3). Applying the secured-container rules — other than the 90-day posting rule — to drop boxes statewide is the subject of Count 1 of this three-count Complaint.

3. Counts 2 and 3 of this Complaint are even more imminently serious. The Secretary’s Standards & Guidance, while not fully tracking the rules for secured containers, do provide a somewhat meaningful framework for ballot security, requiring, among other things, that “[t]he drop box must remain under the direct supervision of at least two county staff or election workers at all times (aka ‘ballot collection team’),” that the “ballot collection team must be bipartisan,” and that the drop boxes be emptied at the end of each voting day — whenever the polling place they are associated with closes — and moved to an inaccessible location during the off hours. Standards & Guidance at 2-3. The Plaintiffs have obtained evidence that the Guadalupe Clerk’s office has been leaving drop boxes unattended and accessible at all hours; this practice, especially if coupled with a failure to monitor the boxes via videorecording, leaves open myriad potential for election misconduct — from the theft, damaging, or destruction of ballots left in the box (or placed there after hours), to the dropping off of large numbers of harvested (or otherwise improperly collected)² ballots during the unmonitored off hours. Count 2 asks the Court to issue an injunction against the Guadalupe Clerk to put an immediate end to this practice. The Taos Clerk, on the other hand, has continuously declined to order poll workers at the county-courthouse polling place to man and observe the drop boxes outside the courthouse, despite several rounds of

² In New Mexico, only the “voter, [a] caregiver to that voter or [a] member of that voter’s immediate family may deliver that voter’s absentee ballot to the county clerk in person or by mail; provided that the voter has subscribed the official mailing envelope of the absentee ballot.” NMSA 1978, § 1-6-10.1(A); *see id.* § -10.1(B) (defining “‘immediate family’ [to] mean[] the spouse, children, parents or siblings of a voter”).

complaints and assurances from the Secretary that the issue has been fixed. Count 3 asks the Court to order the Taos Clerk to either discontinue the use of drop boxes or to ensure their continuous observation.

THE PARTIES

4. Plaintiff RPNM is a qualified major political party in New Mexico under NMSA 1978, § 1-7-7(A). It counts among its membership large numbers of registered voters in Guadalupe and Taos Counties, and has candidates who will appear on the ballots of all Guadalupe County and Taos County voters.

5. Defendant Patrick Martinez is the County Clerk of Guadalupe County, and in that capacity is the chief election official for the county and has numerous duties relating to the issuance, receipt, and processing of absentee ballots. *See, e.g.*, NMSA 1978, §§ 1-2-6 & -12.

6. The Secretary “is the chief election officer of the state,” NMSA 1978, § 1-2-1(A), oversees the state Bureau of Elections, *see id.* § 8-4-5, and is tasked by statute with “obtain[ing] and maintain[ing statewide] uniformity in the application, operation and interpretation of the Election Code,” *id.* § 1-2-1(B)(1).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under § 13 of Article VI of the New Mexico Constitution, the Declaratory Judgment Act, NMSA 1978, § 44-6-1 to -15.

8. This Court has personal jurisdiction over the Defendants under the New Mexico long-arm statute, NMSA § 38-1-16, and under § 1-14-9 of the Election Code.

9. Venue in Santa Fe County is proper under NMSA 1978, § 38-3-1(G), because Santa Fe County is both “the county in which [the Secretary’s] offices are located” and “the capital.”

COUNT 1
CLAIM FOR AN INJUNCTION AND DECLARATION AGAINST THE SECRETARY
REQUIRING THAT THE SECURED-CONTAINER SECURITY STANDARDS OF
§ 1-6-9(E)(3) TO (5) BE APPLIED TO DROP BOXES

10. Pursuant to Rule 1-010(C) NMRA, the Plaintiff incorporates by reference all of the foregoing allegations in this Complaint.

11. The following section of the Election Code — which is reproduced here in full — is the only section laying out voters' options for returned a completed absentee ballot for counting:

- A. When voting a mailed ballot, the voter shall secretly mark the mailed ballot in the manner provided in the Election Code for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. The voter or another person authorized by law shall then return the official mailing envelope containing the voted ballot to the county clerk of the voter's county of residence. If returned by a person other than the voter, the official mailing envelope shall contain the signature, printed name and relationship to the voter of the person returning the ballot.
- B. The official mailing envelope may be returned by mail using the United States postal service. The secretary of state shall implement a free-access tracking system for each voter to be able to see the status of the voter's mailed ballot while en route to the voter as well as when returned to the county clerk.
- C. The official mailing envelope may be returned using a commercial delivery service; provided that unless the secretary of state has approved the use of a specific commercial delivery service, the voter shall be responsible for the costs of delivery by means of such service.
- D. The official mailing envelope may be returned in person to the office of the county clerk or to an alternate voting location, mobile alternate voting location or election day voting location.
- E. The official mailing envelope may be returned by depositing the official mailing envelope in a secured container made available by the county clerk to receive voted mailed ballots for that election; provided that:

- (1) the location of the containers and the days and times the containers will be available to receive ballots are posted by the county clerk at least ninety days before a statewide election or forty-two days before a special election;
- (2) the location of a secured container is considered a polling place for purposes of electioneering too close to the polling place in violation of Section 1-20-16 NMSA 1978;
- (3) all secured containers shall be monitored by video surveillance cameras and the video recorded by that system shall be retained by the county clerk as a record related to voting pursuant to the provisions of Section 1-12-69 NMSA 1978;
- (4) signage at the location of a secured container shall inform voters and those dropping off ballots at the location:
 - (a) that it is a violation of law for any person who is not an immediate family member to collect and deliver a ballot for another person;
 - (b) that electioneering is prohibited within one hundred feet of the secured container; and
 - (c) of the dates and approximate time the ballots will be collected; and
- (5) at least once a day, the county clerk or a full-time deputy county clerk shall collect the ballots from the secured containers, register the date and time stamp on each official mailing envelope and identify the location of the secured container in the ballot register.

NMSA 1978, § 1-6-9.

12. The Secretary has justified drop boxes under subsection (D) of the above statute, the generic provision allowing for the “in person” return of ballots to the county clerk’s office, an alternate or mobile alternate voting location (*i.e.*, an early-voting site), or an election day location. *See Standards & Guidance* at 2. Given existence of subsection (E) on secured containers, and given the historical practice of enforcing the requirements in the last sentence of subsection (A)

and in § 1-6-10.1 by having a poll worker orally verify whether the person dropping off the ballot is the voter — and, if not, further verifying that the person is an immediate family member and that they have signed the outside of the ballot — this conclusion is highly dubious. It is also in direct contravention of the statutory procedure for turning in an absentee ballot to a polling place:

A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter’s absentee ballot on election day to any polling location in the county in which the voter is registered *if the voter presents the official mailing envelope to the presiding judge* before the polls close on election day.

NMSA 1978, § 1-12-8.2(A) (emphasis added).

13. The RPNM, however, has generally been game to consider drop boxes a permissible cross-breed of traditional in-person delivery of absentee ballots and the “secured container” construct of subsection (E), reasoning that the requirement that the “locations of the containers . . . [be] posted . . . at least ninety days before [the] election” is specifically linked to addressing concerns over — *i.e.*, allowing time for citizen complaints and litigation, in addition to public awareness of — the *locations* of the containers, rather than their security. NMSA 1978, § 1-6-9(E)(1); *see* note 1, *supra*.

14. There is no reason, however, for drop boxes to not be subject to the security requirement of subsection (E)(3) to (E)(5) — including the requirement that they be continuously monitored by video surveillance — in addition to those attendant to in-person voting, including that a poll worker orally verifies the ballot deliverer’s relationship to the voter and that he or she has signed the exterior of the envelope. This Court should issue a declaration and an injunction requiring the Secretary to take this position and to issue instructions to all county clerks to adhere to the same.

COUNT 2
CLAIM FOR AN INJUNCTION AGAINST THE GUADALUPE CLERK
FOR KEEPING DROP BOXES OPEN AND ACCESSIBLE DURING OFF HOURS

15. Pursuant to Rule 1-010(C) NMRA, the Plaintiff incorporates by reference all of the foregoing allegations in this Complaint.

16. Guadalupe County voters have informed the RPNM that drop boxes in Guadalupe County have been left open (as in open to individuals placing items into the box) and unattended, not only during hours that the polls are open, but when the polls are closed, as well. The RPNM has been provided with video footage of a drop box left unattended on Saturday, October 23, 2020, when the corresponding polling location was not open for business.

17. This is in direct contravention of both the Election Code and the Standards & Guidance, and the Court should issue an injunction ordering the Guadalupe Clerk to, if he wishes to continue using drop boxes, ensure that all drop boxes are continuously monitored and that they are only open and accessible to the public during hours that the polls are open.

COUNT 3
CLAIM FOR AN INJUNCTION AGAINST THE TAOS CLERK
FOR FAILING TO KEEP DROP BOXES UNDER DIRECT SUPERVISION

18. Pursuant to Rule 1-010(C) NMRA, the Plaintiff incorporates by reference all of the foregoing allegations in this Complaint.

19. Taos County voters have informed the RPNM that the Taos Clerk has left the drop box outside the county courthouse open and unattended during polling hours, and have provided the RPNM with video footage of individuals dropping ballots into the drop box, with no poll workers within sight. This course of conduct has persisted despite several back-and-forth exchanges with the Secretary — with the Secretary attempting to correct the issue and getting

verbal assurances from the Taos Clerk's office that the issue has been rectified — illustrating the need for the Court to issue an injunction.

PRAYER FOR RELIEF

The Plaintiffs hereby pray that this Court grant the following forms of relief to resolve the actual controversies raised in the Complaint and to afford relief from uncertainty and insecurity with respect to the rights, status, and other legal relations of the parties:

A. a TRO or preliminary injunction, followed by a permanent injunction and declaratory judgment, to Defendant Maggie Toulouse Oliver, Secretary of State of New Mexico, determining that, if drop boxes are to be used, they must comply with both with the secure-container security provisions of NMSA 1978, § 1-6-9(E)(3) to (5) and with the in-person security provisions outlined in her Standards & Guidance;


B. a TRO or preliminary injunction, followed by a permanent injunction, ordering Defendant Patrick Martinez, County Clerk of Guadalupe County, to either immediately discontinue the use of drop boxes or ensure that they are made inaccessible to the public during non-polling hours and kept continuously, directly monitored by at least two bipartisan election officials during polling hours, in keeping with the Secretary's Standards & Guidance;

C. a TRO or preliminary injunction, followed by a permanent injunction, ordering Defendant Anna Martinez, County Clerk of Taos County, to either immediately discontinue the use of drop boxes or ensure that they are kept continuously, directly monitored by at least two bipartisan election officials during polling hours, in keeping with the Secretary's Standards & Guidance; and

D. any other relief allowed by law and that the Court deems just and appropriate.

Respectfully submitted,

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Exhibit List

- Ex. 1: SOS Standards & Guidance on Drop Boxes (11 pages)
- Ex. 2: Drop-Box Excerpt from SOS Advisory on Various Subjects (2 pages)



General Election 2020 Drop Box Standards & Guidance

September 9, 2020

Purpose:

Pursuant to the Public Health Order issued by the New Mexico Department of Health on September 3, the Office of the New Mexico Secretary of State (SOS) issues the following guidelines to County Clerks who are interested in providing drop boxes for voters to return their mailed ballots. This guidance is offered in conformance to the Public Health Order's directive to limit the number of voters allowed inside a voting location and additional drop boxes, if incorporated, would preserve the health and safety of County Clerks and their staff, election workers, and voters themselves.

In support of the Public Health Order directive and in anticipation of a high volume of voters choosing to vote absentee, County Clerks are encouraged to allow for drop boxes to be available at every County Clerk's office, early voting location, mobile voting location, election day voting location, and other alternative locations as may be deemed necessary to support the health and safety of those communities impacted by the global pandemic. Ballot drop boxes offer a secure, convenient alternative for voters to cast their completed mail ballots while ensuring they are received by the deadline.

The purpose of this guidance is to provide uniform standards and guidance for the implementation of all ballot drop boxes used for the 2020 general election. Additionally, this document is meant to provide options that the 33 County Clerks may use in order to determine what is best used to support their resources, constraints and voters in their respective communities.

The SOS has been appropriated a portion of the federal CARES Act funding to support this drop box initiative. Information regarding requesting equipment or reimbursement in support of this initiative is included at the end of this document.

Resources:

Election Handbook – Article 6, Absentee Voting
NM Public Health Order – Dated September 3, 2020
Drive Up Drop Off Setup Quick Guide
Ballot Messenger Team Daily Log
Ballot Messenger Team Chain of Custody Form
County Drop Box Request Form
County Reimbursement Form

What are the options available for installing drop boxes?

- Inside a voting location – inside of a voting location but separated from other check-in and voting activities to maintain social distancing and optimize voter convenience.
- Outside a voting location – On a street or in a parking lot outside of the voting location to provide walk up or drive by accessibility to the voter.
- At another location deemed relevant by a County Clerk. Some examples may include:
 - To setup a full time presence in a location that is otherwise deemed to be a mobile voting location;
 - A location that may be a significant landmark or area of foot traffic in a community – such as Tribal Chapter House, Community Center, or Head Start Location.

How many ballot drop boxes will you need?

Section 1-6-9(D) NMSA 1978 provides an opportunity for absentee voters to return their absentee ballots at any voting location through Election Day. At a minimum, the County Clerk should have a drop box at every voting location. Voters generally know the locations of these buildings and are already accustomed to voting or doing business there.

Dependent upon available staffing resources, ballot drop boxes should be available to voters as soon as ballots are mailed and remain available through the close of polls on Election Day.

What are the minimum requirements for securing and maintaining drop boxes?

- The drop box must remain under the direct supervision of at least two county staff or election workers at all times (aka “ballot collection team”). A ballot collection team must be bipartisan and meet the requirements of election workers pursuant to Section 1-2-7 NMSA 1978.
- Drop boxes should be securely fastened to a stationary surface or to an immovable object, placed behind a counter, or portable so it can be transported to a curbside area or a mobile voting area.
- When not in use, all drop boxes, including those used in outdoor locations, shall be placed in an area that is inaccessible to the public and otherwise secured and safeguarded.
- If feasible, in addition to maintaining all other minimum requirements, drop boxes should be monitored by a video security surveillance system. A video security surveillance system can include existing systems on county, city, or private buildings.

- Ballot drop boxes must be secured and locked at all times. Only an election official, messenger, or someone designated to retrieve ballots shall have access to the keys and/or combination of the lock. In addition to locks, all drop boxes shall be sealed with one or more tamper evident seals.
- All drop boxes must be emptied by the end of each day in accordance with the defined protections and chain of custody guidance prescribed by the SOS.

What types of drop boxes may be used?

County clerks may choose to use the tabletop style ballot boxes that many clerks may already have on hand as an indoor ballot drop boxes. An example may be viewed here: <https://electionsource.com/collections/ballot-bags-and-boxes/products/steel-non-stuffable-ballot-box-12-x-12-x16?variant=32372107182160>. Conversely, ADA compliant, stainless steel drop boxes may be purchased from American Security Cabinets (<https://ballotdrops.com/product/model-710/>). This style of ballot box should be used for outdoor locations and can be ordered with castors in order to wheel it outdoors to use as a walk up or drive by drop off location.

Other styles of drop boxes that the counties may have in inventory may be adequate for use as drop boxes if they meet minimum security standards. If you have any questions about using a different style of drop box, please contact the SOS.

What signage is needed for drop boxes?

County clerks should provide signage at the location of each drop box located outside of a voting location that states:

- It is a violation of law for any person who is not an immediate family member or caregiver to collect and deliver a ballot for another person,
- That electioneering is prohibited within one hundred feet of the drop box, and
- The dates and approximate time the ballots will be collected.

Additional signage may be necessary in order to provide voters with notification or instructions related to the purpose of the drop box.

When must you publish the location of the drop boxes?

The number of drop boxes and their locations should be finalized in time to be included in the Notice of Election that is published at least 21 days prior to the general election. The announcement must include the days and estimated times a particular drop box will be available.

County Clerks should also include notice of location and hours of operation of drop boxes conspicuously posted on their website. In the event any changes are made to locations and/or schedules, the information posted on the elections official's website should be updated as soon as possible. Please note, SERVIS does not currently provide for a way to enter drop box information into the voter portal though this could be included in a future enhancement.

Additional notice is optimal to be sent to voters in the county to ensure they understand their options in submitting their mailed ballot. This can include informational inserts mailed out with absentee applications or absentee ballots.

Who can drop off a mailed ballot on behalf of a voter?

Pursuant to Section 1-6-10.1, NMSA 1978, only a voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the County Clerk in person or by mail. "Immediate family" means the spouse, children, parents or siblings of a voter.

If any one of these authorized people returns the mailed ballot of the voter, they must sign and provide their printed name and relationship to the voter on the official mailing envelope.

What equipment and supplies are needed for ballot drop box locations?

For drop boxes located inside the polling location ballot collection team members will likely need:

- Table
- Chairs
- Cable/bike lock
- Secure ballot transport bag/box
- Security seals
- Chain of custody procedures/forms
- Personal protective equipment (e.g. masks, sterile gloves, hand sanitizer), as appropriate and in accordance to current CDC guidance.
- Ballot drop box
- Signage

For drop boxes located outside the polling location allowing for walk up or drive up access, ballot collection team members will likely need:

- Vehicle such as a van or SUV where the seats can be laid flat (county owned or rented)
- Radio or cell phone
- Secure ballot transport bag/box
- Security seals
- Chain of custody procedures/forms
- Personal protective equipment (e.g. masks, sterile gloves, hand sanitizer), as appropriate and in accordance to current CDC guidance.
- Pop-up canopy
- Table
- Chairs
- Ballot drop box, possibly with castors for ease of transport
- Signage
- Road signs
- Orange cones
- Flashlights
- High-visibility vests for workers
- Weather appropriate support
- Setup guidance and maps

A Drive up Drop Off Setup Quick Guide is available to provide further guidance on the best practice setup for this type of drop box setup.

A County Clerk should inform the SOS as soon as possible, and no later than October 6, 2020, if they intend to implement drop boxes outside or separate from the voting location.

What is the special training or considerations needed for ballot collection teams assigned to staff a drop box?

Drop box collection teams, should be trained to ensure:

- That everyone submitting a mailed ballot is either the voter or an authorized person,
- That the authorized person has signed the outer envelope in the appropriate space, and
- How to reach election officials, in the event questions or problems arise.

How should a ballot collection team process a voter choosing to use a ballot drop box?

When a voter chooses to use a ballot drop box, the ballot collection team member should follow the following process:

1. Greet the voter and request confirmation that the voter themselves is dropping of the ballot.
2. If not the voter themselves, the team member should request further information in order to determine whether the person meets the lawful requirement of “immediate family member” or “caregiver” in order to legally drop the ballot.
3. If not already completed, the family member or caregiver should be instructed to sign the designated location on the official envelope.
4. Allow the ballot to be inserted into the drop box and assist the voter with insertion into the drop box, if needed.
5. The team member may provide an ‘I voted’ sticker to the voter.

It is acceptable for someone to drop off more than one ballot if it is deemed the person is an “immediate family member” or “caregiver” as required by Section 1-6-10.1, NMSA 1978.

For individuals not deemed to be legally allowed to drop off an absentee ballot, the ballot collection team member should not allow the insertion of the ballot(s) and should provide the person with information or a handout explaining the state law for dropping off absentee ballots.

Only ballots secured in the Absentee Official may be placed inside of the drop boxes.

Under no circumstance, should provisional ballots, hand tally ballots, or other ballots voted in person be intermingled with those absentee ballots collected in the drop boxes.

Absentee ballots shall be considered timely submitted if delivered to an Election Day polling location by 7:00 pm pursuant to Section 1-6-10(C) NMSA 1978.

What are the ballot retrieval procedures and chain of custody requirements?

To ensure ballot security and tracking, it is important to retrieve ballots at least once per day so that ballots can enter absentee tracking and processing as quickly as possible. The County Clerk should assign at least two designated ballot retrievers (aka “ballot messengers”) to pick up ballots from all drop box locations at least once a day, at the end of the open hours for that drop box, to deliver collected ballots to the County Clerk’s office or designated central count location. Best practice requirements include:

- The designated ballot messengers shall be the county clerk or full-time deputy clerk or designated messengers pursuant to Section 1-2-20 NMSA 1978.
- The designated ballot messengers should be bipartisan.
- Only designated ballot messengers may transport the retrieved ballots.

- Ballots must be transported in a secure ballot collection box/bag so as to not drop or otherwise misplace a ballot.
- Ballot messengers should be provided instructions for proper collection, transport, storage, and completion of the Chain of Custody Form.

Upon arrival at the drop box, the two designated ballot messengers shall complete the Daily Log and Chain of Custody Form every time ballots are collected to include:

- The location of the drop box
- Date and time of arrival
- Number of ballots retrieved
- Security seal number when box is opened
- Security seal number when box is locked and sealed again
- Full name of the designated ballot messengers
- Any other observation of note

Additionally, the date, time, location, and identity of the ballot messenger shall be recorded on each of the official mailing envelopes of the collected ballots.

What is the process for accepting absentee ballots delivered by the designated ballot messengers?

Upon arrival of the designated ballot messengers at the County Clerk's office, or other designated ballot intake or central count location, the County Clerk or designee, shall receive the ballots and complete the bottom portion of the Chain of Custody Form, designated for use by the county clerk, to include:

- Date and time of receipt
- Number of ballots retrieved
- Confirmation that the Daily Log and Chain of Custody forms have been properly completed by the ballot messengers
- A verified comparison to the previous days seal number, if applicable
- Full name and signature of the receiving staff member

Any ballots retrieved from a drop box location shall be processed and secured in the same manner as those absentee ballots otherwise delivered to the County Clerk's office such as by the voter or by the USPS.

Other Considerations

Start thinking about a ballot collection plan. This should include:

- Arranging with the USPS to designate a daily collection point for returned ballots and undelivered ballots.
- Hiring bipartisan messengers with clean driving records.
- Determining the frequency of collection prior to Election Day.
- Determining the frequency of collection on Election Day.
- Ensuring you have ballot messengers assigned at each location when polls close on Election Day.
- Establishing best practices for transferring ballots back to the County Clerk's office.
- All ballot drop boxes and transport boxes/bags should be numbered to ensure all are returned at the end of the shift, day, and on election night.
- Preparing driving routes and accompanying maps or directions.
- Developing a plan for helping voters find ballot drop-off locations. This can include a list of locations in the mail ballot packet as well as an online lookup tool with maps and directions. Two examples are Lewis County, WA (rural county) and King County, WA (large urban county).

Equipment Pre-Orders & Reimbursement Requests

The Office of the Secretary of State was just appropriated a portion of the federal CARES Act money in order to help county clerks implement drop boxes. County clerks may submit a request to order the below mentioned "drop box kits" in order to support this initiative OR counties may request reimbursement after the general election for the purpose of installing and managing drop boxes.

The Secretary of State will reimburse expenses for county clerks who choose to install drop boxes at all early, mobile, and Election Day polling locations. These drop boxes may be inside the polling location or outside the polling locations setup as a walk up or drive up drop box. Additionally, the Secretary of State will reimburse expenses for drop boxes installed at non-polling locations located in tribal or pueblo communities.

If counties choose to request equipment and supplies up front, we will order the equipment indicated in the "drop box kits" detailed below. The Secretary of State has priced common equipment and supplies that counties may need in order to setup the drop box stations. Alternatively, if counties prefer to use existing equipment or otherwise has specialty needs and would prefer to customize their equipment orders, our office will provide reimbursements up to the maximum allowable amount per location in lieu of us purchasing the standard kit on your behalf.

To place an order or to request reimbursement, the county clerk must fill out the provided forms. Pre-orders must be received as soon as possible by no later than September 21 in order to ensure we are able to have items delivered by October. For counties that would like to request a reimbursement, please include copies of invoices or receipts for the items that you would like to submit for reimbursement. Please submit orders and reimbursement requests to sos-finance@state.nm.us. All reimbursement requests must be received by December 31, 2020.

Questions about the drop boxes and supplies may also be directed to Jessie Hunt at (505) 918-5826.

*Note: If you have already submitted an order for ballot boxes but would like the SOS to cover the cost upfront, please proceed with completing the pre-order form and make a notation that the boxes have already been ordered.

Indoor Drop Box Kit

The indoor drop box kit provides for the option to setup a separate space inside the polling place to allow voters to bypass the in person voter check in line and proceed directly to a supervised drop box location. It assumes that the county will provide table and chairs for staff.

The equipment and supplies listed below are suggested, however, the county may choose comparable products to suit their specific needs.

Supply Line Item	Cost
Election Source Tabletop Ballot Box	\$133
Cable style bike lock w/padlock to secure box to table or other stationary surface	\$25
A frame stand with sign to direct voters to "Absentee Ballot Drop Box"	\$60
100 security seals for ballot box	\$45
Total maximum cost per location	\$275

*County Clerks may submit reimbursements for comparable equipment and supplies up to the maximum cost per location.

Many counties may already have tabletop ballot boxes that may be used for this purpose. Spare Dominion ballot bins may also be deployed as drop boxes, if needed. If you have any questions regarding the suitability of a particular style of drop box, please contact the SOS.

Outdoor Drop Box Kit

The outdoor drop box kit provides the option to setup a walk up or drive up drop box on the side walk, driveway, or parking lot of 1) an early or Election Day polling location or 2) a non-polling location such as a tribal or pueblo administrative building.

The kit provides for basic supplies presumed to be needed to setup a supervised drop box area on the exterior of a building. The equipment and supplies listed below are suggested as a starting point, however, the county should choose comparable products needed in order to provide a safe setup depending upon the unique circumstances at each location.

****Note:** the drop boxes used for outdoor locations should be the Ballot Drop Model 710 or similar. This ballot drop box is sturdy and designed to withstand a variety of weather and protect the ballot from moisture. The drop box is heavy so we have quoted it with castors so it can be wheeled in and out of the building each day. These drop boxes can also be converted to the secured containers and bolted to a permanent foundation when we implement Section 1-6-9, NMSA 1978 next year. The drop boxes may be viewed online at

<https://ballotdrops.com/product/model-710-on-casters/>.

Supply Line Item	Cost
Ballot Drops metal ballot drop box w/locking castors and extra keys (Model 710)	\$2226
Panel cart for transporting supplies	\$300
6ft folding table	\$60
Two folding chairs	\$50
Pop up canopy w/sand bag weights	\$150
A frame stand with sign to direct voters to "Absentee Ballot Drop Box"	\$60
Orange traffic cones -- pack of 10	\$150
Flashlight(s)	\$20
High visibility vests for workers (2)	\$30
100 security seals	\$45
Total maximum cost per location	\$3,100

*County Clerks may submit reimbursements for comparable equipment and supplies up to the maximum cost per location.

Small Ballot Transport Kit for Daily Pickup

The small ballot transport kit is intended to provide ballot transfer bags and security seals suitable for most counties to use for the daily transport of all absentee ballots to the county clerk for the duration of early and Election Day voting.

The equipment and supplies listed below are suggested, however, the county may choose comparable products to suit their specific needs.

Supply Line Item	Cost
Election Source Ballot Transfer Bag	\$30
100 Security Seals	\$45
Total maximum cost per election	\$75

Large Ballot Transport Kit for Daily Pickup

The large ballot transport kit is intended for counties that may need larger collection and transport bags to suit any location that is expected to experience a high volume of ballot drop offs.

The equipment and supplies listed below are suggested, however, the county may choose comparable products to suit their specific needs.

Supply Line Item	Cost
Election Source Large Ballot Transfer Duffle Bag	\$83
100 Security Seals	\$45
Total maximum cost per election	\$128

Ballot Collection Team

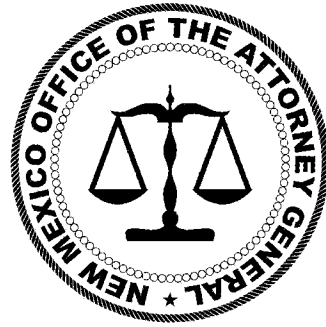
The Secretary of State will reimburse the hourly rate for all extra staff hired to serve on a ballot collection team. A team of two staff per location is expected to be suitable for most locations. The hourly rate **may not exceed \$13.68 an hour**. This reimbursement does not apply to county staff or those temporary workers that are also serving as poll workers.

Ballot Messenger Team

The Secretary of State will reimburse the hourly rate for all extra staff hired to serve on a ballot messenger team. A team of two staff may be assigned to pick up ballots from all polling locations in most situations, however, counties may determine the appropriate staffing need depending upon their own circumstances and total number of locations that will be served. The hourly rate **may not exceed \$13.68 an hour**. This reimbursement does not apply to county staff or those temporary workers that are also serving as poll workers.



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE



Secretary of State and Attorney General's 2020 New Mexico General Election Voter Information Advisory

October 14, 2020

Introduction

The right of each voter to cast his or her ballot free from intimidation or coercion is foundational to our democracy. Multiple statutes protect voter rights and central to these rights is maintaining order in and around the polling place. Voter intimidation and discriminatory conduct, as well as obstruction or interference at the polls, is illegal under federal and New Mexico law. Any activity that threatens, harasses or intimidates voters, including any activity that is intended to, or has the effect of, interfering with any voter's right to vote is illegal, whether it occurs outside the polling place or inside the polling place.

Know Your Rights

All registered voters have a right to cast a secret ballot without anyone bothering you or telling you how to vote. If someone interferes with your right to vote through threats, intimidation, or coercion, or you become aware of any interference with the right of New Mexico residents to vote, please contact the Attorney General's Election Security Hotline at (505) 318-1008.

Trusted Information

Election Officials, which include the Office of the Secretary of State (SOS) and the 33 County Clerk Offices, are your source for reliable and trustworthy information for election information. Be wary of confusion and misinformation being posted by varying sources on television, online or on social media.

Voter Information Portal - NMVote.org

New Mexico residents can find trusted information about the 2020 General Election, including polling locations, a ballot tracker, and a sample ballot, at NMVote.org or by contacting your local county clerk.

PLAINTIFF'S
EXHIBIT

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Drop Boxes

To further the effort to provide safe voting options during the pandemic, consistent with the Public Health Order, the SOS has issued specific guidance allowing for supervised absentee ballot drop boxes to be deployed during this election. These drop boxes are provided to voters as an alternative to mailing an absentee ballot back to the county clerk's office. County clerks may provide drop boxes both inside of polling locations and outside for express or drive through service depending upon the needs of a particular community.

All ballot drop boxes should be considered an extension of a polling location. As such, electioneering within 100 feet and other prohibited activities mentioned below apply to locations where ballot drop boxes have been set up. Additionally, drop boxes should have at least two workers supervising them at all times.

Again, pursuant to state law, only a voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot.

Prohibited Activity and Unauthorized Individuals

Anyone who intentionally refuses to permit a person to vote who is entitled to under law commits a crime under the Federal Voting Rights Act of 1965 and the New Mexico Election Code.

Some specific activities are prohibited under federal and state law and are summarized in the following sections.

Unauthorized Individuals

The PJ is the first line of defense in asking unauthorized individuals at a polling location to leave immediately. If an individual is resistant to following instructions or to leaving, the PJ has been instructed to contact law enforcement and the county clerk.

Only authorized challengers, watchers, and observers are permitted inside a polling location. Self-appointed watchers, such as private citizens, individuals purportedly appointed by organizations or private militia type groups, are not allowed to linger in the polling location and can easily present a disruption.

Additionally, authorized challengers, watchers, or observers may not directly confront voters. They also may not use raised voices or insulting, offensive, or threatening language. No one may interfere with the duties of the election board members.

Media: While the NM Election Code does not specifically address media in the polling place, the county clerk or PJ may choose to allow media access as long as it is not interfering with the voting process or compromising the secrecy of the ballot.

Persons not authorized to be in the polling place or willfully blocking the entrance of a polling place may be guilty of obstructing the polling place.

Voter Intimidation

Voter intimidation is a crime under federal and state laws. Under the New Mexico Election Code, intimidation consists of "inducing or attempting to induce fear in any member of a election board, voter,