



COUNSEL'S OFFICE

November 2, 2024

Jane Nelson
Texas Secretary of State
1019 Brazos St.
Austin, TX 78701

RE: Texas's Illegal Counting of Mail Ballots Received After Election Day

Dear Secretary Nelson:

I write on behalf of the Republican National Committee regarding Texas's illegal practice of counting mail ballots that are received by election officials after Election Day. According to a recent decision by the U.S. Court of Appeals for the Fifth Circuit, "receipt" of mail ballots after Election Day is "preempted by federal law." *RNC v. Wetzel*, __F.4th__, No. 24-60395, 2024 WL 4579307, at *1 (5th Cir. Oct. 25, 2024). That rule is binding on the State of Texas with respect to federal elections.

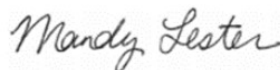
Federal law establishes a uniform, national day to elect Senators, members of Congress, and presidential electors—the first Tuesday following the first Monday in November. 2 U.S.C. §§1, 7; 3 U.S.C. §1. "For over a century after Congress established a uniform federal Election Day, States understood those statutes to mean what they say: that ballots must be *received* no later than the first Tuesday after the first Monday in November." *RNC*, 2024 WL 4579307, at *5.

But Texas is poised to count ballots that are received by election officials after Election Day. Tex. Elec. Code §86.007. Instead of instructing voters to deliver their ballots by Election Day as required by federal law, your office is instructing voters that their mail ballots may be received by 5:00 p.m. the day after Election Day and still count. *Voting by Mail*, VoteTexas, www.votetexas.gov/mobile/voting/voting-by-mail.htm.

This year, federal Election Day is November 5th. Federal law "does not permit" states "to extend the period for voting by one day, five days, or 100 days." *RNC*, 2024 WL 4579307, at *10. And any "contrary law is preempted." *Id.*

Given the unlawfulness of counting mail ballots received after Election Day in federal elections, there is a grave risk that all mail ballots received after Election Day in the State of Texas will be challenged in court and ultimately invalidated. We urge you to immediately abandon your plan to receive such ballots in order to avoid the threat of invalidated ballots and needless litigation. We also urge you to immediately update the incorrect guidance you are giving voters concerning when ballots must be received in order to be counted. At a minimum, you must instruct election officials to segregate any mail ballots collected after Election Day from all other ballots that are received.

Sincerely,



Mandy Lester
Chief Counsel