



OFFICE OF THE SECRETARY OF STATE

ELECTIONS DIVISION

Directive of the Secretary of State	Subject: Ballot Counting	Directive Issued at the Request of: Secretary of State	Date: July 18, 2024	Number: 2024-04
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The Secretary of State in carrying out the duties of the office shall issue detailed directives necessary to maintain uniformity in the application, operation, and interpretation of Oregon election laws. (ORS 246.110-120)
The information provided here is an official directive of the Secretary of State.

Background

A ballot mailed on or before Election Day is timely so long as it is received by election officials within seven days of the election. See ORS 254.470(6)(e) and (8); ORS 253.585(4). If a ballot arrives without a postmark or another “postal indicator” within seven days of the election, election officials must count the ballot as timely in reliance on a voter’s statement signed under penalty of perjury that “[i]f mailed, this ballot was mailed no later than election day.” ORS 254.470(8); see also ORS 253.585(4); ORS 254.470(7)(b); OAR 165-007-0045(6)(c); Vote by Mail Procedures Manual, Appendix 3.

On the evening of the 2022 General Election, counsel to a political party sent a letter to the Secretary of State and the chief elections official of each of Oregon’s 36 counties claiming ORS 254.470(8) is unlawful, threatening to file a lawsuit asserting that claim, and requesting that ballots be segregated until the suit was decided. To date, no lawsuit challenging ORS 253.470(8) has been filed.

Local elections officials should not change ballot processing in response to an ORS 253.470(8) challenge unless expressly directed to do so by the Elections Division or a court of law. Any challenge to the legality of ORS 254.470(8) would be without merit. See *Bost v. Illinois State Bd. of Elections*, 684 F Supp 3d 720, 735–39 (ND Ill 2023). In addition, a statute cannot be invalidated after voters rely on the statutory mailing deadline. See generally *Purcell v. Gonzalez*, 549 US 1 (2006); *State ex rel. Keisling v. Norblad*, 317 Or 615, 625 (1993). Segregating the few ballots that are received without postmarks after election day for the purpose of “litigation holds” or other delayed ballot processing could unlawfully undermine voter anonymity. See generally Elections Division Directive 2022-2; ORS 254.400(1).

Directive

Mailed ballots received by a county election official within seven days of an election without a “postal indicator” must be processed in accord with ORS 254.470(8) and 253.585(4) and may not be segregated from other ballots, absent a contrary court order. This directive has no effect on the statutory challenge procedure under ORS 254.415.

Appeal

This directive may be appealed to Marion County Circuit Court within 60 days of its issuance under ORS 246.910.

LaVonne Griffin-Valade

Secretary of State

By:

Molly Woon

Elections Director